

## CHAPTER 23:02

### CUSTOMS AND EXCISE ACT

*Acts 16/1955 (Federal), 24/1955 (Federal), 10/1956 (Federal), 16/1956 (Federal), 20/1956 (Federal), 29/1956 (Federal), 1/1957 (Federal), 10/1957 (Federal), 20/1957 (Federal), 24/1957 (Federal), 15/1958 (Federal), 25/1958 (Federal), 7/1959 (Federal), 15/1959 (Federal), 21/1959 (Federal), 22/1959 (Federal), 44/1959 (Federal), 3/1960 (Federal), 4/1960 (Federal), 17/1960 (Federal), 18/1960 (Federal), 39/1960 (Federal), 5/1961 (Federal), 22/1961 (Federal), 4/1962 (Federal), 6/1962 (Federal), 25/1962 (Federal), 36/1962 (Federal), 49/1962 (Federal), 3/1963 (Federal), 9/1963 (Federal), 25/1963 (Federal), 5/1964, 11/1964, 36/1964, 51/1964, 90/1964, 4/1965, 6/1965 (s. 19), 9/1965 (s. 8), 14/1965, 26/1965, 3/1966, 7/1966, 40/1966, 1/1967, 3/1967, 12/1967, 32/1967, 48/1967, 3/1968, 17/1968, 28/1968, 3/1969, 26/1969, 38/1969, 1/1970, 17/1970, 36/1970, 19/1971, 49/1971, 19/1972, 43/1972, 7/1973, 19/1973, 6/1974, 22/1974, 41/1974, 30/1975, 17/1976, 30/1976, 26/1977, 22/1978, 24/1978, 36/1978, 41/1978 (s. 15), 23/1979, 24/1979, 2/1980, 15/1980, 1/1981, 15/1981, 22/1981, 51/1981, 53/1981, 8/1982, 33/1982, 34/1982, 9/1983, 20/1983, 29/1983, 17/1984, 25/1984, 29/1984, 19/15, 26/1985, 18/1986, 20/1986, 24/1986, 28/1987, 29/1987, 30/1987, 16/1988, 11/1989, 3/1990, 5/1990, 19/1990, 25/1990, 1/1991, 11/1991 (s. 14), 27/1991, 8/1992, 17/1992, 21/1992, 12/1993, 15/1994, 19/1994, 17/1995, 4/1996 (as modified by S.I. 94/1996), 13/1996, 3/1998 (s. 31), 29/1998, 17/1999, 21/1999, 22/1999, 18/2000, 22/2001, 27/2001, 29/2001, 15/2002, 12/2002, 15/2002, 10/2003, 18/2004, 29/2004, 2/2005, 8/2005, 12/2006; R.G.N.s 803/1963, 25/1970, 217/1970, 313/1970, 452/1970, 529/1970, 1135/1971, 413/1974, 790/1974, 822/1974.*

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**AN ACT to provide for the imposition, collection and management of customs, excise and other duties, the licensing and control of warehouses and of premises for the manufacture of certain goods, the regulating, controlling and prohibiting of imports and exports, the conclusion of customs and trade agreements with other countries, and forfeitures, and for other matters connected therewith.**

[Date of commencement: 1st July, 1955.]

#### PART I

##### PRELIMINARY

### 1 Short title

This Act may be cited as the Customs and Excise Act [*Chapter 23:02*].

### 2 Interpretation

In this Act—

“absolute alcohol” means absolute alcohol by volume at a temperature of fifteen degrees Celsius;

“agreement” means—

- (a) a convention, treaty, agreement or other arrangement concluded by the President in terms of section *ninety-nine*; or
- (b) those provisions of a convention, treaty, agreement or other arrangement referred to in subsection (2) of section *one hundred* that are identified by the President in terms of paragraph (b) of that subsection;

“aircraft” includes balloons, kites, gliders, airships and flying machines;

“anti-dumping duty” means an anti-dumping duty imposed in terms of section *ninety*;

“beer” includes ale, black beer, lager beer, porter, spruce beer and stout;

“bill of entry” means a prescribed form on which an entry is made;

[Definition inserted by Act 18 of 2000]

- (a) a distillate produced solely by the distillation of wine derived from the fermented juice of grapes, by a pot still or similar process, at a strength not exceeding eighty *per centum* of absolute alcohol; or
- (b) a mixture of two or more distillates as defined in paragraph (a); or
- (c) a distillate or mixture of distillates as defined in paragraph (a) or (b) to which has been added wine spirit or rectified spirit and flavouring matter so, however, than the finished product contains not less than twenty *per centum* of distillate referred to in paragraph (a) calculated as absolute alcohol; or
- (d) marc brandy;

and includes synthetic or imitation brandy which means a potable liquor containing more than one comma seven *per centum* of absolute alcohol and which purports to have or has the appearance and flavour of brandy but was produced by methods other than those specified in paragraph (a), (b) or (c), and is not marc brandy;

“brewer” means a brewer of beer, and includes the proprietor, lessee or possessor of a brewery;

“cigar” includes cheroot and cigarillo;

“cigarette” means any article made from cigarette tobacco rolled or enveloped in paper or other covering;

“cigarette tobacco” means—

- (a) any tobacco cut into strips less than one millimetre in width and includes any cut tobacco described or offered for sale as tobacco for making into cigarettes;
- (b) a mixture of any cut tobacco with tobacco as defined in paragraph (a);

“commercial goods” means goods which are used mainly for the generation of income or the making of profits;

“Commissioner” means—

- (a) the Commissioner in charge of the department of the Zimbabwe Revenue Authority which is declared in terms of the Revenue Authority Act [*Chapter 23:11*] to be responsible for assessing, collecting and enforcing the payment of duties in terms of this Act; or
- (b) the Commissioner-General of the Zimbabwe Revenue Authority, in relation to any function which he has been authorised under the Revenue Authority Act [*Chapter 23:11*] to exercise;

[Definition inserted by Act 17 of 1999]

“container” means a receptacle which—

- (a) is fully or partially enclosed so as to constitute a compartment intended for containing goods; and
- (b) is of a permanent character and strong enough to be suitable for repeated use; and
- (c) is specially designed to facilitate the carriage of goods by one or more modes of transport; and
- (d) is designed for ready handling, particularly when being transported from one mode of transport to another mode of transport; and
- (e) has an internal volume of one cubic metre or more;

“container depot” means any premises appointed by the Commissioner in terms of subsection (1) of section *nineteen* to which containers which contain or may contain uncustomed goods may be removed for entry, storage, detention, unpacking and examination;

[Definition amended by Act 17 of 1999]

“cost”, in relation to the cost, insurance, freight value of any goods, means the ex-factory price of the goods, together with the cost of transport from the place of manufacture to the place of export and all other charges and expenses incidental to placing the goods on board the means of transport by which the goods are removed from the country of exportation;

“cost, insurance, freight value”, in relation to any goods, means the total amount of the cost, insurance and freight paid or payable for those goods;

- “countervailing duty” means a countervailing duty imposed in terms of section *ninety-two*;
- “country of exportation”, in relation to imported goods, means the country from which such goods are exported to Zimbabwe, excluding any country through which such goods travel in transit;
- “crew” includes every person, except the master or pilot, employed in any capacity on any ship, aircraft or vehicle;
- “currency” includes any bill of exchange, promissory note, traveller’s cheque or letter of credit or any draft or other document issued to obtain currency or credit for an amount of money;
- “custom house” means a custom house appointed in terms of paragraph (f) of subsection (1) of section *fourteen*;
- “customs area” means any place appointed by the Commissioner in terms of subsection (1) of section *eighteen* for the deposit of uncustomed goods;  
[Definition amended by Act 17 of 1999]
- “customs aerodrome” means any aerodrome appointed by the Minister in terms of paragraph (d) of subsection (1) of section *fourteen*;
- “customs tariff” means the tariff of customs duties imposed in terms of section *two hundred and twenty-five*, as amended or replaced from time to time in terms of that section;
- “dealer”, in relation to cigarettes, means any person, including a club, who deals in cigarettes;
- “Department” means the department of the Zimbabwe Revenue Authority which is declared in terms of the Revenue Authority Act [*Chapter 23:11*] to be responsible for assessing, collecting and enforcing the payment of duties in terms of this Act;  
[Definition substituted by Act 17 of 1999]
- “designated opaque beer” means opaque beer which is manufactured by the holder of a commercial brewers permit issued in terms of the Traditional Beer Act [*Chapter 14:25*];
- “direct trader input facilities” means computerised facilities enabling an importer, exporter, manufacturer, holder of a licence or clearing agent to record information on the Customs computer system;  
[Definition inserted by Act 18 of 2000]
- “Director” .....  
[Definition repealed by Act 17 of 1999]
- “distiller” means any person who conducts, works or carries on any distillery either by himself or through his agent or servant;
- “distillery” means any place or premises where any process of distillation whatever of spirits is carried on, or where any process of rectification of spirits is carried on, or where any spirits are manufactured or produced from any substance whatever by any process other than fermentation;
- “duty”, subject to subsection (4) of section *thirty-four*, subsection (4) of section *thirty-eight*, subsection (6) of section *thirty-nine*, subsection (5) of section *forty*, subsection (6) of section *forty-five*, subsection (3) of section *forty-six*, subsection (1) of section *one hundred and eighteen*, subsection (2) of section *one hundred and ninety-two*, subsection (2) of section *one hundred and ninety-three*, subsection (3) of section *two hundred and four* and subsection (10) of section *two hundred and nine*, means any duty leviable under this Act or any other law relating to customs and excise and includes surtax;
- “duty-paid value”, in relation to any goods or articles, means, subject to section *two hundred and six* , the value of such goods or articles as determined in terms of section *one hundred and eighteen*;  
[Definition amended by Act 22 of 2001]
- “entry” in relation to clearance of goods for importation, warehousing, removal from a warehouse or exportation, means the presentation in accordance with this Act of a correctly completed and signed declaration on a bill of entry in writing and, where direct trader input facilities exist, includes the recording of the required information on the Customs computer system, using procedures approved by the Commissioner, or using a computerised procedure approved by the Commissioner, together with such bills of lading, invoices, price lists and other documents showing the purchase value of the goods together with the freight, insurance and other charges on the goods required to be declared by any provision of this Act;  
[Definition substituted by Act 18 of 2000]
- “excise tariff” means the tariff of excise duties imposed in terms of section *two hundred and twenty-five*, as amended or replaced from time to time in terms of that section;
- “export” means to take goods or cause goods to be taken out of Zimbabwe;
- “exporter” means any person in Zimbabwe who takes goods or causes goods to be taken out of Zimbabwe, and includes any employee or agent of such person and the owner of such goods as are exported;
- “feints” means any liquid which, in the course of distillation, redistillation or rectification, is conveyed to—
- (a) a feints receiver; or
  - (b) a vessel, the use of which as a feints receiver is authorized by or under this Act;

“fortified wine” means wine, grape must or concentrated grape must to which spirits other than feints have been added and includes wine to which fortified wine has been added;

“free on board” means free on board any ship, aircraft or vehicle;

“free on board value”, in relation to—

- (a) exported goods, means the price of such goods to the purchaser, including all costs, charges and expenses incidental to the sale thereof or to the placing thereof on board the means of transport by which they will be removed from Zimbabwe but excluding any subsequent costs, charges or expenses incurred in connection with the delivery of such goods to their destination;
- (b) imported goods, means the price of such goods to the importer, including all costs, charges and expenses incidental to the purchase thereof or to the placing thereof on board the means of transport by which they will be removed from the country of exportation but excluding any subsequent costs, charges or expenses incurred in connection with the delivery of such goods to Zimbabwe;

“freight”, in relation to the cost, insurance, freight value of any goods, means the cost of transporting the goods from the place of export in the country of exportation to the place of importation in Zimbabwe, and includes all loading, unloading handling and storage charges incurred prior to their arrival in Zimbabwe;

“gin” means—

- (a) a distillate resulting from the redistillation of rectified spirit in the presence of juniper berries with or without the addition of common salt and harmless aromatic or other flavouring matter in a pot or gin still; or
- (b) a distillate as defined in paragraph (a) compounded with rectified spirit;

and includes synthetic or imitation gin which means a potable liquor containing more than one comma seven *per centum* of absolute alcohol and which purports to have or has the appearance and flavour of gin but was produced by methods other than those specified in paragraph (a) or (b);

“goods”, subject to subsection (3) of section *twenty-seven*, subsection (3) of section *forty-eight*, subsection (2) of section *fifty-five*, subsection (4) of section *sixty-one*, subsection (2) of section *one hundred and seventy-three*, subsection (2) of section *one hundred and eighty-seven*, subsection (2) of section *one hundred and ninety-three* and subsection (10) of section *two hundred and nine*, including all wares, articles, merchandise, animals, matter, baggage, stores or things;

“honey beer” means any potable liquid containing more than one comma seven *per centum* but not more than seven comma four *per centum* of absolute alcohol which is derived by the fermentation of a mixture of honey and water;

“import” means to bring goods or cause goods to be brought into Zimbabwe;

“importer”, in relation to goods, includes any owner of or other person possessed of or beneficially interested in any goods at any time before entry of the same has been made and the requirements of this Act fulfilled;

[Definition amended by Act 18 of 2000]

“insurance”, in relation to the cost, insurance, freight value of any goods, means any costs, charges and expenses of or associated with the insurance of the goods from the place of export in the country of exportation to the place of importation in Zimbabwe;

“Lake Kariba” means the body of water formed by the construction of the Kariba Dam;

“landing”, in relation to goods, includes the discharging of goods from a pipeline;

“leaf tobacco” means the cured leaves of the tobacco plant;

“licence”, in relation to the manufacture of goods liable to excise duty or surtax, means a licence issued in terms of section *one hundred and twenty-eight*;

“licensed premises” means any premises in respect of which a licence is issued in terms of section *one hundred and twenty-eight* and includes any building situate outside the immediate precincts of any such premises which is used, with the approval of the Commissioner, in conjunction with those premises for reducing, bottling or the disposal of spirits distilled within Zimbabwe;

[Definition amended by Act 17 of 1999]

“loading”, in relation to goods, includes the pumping or insertion of goods into a pipeline;

“low-wines” means spirits of first extraction by a single still and conveyed into a low-wines receiver;

“manufacture”, in relation to—

- (a) goods liable to excise duty or surtax other than—
  - (i) motor spirit; and
  - (ii) imported goods;

includes the mixing, brewing, distilling or production of goods liable to excise duty or surtax; or

- (b) motor spirit liable to excise duty or surtax, other than imported motor spirit, includes the production of motor spirit by the mixing, blending, distilling or refining of any materials (excluding a motor spirit or such materials as may be prescribed);
- “manufactured tobacco”, in relation to tobacco liable to excise duty or surtax, other than surtax on imported goods, means—
- (a) leaf tobacco which has been subjected to any process of manufacture including cutting, grinding, crushing, rolling, breaking, tearing or rubbing; and
- (b) manufactured or partially manufactured tobacco which is subjected to any further process of manufacture including cutting, grinding, crushing, rolling, breaking, tearing or rubbing;
- but does not include leaf tobacco which has been subjected only to any process or treatment known in the usage of the trade as butting, thrashing or stripping;
- “manufacturer”, in relation to—
- (a) goods liable to excise duty or surtax other than—
- (i) motor spirit; and
- (ii) imported goods;
- includes any person who is required to be licensed in terms of section *one hundred and twenty-eight* and any person who mixes, brews, distils or produces goods liable to excise duty or surtax or who employs others to do so on his account; or
- (b) motor spirit liable to excise duty or surtax, other than imported motor spirit, includes any person who is required to be licensed in terms of section *one hundred and twenty-eight* and any person who produces motor spirit, liable to excise duty or surtax, by the mixing, blending, distilling or refining of any materials (excluding a motor spirit or such materials as may be prescribed) or who employs others to do so on his account;
- “mass” means—
- (a) in relation to tobacco, the net mass of such tobacco plus the mass of the moisture and other substances contained therein at the time of manufacture; and
- (b) in relation to cigarettes, the mass of the cigarettes as a whole including the mass of the tobacco, the paper or other wrapping material and the tipping material, if any;
- “master”, in relation to any ship or vehicle, means any person, other than the pilot of a ship, having charge of such ship or vehicle;
- “methyrate” includes any prescribed method of denaturation;
- “Minister” means the Minister of Finance or any other Minister to whom the President may, from time to time, assign the administration of this Act;
- “neutral spirit” means a spirit derived from the fermentation of carbohydrate materials and rectified at a strength of not less than ninety-four comma eight *per centum* of absolute alcohol,
- “officer”—
- (a) means an officer of the department of the Zimbabwe Revenue Authority which is declared in terms of the Revenue Authority Act [*Chapter 23:11*] to be responsible for assessing, collecting and enforcing the payment of duties in terms of this Act;
- [Definition substituted by Act 17 of 1999]
- (b) includes a person exercising the powers or performing the duties of an officer conferred or imposed upon him in terms of subsection (4) of section *three*;
- “opaque beer”, means any potable opaque liquid containing more than one comma seven *per centum* of absolute alcohol which—
- (a) is derived by the fermentation of a mash of cereal grain or vegetables or of grain or vegetable products, with or without the addition of sucrose; and
- (b) contains the mash or a residue of the mash from which it is derived;
- “open stock” means any goods which have been released within Zimbabwe after the requirements of this Act have been satisfied;
- “operator”, in relation to a pipeline, includes any person responsible for the management thereof or for the pumping or insertion of goods into or the discharge of goods from the pipeline;
- “package” means any container, wrapping or outer-cover and its contents, or any bundle or single piece where the goods are not packed;
- “pilot”, in relation to any aircraft, means any person having charge of such aircraft;
- “pipe tobacco” means any manufactured tobacco including tobacco in the form of cake, plug or stick but not including cigars, cigarette tobacco, roll tobacco, snuff or tobacco processed for any purpose other than chewing or smoking;
- “place of importation”, in relation to—
- (a) goods other than goods imported by post, means—

- (i) where the goods are imported by ship, the ship's first port of call in Zimbabwe;
- (ii) where the goods are imported by aircraft, the place where the aircraft makes its first landing in Zimbabwe;
- (iii) where goods are imported by road or rail transport, the place where the goods cross the borders of Zimbabwe;
- (iv) where the goods are imported by pipeline, the place where the goods pass through the first metered point on the pipeline within Zimbabwe;

(b) goods imported by post, means the post office in Zimbabwe where duty payable on the goods is assessed;

“port” means any place appointed by the Minister in terms of paragraph (a) of subsection (1) or paragraph (a) of subsection (2) of section *fourteen* and any customs aerodrome, whether within a port or not, shall be deemed to be a port for aircraft;

“potable” means suitable for consumption as an alcoholic beverage;

“premises” means any building or place whatsoever;

“proper officer” means, in respect of any port or matter the officer designated by rule or regulation or by the Commissioner to be the proper officer at that port or in that matter;

[Definition amended by Act 17 of 1999]

“provisional anti-dumping charge” means a provisional anti-dumping charge imposed in terms of section *ninety-one*;

“record” includes any device or medium whereon or wherein information is recorded;

“rectified spirit” means a spirit derived from the fermentation of carbohydrate material and rectified at a strength of not less than ninety-five *per centum* of absolute alcohol;

“revenue lock” or “revenue rod” means any lock or rod s the case may be, affixed by an officer to any premises, other storage places or goods, for the protection of the revenue;

“roll tobacco” means—

- (a) leaf tobacco which is grown in Zimbabwe and is twisted and put up for sale in the form of a roll, which is commonly known in Zimbabwe as roll tobacco;
- (b) tobacco grown in Zimbabwe and made up into balls and commonly known as inyoka tobacco;

“rum” means—

- (a) a distillate resulting from the distillation of the fermented juice of sugar cane or its by-products at a strength not exceeding eighty-two comma eight *per centum* of absolute alcohol; or
- (b) a mixture of two or more distillates as defined in paragraph (a); or
- (c) a distillate or mixture of distillates as defined in paragraph (a) or (b) compounded with rectified spirit derived from sugar cane or its by-products so, however, that the finished product contains not less than twenty *per centum* of distillate referred to in paragraph (a) calculated at absolute alcohol;

and includes synthetic or imitation rum which means a potable liquor containing more than one comma seven *per centum* of absolute alcohol and which purports to have or has the appearance and flavour of rum but was produced by methods other than those specified in paragraph (a), (b) or (c);

“sealable goods” means—

- (a) tobacco, cigars, cigarettes and any other preparations of tobacco or substitutes therefor;
- (b) wet goods;
- (c) opium and preparations of opium in any form;
- (d) cocaine, preparations of cocaine and other habit-forming drugs;
- (e) articles brought or intended as gifts for, or for sale to or for exchange with, any person;
- (f) all goods liable to excise duty or surtax and on which duty has not been paid, shipped at a place in Zimbabwe as ship's or aircraft stores;
- (g) any other goods which may from time to time be declared by rule or regulation to be sealable goods;

“ship” includes any ship, vessel or boat of any kind whatsoever, whether propelled by steam or otherwise or towed;

“smuggling” means any importation, introduction or exportation or attempted importation, introduction or exportation of goods with intent to defraud the State or to evade any prohibition of, restriction on or regulation as to, the importation, introduction or exportation of any goods required to be accounted for under this Act, and “smuggle” and “smuggled goods” have corresponding meanings;

“spirits” means—

- (a) ethyl alcohol; and
- (b) feints; and

(c) potable liquid containing more than one comma seven *per centum* of absolute alcohol obtained by any process other than fermentation;

but does not include a fermented potable liquid which has been fortified by the addition of spirits;

“stamp label” means any piece of paper or other material, having thereon the stamp, mark or impression of any die, plate or other instrument, made or used under this Act for the purpose of denoting any duty;

“State warehouse” means any premises appointed by the Commissioner in terms of section *two hundred and thirty-two*;

[Definition amended by Act 17 of 1999]

“still” includes any part of a still and any distilling apparatus whatever;

“surtax tariff” means the surtax tariff imposed in terms of section *two hundred and twenty-five*, as amended or replaced from time to time in terms of that section;

“tobacco refuse” means scrap tobacco, tobacco waste, tobacco clippings or stems or deposits of tobacco resulting from any processing or handling of leaf tobacco;

“transit shed” means any premises appointed by the Commissioner in terms of subsection (1) of section *eighteen* for the deposit of uncustomed goods;

[Definition amended by Act 17 of 1999]

“uncustomed goods” means goods liable to duty on which the full duties have not been paid, and any goods, whether liable to duty or not, which, being required to be accounted for in terms of this Act, have not been so accounted for;

“vehicle” means any train, motor car, van, lorry, cart or other conveyance of any kind, except a ship or aircraft, and includes fittings, furnishings and equipment thereof and also animals and their harness and tackle;

“visitor” means a traveller who is not resident in Zimbabwe;

“warehouse” means a warehouse, bonded and licensed in terms of section *sixty-eight*, in which goods may be lodged, kept and secured without the payment of duty or until the requirements of this Act have been satisfied, and includes any store, house, shed, yard or other place in which goods are so lodged;

“wash” means the liquid from any substance prepared for distillation after fermentation has commenced;

“weight” means—

(a) in relation to tobacco, the net weight of such tobacco plus the weight of the moisture and other substances contained therein at the time of manufacture; and

(b) in relation to cigarettes, the weight of the cigarettes as a whole including the weight of the tobacco, the paper or other wrapping material and the tipping material, if any;

“wet goods” means potable liquid of any description containing more than one comma seven *per centum* of absolute alcohol, other than honey beer;

“wine”—

(a) means any potable liquid derived by the fermentation of the juices of fruit or vegetables or fruit or vegetable products; and

(b) includes fortified wine;

but does not include opaque beer, cider or perry;

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

“Zimbabwe Revenue Authority” means the Zimbabwe Revenue Authority established by section 3 of the Revenue Authority Act [*Chapter 23:11*].

[Definition inserted by Act 17 of 1999]

### 3 Commissioner of Customs and Excise

(1) ...

(2) ...

(3) ...

[Subsections repealed by Act 17 of 1999]

(4) The Commissioner may confer all or any of the powers and impose all or any of the duties of an officer in terms of this Act upon any person or class of persons:

Provided that the Commissioner shall not confer any such powers or impose any such duties upon a person who is—

(a) a member of the Public Service, except with the consent of and subject to such conditions as may be fixed by the Public Service Commission and the Minister responsible for the Ministry in which that person is employed; or

(b) a member of the Prison Service, except with the consent of and subject to such conditions as may be fixed by the Commissioner of Prisons and the Public Service Commission; or

(c) a police officer, except with the consent of and subject to such conditions as may be fixed by the Commissioner of Police and the Police Service Commission; or

- (d) a member of the Regular Force of the Defence Forces, except with the consent of and subject to such conditions as may be fixed by the Commander of the branch of the Defence Forces concerned and the Defence Forces Service Commission; or
- (e) not a person referred to in paragraph (a), (b), (c) or (d), except with the consent of that person.

4 .....

[Section repealed Act 17 of 1999]

## PART II

### POWERS OF OFFICERS

#### 5 Stationing of officers on ships or trains

The Commissioner, or the proper officer at any port or place in Zimbabwe, may station any officer on any ship or train while such ship or train is within the limits of that port or place, and the master of any ship and the person in charge or control of any train upon which an officer is so stationed shall provide for such officer such accommodation and board as the Commissioner may reasonably require.

[Section amended by Act 17 of 1999]

#### 6 Officers to travel free when on duty

Any officer, when travelling on any duty connected with the administration of this Act in any ship or train, shall be entitled to travel free of charge as a passenger of such class as the Commissioner may direct.

[Section amended by Act 17 of 1999]

#### 7 Powers of officers in relation to ships, aircraft or vehicles

(1) An officer may board any ship arriving at or being about to depart from any port in Zimbabwe, or being within Zimbabwean waters, and may freely stay on board for so long as he considers necessary for the proper performance of his duties or until all goods laden therein have been delivered from such ship. Such officer shall have free access to and the right to search every part of the ship and to examine all goods and containers on board, shall have power to fasten down hatchways, doors and other openings, to lock up, seal, mark or otherwise secure any goods or containers on board that ship or to remove any goods or containers to a State warehouse or to any other place indicated by the officer, and shall have the right to lock up, seal or otherwise secure the ship's wireless apparatus.

(2) An officer may enter any train destined for Zimbabwe or any aircraft or vehicle arriving in or being about to depart from Zimbabwe or any aircraft or vehicle within Zimbabwe which is suspected of containing uncustomed goods or goods destined for Zimbabwe and may, *mutatis mutandis*, exercise the powers provided for in subsection (1).

(3) If any place or any package within or upon any ship, aircraft or vehicle is locked or otherwise secured and the keys thereto or other means of opening it are not produced on demand, the officer may open such place or package in any manner in his power.

(4) An officer may, in the pursuance of his duties, stop and detain within the limits of Zimbabwe any ship, aircraft or vehicle entering or being about to depart from Zimbabwe or any ship, aircraft or vehicle suspected of containing uncustomed goods.

(5) Containers which are locked up or sealed in terms of subsection (1) shall not be interfered with in any way, and no seal may be broken or tampered with before production to an officer.

#### 8 Sealing of goods on ships, aircraft or vehicles

(1) In addition to the powers conferred by section *seven*, an officer, if he enters any ship, aircraft or vehicle under the powers conferred by section *seven*, may, subject to such regulations as may be prescribed or to such rules as the Commissioner may make, seal up all sealable goods on the ship, aircraft or vehicle which are either unconsumed stores of the ship, aircraft or vehicle or the personal property or in the possession of the master or pilot or any member of the crew thereof, and the master or pilot and members of the crew shall declare all such sealable goods when called upon by an officer to do so.

An officer may also, at his discretion, seal up any goods other than sealable goods in the possession of the master, pilot, members of the crew or passengers on the ship, aircraft or vehicle. Except by the authority of an officer, no seal placed by an officer upon such goods shall be broken or disturbed while the ship, aircraft or vehicle remains at any place in Zimbabwe.

[Subsection amended by Act 17 of 1999]

(2) Nothing in this section contained shall in any way affect sections *twenty-four*, *twenty-six*, *twenty-seven*, *twenty-eight* and *twenty-nine*.

(3) The proper officer may permit surplus stores to be entered for consumption under and subject to the same rules, regulations and duties to which the like kinds of goods would be subject on importation, or permit any surplus stores to be entered and warehoused for future use as ship's, aircraft or vehicle stores, even if they could not legally be imported for consumption.

## **9 General powers of officers**

(1) An officer may stop and search any person, including any person within or upon any ship, aircraft or vehicle, whom there are reasonable grounds for believing has secreted about him or in his possession any document or thing which may afford evidence of an offence in terms of this Act or any dutiable goods or any goods in respect of which there has been a contravention of any of the provisions of this Act:

Provided that—

- (i) before being searched, such person may demand to be taken before the proper officer, who may, at his discretion, discharge such person or direct that he be searched;
- (ii) a female shall be searched only by a medical practitioner or by a female and the search shall be conducted with strict regard to decency.

(2) Where there are reasonable grounds for believing that it is necessary to do so for the protection of the revenue and the proper administration of this Act, a proper officer appointed for the purposes of this subsection or an officer authorized by such a proper officer may—

- (a) without previous notice, at any time enter any office, business premises, store, shop, structure or enclosed area for the reception of goods, for the purpose of making such search, examination and enquiry as he considers necessary, and may seal, mark or otherwise secure any package there found, and may take possession of any document, record or other thing for as long as may be necessary for the purpose of any examination, investigation, trial or inquiry;
- (b) while he is on such premises or at any other time, require from any person the production then and there, or at a time and place to be fixed by the officer, of any book, document, record, thing or printout or information stored in any information retrieval system which is required under the provisions of this Act to be kept or exhibited, or which is or has been on such premises or in the possession or custody or under the control of any such person or his employee; and
- (c) at any time and at any place require from any person who has the possession, custody or control of any such book, record, printout, document or thing as is mentioned in paragraph (b), the production thereof then and there, or at a time and place to be fixed by the officer; and
- (d) examine and make extracts from and copies of such books, records, printout or documents as are mentioned in paragraph (b) and may require from any person an explanation of any entry therein and may seize such books, records, printout, documents or things as in his opinion may afford evidence of an offence under this Act; and
- (e) take with him on to such premises an assistant or a police officer.

(3) Any person who is in occupation, ownership or control of any premises referred to in subsection (2) and every person employed by him shall at all times furnish such facilities as are required by an officer for entering such premises in the course of his duties and for the exercise of the powers conferred by subsection (2).

(4) If an officer, after having declared his official capacity and his purpose and having demanded admission into any premises referred to in subsection (2) is not immediately admitted thereto, he and any person assisting him may at any time, but during the hours of darkness only in the presence of a police officer, break open any door or window or break through any wall on such premises for the purpose of entry and search.

(5) An officer and any person assisting him may at any time break up any part of any premises referred to in subsection (2) for the purpose of search, and if any safe, chest, box or package is locked or otherwise secured and the keys thereof or other means of opening it are not produced upon demand, may open such safe, chest, box or package by any means at his disposal.

(6) If a search reveals no breach of this Act, any damage done by an officer or person assisting, him shall be made good at the expense of the State, unless such officer or other person has been obstructed in the exercise of his powers under this section.

(7) Upon any such examination or inspection as is referred to in this section or in respect of any matter connected with the provisions of this Act, an officer shall have the right to put such questions to any person as may be required for obtaining all necessary information.

## **10 Taking of samples**

An officer may at any time take, without payment, samples of any goods for examination or for ascertaining the duties payable thereon or for such other purpose as the Commissioner may consider necessary, and such samples shall be dealt with and accounted for in such manner as the Commissioner may direct:

Provided that any sample so taken shall, whenever possible, be returned to the owner of the goods.

[Subsection amended by Act 17 of 1999]

## **11 Opening of packages**

(1) An officer may require the owner of any package, imported or believed to have been imported into Zimbabwe or entered for export or believed to be intended for export from Zimbabwe, or containing or suspected of containing any goods which are liable to duty, or required to be accounted for in terms of this Act, to open such package, and may examine, weigh, mark or seal such goods as are contained therein.

(2) An officer may in the absence of the owner of any such package as is mentioned in subsection (1) open and examine such package at the owner's risk and expense.

## **12 Opening of postal articles**

(1) Notwithstanding the provisions of any other law, an officer may open and examine any postal article which is to be sent outside Zimbabwe or which has been received from outside Zimbabwe for the purpose of ascertaining whether or not it contains any goods liable to seizure.

(2) If upon examination in terms of subsection (1)—

- (a) an officer discovers in the postal article any goods which he has reasonable grounds for believing are liable to seizure, he may seize those goods and the postal article concerned and section *one hundred and ninety-three* shall apply, *mutatis mutandis*, in relation thereto; or
- (b) an officer discovers in the postal article no goods referred to in paragraph (a), he shall release the postal article for delivery to the person to whom it is addressed or his representative on payment of the duty, if any, payable thereon.

(3) In this section—

“liable to seizure” has the meaning given to it in section *one hundred and ninety-three*;

“postal article” has the meaning given to it in section 2 of the Postal and Telecommunication Services Act [*Chapter 12:02*].

## **13 Arrest of offenders by proper officers**

If a proper officer has reasonable grounds for suspecting that any person has contravened any provision of this Act, such proper officer may—

- (a) take such person forthwith to a police station and lay a charge against him; or
- (b) if there is no police station in the vicinity, take such person forthwith before a magistrate with a view to obtaining a warrant for his arrest.

## **PART III**

### IMPORTATION OF GOODS

## **14 Ports of entry and routes**

(1) The Minister may, subject to such conditions as he may specify, by order in a statutory instrument—

- (a) appoint places to be ports for Zimbabwe at or through which alone goods may be imported or exported;
- (b) define the roads or routes in Zimbabwe over which imported goods or goods intended for export shall be conveyed to or from a particular port;
- (c) appoint places within Zimbabwe as warehousing ports where bonded warehouses may be established in terms of section *sixty-eight*;
- (d) appoint places within Zimbabwe to be customs aerodromes at which aircraft entering Zimbabwe may land, from which aircraft leaving Zimbabwe may depart and through which alone goods may be imported or exported by air;
- (e) specify the hours during which goods shall not be imported or exported without the special permission in writing of the proper officer;
- (f) appoint custom houses within Zimbabwe or beyond its borders for the collection of revenue and the general administration of the provisions of this Act except, in the case of custom houses situated beyond the borders of Zimbabwe, such provisions as refer to excise or to other matters which cannot properly be dealt with outside Zimbabwe;
- (g) specify the custom houses or customs posts at which uncustomed goods consigned to certain places within Zimbabwe or imported by passengers shall be entered;
- (h) direct that goods consigned to such place or area within Zimbabwe as he may specify shall only be imported when entry has been effected at such custom house as he may specify and thereupon such goods shall only be imported in accordance with the terms of such direction.
- (i) specify that entry of uncustomed goods or goods in the baggage or upon the person of passengers travelling to Zimbabwe by railway train shall be made on board the train, whether within Zimbabwe or beyond its borders.

(2) The Minister may, subject to such conditions as he may specify, by order in a statutory instrument or otherwise—

- (a) appoint ports within Zimbabwe for particular or limited purposes and for such periods as may be specified in the order; and
- (b) appoint customs posts within Zimbabwe for particular or limited purposes.

## **15 Establishment of customs barriers**

(1) The Commissioner may establish customs barriers on any road or route for the control of imports and exports.

(2) Any person who fails to stop at a customs barrier established in terms of subsection (1) or who breaks or damages such barrier shall be guilty of an offence and liable to a fine not exceeding level five or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

[Subsection amended by Act 22 of 2001]

## **16 Prohibition of importation or exportation except through appointed ports or by defined routes**

(1) Subject to subsections (2) and (3), all ships, aircraft and vehicles and all persons engaged in importing or exporting goods shall enter or leave Zimbabwe through ports or through aerodromes appointed in terms of section *fourteen*, and shall follow such routes as may have been appointed or defined under such section, and shall comply with all such rules and regulations as may under the provisions of this or any other enactment be in force for the protection of the revenue and trade of Zimbabwe.

(2) The Commissioner may, in special circumstances, permit, subject to such conditions as he may fix, ships, aircraft and vehicles and persons engaged in importing or exporting goods to enter or leave Zimbabwe through places or aerodromes or by routes other than those appointed or defined in terms of section *fourteen*.

[Subsection amended by Act 17 of 1999]

(3) Any pipeline through which goods may be imported or exported shall, for its entire length in Zimbabwe, be laid along a route defined in terms of section *fourteen* and shall be constructed and operated in accordance with such regulations as may be prescribed.

(4) Any person—

(a) contravenes subsection (1); or

(b) contravenes or fails to comply with any condition fixed in terms of subsection (2); or

(c) contravenes any regulations referred to in subsection (3);

shall be guilty of an offence and liable to a fine not exceeding level five or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

[Subsection inserted by Act 22 of 2001]

## **17 Appointment of landing, loading and examination places**

(1) The Commissioner may appoint at any port places for the landing and embarkation of persons, and the landing, loading and examination of goods, including baggage, and may from time to time make such rules and lay down such conditions in connection therewith as he considers necessary.

[Subsection amended by Act 17 of 1999]

(2) Where, at any port, a place has been appointed in terms of this section, any person who lands or loads goods otherwise than at such place, except with the written permission of the Commissioner, shall be guilty of an offence and liable to a fine not exceeding level five or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

[Subsection amended by Act 22 of 2001]

## **18 Appointment of transit sheds and customs areas and licensing of other places**

(1) Subject to this section, the Commissioner may appoint and license sheds or places erected, owned or occupied by any carrier or by the Posts and Telecommunications Corporation as transit sheds or customs areas into which goods may, before entry, be removed from a ship, aircraft or vehicle.

[Subsection amended by Act 17 of 1999]

(1a) The Commissioner may impose terms and conditions on a licence issued in terms of subsection (1), including terms and conditions as to the following matters—

(a) requiring the licensee—

(i) to enter into a bond with sufficient surety, to the satisfaction of the Commissioner, for ensuring the payment of duty and compliance with the requirements of this Act in respect of goods delivered or to be delivered to the transit shed or customs area;

(ii) to maintain records in respect of the movement and delivery of all goods into and from the transit shed or customs area;

(iii) not to permit the removal of any goods from the transit shed or customs area until entry has been made and all the requirements of this Act have been satisfied;

(b) the cancellation or suspension of the licence in the event of the licensee failing to comply with any requirement of this Act or with any condition of his bond referred to in subparagraph (i) of paragraph (a).

[Subsection inserted by act 29 of 1998]

(1b) A licence issued in terms of subsection (1) shall expire on the 31st December in the year in which it was issued but may be renewed for further periods of a year.

[Subsection inserted by act 29 of 1998]

(2) The owner or occupier of a transit shed or customs area appointed in terms of subsection (1) shall, if required by the Commissioner, provide free of charge, to the satisfaction of the Commissioner—

(a) office accommodation and other facilities for use by officers stationed at the transit shed or customs area; and

(b) other accommodation for the storage and protection of goods.

[Subsection amended by Act 17 of 1999]

(3) The owner or occupier of a transit shed or customs area appointed in terms of subsection (1) shall be responsible for the maintenance of the accommodation and facilities referred to in subsection (2).

### **19 Appointment of container depots**

(1) The Commissioner may appoint and license places as container depots for the storage, detention, unpacking and examination of containers or the contents of containers or for the delivery to importers of contents of containers after such contents have been duly entered, subject to the following conditions and such other conditions and safeguards as the Commissioner may specify—

- (a) the licensee shall enter into a bond with sufficient surety, to the satisfaction of the Commissioner, for the securing of the duty and compliance with the requirements of this Act in respect of goods delivered or to be delivered to the container depot; and
- (b) the proprietor or occupier of a container depot shall, as long as there is space available in his depot, give accommodation at a reasonable and uniform charge for the goods of other importers; and
- (c) the licensee shall maintain records in respect of the movement, unpacking and delivery of all goods and shall, when required to do so by an officer, make the records available to the officer; and
- (d) the licensee shall not permit the removal of any goods from the depot until entry has been made and all the requirements of this Act have been satisfied; and
- (e) licences issued in terms of this section shall expire on the 31st December in each year; and
- (f) if the licensee fails to comply with the conditions of his bond or fails to comply with this Act or any instruction given by the Commissioner in any matter connected with the administration of this Act, the Commissioner may cancel or suspend his licence immediately or refuse to renew it.

(2) The owner of a container depot shall provide free of charge and maintain to the satisfaction of the Commissioner—

- (a) suitable office accommodation and other facilities for use by any officers whom the Commissioner may station at the container depot; and
- (b) a suitable and secure place for the storage and protection of goods.

[Section amended by Act 17 of 1999]

### **20 Appointment of private railway sidings**

(1) The Commissioner may appoint and license private railway sidings as places where uncustomed goods, other than containerized-goods, may be delivered to the licensee by the National Railways of Zimbabwe, subject to the following conditions and such other conditions and safeguards as the Commissioner may specify—

- (a) the goods delivered to the private railway siding shall be for the use of the licensee only; and
- (b) the licensee shall enter into a bond with sufficient surety, to the satisfaction of the Commissioner, for the securing of the duty and compliance with the requirements of this Act in respect of goods delivered or to be delivered to the licenced private siding; and
- (c) the goods shall not be taken into stock, sold or otherwise disposed of until entry thereof has been made and all the requirements of this Act have been satisfied; and
- (d) licences issued in terms of this section shall expire on the 31st December in each year; and
- (e) if the licensee fails to comply with the conditions of his bond or fails to comply with this Act or any instructions given by the Commissioner in any other matter connected with the administration of this Act, the Commissioner may cancel or suspend his licence immediately or refuse to renew it.

[Section amended by Act 17 of 1999]

### **21 Uncustomed goods not to be removed**

(1) With the exception of—

- (a) goods which are removed to a State warehouse or other place of security at the direction of an officer; and
- (b) goods which are removed to a place licensed in terms of section *eighteen, nineteen* or *twenty*; and
- (c) goods which, having been entered for warehousing, are removed to a warehouse licensed in terms of section *sixty-eight* or to a place approved in terms of subsection (2) of section *seventy*;

no uncustomed goods shall be removed from any ship, aircraft, vehicle or container to any place.

(1a) Any person who contravenes subsection (1) shall be guilty of an offence and liable to—

- (a) a fine not exceeding level twelve or three times the duty-paid value of the goods that are the subject of the offence, whichever is the greater; or
- (b) imprisonment for a period not exceeding five years;

or to both such fine or imprisonment.

[Subsection inserted by Act 22 of 2001]

(2) The importer of any goods shall be responsible for all fees or charges due to the State in respect of lighterage, wharfage and handling and transportation to a transit shed, customs area, container depot, State warehouse or other place under customs control.

## **22 Entrance and exit to or from customs areas**

(1) The Commissioner may, subject to such restrictions and conditions as he may specify, appoint entrances and exits generally or specially to or from any customs area within Zimbabwe.

[Subsection amended by Act 17 of 1999]

(2) Where entrances to or exits from a customs area have been appointed in terms of subsection (1), no person or vehicle shall enter or leave and no goods, whether dutiable or not, shall be brought into or taken out of such area otherwise than through an entrance or exit so appointed.

(2a) Any person who contravenes subsection (2) shall be guilty of an offence and liable to a fine not exceeding level five or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

[Subsection inserted by Act 22 of 2001]

(3) Any person or vehicle entering or leaving any customs area and all goods which are being brought into or out of such area may be detained by any officer for the purpose of search or examination.

## **23 Vehicles entering or leaving customs areas**

(1) The driver or person in charge or having the control of any vehicle which is within or is entering or leaving any customs area in which there is a customs officer or where an officer is stationed shall, when requested to do so by an officer by word, sign or in any other manner, cause the vehicle to stop for the purpose of search and examination, and no person shall cause the vehicle to be set in motion again until permitted by such officer to do so.

(2) Any person who contravenes subsection (1) shall be guilty of an offence and liable to a fine not exceeding level five or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

[Subsection inserted by Act 22 of 2001]

## **24 Stationmaster to supply documents to proper officer**

(1) Upon the arrival at any port of any train carrying uncustomed goods, the stationmaster or other person in charge of the railway station at the port or, failing him, the person in charge of the train, shall submit to the proper officer—

- (a) a train manifest detailing the goods in each container entering Zimbabwe on the train; and
- (b) copies of all invoices, waybills or other documents relating to the goods conveyed by train and consigned to that station or required to be entered at that port.

[Subsection substituted by Act 29 of 1998]

(2) The conductor or guard or any other person in charge of a train whether within Zimbabwe or beyond its borders shall on demand by an officer furnish that officer with all information at his disposal in respect of any goods on such train, including sealable goods, whether such goods are for consumption, stores or the personal property or in the possession of any member of the crew or the person in charge of the train.

(3) The stationmaster or other person in charge of the railway station shall deliver to the officers of customs concerned copies of all advice and delivery notes and such other documents as may be required relating to goods detained at the ports from which delivery of such goods may be authorized.

(4) With the exception of goods which are removed to a place licensed in terms of section *twenty*, no stationmaster or other person in charge of a railway station at a port shall, without the written permission of an officer, permit uncustomed goods required to be entered at that port and conveyed to that station in any train to be removed from the transit shed or customs area appointed for such station or to be forwarded to any other railway station, and it shall be an offence to remove any goods from such shed or area before delivery or removal has been authorized by an officer.

(5) With the exception of containers which are removed to a container depot licensed in terms of section *nineteen*, no stationmaster or other person in charge of a railway station shall, without the written permission of an officer, deliver any uncleared containers to any private siding or any other railway station.

(6) No stationmaster or other person in charge of a railway station shall, without the written permission of an officer, deliver to the consignee or any other person at his station any goods which are required to be entered at any other station.

(7) No person, being the proprietor or lessee of a private railway siding, may receive railway trucks containing uncustomed goods into his private siding unless he has been granted a licence by the Commissioner in terms of section *twenty*.

[Subsection amended by Act 17 of 1999]

(8) Any person who contravenes subsection (1), (2), (3) or (5) shall be guilty of an offence and liable to a fine not exceeding level five or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

[Subsection inserted by Act 22 of 2001]

(9) Any person who contravenes subsection (4), (6) or (7) shall be guilty of an offence and liable to—

- (a) a fine not exceeding level twelve or three times the duty-paid value of the goods that are the subject of the offence, whichever is the greater; or
  - (b) imprisonment for a period not exceeding five years;
- or to both such fine and such imprisonment.

[Subsection inserted by Act 22 of 2001]

## **25 Postmaster-General to report goods imported by post**

The Postmaster-General shall report by means of a manifest or in any other approved manner, all goods or parcels that arrive by post from outside Zimbabwe and shall produce them to an officer for examination.

## **26 Person in charge of vehicle to report goods in his charge**

(1) The person in charge of any vehicle, other than a railway train, arriving in Zimbabwe, whether conveying goods or not, shall proceed immediately with the vehicle to the custom house or customs post at the port of entry and, before unloading or in any manner disposing of such vehicle or goods, make full report in such manner as the officer may require or as may be prescribed concerning the vehicle, the goods in his possession or charge and the journey or destination of such goods. If a report in writing is prescribed or required by the officer, such person shall make and subscribe before the officer a declaration, at the foot of the report, as to the truth of the same, and shall answer to the best of his knowledge all such questions and produce all waybills or other documents relating to the goods, freight and journey as may be demanded of him by such officer.

(2) No person shall remove a vehicle mentioned in subsection (1) from the custom house or customs post mentioned in that subsection until permission for removal has been granted by an officer.

## **27 Persons to report goods in their possession**

(1) Any person arriving in Zimbabwe shall—

(a) whether or not he has goods in his possession, proceed directly—

- (i) in the case of a person arriving by ship or vehicle, other than a railway train, to the custom house or customs post at the place of arrival;
- (ii) in the case of a person arriving by aircraft, to the customs post or the officer at the aerodrome of first landing or such other aerodrome as the Commissioner may direct;
- (iii) in the case of a person arriving on foot, to the custom house or customs post nearest to the point at which he crossed the border;

[Subsection amended by Act 17 of 1999]

(b) in the case of a person in possession of uncustomed goods arriving by railway train, proceed directly to the customs post or the officer at the place appointed in accordance with this Act.

(2) Any person—

- (a) being on a railway train destined for Zimbabwe; or
- (b) after proceeding as required by subsection (1);

shall—

(i) if called upon by an officer to do so, unreservedly declare all the goods in his possession in such manner as the officer may require and shall fully and truthfully answer any questions put to him by the officer; and

(ii) if so required, produce the goods referred to in subparagraph (i) for inspection by an officer; and shall not in any manner dispose of any goods in his possession until they have been released by an officer.

(3) In this section—

“goods” includes Zimbabwean and foreign currency.

## **28 Report of aircraft**

(1) The pilot of every aircraft arriving in Zimbabwe, whether with or without goods or passengers, shall, except with the special permission of the Commissioner or as required by any law relating to aviation, make his first landing at one of the aerodromes appointed in terms of paragraph (d) of subsection (1) of section *fourteen* and shall forthwith take his aircraft to the customs post at that aerodrome:

Provided that this subsection shall not apply if the pilot proves to the satisfaction of an officer that he was compelled to land elsewhere or could not take his aircraft to such post owing to stress of weather, unavoidable accident or other circumstances beyond his control.

[Subsection amended by Act 17 of 1999]

(2) Within three hours after the landing at a customs aerodrome of an aircraft from a place outside Zimbabwe or within such further time as the Commissioner may allow, but in any event before any goods are unloaded from the aircraft, the pilot shall—

- (a) make a report to the officer on duty in such manner and in such form as may be prescribed; and
- (b) answer to the best of his knowledge all questions concerning the aircraft and cargo and the crew and passengers and journey as are put to him by the officer on duty.

[Subsection amended by Act 17 of 1999]

(3) When making the report referred to in paragraph (a) of subsection (2), the pilot shall, if required to do so by the officer on duty, provide the officer with—

- (a) the particulars of the arrival and journey of the aircraft; and
- (b) a list of sealable goods on board, whether such goods are for consumption, stores or the personal property or in the possession of the pilot or any member of the crew; and
- (c) a list of the passengers and crew; and
- (d) manifests of the goods on board, signed by the person authorized to sign such manifests at the aerodrome from which the aircraft departed for Zimbabwe.

(4) The pilot shall, if required to do so by the officer, disembark from the aircraft all passengers and their baggage for examination

(5) Except with the permission of an officer—

- (a) no person shall enter any aircraft carrying goods or passengers in transit through Zimbabwe while such aircraft remains at any aerodrome within Zimbabwe;
- (b) no person shall enter any aircraft which has arrived at a customs aerodrome from beyond the borders of Zimbabwe until report has been made in terms of this section and the officer has carried out such examination of the aircraft and any goods contained therein as he may consider necessary.

(6) If an aircraft flying from outside Zimbabwe lands within Zimbabwe at any place other than a customs aerodrome, the pilot shall forthwith report to the official in charge of any aerodrome at such place or, if there is no aerodrome there, to the nearest officer, magistrate or police officer, and shall on demand produce to such person all papers belonging to the aircraft and shall not allow any goods to be unloaded from the aircraft without the consent of such person. Save for reasons of health or safety or in order to report in terms of this subsection, no person shall leave the immediate vicinity of the place of landing without the consent of such official in charge, officer, magistrate or police officer.

## **29 Report of arrival of ships**

(1) The master of a ship carrying uncustomed goods arriving in Zimbabwe shall not call at any place therein other than a port appointed in terms of paragraph (a) of subsection (1) of section *fourteen* unless forced to do so by stress of weather, accident or other circumstances beyond his control, in which case he shall come to the custom house or customs post at the first port at which the ship afterwards arrives and there make full report to the proper officer concerning the circumstances which so forced him.

(2) The master of every ship carrying uncustomed goods arriving at any port in Zimbabwe shall—

- (a) within twenty-four hours after the ship's arrival and before any goods are discharged, come to the custom house or customs post at that port and there—
  - (i) make a report in writing in the form prescribed or in such other form as the Commissioner may direct, with as many copies or extracts as the proper officer may require;
  - (ii) make and subscribe to a declaration as to the truth of the report, before the proper officer, and answer to the best of his knowledge all such questions concerning the ship and cargo and the crew, passengers and voyage as may be put to him by that officer;
- (b) produce, if required, the official log books for the voyage, the stowage plans and any other documents in his possession relating to the cargo.

[Subsection amended by Act 17 of 1999]

(3) The report referred to in subsection (2) shall state—

- (a) the particulars of the arrival and voyage of the ship; and
- (b) the name, country, tonnage and port of registry of the ship; and
- (c) the name and nationality of the master and the owners of the ship; and
- (d) the number of the crew; and
- (e) whether the ship is laden or in ballast; and shall include—
  - (i) a list of sealable goods on board, whether such goods are for consumption, stores or the personal property or in the possession of the master or any member of the crew; and
  - (ii) a list of the passengers; and
  - (iii) a manifest, in the prescribed form, of goods on board.

(4) When the ship is granted clearance to leave the port, the manifest, bills of lading or other documents in respect of goods on board not consigned to Zimbabwe shall be returned to the master, and the manifest or bills of lading for goods consigned to any other port in Zimbabwe shall likewise be returned to the master but enclosed with a copy or extract of the report and under the seal of the proper officer, which sealed copy or extract shall be delivered by the master to the proper officer at such other port.

## **30 Report or production of documents may be dispensed with by Commissioner**

When a ship arrives at one port in Zimbabwe and proceeds to another port or other ports in Zimbabwe, the Commissioner may, subject to such rules and under such conditions as he may prescribe, dispense with the report

mentioned in section *twenty-nine* and with the production of the manifest or bills of lading at any port other than the first port.

[Section amended by Act 17 of 1999]

### **31 Report by operator of pipeline**

The nature and quantities of goods imported or exported through a pipeline shall be recorded and reported by the operator of the pipeline in such manner as the Commissioner may direct, and for the purpose of keeping such record and making such report the operator shall, at his own expense, provide such apparatus and appliances as the Commissioner may specify.

[Section amended by Act 17 of 1999]

### **32 Report may be amended**

If a report required in terms of section *twenty-six*, *twenty-eight*, *twenty-nine* or *thirty-one* is found to be in any way incomplete or incorrect, the proper officer may, if he is satisfied that there was no fraudulent intention, permit the report to be amended by the person who made it.

### **33 Cargo may remain on board ship or aircraft**

With the permission of and under conditions imposed by the proper officer at any port or customs aerodrome, the master of a ship or the pilot of an aircraft may retain on board cargo consigned to that port or aerodrome or may land at that port or aerodrome cargo not consigned thereto.

### **34 Liability for duty**

(1) The master of a ship, the pilot of an aircraft or the owner or person in charge of any other vehicle, as the case may be, shall, unless the goods have been imported in contravention of this Act or any other enactment, be liable for the duty on all goods which are removed from the said ship, aircraft or other vehicle at any place in Zimbabwe other than that to which they have been consigned or at which they are required to be entered and such liability shall continue until the goods have been accounted for to the satisfaction of the Commissioner.

[Subsection amended by Act 17 of 1999]

(2) In all cases where under subsection (1) liability for duty does not rest upon the master of a ship, the pilot of an aircraft, or the owner or person in charge of any other vehicle, liability for duty on all imported goods or goods deemed to have been imported in terms of section *thirty-six* shall rest upon the importer, or in the case of goods consigned to Zimbabwe, upon the person within Zimbabwe who deals with the goods on behalf of the owner thereof.

[Subsection substituted by Act 18 of 2000]

(3) If it can be shown before delivery of any goods has been granted that such goods have been wrongly consigned or addressed to Zimbabwe or have been imported through error or oversight on the part of the master of a ship, the pilot of an aircraft or the owner or person in charge of any other vehicle, the Commissioner may allow the said goods to be exported without the payment of duty under such conditions as he may impose.

[Subsection amended by Act 17 of 1999]

(4) In this section—

“duty” includes any import tax which is payable in terms of the Value Added Tax Act [*Chapter 23:12*].

[Subsection amended by Act 12 of 2002]

### **35 Master, pilot or pipeline operator may appoint agent**

Notwithstanding anything to the contrary contained in sections *twenty-six*, *twenty-eight*, *twenty-nine*, *thirty-one*, *fifty-one* and *fifty-two*, the master of a ship, the person in charge of any vehicle other than a railway train, the pilot of an aircraft or the operator of a pipeline, instead of himself performing any act, including the answering of questions, required by or under any of those sections to be performed by him, may, at his own risk, appoint an agent to perform any such act, and any such act performed by such agent shall in all respects and for all purposes be deemed to be the act of the master, person in charge, pilot or operator, as the case may be, so, however, that the personal attendance of the master, person in charge, pilot or operator may be demanded at any time by the proper officer.

### **36 Goods deemed to have been imported**

All goods reported under this Part or shown on the bill of lading, manifest, consignment note, waybill or other document as having been consigned to Zimbabwe shall be deemed to have been imported unless it is proved to the satisfaction of the Commissioner that they were not imported.

[Section amended by Act 17 of 1999]

### **37 Time of importation**

(1) With the exception of goods imported by post, the time of importation of any goods into Zimbabwe shall be deemed to be—

- (a) where goods are imported by ship, the time when the goods are unloaded in Zimbabwe or the time when the ship arrives at its first port of call in Zimbabwe, whichever is the earlier;
- (b) where goods are imported by aircraft, the time when the goods are unloaded in Zimbabwe or the time when the aircraft makes its first landing in Zimbabwe from abroad, whichever is the earlier;

- (c) where goods are imported by train, the time when the goods are unloaded in Zimbabwe or the time when the train arrives at the first port of entry in Zimbabwe, whichever is the earlier;
- (d) where goods are imported by pipeline, the time when the goods are discharged from the pipeline in Zimbabwe or the time when the goods pass through the first metered point on the pipeline within Zimbabwe, whichever is the earlier;
- (e) where goods are imported by means other than ships, aircraft, trains or pipeline, the time when the goods cross the borders of Zimbabwe.
- (f) where goods are imported from an export processing zone in terms of paragraph (b) of section *sixty-five*, the time when the goods cross the boundary of the export processing zone.

[Paragraph inserted by Act 18 of 2000]

(2) The time of importation of any goods imported into Zimbabwe by post shall be deemed to be the time when the goods arrive at the post office where duty is assessed.

### **38 No importation without entry**

(1) No goods shall be imported into Zimbabwe without entry being made and without the duty being paid or secured.

(2) The owner or occupier of a customs area or transit shed shall not remove or permit the removal of uncustomed goods placed in the customs area or transit shed without written authority from an officer, and no person shall remove or take delivery of uncustomed goods from a customs area or transit shed without written authority from an officer.

(3) No carrier of goods or operator of a pipeline shall remove or discharge or permit the removal or discharge of uncustomed goods from the ship, aircraft, vehicle or pipeline in his charge or control without written authority from an officer, and no person shall remove, discharge or take delivery of uncustomed goods from any ship, aircraft, vehicle or pipeline without written authority from an officer.

(4) In subsection (1)—

“duty” includes any import tax which is payable in terms of the Value Added Tax Act [*Chapter 23:12*].

[Definition amended by Act 12 of 2002]

### **39 Entry of goods to be made**

(1) Subject to any regulations, every importer of goods shall make entry of those goods at the port of entry—

(a) at the time of importation; or

(b) in the case of goods which are to be removed to a place appointed in terms of section *eighteen* or *nineteen*, within ten days after the time of their importation;

as defined in section *thirty-seven*:

Provided that the Commissioner may in any case, including a case referred to in paragraph (b), grant an extension of time within which goods shall be entered.

(2) In default of entry in terms of subsection (1), the proper officer may cause the goods to be conveyed to a State warehouse or to any other place indicated by him or may himself so remove them, and if entry is not made within three months, together with payment of any duty due and all charges of removal and warehouse rent, the Commissioner may, subject to this section, cause the goods to be sold by public auction, if they have not been entered before the date fixed for their sale:

Provided that goods which are of no commercial value need not be offered for sale by public auction and the Commissioner may order that such goods be sold out of hand or destroyed or appropriated to the State without payment of compensation.

(3) Any sale by public auction in terms of subsection (2) shall, subject to the provisions of this section, take place at a place and time notified by the Commissioner in the *Gazette* at least a month before such sale.

(4) The offer for sale by public auction shall be subject to a reserve sufficient to cover the duty and the expenses incurred in connection with the sale:

Provided that—

(i) the Commissioner may by direction accept such bid below the reserve as he deems adequate;

(ii) if the goods are not sold at such sale they may, by direction of the Commissioner, be sold out of hand or destroyed or appropriated to the State without compensation.

[Subsection substituted by Act 18 of 2000]

(5) If the goods are unsuitable for storage or are of a dangerous or perishable nature, or if the Commissioner considers that the proceeds will not be sufficient to cover the duty and the expenses incurred in connection with the auction sale, he may direct that they be sold immediately out of hand. If such goods cannot be sold immediately out of hand, the Commissioner may direct that they be destroyed or appropriated to the State without compensation.

[Subsection amended by Act 17 of 1999]

(6) The proceeds of any sale in terms of subsection (2), (4) or (5) shall be applied in payment of—

(a) the duty due and any expenses incurred in connection with the sale;

(b) any carriage charges due to any carrier;

- (c) any warehouse rent, storage charges, including storage charges due to any carrier, and portorage charges;

in that order and if the balance of such proceeds after making the payments referred to in paragraphs (a) and (b) is insufficient to pay in full for the expenses referred to in paragraph (c) it shall be applied pro rata to the payment of such expenses.

(7) Any balance remaining after the proceed of any sale have been applied in terms of subsection (6) shall, unless the Commissioner is satisfied that the goods in question were imported in contravention of any enactment, be paid on application to the importer or to the person who would have been entitled to receive the goods if entry had been made and the duty paid.

[Section amended by Act 17 of 1999]

(8) In this section—

“duty” includes any import tax which is payable in terms of the Value Added Tax Act [*Chapter 23:12*].

[Definition amended by Act 12 of 2002]

#### 40 Entry of imported goods

(1) Subject to subsection (2) and of sections *forty-five* and *forty-six*, the person making entry of any imported goods shall—

(a) deliver to the proper officer a bill of entry, with such number of copies thereof as may be prescribed or required by that officer, which sets forth the full particulars as indicated on the prescribed form and as required by that officer, and, where direct trader input facilities exist, record the required information on the customs computer system using procedures approved by the Commissioner;

[Paragraph substituted by Act 18 of 2000]

(b) make and subscribe to a declaration in the prescribed form—

(i) as to the correctness of the particulars on the bill of entry; and

(ii) except in the case of an importer of such goods as may be prescribed, as to whether or not he is related to the supplier of the imported goods within the meaning of subsection (3) of section *one hundred and four*;

and

(c) unless the goods are entered to be warehoused or to be removed in bond, pay the duty due thereon; and

(d) produce all bills of lading, invoices or other documents relating to the goods or their value, including, if required, the declarations and certificates referred to in section *forty-two*, and answer all such questions relating to the goods as may be demanded of or put to him by the proper officer; and.

(e) if required, produce for retention by the proper officer a true copy of any invoice or other document relating to the goods.

(f) in the case of motor-vehicles, pay the prescribed registration fee.

[Paragraph inserted by PART IV of Act 18 of 2000]

(1a) If a bill of entry, declaration or other document delivered, produced or prepared in terms of subsection (1)—

(a) is incomplete; or

(b) is incorrect in regard to the nature, quantity, value or origin of the goods concerned; or

(c) fails to disclose correctly all the information that the proper officer may require;

the proper officer may release the goods on condition that the person making entry deposits with him a sum determined by the proper officer as security for the production of a complete or corrected document within a period of three months.

[Subsection inserted by Act 29 of 1998]

(1b) If, after a person has made a deposit in terms of subsection (1a), he does not produce the complete or corrected document within the three-month period referred to in that subsection, the deposit shall be forfeited to the State unless the Commissioner directs otherwise.

[Subsection inserted by Act 29 of 1998]

(2) Where—

(a) goods are imported temporarily; or

(b) goods are imported in the baggage or upon the person of a passenger and are not merchandise; or

(c) goods are not merchandise or goods imported in the baggage or upon the person of a passenger; or

(d) merchandise is valued at not more than the prescribed amount;

[Paragraph amended by act 29 of 1998]

the presentation of a bill of entry may be dispensed with and entry may be effected in such other manner as may be prescribed or, where no such manner has been prescribed, in such manner as the Commissioner may direct.

[Subsection amended by Act 17 of 1999]

(3) In subsection (1)—

“duty” includes any import tax which is payable in terms of the Value Added Tax Act [*Chapter 23:12*].

[Definition amended by Act 12 of 2002]

#### **41 Embargo and examination of goods still under customs control**

(1) For the purpose of making entry of any imported goods, the importer shall, at his own risk and expense and in the presence of an officer, unload and reload, remove to or from any place indicated by the officer, open, unpack, repack and close up such of his containers or packages as the officer may require for examination, and all charges incurred in the examination of containers or packages or goods shall be borne by the importer.

(2) Where containers or goods have been moved to a place indicated by an officer in terms of subsection (1) or embargoed for purposes of examination, they shall not be removed from that place, nor be opened or have any seals broken or interfered with or dealt with in any way without the permission of an officer.

(3) Any person who represents, either personally or through an agent, to any officer that he is the importer of any goods shall, in respect of those goods, be liable for the fulfilment of all obligations imposed on importers by this Act or any law relating to customs and prosecution for infringements thereof and to penalties and forfeitures incurred thereunder.

#### **42 Commissioner may require certain declarations and certificates**

For the purposes of ascertaining the value and origin of any imported goods, the Commissioner may require the importer to produce—

- (a) a declaration of value completed by the importer; and
- (b) a declaration of particulars relating to the value of the goods for duty purposes; and
- (c) a certificate of origin completed by the supplier or manufacturer of the goods;

in such manner and to such effect as may be prescribed.

[Section amended by Act 17 of 1999]

#### **43 Entry after sight**

(1) If an importer makes and subscribes to a declaration before an officer that he cannot for want of full information make entry of his goods, the proper officer may order the goods to be brought at the expense of the importer to a place indicated by such officer in order that they may be examined in his presence by the importer.

(2) The importer shall make entry of the goods and pay the duty due thereon, or duly warehouse the goods in terms of section *seventy*, or remove them in bond within ten days of the date on which they were brought to the place of examination, which place shall be regarded as a customs area for the purpose of securing the duties payable upon the goods, until such duties have been paid or the goods are warehoused or removed in bond:

Provided that in default of entry the goods shall be taken to the State warehouse and if the importer or his agent does not, within three months after expiry of the aforesaid period, make entry of the goods and pay the duties thereon or duly warehouse them or remove them in bond, and at the same time pay the charges of removal and State warehouse rent and all other charges incurred by the State, the goods may be disposed of in the manner set out in and subject to section *thirty-nine*.

(3) No goods dealt with in terms of subsection (1) shall be delivered, warehoused or removed without entry and the payment of duty in the case of delivery, and the provisions of this Act in respect of the incorrect or false entry of goods shall also apply in respect of goods dealt with in terms of this section.

#### **44 Particulars of goods in entry**

(1) No entry in terms of section *forty* or subsection (2) of section *forty-three* shall be valid unless—

- (a) particulars of the goods and packages in that entry correspond with the particulars of the goods and packages as reported in terms of section *twenty-four*, *twenty-six*, *twenty-eight*, *twenty-nine* or *thirty-one* and in the certificate or other document, where any is required, by which the importation of those goods is authorized; and
- (b) the goods have been properly described in the entry by the denomination and with the characters, circumstances and origin according to which they may be imported or are charged with duty; and
- (c) the value for duty purposes of the goods in terms of Part X has been declared; and

[Paragraph amended by Act 29 of 1998]

- (d) the free on board value of the goods has been declared; and
- (e) the cost, insurance, freight value of the goods has been declared; and
- (f) the following documents have been produced to the proper officer—
  - (i) a sufficient invoice relating to the goods described on the entry; and
  - (ii) documents relating to freight and insurance on the goods described in the entry; and
  - (iii) the declarations and certificate referred to in section *forty-two* and relating to the goods described in the entry; and
  - (iv) any other document which may be required by or in terms of this Act:

Provided that—

- (i) in the absence of any such document or if any such document is incomplete or fails to disclose all the information which the proper officer may require, that officer may, if he thinks fit and as a condition for the release of the goods, permit the person who entered the goods to deposit with him, in lieu of production of the required document, a sum to be determined by that officer and,

if the document is not produced within a period specified by that officer, the sum so deposited shall be forfeited to the State unless the Commissioner directs otherwise;

- (ii) in the case of goods which are not merchandise for sale, the Commissioner may dispense with the production of an invoice.

[Subsection amended by Act 17 of 1999]

(2) Goods taken or delivered by virtue of an entry which is not valid out of any ship, aircraft, vehicle, pipeline, transit shed or bonded warehouse or other place where they have been deposited in terms of this Act shall be deemed to be goods landed or taken without entry, and any person taking or delivering such goods shall be guilty of an offence.

(3) If any goods in respect of which a valid entry has been made—

- (a) are delivered to any person from any transit shed or other place where they have been deposited in terms of this Act pending clearance through customs or from any ship, aircraft, pipeline or vehicle; or  
(b) are tampered with in any way whatsoever; before authority for delivery has been granted in such manner as may be prescribed, the person delivering or tampering with them shall be guilty of an offence.

(3a) Any person who contravenes subsection (2) or (3) shall be guilty of an offence and liable to—

- (a) a fine not exceeding level twelve or three times the duty-paid value of the goods that are the subject of the offence, whichever is the greater; or  
(b) imprisonment for a period not exceeding five years..

or to both such fine and such imprisonment.

[Subsection inserted by Act 22 of 2001]

(4) If any particular or amount shown on a document referred to in paragraph (f) of subsection (1) is not true and correct, whether by virtue of any credit or debit passed by the supplier of the goods concerned or of any other change whatsoever that has a direct or indirect effect upon the validity of entry or otherwise, the importer shall forthwith report the matter to the proper officer and shall obtain and produce to that officer an amended document as that officer may require.

#### **45 Form or label affixed to parcels imported through the post**

(1) For the purpose of entry and the collection of duty on goods imported into Zimbabwe by post, any form or label affixed to or accompanying the parcel, package or letter packet or any other declaration made under this Act and the statement of value and the particulars as to the nature, quantity and origin of the goods shown in such form, label or other declaration shall, for the purpose of ascertaining the duty payable on the goods or for any other purpose connected with this Act, take the place of the bill of entry, the declaration to be made by the importer and the other documents required in terms of section *forty*:

Provided that an officer may at his discretion call upon the importer to make entry in terms of section *forty* of any goods contained in any postal parcel, package or letter packet or to furnish such documents as are required in terms of section *forty* to be submitted in support of a bill of entry or other form of clearance.

(2) The duty payable on any goods imported by post shall be paid in the manner prescribed.

(3) Any goods contained in any parcel, package or letter packet imported by post and found not to agree with the value, nature, quantity or origin entered in the form, label or declaration mentioned in subsection (1) shall be liable to forfeiture and the importer shall be as liable to the penalties prescribed for under-valuation or false declaration of the nature, quantity or origin of the goods as if the entry and declaration had been made in the manner prescribed in section *forty*.

(4) Notwithstanding anything contained in subsection (1), any goods imported by post which are to be entered—

- (a) for warehousing without payment of duty; or  
(b) for removal or export in bond; or  
(c) under rebate of duty; or  
(d) under any item of the customs tariff which requires that a certificate be given or a condition be complied with;

shall be entered in the manner specified in section *forty* unless entry in terms of subsection (1) has been approved by the Commissioner.

[Subsection amended by Act 17 of 1999]

(5) If any particular or amount shown on a form, label, declaration or document referred to in subsection (1) is not true and correct, whether by virtue of any credit or debit passed by the supplier of the goods concerned or of any other change whatsoever, the importer shall forthwith report the matter to the proper officer and shall obtain and produce to that officer an amended invoice or such other document as that officer may require.

(6) In this section—

“duty” includes any import tax which is payable in terms of the Value Added Tax Act [*Chapter 23:12*].

[Definition amended by Act 12 of 2002]

#### **46 Entry of goods imported as freight in aircraft**

(1) Subject to subsection (2), the provisions of section *forty-five* may be applied, *mutatis mutandis*, to any goods imported into Zimbabwe as freight in any aircraft.

(2) If the pilot or owner of any aircraft engaged in the importation of goods into Zimbabwe wishes the entry of such goods to be made under subsection (1), the Commissioner may at his discretion grant him a licence to do so, subject to the following conditions and such other safeguards as he may consider it necessary to impose—

- (a) the licensee shall enter into a bond with sufficient surety, to the satisfaction of the Commissioner, for the securing of the duty on goods imported or to be imported and for compliance with this Act in respect of such goods; and
- (b) the goods shall not be delivered until the duty due thereon has been paid in the manner prescribed and all the requirements of this Act have been satisfied; and
- (d) licences issued in terms of this section shall expire on the 31st December in each year; and
- (e) the goods shall be held in transit sheds duly appointed by the Commissioner until all the requirements of this Act have been satisfied; and
- (f) if the licensee fails to comply with the conditions of his bond or neglects or fails to comply with the provisions of this Act or any rule or instruction given by the Commissioner in this or any other matter connected with the administration of this Act, the Commissioner may cancel his licence immediately or refuse to renew it.

(3) In this section—

“duty” includes any import tax which is payable in terms of the Value Added Tax Act [*Chapter 23:12*].

[Subsection amended by Act 17 of 1999 and by Act 12 of 2002]

#### **47 Goods prohibited from importation**

(1) Subject to subsection (3), the importation into Zimbabwe of the goods described in this subsection is totally prohibited—

- (a) base, counterfeit or forged coins or currency;
- (b) any goods which are indecent, obscene or objectionable;
- (c) any goods which might tend to deprave the morals of the inhabitants, or any class of the inhabitants, of Zimbabwe;
- (d) prison-made and penitentiary-made goods;
- (e) spirituous beverages which contain preparations, extracts, essences or chemical products which are noxious or injurious;
- (f) any goods the importation of which is prohibited by or under the authority of any enactment.

(2) Any goods imported in contravention of subsection (1) shall be liable to forfeiture.

(3) The Minister may authorize the importation of any goods described in subsection (1) for the purpose of study, scientific investigation or use as evidence in any proceedings.

(4) Any person who imports goods described in subsection (1), otherwise than in accordance with an authority given in terms of subsection (3), shall be guilty of an offence and liable to—

- (a) a fine not exceeding level twelve or three times the duty-paid value of the goods concerned, whichever is the greater; or
- (b) imprisonment for a period not exceeding five years;

or to both such fine and such imprisonment.

[Subsection inserted by Act 22 of 2001]

#### **48 Restricted importations**

(1) Except with the written permission of the Commissioner and under such conditions as he may consider it necessary to impose, the importation into Zimbabwe of stills and all apparatus or parts of apparatus capable of being used for the production or refining of alcohol is prohibited.

[Subsection amended by Act 17 of 1999]

(2) Goods the importation of which is restricted or controlled by this Act or any other enactment shall only be imported in conformity with the provisions of this Act or such other enactment, as the case may be.

(2a) Any person who imports goods in contravention of subsection (1) or (2) shall be guilty of an offence and liable to—

- (a) a fine not exceeding level twelve or three times the duty-paid value of the goods concerned, whichever is the greater; or
- (b) imprisonment for a period not exceeding five years;

or to both such fine and such imprisonment.

[Subsection inserted by Act 22 of 2001]

(3) In subsection (2)—

“goods” includes Zimbabwean and foreign currency.

## **49 Wreck**

(1) For the purpose of this section—

“wreck” includes—

- (a) flotsam and jetsam; and
- (b) any portion of a ship lost, abandoned or stranded or of the cargo, stores or equipment thereof; and
- (c) any portion of an aircraft or vehicle which has been wrecked or abandoned or of the cargo, stores or equipment thereof.

(2) Every person who has in his possession any uncustomed wreck shall without delay give notice thereof to the nearest officer and shall, unless he is the owner of such wreck or the duly authorized agent of the owner, if required, forthwith deliver that wreck or permit it to be delivered to the said officer, and unless it is necessary for the preservation or safe keeping thereof, no person shall without the permission of an officer remove or alter in quantity or quality any such wreck.

(2a) Any person who contravenes subsection (2) shall be guilty of an offence and liable to a fine not exceeding level five or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

[Subsection inserted by Act 22 of 2001]

(3) Uncustomed wreck found in or brought into Zimbabwe may, at any time after it has come under the control of the Commissioner, be disposed of by him in the manner set out in subsection (2) of section *thirty-nine*, but shall otherwise be subject to the same duty and enactments, as imported goods of the like kind.

[Subsection amended by Act 17 of 1999]

## **49A Registration of imported vehicles**

Imported vehicles shall be registered for the purposes of the Vehicle Registration and Licensing Act [*Chapter 13.14*] at the time entry is made in terms of section *forty*—

- (a) on submission of an application on the prescribed form, and
- (b) on payment of the prescribed fee.

Provided that vehicles to be warehoused in terms of section *seventy* shall be registered at the time the vehicle is taken out of the warehouse in terms of section *seventy-one*.

[Section inserted by Act 18 of 2000]

## **49B Application for registration of locally assembled and re-built vehicles**

Application for registration of a locally assembled or re-built vehicle for purposes of the Vehicle Registration and Licensing Act [*Chapter 13.14*] shall be made to the Commissioner, submitting the following and such other information as the Commissioner may require—

- (a) an application on a prescribed form, and
- (b) payment of prescribed fee, and
- (c) evidence of customs clearance of imported components, and
- (d) in the case of a re-built-vehicle—
  - (i) production of a certificate of roadworthiness
  - (ii) evidence, in the form of a police clearance certificate or otherwise, of the lawful acquisition of the vehicle and its component parts.

[Section inserted by Act 18 of 2000]

## **49C Allocation of registration mark and number and issue of registration book**

The Commissioner shall, if he is satisfied that all the provisions of the Act have been met, register the vehicle and—

- (a) allocate to it a registration mark and number; and
- (b) issue in the name of owner a registration book in respect thereof in the prescribed form.

[Section inserted by Act 18 of 2000]

## **PART IV**

### **COASTING TRADE**

## **50 Coasting trade**

(1) All transport of goods by water from any place within to any other place within Zimbabwe shall be deemed to be coasting trade, and all ships while employed therein shall be deemed to be coasting ships.

(2) Except in such circumstances as the Commissioner may allow, cargo shall not be laden on or discharged from coasting ships at any place in Zimbabwe other than a port.

[Subsection amended by Act 17 of 1999]

## **51 Report to be delivered before departure of ship**

Except in such circumstances as the Commissioner may permit, before any coasting ship departs from the port or place where it was loaded, the master shall sign a report in the prescribed form containing the prescribed

particulars and shall deliver it to the proper officer, who shall sign and return it to the master, and such report shall be the clearance for the goods mentioned therein and for the ship for the voyage.

[Section amended by Act 17 of 1999]

## **52 Report to be delivered before goods are landed**

Within twenty-four hours or within such further time as the Commissioner may under special circumstances permit after the arrival of any coasting ship at a port or place of discharge, and before any goods are discharged, the report required in terms of section *fifty-one* shall be delivered to the proper officer who shall note thereon the date of delivery. The report shall be returned to the master by the proper officer at each intermediate port named in the report, and retained by the proper officer at the last port so named.

[Section amended by Act 17 of 1999]

## **53 Payment of wharfage and other fees**

The responsibility for payment of fees and charges due to the State in respect of lighterage, wharfage or handling of goods conveyed by coasting ship shall lie upon the consignor for all such fees and charges incurred at the port of lading and upon the consignee for all such fees and charges incurred at the port of discharge.

## **PART V**

### **EXPORTATION OF GOODS**

## **54 Exporter to deliver customs documents and produce goods**

(1) Subject to subsection (5), every person or his authorised agent exporting any goods from Zimbabwe shall, before such exportation takes place, deliver to an officer a bill of entry or such other documents as may be prescribed, with such copies as may be required by the officer, and where direct trader input facilities exist, record the required information on the Customs computer system using procedures approved by the Commissioner, showing full details and particulars of the goods and their destination with such other information as the officer may require, and no goods shall be exported or accepted for carriage for export until such entry or other customs documents have been so delivered:

Provided that—

(i) where—

(a) certain prescribed goods are to be exported temporarily; or

(b) goods are to be exported after having been imported under special temporary clearance arrangements;

the presentation of a bill of entry or other customs document may be dispensed with at the Commissioner's discretion and entry for exportation shall be effected in such other manner as the Commissioner may direct;

(ii) the presentation of a bill of entry or other customs document in respect of the baggage of passengers, not being merchandise, shall not be necessary, unless specifically or generally required by the Commissioner or a proper officer.

[Subsection substituted by Act 18 of 2000]

(2) Notwithstanding anything to the contrary contained in subsection (1), the bill of entry or other customs documents may be delivered within such time after exportation of the goods as the officer may allow.

(3) Except in such circumstances as the Commissioner may permit, a separate bill of entry or other customs document, as the case may be, shall be delivered in respect of each separate consignment of goods exported by any one exporter.

[Subsection amended by Act 17 of 1999]

(4) Where goods are exported by post, any form or label affixed to the parcel on which a description of the contents and their value are set forth, together with such other form as may be prescribed, shall be deemed to be the document or documents required under the provisions of subsection (1).

(5) Every exporter shall, if he is requested to do so by an officer, produce for his inspection all invoices and other documents relating to any goods entered for export in terms of this section and shall, at his own risk and expense, unload, reload, remove to or from any place indicated by the officer, open, unpack, repack and close up such of the packages as the officer may require for examination and all charges incurred in the examination shall be borne by the exporter.

(6) In default of compliance with subsection (1) or (5), the proper officer may cause the goods concerned to be conveyed to a State warehouse or to any other place indicated by him or may himself so remove them and, if entry is not made within three months together with the payment of any duty due and all charges of removal and warehouse rent, the Commissioner may, subject to this section, cause the goods to be sold by public auction, if they have not been entered before the date fixed for their sale.

[Subsection amended by Act 17 of 1999]

(7) Subsections (3), (4), (5), (6) and (7) of section *thirty-nine* shall apply, *mutatis mutandis*, in respect of any goods referred to in subsection (6).

(8) Any person who exports or assists in exporting any goods in contravention of this section shall be guilty of an offence and liable to a fine not exceeding level six or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

[Subsection amended by Act 22 of 2001]

#### **54A Person in charge of vehicle to report goods in his charge before leaving Zimbabwe**

Before any vehicle departs from Zimbabwe, whether carrying goods or not, the person in charge of the vehicle shall, upon arrival at the port from which the vehicle is to depart from Zimbabwe, make a full report to an officer in such manner as the officer may require or as maybe prescribed, concerning the vehicle and any goods in his possession or charge, and the destination of the goods.

[Section inserted by Act 13 of 1996]

#### **55 Exportation of goods**

(1) Except with the prior permission of an officer, no person shall load any goods, except the personal effects of passengers contained in their baggage, into a ship, aircraft, vehicle or pipeline for exportation from Zimbabwe.

(2) Any person leaving Zimbabwe shall, whether or not he has goods in his possession, report to an officer—

- (a) in the case of a person departing by ship or vehicle, at the custom house or customs post at the place of his departure;
- (b) in the case of a person leaving by aircraft, at the customs post or to an officer at the aerodrome of departure or such other aerodrome as the Commissioner may direct;
- (c) in the case of a person leaving on foot, at the custom house or customs post nearest the point at which he intends to cross the border;
- (d) in the case of a person leaving by train, on board such train or, with the consent of or at the direction of such officer or if there is no officer on board the train, at the custom house or customs post nearest the point of departure of the train from Zimbabwe;

and shall, if called upon to do so, unreservedly declare all goods in his possession which he proposes to take with him beyond the borders of Zimbabwe in such manner as the officer may require, and shall fully and truthfully answer any questions put to him by the officer and, if so required, produce such goods for inspection by an officer.

[Subsection amended by Act 17 of 1999]

(3) Any person exporting goods by ship shall be responsible for all fees or charges due to the State in respect of lighterage, wharfage or handling at the port of shipment.

(4) For the purposes of subsection (2)—

“goods” includes Zimbabwean and foreign currency.

#### **56 Exportation of goods overland**

No person in charge of a vehicle used in the exportation of goods overland shall remove such vehicle beyond the borders of Zimbabwe without the permission of an officer and under such conditions as the Commissioner may specify. The Commissioner may, in his discretion, grant a general permission to any such person.

[Section amended by Act 17 of 1999]

#### **57 Outward clearance of ships**

(1) The master of every ship bound from any place within to any place beyond the borders of Zimbabwe shall, before any goods are laden therein, make application to the proper officer in the form prescribed for permission to load goods on such ship.

(2) No goods or ballast shall be laden before all inward cargo to be discharged has been discharged, except such goods or ballast as may be permitted by the proper officer.

(3) Before the ship departs, whether in ballast or laden, the master shall—

- (a) come before the proper officer and deliver to him in the prescribed form a report together with a full account of all goods liable to excise duty or surtax and goods on which duty has not been paid shipped as stores on board that ship; and
- (b) make and subscribe to a declaration as to the truth of such report and account; and
- (c) answer all such questions concerning the ship and cargo, if any, and the crew, passengers and voyage, as may be put to him by such officer.

(4) The master shall not cause or permit the ship to depart without first obtaining a certificate of clearance for the intended voyage from the proper officer, who shall not without reasonable cause withhold such certificate.

(5) If a ship in respect of which a clearance has been issued at any place in terms of this section does not depart from that place within thirty-six hours of the time when the clearance was issued, or within such further time as the proper officer may allow, such clearance shall lapse and the master shall obtain fresh clearance before permitting the ship to depart.

(6) A master of a ship who contravenes subsection (1), (2), (3), (4) or (5) shall be guilty of an offence and liable to a fine not exceeding level six or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

[Subsection inserted by Act 22 of 2001]

## 58 Outward clearance of aircraft

(1) The pilot of every aircraft bound from any place within to any place outside Zimbabwe shall furnish to an officer before any goods are taken on board particulars of the departure and journey of the aircraft and deliver, before the aircraft departs, in the form prescribed and with as many copies as that officer may require—

- (a) a report, and
- (b) a manifest of the goods on board; and
- (c) a statement of stores on board; and such forms when signed by such officer shall be the clearance and authority for the aircraft to proceed to its destination outside Zimbabwe.

(2) Save as may be permitted by the Commissioner, every aircraft shall depart from Zimbabwe from a customs aerodrome.

[Subsection amended by Act 17 of 1999]

(3) No aircraft shall depart from a customs aerodrome in Zimbabwe until the pilot has obtained the clearance and authority referred to in subsection (1) and the pilot shall not, after departure, call at any place in Zimbabwe other than a customs aerodrome unless forced to do so by accident, stress of weather or other circumstances beyond his control.

(4) If the aircraft in respect of which a clearance has been issued at any place in terms of this section does not depart from that place within thirty-six hours of the time when the clearance was issued, or within such further time as the officer may allow, such clearance shall lapse and the pilot shall, before permitting the aircraft to depart, obtain fresh authority for the aircraft to proceed outside Zimbabwe.

(5) A pilot of an aircraft who contravenes subsection (1), (2), (3) or (4) shall be guilty of an offence and liable to a fine not exceeding level six or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

[Subsection inserted by Act 22 of 2001]

## 59 Master, pilot or operator may appoint agent

The master of any ship, the person in charge of any vehicle other than a railway train, the pilot of any aircraft or the operator of any pipeline may, instead of himself performing any act, including the answering of questions, required by or under this Part to be performed by him, appoint an agent on his behalf and at his risk to perform any such act, and any such act performed by such agent shall in all respects and for all purposes be deemed to be the act of the master, person in charge, pilot or operator, as the case may be, so however, that the personal attendance of the master, person in charge, pilot or operator may be demanded at any time by the proper officer at any port.

## 60 Time of exportation of goods

(1) With the exception of goods exported by post or by of pipeline, the time of exportation shall be deemed to be the time when the bill of entry or other document required in terms of section *fifty-four* is delivered to an officer or the time when the goods cross the borders of Zimbabwe, whichever is the earlier.

(2) Where goods are exported by post, the time of exportation shall be the time when any export document which may be prescribed in terms of subsection (4) of section *fifty-four* is delivered to an officer or the time when the goods are placed in the post, whichever is the earlier.

(3) Where goods are exported by pipeline, the time of exportation shall be the time when the bill of entry or other document required in terms of section *fifty-four* is delivered to an officer or the time when the goods are first placed in the pipeline, whichever is the earlier.

## 61 Restriction of exportation

(1) If the exportation of any goods is restricted or controlled by any enactment, such goods shall only be exported in conformity with the provisions of such enactment.

(2) Any person who exports or assists in exporting any goods the exportation of which is prohibited by any enactment, and any person who exports or assists in exporting any goods in contravention of any enactment which restricts or controls the exportation of such goods shall be guilty of an offence.

(3) For the purposes of this Act, the entry of goods for export, the loading or placing of any goods upon a ship, aircraft or vehicle which is about to leave Zimbabwe or has other goods upon it which are to be exported, the taking of goods aboard such a ship, aircraft or vehicle by a person, the handing of any goods to any carrier or transport company or to the master of a ship or the pilot or owner of any aircraft for the purpose of exportation, the placing of any goods in a pipeline which has been prepared for the exportation of goods or the placing in the post of any package addressed to a place outside Zimbabwe shall be deemed to be an attempt to export.

(4) In this section—

“goods” includes Zimbabwean and foreign currency.

PART VI  
EXPORT PROCESSING ZONES

**62 Interpretation in Part VI**

In this Part—

“customs territory” means any part of Zimbabwe that is not within an export processing zone;

“export processing zone” means any part of Zimbabwe declared to be an export processing zone in terms of the Export Processing Zones Act [*Chapter 14:09*];

“Export Processing Zone Authority” means the Zimbabwe Export Processing Zone Authority established in terms of the Export Processing Zones Act [*Chapter 14:09*].

**63 Goods imported into export processing zones exempt from duty**

Goods imported into an export processing zone shall not be subject to duty:

Provided that such goods are not consumed within the customs territory.

**64 Facilities, etc., to be provided by Export Processing Zones Authority**

The Export Processing Zone Authority shall—

(a) construct or cause to be constructed suitable high enclosures with one suitable gate and install or cause to be installed adequate lighting around the export processing zone; and

(b) provide or cause to be provided, free of charge, and maintain to the satisfaction of the Commissioner—  
(i) suitable office accommodation and other facilities for use by officers stationed at any export processing zone; and

(ii) suitable space, facilities and devices for the examination of goods being imported into or exported from any export processing zone.

[Section amended by Act 17 of 1999]

**65 Goods deemed to be exported and imported**

For the purposes of this Act—

(a) goods which are taken from the customs territory and brought into an export processing zone shall be deemed to be exported from Zimbabwe; and

(b) goods which are brought out of an export processing zone and taken into the customs territory shall be deemed to be imported into Zimbabwe; and

(c) goods which are brought from outside Zimbabwe directly into an export processing zone shall be deemed not to have entered Zimbabwe; and

(d) goods which are manufactured or produced in an export processing zone shall be deemed to have been manufactured or produced outside Zimbabwe.

**66 Goods manufactured in export processing zones**

(1) Goods manufactured in an export processing zone shall not be taken out of an export processing zone except—

(a) for export; or

(b) for repair, maintenance, processing or conversion in the customs territory under such conditions as the Commissioner may specify.

[Subsection amended by Act 17 of 1999]

(2) Any person who takes goods out of an export processing zone in contravention of subsection (1) shall be guilty of an offence and liable to—

(a) a fine not exceeding level twelve or three times the duty-paid value of the goods concerned, whichever is the greater; or

(b) imprisonment for a period not exceeding five years;

or to both such fine and such imprisonment.

[Subsection inserted by Act 22 of 2001]

**67 Removal of goods from export processing zones**

Goods in an export processing zone may—

(a) be removed for export or sent into another export processing zone or bonded warehouse; or

(b) be destroyed;

subject to any conditions the Commissioner may specify.

[Section amended by Act 17 of 1999]

## PART VII

### WAREHOUSING OF GOODS

#### 68 Bonded warehouses

(1) Subject to any regulations governing the erection, maintenance and control of such warehouses, the Commissioner may, by notice in the *Gazette*, appoint and license such buildings or structures approved by him to be—

- (a) bonded warehouses for warehousing and securing of goods;
- (b) duty-free shops for the warehousing and sale of goods;

without payment of duty under this Act or any other law relating to customs and excise, at any place appointed in terms of paragraph (c) of subsection (1) of section *fourteen*, and may in like manner revoke such appointment of warehouses or duty free shops.

(2) The Commissioner may determine the kind of goods that may be placed in bonded warehouses or duty-free shops.

(3) Each of the following may be appointed and licensed as a separate warehouse for the purposes of this section, whether or not it is situated within a wire or other enclosure—

- (a) a bulk storage tank, for the storage of any commodity, which is unconnected by pipes to another similar storage tank;
- (b) two or more bulk storage tanks, for the storage of any commodity, which are permanently connected by pipes for the purpose of transferring the contents from one to another such tank;
- (c) a store, house or shed which is so constructed as to provide, to the satisfaction of the Commissioner, for the securing of the goods to be stored therein and of the duties payable on such goods.

(4) A fenced or walled enclosure shall only be appointed and licensed as a separate warehouse for the purposes of this section if it is of such a nature as to provide, to the satisfaction of the Commissioner, for the securing of the goods to be warehoused and of the duties payable on such goods without regard to any store, house or shed which may be situated within such enclosure.

(5) All licences issued in terms of this section shall be issued by the Commissioner and shall, whenever issued, expire on the 31st December in each year.

(6) If the licensee fails to comply with the conditions of his bond or fails to comply with the provisions of this Act or any rule or instruction made or given by the Commissioner in this or any other matter connected with the administration of this Act, the Commissioner may cancel his licence or refuse to renew it.

(7) A licence may be transferred from one warehouse to another duly appointed warehouse in the possession of the person to whom the licence has been issued, but shall not be transferable from one person to another.

(8) The proprietor or occupier of a bonded warehouse shall, as long as there is space available in his warehouse, give accommodation at a reasonable and uniform charge for the goods of other importers.

[Subsection amended by Act 17 of 1999]

#### 69 General bond of proprietor or occupier of bonded warehouse

(1) The proprietor or occupier of any warehouse shall give general security by bond, with sufficient surety to the satisfaction of the Commissioner, for compliance with this Act and for the payment of the full duties on all such goods as may at any time be warehoused therein, or for the removal of such goods, in accordance with such conditions as may be prescribed, to another warehouse or port or to a place outside Zimbabwe.

[Subsection amended by Act 17 of 1999]

(2) The bond shall include—

- (a) a condition for the safe deposit in the warehouse of such goods as may be entered for warehousing;
- (b) a condition that no goods shall be taken out of the warehouse for consumption, exportation or removal in bond, except upon an order in writing from an officer after entry has been made.

Provided that this paragraph shall not apply to goods sold from a duty-free shop.

(3) The Commissioner may at any time require that the form or amount of such security shall be altered in such manner as he may determine.

[Subsection amended by Act 17 of 1999]

#### 70 Storing of goods in warehouse without payment of duty

(1) The importer of any dutiable goods may warehouse them in any warehouse duly licensed in terms of section *sixty-eight* without the payment of duty on the first importation thereof, except any anti-dumping duty, provisional anti-dumping charge or countervailing duty and such duty as may become due as a result of the loss or diminution of the goods during their transportation to the warehouse in which they are to be deposited. All goods so warehoused shall be subject to such restrictions and conditions as may be prescribed.

(2) The importer or owner of any dutiable goods may, before duty is paid on them, warehouse the goods without payment of duty, except any anti-dumping duty, provisional anti-dumping charge or countervailing duty, in a place other than a warehouse licensed in terms of section *sixty-eight* if such place is approved by the

Commissioner for that purpose and if the importer or owner furnishes such security and complies with such conditions as the Commissioner may fix.

(3) The purchaser or manufacturer of any goods liable to excise duty or surtax may, before such excise duty or surtax has been paid, warehouse the goods without payment of duty or surtax in any warehouse duly licensed in terms of section *sixty-eight* or in a place approved by the Commissioner in terms of subsection (2), and all goods so warehoused shall be subject to such restrictions and conditions as may be imposed in terms of subsection (1) or (2), as the case may be.

[Subsection amended by Act 17 of 1999]

(4) Before warehousing any goods in terms of subsection (1) or (3), an importer, purchaser or manufacturer shall satisfy the proper officer that the proprietor or occupier of the bonded warehouse is willing and able to store the goods and that the safe deposit of the goods in the bonded warehouse is covered by the bond given by the proprietor or occupier in terms of section *sixty-nine*.

[Subsection inserted by Act 29 of 1998]

## **71 Removal of goods from warehouse**

(1) No goods which have been warehoused shall be taken or delivered from a warehouse except in accordance with the regulations and upon entry and payment of any duty due thereon and payable in terms of this section.

(1a) Any person who takes or delivers goods from a warehouse in contravention of subsection (1) shall be guilty of an offence and liable to—

- (a) a fine not exceeding level twelve or three times the duty-paid value of the goods concerned, whichever is the greater; or
  - (b) imprisonment for a period not exceeding five years;
- or to both such fine and such imprisonment.

[Subsection inserted by Act 22 of 2001]

(2) Subject to this Act in respect of rebates and manufacture, assembly or conversion in bond, duty shall be paid on goods delivered from a warehouse for consumption and such duty shall be paid in accordance with the quantities and the values of those goods as accepted at the time of their entry for warehousing in Zimbabwe:

Provided that if any deficiency has already been accounted for in terms of subsection (4), duty shall only be paid on the actual quantity of goods delivered for consumption.

(3) Notwithstanding subsection (1)—

- (a) entry shall not be made of or duty paid on wet goods which are—
  - (i) removed in the prescribed manner and in accordance with prescribed conditions from a warehouse to a place on or a part of licensed premises approved by the Commissioner for regauging, racking, blending, mixing, reducing, fining, bottling or other manipulation; and
  - (ii) returned to the warehouse from which they were removed; and
- (b) duty shall not be paid on goods which are—
  - (i) released from a warehouse in terms of section *seventy-two*; or
  - (ii) taken from a warehouse for re-warehousing or for removal or export in bond.

[Subsection amended by Act 17 of 1999]

(4) If at any time while they are in a warehouse or when they are delivered from a warehouse for any purpose the quantity of any goods is found to be less than that which was declared and accepted at the time of their entry for warehousing, duty shall be paid on the deficiency:

Provided that—

- (i) in the case of—
  - (a) wet goods; and
  - (b) oil in bulk storage tanks; and
  - (c) petrol and any other spirit derived from petroleum shale or coal tar, in bulk storage tanks; and
  - (d) such other goods as are specified by regulation;an officer may, when assessing duty in respect of a deficiency, make such allowances as are specified by or in accordance with the provisions of regulations, if he is satisfied that no part of such deficiency was wilfully or negligently caused;
- (ii) nothing contained in this subsection shall be deemed to release the owner of any goods or the proprietor or occupier of any warehouse from liability to prosecution under this Act for the removal of goods from a warehouse without entry thereof;
- (iii) any deficiency in the goods in a warehouse, except a deficiency not in excess of that specified by or in accordance with the provisions of regulations, shall, in the absence of proof to the contrary, be deemed to have come about by the removal of goods from the warehouse without entry.

(5) Any part of licensed premises where goods are manipulated or manufactured shall, if the Commissioner so directs, be treated as a warehouse for the purposes of subsection (4).

[Subsection amended by Act 17 of 1999]

## **72 Bonded goods as stores for aircraft or ships**

(1) An officer may release goods free of duty from any bonded warehouse in Zimbabwe, in original packages as imported or as repacked in bond under this Act, for shipment in accordance with the regulations, as stores for the use of any ship or aircraft which is not then on any voyage or journey from one place in Zimbabwe to any other place in Zimbabwe.

(2) If any goods warehoused have been declared to be for export as ship's or aircraft stores or otherwise, an officer may refuse to allow their removal from the warehouse for any purpose other than that which has been declared.

## **73 Bonded goods sold from a duty-free shop**

(1) The proprietor or occupier of a duty-free shop may sell goods free of duty to such class or classes of persons and under such conditions as may be prescribed.

(2) An officer shall not allow the removal of any goods from a duty-free shop except for sale in terms of subsection (1) or in such other circumstances as may be prescribed.

## **74 Clearance in terms of bond**

Subject to section *seventy-seven* and to the allowances made under subsection (4) of section *seventy-one*, all goods warehoused or re-warehoused shall be duly cleared for consumption, export or removal in bond according to the conditions of the bond under which such goods were warehoused or re-warehoused.

## **75 Liability of goods to duty at date of entry for consumption**

All goods whatsoever which have been deposited in terms of this Act in any warehouse or place of security under lawful authority without payment of duty upon the first importation thereof shall, upon being entered for consumption, be subject to such rate of duty as may be in force at the time of their being entered for consumption.

## **76 When warehoused goods must be cleared**

(1) Imported goods which have been warehoused in terms of section *seventy* for two years shall immediately be entered for export in bond and duly exported or entered for consumption and delivered from the warehouse:

Provided that this subsection shall not apply to—

- (a) oil in bulk storage tanks; or
- (b) petrol or any other spirit derived from petroleum, shale or coal tar, in bulk storage tanks.

[Subsection substituted by Act 29 of 1998]

(2) If any such goods are not so entered, the Commissioner may cause them to be sold, and shall apply the proceeds first to the payment of duty, next to warehouse rent and charges incurred by the State and shall pay the balance, if any, to the owner of the goods. If the goods cannot be sold for a sum sufficient to pay the duty, rent and charges as aforesaid, they may, by direction of the Commissioner, be destroyed or appropriated to the State without compensation.

[Subsection amended by Act 17 of 1999]

## **77 Sorting, repacking or destroying goods under customs authority**

(1) Subject to such safeguards as he may prescribe, the Commissioner may permit—

- (a) the owner of or person having control over warehoused goods to sort, separate, pack or repack any such goods and to make such alterations therein or arrangements as may be necessary for the preservation of those goods, or for the sale, exportation or other legal disposal thereof and, in the case of wines and spirits, to bottle from bulk stocks or to break down from greater to lesser strengths;
- (b) any parts of goods separated in terms of paragraph (a) to be destroyed, but without prejudice to the claim for duty upon the remaining goods;
- (c) the assembly, blending, mixing, conversion or manufacture in bond of any goods wholly or partly consisting of material liable to duty:

Provided that—

- (i) this paragraph shall not apply if the finished products of any such process would be liable to excise duty or surtax;
- (ii) when the finished product is entered for consumption, duty shall be paid upon any material liable to duty contained therein or consumed in its manufacture and, when such duty is payable on value, the value of such material, as accepted at the time of their warehousing in Zimbabwe, shall be their value for duty purposes.

(2) Anything done or performed under any permission granted in terms of subsection (1) shall be done or performed in accordance with rules made by the Commissioner for the due protection of revenue and for the payment of any expenses incurred in respect of the attendance of officers.

[Subsection amended by Act 17 of 1999]

## **78 Transfer of ownership of goods warehoused**

The owner of any goods warehoused may transfer such ownership to any other person who may lawfully own the said goods, but the Commissioner may refuse to recognize any such transfer of ownership unless notice thereof in writing has been given to him by the owner prior to the transfer.

[Section amended by Act 17 of 1999]

## **79 Warehouses may be locked by officer**

An officer may cause any bonded warehouse to be locked with a customs lock for so long as he deems fit, and no person shall during such period remove or break such lock or enter such warehouse or duty-free shop or remove any goods therefrom without the permission of the officer.

## **80 Taking stock and duty on deficiencies**

An officer may at any time take stock of the goods in any bonded warehouse or duty-free shop and duty shall be paid upon deficiencies in terms of subsection (4) of section *seventy-one*.

## **81 Sampling of warehoused goods**

- (1) An officer may permit—
  - (a) the taking, subject to such conditions as may be prescribed, of samples of warehoused goods by the owner or importer of the goods; and
  - (b) the payment of duty on samples taken in terms of paragraph (a) to be deferred until the consignment of the goods from which the samples were taken is entered for consumption or for removal or export in bond.
- (2) The Commissioner may remit the duty on samples taken in terms of subsection (1).

[Subsection amended by Act 17 of 1999]

## **82 Remittal of duty on certain warehoused goods which are destroyed, etc.**

- (1) If the Commissioner is satisfied that—
  - (a) goods were destroyed by accident or lost by accident without going into consumption whilst in a bonded warehouse, or duty-free shop or place deemed to be a bonded warehouse in terms of subsection (5) of section *seventy-one* or whilst in transit to a bonded warehouse or whilst in transit for export in bond or when removed from a bonded warehouse in terms of subparagraph (i) of paragraph (a) of subsection (3) of section *seventy-one*; and
  - (b) every reasonable effort was made and precaution taken to prevent their loss or destruction;the Commissioner shall remit the duty payable on the goods.
- (2) The Commissioner shall remit the duty due upon warehoused goods which, with his consent—
  - (a) are destroyed by the owner or other person having control of the goods under the supervision of a proper officer; or
  - (b) are given up to the control of a proper officer in whole packages to avoid the payment of the duty.

[Subsection amended by Act 17 of 1999]

## **83 Removal of goods in bond to any other port of entry or any other territory**

- (1) If an importer, instead of paying duties on any goods or depositing such goods in a bonded warehouse, wishes to remove such goods in bond to any other port of entry within Zimbabwe or to export such goods in bond to some place beyond the borders of Zimbabwe, he shall—
  - (a) give a bond, with sufficient surety to the satisfaction of the proper officer, conditioned for the payment of the duties on such goods unless evidence of removal or export acceptable to the Commissioner is produced within a reasonable time to be stated in the bond; or
  - (b) make a deposit in cash of not less than the amount of duty leviable upon the goods in question pending production by him within a reasonable period of evidence of removal or export acceptable to the Commissioner.

[Subsection amended by Act 17 of 1999]

- (2) The method and means whereby goods are removed in bond in terms of subsection (1) shall be subject to such conditions and restrictions as may be prescribed.

## **84 Responsibility for goods placed in bonded warehouse**

The State shall in no case be liable for any loss or damage of whatsoever nature to any goods lodged in any warehouse appointed or licensed in terms of this Part or through wrong delivery of such goods.

## **PART VIII**

### **ORDINARY DUTIES, ANTI-DUMPING DUTIES AND COUNTERVAILING DUTIES**

## **85 Interpretation in Part VIII**

- (1) In this Part—

“export price”, in relation to imported goods, means the price of such goods to the importer, including all costs, charges and expenses incidental to the purchase thereof or to the placing thereof on board the means of transport by which they will be removed from the country of exportation but excluding any subsequent costs, charges or expenses incurred in connection with the delivery of such goods to Zimbabwe;

“factory cost”, in relation to manufactured goods, means the cost of such goods in their finished condition calculated in the manner prescribed;

“investigating authority ” means the Competition and Tariff Commission established in terms of section 4 of the Competition Act, 1996.

[Definition amended by Act 29 of 2001]

“local content”, in relation to goods manufactured in any particular country, means such percentage of the factory costs of such goods in their finished condition as is represented by the cost of—

- (a) the direct labour involved in the manufacture of the goods; and
- (b) any materials which were grown, produced or manufactured in the country concerned and which were used in the manufacture of the goods.

(2) Any reference in this Part to goods which have been produced shall be construed as a reference to goods which have not been subjected to any process of manufacture.

## **86 Customs duties**

Subject to section *ninety-eight*, there shall be charged, levied, collected and paid in respect of goods which are imported customs duties at the appropriate rates provided in the customs tariff.

## **87 Classification of goods for customs purposes**

(1) For the purpose of determining the customs duty payable in respect of any goods that are imported, the Commissioner or an officer shall classify such goods into the appropriate tariff headings, subheadings or codes in accordance with any rules set out in the customs tariff , paying due regard to—

- (a) the explanatory notes to the Harmonised Commodity Description and Coding System, issued from time to time by the World Customs Organisation in Brussels; and
- (b) decisions of the Harmonised Commodity Description and Coding System Committee.

[Subsection amended by Act 29 of 1998 and by Act 17 of 1999]

(2) The Commissioner shall vary or set aside a classification of goods made in terms of subsection (1) if he is satisfied, whether on appeal by the importer of the goods or otherwise, that the classification was incorrect.

(3) Any classification of goods made in terms of this section shall be binding on the importer of the goods, subject to an appeal—

- (a) to the Commissioner, where the classification was made by an officer; or
- (b) to the Fiscal Appeal Court in terms of the Fiscal Appeal Court Act [*Chapter 23:05*], where the classification was made, varied or confirmed by the Commissioner.

(4) The Commissioner shall ensure that at least one copy of—

- (a) the publications referred to in paragraph (a) of subsection (1); and
- (b) any decision referred to in paragraph (b) of subsection (1) on which he has relied for the purpose of classifying any goods;

is kept available for public inspection during normal business hours in his offices and at such other offices of the Department as he considers appropriate.

(5) If the classification of goods for the purposes of this Act is an issue in any proceedings before any court, a document purporting to be a copy of a publication or decision referred to in subsection (1), and purporting to be certified as correct by the Commissioner, shall be admissible in the proceedings as prima facie proof of its contents upon its production by any person.

[Subsection amended by Act 17 of 1999]

## **88 Determination of origin of manufactured goods**

For the purposes of this Act, the country of origin of any manufactured goods shall be the country in which the last process of manufacture has been performed.

## **89 Specified country content of goods subject to lower rates of duty than in customs tariff**

(1) Subject to subsection (3), where goods which are grown, produced or manufactured in any country are, because of their origin, subject under the provisions of this Act to rates of duty which are lower than those set out in Part II of the customs tariff, such lower rates shall be allowed only—

- (a) in the case of unmanufactured goods, where such goods have been wholly grown or produced in that country;
- (b) in the case of manufactured goods, where such goods have been subjected to their last process of manufacture in that country and—
  - (i) have such local content in relation to that country as may be prescribed; or
  - (ii) have been subjected in that country to such process of manufacture as may be prescribed in relation to the class of goods to which such goods belong.

(2) Regulations made for the purposes of subsection (1) may provide for the manner in which or the authority by whom the determination of the local content of manufactured goods shall be made and the information to be supplied by importers in relation thereto.

(3) If any preference, rebate or remission of duty is granted in terms of any agreement in respect of goods grown, produced or manufactured in any country, the conditions as to the local content required in relation to the

goods before such preference, rebate or remission is granted may be determined by special provision in such agreement and if no such special provision has been made, subsection (1) shall apply.

## **90 Anti-dumping duties**

(1) For the purposes of this section, imported goods or goods likely to be imported shall be deemed to be dumped if the export price of such goods is less than—

- (a) the domestic price of such goods, which means the price at which identical or comparable goods are being sold in the ordinary course of trade in the country of exportation or, where such price is fixed by the government in the country of exportation, such price as the investigating authority may determine; or
- (b) if there is no domestic price in terms of paragraph (a), any of the following—
  - (i) the highest comparable price for identical or comparable goods when exported from the country of exportation and sold in any other foreign country in the ordinary course of trade; or
  - (ii) the cost of production or manufacture of the goods plus such amount in respect of administration, selling and other costs and profit as the investigating authority may consider reasonable; or
  - (iii) where the cost referred to in subparagraph (ii) cannot be ascertained by the investigating authority or is considered by the investigating authority to be subject to any form of government control, such domestic price as the investigating authority may determine; or
- (c) the cost of production or manufacture of the goods plus such amount in respect of administration, selling and other costs and profit as the investigating authority may consider reasonable:

Provided that imported goods shall not be deemed to be dumped by reason only of the exemption of such goods from duties or taxes borne by identical or comparable goods destined for consumption or use in the country of exportation or by reason of the refund of such duties or taxes.

(2) For the purposes of subsection (1)—

- (a) the comparison of prices contemplated in that subsection shall be made at the same level of trade and in respect of sales made at as nearly as possible the same time;
- (b) where there is no export price or it appears to the investigating authority that the export price is unreliable because of an association or compensatory arrangements between the supplier and the importer or a third party, the investigating authority may determine the export price on the basis of the price at which the imported goods are first re-sold to an independent buyer or, if they are not re-sold to an independent buyer or are not re-sold in the condition in which they were imported, on such basis as the investigating authority thinks fit.

(3) The margin of dumping deemed, for the purposes of this section, to have taken place or to be likely to take place shall be the difference in prices contemplated in subsection (1).

(4) If, after considering the report of an investigating authority, the Minister is satisfied that—

- (a) any goods have been or are being or are likely to be imported in circumstances in which they are deemed in terms of subsection (1) to be dumped; and
- (b) the effect of such importation has been or will be to cause or threaten detriment to an established industry in Zimbabwe or to affect detrimentally the establishment or expansion of an industry in Zimbabwe; and
- (c) it would be in the public interest to impose an anti-dumping duty in respect of such goods;

he shall, by notice in the *Gazette*, impose such antidumping duty in respect of goods of that class as will, in his opinion, offset the dumping.

(5) An anti-dumping duty—

- (a) shall not exceed the margin of dumping referred to in subsection (3); and
- (b) may, where a provisional anti-dumping charge has been levied in respect of the goods concerned, be imposed with effect from a date which is prior to the date of publication of the notice in the *Gazette* but is not prior to the date with effect from which such provisional anti-dumping charge was levied.

## **91 Provisional anti-dumping charge**

(1) If at any time the Minister is of the opinion that prima facie the provisions of paragraphs (a) and (b) of subsection (4) of section *ninety* apply in relation to any goods which have been or are being or are likely to be imported, he may, by notice in the *Gazette*, impose a provisional anti-dumping charge on goods of that class for a period not exceeding three months from the date of publication of such notice, which charge shall not exceed the amount that it is estimated would constitute the margin of dumping referred to in subsection (3) of section *ninety*.

(2) The period for which the provisional antidumping charge has been imposed may, before the expiration thereof, be extended by the Minister, by notice in the *Gazette*, for a further period not exceeding three months if he is so requested by the exporter and the importer concerned.

(3) A provisional anti-dumping charge shall be paid on goods subject to that charge at the time of their entry for consumption or for warehousing as security for any anti-dumping duty that may be imposed on such goods and shall be brought to account in such manner as the Commissioner may direct.

- (4) Where—
- (a) an anti-dumping duty is imposed with retrospective effect in respect of goods in relation to which a provisional anti-dumping charge has been levied, the amount of the charge which has been paid shall be set off against the anti-dumping duty which is payable and if such amount—
    - (i) is greater than the anti-dumping duty payable, the balance shall be refunded to the importer on application;
    - (ii) is less than the anti-dumping duty payable, the balance shall become due and payable by the importer on demand being made by the proper officer;
  - (b) no anti-dumping duty is imposed in respect of goods in relation to which a provisional anti-dumping charge has been levied or such a duty is imposed but not with retrospective effect, the amount collected in respect of such charge shall be refunded to the importer on application.

## 92 Countervailing duties

- (1) For the purposes of this section, a bounty or subsidy shall be deemed to be granted if it is granted—
- (a) directly or indirectly, on the growth, production, manufacture or exportation of goods, whether by way of grant, loan, tax relief or otherwise and whether related directly to the goods themselves, to materials included in the goods or to anything else; or
  - (b) by way of a special subsidy on the transport of any particular goods.
- (2) If, after considering the report of an investigating authority, the Minister is satisfied that—
- (a) a bounty or subsidy in respect of goods which have been or are being or are likely to be imported has been or will be granted within the meaning of subsection (1) in the country in which such goods were grown, produced or manufactured or from which they were or are to be exported; and
  - (b) the effect of the granting of such bounty or subsidy has been or will be to cause or threaten detriment in an established industry in Zimbabwe or to affect detrimentally the establishment or expansion of an industry in Zimbabwe; and
  - (c) it would be in the public interest to impose a countervailing duty in respect of such goods;
- he shall, by notice in the *Gazette*, impose such countervailing duty in respect of goods of that class as will, in his opinion, offset the granting of such bounty or subsidy.
- (3) A countervailing duty shall not exceed the amount as determined by the investigating authority of the bounty or subsidy referred to in paragraph (a) of subsection (2).
- (4) A countervailing duty shall not be imposed on any imported goods by reason only of—
- (a) the exemption of such goods from duties or taxes borne by identical or comparable goods destined for consumption or use in the country of exportation; or
  - (b) the refund of any duties or taxes referred to in paragraph (a).

## 93 General provisions regarding anti-dumping and countervailing duties

(1) Unless the Minister has, by notice in the *Gazette*, specified to the contrary, an anti-dumping duty, provisional anti-dumping charge or countervailing duty shall not apply to raw, semi-manufactured or manufactured materials or requisites of any industry which are entered for use in the manufacture, assembly or refining of any article within Zimbabwe under a rebate or remission of the ordinary duty prescribed in regulations referred to in paragraph (b) of subsection (1) of section *one hundred and twenty* providing for such matters.

(2) Subject to this Act, the goods specified in a notice made in terms of section *ninety* or *ninety-two* shall, from the date of publication of such notice in the *Gazette* or such earlier date as may be specified in a notice made in terms of section *ninety*, be liable to the appropriate anti-dumping duty or countervailing duty provided for in the notice, and such anti-dumping duty or countervailing duty shall be paid by the importer, in addition to any other duty payable thereon, on the entry for consumption or for warehousing of such goods.

(3) An anti-dumping duty and a countervailing duty shall not be imposed on the same imported goods in order to compensate for the same situation of dumping or the granting of a bounty or subsidy.

(4) Whenever any anti-dumping duty or countervailing duty is imposed on any goods, the importer or owner of any such goods which have been warehoused in terms of Part VI shall produce the invoice and such other documents relating to the goods as the proper officer may require and shall forthwith pay the antidumping duty or countervailing duty that is due on such goods.

(5) Notwithstanding the provisions of sections *ninety* and *ninety-two*, the Commissioner may, subject to such conditions as he thinks fit, remit the anti-dumping duty or countervailing duty due on any goods which are imported in such circumstances or in such quantities that the importation of such goods does not, in his opinion, constitute a regular importation of such goods for the purposes of trade.

(6) For the purposes of sections *ninety*, *ninety-one* and *ninety-two*, where any cost or price is expressed in the currency of a foreign country, conversion to the currency of Zimbabwe shall be made in accordance with section *one hundred and eight*.

(7) The Minister may at any time, by notice in the *Gazette*, repeal a notice in terms of subsection (4) of section *ninety*, subsection (1) of section *ninety-one* or subsection (2) of section *ninety-two*.

#### **94 Confirmation of anti-dumping duty, provisional anti-dumping charge or countervailing duty**

(1) The Minister shall lay a copy of a notice in terms of subsection (4) of section *ninety*, subsection (1) of section *ninety-one* or subsection (2) of section *ninety-two* and a statement of the reasons for the publication of the notice before Parliament—

- (a) in the case of a notice published when Parliament is sitting or is adjourned for seven days or less or when Parliament is prorogued for seven days or less, within fourteen days of the publication of the notice or, if before the copy of the notice and statement are so laid Parliament is dissolved or is prorogued for more than seven days or Parliament is adjourned for more than seven days, within fourteen days after the next sitting of Parliament;
- (b) in the case of a notice published when Parliament is dissolved or is prorogued for more than seven days or Parliament is adjourned for more than seven days, within fourteen days of the next sitting of Parliament or, if before the copy of the notice and the statement are so laid Parliament is dissolved or is prorogued for more than seven days Parliament is adjourned for more than seven days, within fourteen days after the next sitting of Parliament.

(2) If Parliament does not by resolution approve a notice, a copy of which is laid before it in terms of subsection (1), before Parliament is next dissolved or is next prorogued for more than seven days, the notice shall cease to be of force on the day Parliament is so dissolved or prorogued or the day Parliament is so adjourned.

#### **95 Excise duties**

There shall be charged, levied, collected and paid in respect of goods which are manufactured or produced within Zimbabwe, excise duties at the appropriate rates provided in the excise tariff.

#### **96 Classification of goods for excise purposes**

(1) For the purposes of determining the excise duty payable in respect of any goods that are manufactured or produced within Zimbabwe, the Commissioner or an officer shall classify such goods into the appropriate tariff headings or subheadings set out in the statutory instrument published in terms of subsection (1) of section *two hundred and twenty-five* and imposing an excise tariff.

[Subsection amended by Act 29 of 1998]

(2) The Commissioner shall vary or set aside a classification of goods made in terms of subsection (1) if he is satisfied, whether on appeal by the person liable for the payment of the excise duty or otherwise, that the classification was incorrect.

(3) Any classification of goods made in terms of this section shall be binding on the person liable for the payment of the excise duty, subject to an appeal—

- (a) to the Commissioner, where the classification was made by an officer; or
- (b) to the Fiscal Appeal Court in terms of the Fiscal Appeal Court Act [*Chapter 23:05*], where the classification was made, varied or confirmed by the Commissioner.

[Subsection amended by Act 17 of 1999]

#### **97 Surtax**

There shall be charged, levied, collected and paid in respect of goods which are imported into or manufactured or produced within Zimbabwe, surtax at the appropriate rate provided in the surtax tariff.

#### **98 Duties shall be subject to certain provisions**

The duties imposed under this Act shall be subject to all the provisions of this Act relating to agreements, suspensions, rebates, refunds, drawbacks or remissions of duty, or to the warehousing of goods.

### **PART XA**

#### **APPLICATION OF INFORMATION TECHNOLOGY TO CUSTOMS PROCESSES**

[Part inserted by Act 12 of 2006]

#### **98A interpretation in Part XA**

In this Part—

- “access”, means gaining entry into, instructing or communicating with the logical, arithmetical or memory function resources of a computer, computer system or computer network;
- “affixing a digital signature”, in relation to an electronic record or communication, means authenticating the electronic record or communication by means of a digital signature;
- “computer” means any electronic, magnetic, optical or other high speed data processing device or system which performs logical, arithmetic and memory functions by manipulation of electronic, magnetic or optical impulses and includes all input, output, processing, storage, computer software or communication facilities which are connected or related to the computer in a computer system or a computer network;
- “computer network” means the interconnection of one or more computers through—

- (a) the use of satellite, microwave, terrestrial line or other communication media; and
  - (b) terminals or a complex consisting of two or more interconnected computers whether or not the interconnection is continuously maintained;
- “computer system”, means a device or collection of devices, including input and output devices capable of being used with external files, which contain computer programmes, electronic instructions and input and output data, and that performs logic, arithmetical, data storage and retrieval, communication control and other functions;
- “digital signature” means an electronic signature created by computer that is intended by the registered user using it and by the Commissioner accepting it to have the same effect as a manual signature, and which complies with the requirements for acceptance as a digital signature specified in subsection (1) of section *ninety-eight F*.
- “electronic data” means any information, knowledge, fact, concept or instruction stored internally in the memory of the computer or represented in any form (including computer printouts, magnetic optical storage media, punched cards or punched tapes) that is being or has been prepared in a formalised manner and is intended to be or is being or has been processed in a computer system or network;
- “electronic record or communication” means electronic data that is recorded, received or sent in an electronic form or in microfilm or computer-generated microfiche;
- “intermediary”, with respect to any particular electronic communication, means any person who on behalf of another person receives, stores or transmits that communication or provides any service with respect to that communication;
- “Internet” has the meaning given to that word by the Postal and Telecommunications Act [*Chapter 12:05*];
- “originator”, means a person who sends, generates, stores or transmits any electronic communication to be sent, generated, stored or transmitted to any other person, but does not include an intermediary;
- “registered user” means a person registered in terms of section *ninety-eight E*;
- “user agreement”, means the agreement between the registered user and the Commissioner referred to in section *ninety-eight D*.

### **98B Use of electronic data generally as evidence**

- (1) Notwithstanding anything to the contrary contained in any other law, the admissibility in evidence of any electronic data for any purpose under this Act shall not be denied—
- (a) on the sole ground that it is electronic data; or
  - (b) if it is the best evidence that the person adducing it can reasonably be expected to obtain, on the grounds that it is not in original form
- (2) Information in the form of electronic data shall be given due evidential weight.
- (3) In assessing the evidential weight of electronic data a court shall have regard to such of the following considerations as may be applicable in the circumstances of the case—
- (a) the reliability of the manner in which the data was generated, stored and communicated; and
  - (b) the reliability of the manner in which the integrity of the data was maintained; and
  - (c) the manner in which its originator was identified.

### **98C Establishment of computer systems for customs processing purposes**

The Commissioner may, notwithstanding anything to the contrary in this Act, establish and maintain a computer system for the purpose of applying information technology to any process or procedure under this Act, including—

- (a) the electronic processing of any document; and
- (b) the receipt and processing of reports and other documents relating to the arrival and departure of vehicles, vessels and aircraft and their passengers and cargo and the control of such passengers and cargo, and
- (c) the accounting for the receipt, clearance and release of goods, the storage of goods in customs warehouses or other places and the removal or carriage of goods for any purpose under this Act, and
- (d) the accounting for the production or manufacture of any goods in compliance with any procedure prescribed by or under this Act

### **98D User agreements**

- (1) The Commissioner may, for the purpose of regulating communication through a computer system established in terms of section *ninety-eight C*, prescribe the form of a user agreement to be entered between the Zimbabwe Revenue Authority and registered users.
- (2) A user agreement shall set out—
- (a) the terms and conditions governing communication through a computer system established in terms of section *ninety-eight C*, including—

- (i) the use by registered users of computer equipment and facilities of a class or kind specified in the agreement;
- (ii) the allocation to a registered user of a digital signature by the Commissioner;
- (iii) the requirement that registered users ensure the security of the digital signatures allocated to them in the manner specified in the agreement,
- (b) the manner of affixing a digital signature to any electronic communication or record;
- (c) the conditions of reasonable access to the computer system of the registered user by the Commissioner for such verification and audit purposes as may be required by this Act;
- (d) the manner and period of keeping electronic records that are necessary or convenient to be kept in connection with a computer system established in terms of section *ninety-eight C*.

### **98E Registration of registered users and suspension or cancellation of registration**

(1) No person shall communicate with the Commissioner through a computer system established in terms of section 98C unless such person is a registered user.

(2) An application for registration as a registered user shall be made in the prescribed form, and be accompanied by the user agreement completed by the applicant and the prescribed fee, if any, and such other information as the Commissioner may reasonably require the applicant to furnish in support of the application.

(3) If, after considering an application in terms of subsection (2) and making such enquiries as he or she may deem necessary, the Commissioner is satisfied that the applicant—

- (a) is a clearing agent licensed under this Act, or is a person who will make regular use of the computer system established in terms of section *ninety-eight C*;
- (b) will introduce adequate measures to—
  - (i) prevent disclosure of the digital signature allocated to him or her by the Commissioner to any person not authorised to affix such signature;
  - (ii) safeguard the integrity of information communicated through a computer system established in terms of section *ninety-eight C*, apart from any change which may occur in the normal course of such communication or during storage and display of such information;
- (c) will maintain the standard of reliability of his or her own computer system required in accordance with the requirements of the user agreement;

the Commissioner may approve the application, subject to such reasonable conditions as he or she may impose either generally or in relation to the applicant.

(4) If, at any time after granting an application in terms of subsection (2), the Commissioner is satisfied that a registered user—

- (a) has not complied with the requirements of his or her user agreement with any condition or obligation imposed by the Commissioner in respect of such registration;
- (b) has made a false or misleading statement with respect to any material fact or omits to state any material fact which was required to be stated in the application for registration;
- (c) fails to make regular use of the computer system established in terms of section 98B;
- (d) has contravened or failed to comply with any provision of this Act;
- (e) has been convicted of an offence under this Act;
- (f) has been convicted of an offence involving dishonesty;
- (g) is sequestered or liquidated;
- (h) no longer carries on the business for which the registration was issued;

the Commissioner may cancel or suspend for a specified period the registration of the registered user.

(5) Before cancelling or suspending the registration of a registered user in terms of subsection (4) the Commissioner shall—

- (a) give notice to the registered user of the proposed cancellation or suspension; and
- (b) provide the reasons for the proposed cancellation or suspension; and
- (c) afford the registered user a reasonable opportunity to respond and make representations as to why the registration should not be cancelled or suspended.

### **98F Digital signatures**

(1) Every digital signature intended for use in connection with a computer system established in terms of section 98C shall comply with the following requirements, namely, it must—

- (a) be unique to the registered user and under the sole control of the registered user; and
- (b) be capable of verification; and
- (c) be linked or attached to electronically transmitted data in such a manner that, if the integrity of the data transmitted is compromised, the digital signature is invalidated, and
- (d) be in complete conformity with the requirements prescribed by the Commissioner and contained in the user agreement.

(2) The Commissioner shall, on registering a user, allocate to the registered user—

- (a) if the user is a natural person, a digital signature or sufficient digital signatures for the user and each employee of the user nominated in the user agreement; or
- (b) if the user is not a natural person, sufficient digital signatures for each employee of the user nominated in the user agreement.

(3) Where the registered user is a clearing agent licensed under this Act, no employee of such agent who is not licensed as a clearing agent shall be allocated a digital signature.

### **98G Production and retention of documents**

Where any provision of this Act prescribes or requires that documents, records, information or the like should be retained for a specific period, that requirement shall be deemed to have been satisfied by a registered user if such documents, records, information or the like are so retained in electronic form that—

- (a) the information contained therein remains accessible so as to be subsequently usable; and
- (b) the electronic record is retained in the format in which it was originally generated, sent or received or in a format which can be demonstrated to represent accurately the information originally generated, sent or received; and
- (c) the details which will facilitate the identity of the origin, destination, date and time of dispatch or receipt of such electronic record are available in the electronic record.

### **98H Sending and receipt of electronic communications**

(1) An electronic communication through a computer system established in terms of section *ninety-eight C* or the record of such communication shall be attributed to the originator—

- (a) if it was sent by the originator; or
- (b) if it was sent by a person who had the authority to act on behalf of the originator in respect of that communication or record; or
- (c) if it was sent by a computer system programmed by or on behalf of the originator to operate automatically.

(2) Where the Commissioner and a registered user have not agreed that an acknowledgment of receipt of electronic communication be given in any particular form or by any particular method, an acknowledgement maybe given by—

- (a) any communication by the Commissioner, electronic or otherwise; or
- (b) conduct by the Commissioner or any officer sufficient to indicate to the registered user that the electronic communication has been received.

(3) Where the Commissioner and the registered user have agreed that an electronic communication shall be binding only on the receipt of an acknowledgement of such electronic communication, then, unless such acknowledgement has been so received within such time as agreed upon, such electronic communication shall be deemed not to have been sent.

(4) As between a computer system established in terms of section *ninety-eight C* and any other computer system of a registered user, the lodgement of an electronic communication occurs when it enters a computer system outside the control of the originator.

(5) The time of receipt of an electronic communication shall be the time when the electronic communication enters the computer—

- (a) where the electronic communication is by a registered user, at any office of the Zimbabwe Revenue Authority, or of the Commissioner, to whichever it was addressed, and such office shall be the place of receipt or
- (b) if the electronic communication is sent by the Zimbabwe Revenue Authority or the Commissioner to a registered user, at the place of receipt that is stipulated in the user agreement.

(6) Whenever any registered user is authorised to submit and sign electronically any manifest, bill of entry, return, prescribed form, document, schedule, application, declaration, statement, report, notice or the like, which is required to be submitted and signed in terms of this Act, such signature electronically affixed to such electronic communication and communicated to the Zimbabwe Revenue Authority or the Commissioner, shall, for the purposes of this Act, have effect as if it was affixed thereto in manuscript, and acceptance thereof shall not be denied if it is in conformity with the user agreement concluded between the Commissioner and the registered user.

(7) The Commissioner may, notwithstanding anything to the contrary contained in this section, permit any registered user to submit electronically any manifest, bill of entry, return, prescribed form, document, schedule, application, declaration, statement, report, notice or the like, which is required to be submitted in terms of this Act, by using the Internet, and subject to such exceptions, adaptations or additional requirements as the Commissioner may stipulate or prescribe, this section shall apply to the submission of the foregoing documents using the Internet.

### **98I Obligations, indemnities and presumptions with respect to digital signatures.**

(1) If the security of a digital signature allocated to a registered user has been compromised in any manner the registered user shall inform the Commissioner in writing of that fact without delay.

(2) No liability shall attach to the Commissioner, the Zimbabwe Revenue Authority or any officer or employee thereof for any failure on the part of a registered user to ensure the security of the digital signature allocated to him or her and in particular, where electronic data authenticated by a digital signature is received by the Commissioner or the Zimbabwe Revenue Authority—

- (a) without the authority of the registered user to whom such signature was allocated, and
- (b) before notification to the Commissioner or the Zimbabwe Revenue Authority by the registered user that the security of the digital signature allocated to him or her has been compromised;

the Commissioner or the Zimbabwe Revenue Authority shall be entitled to assume that such data has been communicated by, or with the authority of, the registered user of that digital signature.

(3) Where in any proceedings or prosecution under this Act or in any dispute to which the Zimbabwe Revenue Authority is a party, the question arises whether an digital signature affixed to any electronic communication to the Commissioner or the Zimbabwe Revenue Authority was used in such communication with or without the consent and authority of the registered user, it shall be assumed, in the absence of proof to the contrary, that such signature was so used with the consent and authority of the registered user.

#### **98J Alternatives to electronic communication in certain cases**

(1) Whenever a computer system established in terms of section 98C or any other computer system of a registered user is inoperative, the registered user and the Commissioner shall communicate with each other in writing in the manner prescribed in this Act.

(2) The Commissioner may at any time require from any registered user the submission of any original document required to be produced under any of the provisions of this Act.

#### **98K Unlawful uses of computer systems**

(1) A person who, not being the registered user of a digital signature to whom it is allocated, uses such a signature in any electronic communication to the Commissioner or the Zimbabwe Revenue Authority without the authority of such registered user, commits an offence and is liable to a fine not exceeding level twelve or to imprisonment for a period not exceeding ten years or to both such fine and such imprisonment.

(2) A person who—

- (a) makes a false electronic record or falsifies an electronic record; or
- (b) dishonestly or fraudulently—
  - (i) makes, affixes any digital signature to, transmits or executes an electronic record or communication;
  - (ii) causes any other person to make, affix any digital signature to, execute, transmit or execute an electronic record or communication;

commits an offence and is liable to a fine not exceeding level twelve or to imprisonment for a period not exceeding ten years or to both such fine and such imprisonment.

### **PART IX**

#### **AGREEMENTS**

#### **99 President may enter into customs agreements**

(1) Without derogation from the powers conferred on the President in terms of any other law, the President may conclude conventions, treaties, agreements or other arrangements with the government of any country, under such conditions as he may consider necessary, providing for any or all of the following matters—

- (a) concessions as to, or exemptions from, the duties normally payable in respect of goods grown, produced or manufactured in, or imported from, the territory of that government, in consideration of the extension by that government of privileges in respect of goods grown, produced or manufactured in, or imported into the territory of that government from, Zimbabwe;
- (b) payments to compensate for the extension of privileges by either of the parties in respect of goods grown, produced or manufactured in, or imported from, the territory of the other party;
- (c) the importation, removal and exportation of goods, including the collection by the one party on behalf of the other party of the customs duties imposed in respect of goods which, having been imported into the territory of the one party, are removed into the territory of the other party, the payment of such duties or of an amount in commutation thereof, and the charges for the collection of such duties;
- (d) the prohibition of the importation and exportation of specified goods, or that specified goods may be imported or exported only under licence or permit.

(2) Any concession as to, or exemption from, duty referred to in paragraph (a) of subsection (1) and any payment in compensation referred to in paragraph (b) of subsection (1) may be made or granted with retrospective effect if the President considers it expedient to do so.

## **100 Agreements to be published**

(1) Subject to this section, every agreement concluded under the powers conferred by section *ninety-nine* shall be published in the *Gazette*, and the provisions thereof shall be brought into force by the President by notice in the *Gazette* as from such date as he may in such notice declare.

(2) Where the President considers that any convention, treaty, agreement or other arrangement concluded by or on his behalf with the government of any country makes provision, in addition to other matters, for any of the matters referred to in subsection (1) of section *ninety-nine*, he shall publish a notice in the *Gazette*—

- (a) stating that the convention, treaty, agreement or arrangement has been concluded; and
- (b) identifying the provisions of the convention, treaty, agreement or arrangement which, in his opinion, relate to any of the matters referred to in subsection (1) of section *ninety-nine*; and
- (c) specifying the office or offices within Zimbabwe at which a copy of the convention, treaty, agreement or arrangement may be inspected free of charge; and
- (d) declaring the date with effect from which the provisions of the convention, treaty, agreement or arrangement which relate to any of the matters referred to in subsection (1) of section *ninety-nine* shall have force and effect within Zimbabwe.

(3) The Minister shall lay a copy of every agreement referred to in subsections (1) and (2) before Parliament on one of the thirty days on which it next sits after the date on which—

- (a) the agreement was published in terms of subsection (1); or
- (b) the notice was published in terms of subsection (2);

as the case may be.

(4) If Parliament, on one of the thirty days on which it next sits after a copy of an agreement has been laid before it in terms of subsection (3), does not by resolution approve such agreement, such agreement shall cease to be of force or effect at the end of the thirtieth sitting day.

## **101 President may make regulations to give effect to agreements**

The President may make regulations in order to give effect to any agreement.

## **102 Provisions of agreements and regulations to prevail when inconsistent with this Act or any other law**

(1) Any agreement or any regulation relative to such agreement shall have force and effect notwithstanding anything inconsistent therewith contained elsewhere in this Act or in any other law or instrument having effect by virtue of any law.

(2) If in any agreement referred to in subsection (1), whether concluded before or after the 30th June, 1970, concessions as to, or exemptions from, duties are allowed in respect of goods manufactured in a territory of the government with whom the agreement was concluded and no conditions are specified therein as to the requirements to be satisfied before such goods may be regarded as having been manufactured in that territory, such goods shall be deemed, for the purposes of the agreement and any regulation relative thereto, to have been manufactured in that territory only if the requirements of paragraph (b) of subsection (1) of section *eighty-nine* are satisfied in relation to that territory.

## **103 President may suspend, rebate or remit duties payable under agreement**

Any suspension, rebate or remission of duty granted in terms of section one *hundred and twenty* in respect of any duty in the customs tariff or surtax tariff may be extended in whole or in part by the President, by notice in the *Gazette*, to any corresponding special rate of duty which may be applicable under an agreement to goods grown, produced or manufactured in any particular country. Such suspensions, rebates or remissions of duty may in like manner be amended or repealed.

## **PART X**

### **VALUE FOR DUTY PURPOSES**

## **104 Interpretation in Part X**

(1) In this Part—

“Agreements” means Article VII of the General Agreement on Tariffs and Trade, which was entered into at Geneva on the 30th October, 1947, and the Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade, which was entered into at Geneva on the 12th April, 1979.

“buying commission”, in relation to imported goods, means an amount paid or payable by or on behalf of the importer directly or indirectly to a person who, as an agent of the importer, represented him abroad in the purchase and payment for the goods:

Provided that the amount paid by the importer shall not be taken to be buying commission unless the Commissioner is satisfied that the person acting as the agent did not or does not—

- (i) produce in whole or in part or control the production in whole or in part of the imported goods or any other goods whose value would be taken into account in determining the transaction value of the imported goods;
- (ii) render or control the rendering of any services whose value would be taken into account in determining or attempting to determine the price of the imported goods or other services of the same class; or
- (iii) transport the imported goods, or any other goods referred to in paragraph (i) within any foreign country or between a foreign country and Zimbabwe or within Zimbabwe, for any purpose associated with the manufacture or importation of the imported goods; or
- (iv) purchase, exchange, sell or otherwise trade in any of the goods referred to in paragraph (i) or render any of the services referred to in paragraph (ii) otherwise than in the capacity of an agent of the importer; or
- (v) in relation to any of the goods referred to in paragraph (i) or any of the services referred to in paragraph (ii), act as an agent for, or in any other way represent the producer, supplier or seller of the goods or the person who rendered the services, as the case may be, or otherwise be associated with any such person except as the agent of the importer; or
- (vi) claim or receive, directly or indirectly, the benefit of any commission, fee or other payment on any goods or services from any person as a consequence of the importation of the goods concerned other than commission received from the importer for the services rendered by that person in that transaction;

[Definition amended by Act 17 of 1999]

“computed value”, in relation to imported goods, means the value of the goods as determined by the Commissioner in terms of section *one hundred and ten*;

[Definition amended by Act 17 of 1999]

“general expenses” means the direct and indirect costs, charges and expenses of producing and selling goods for export, other than the costs, charges and expenses referred to in paragraphs (a) to (d) of subsection (2) of section *one hundred and ten*;

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

“identical goods”, in relation to imported goods, means goods which—

- (a) are manufactured in the same country as the imported goods, whether by the same or a different manufacturer; and
- (b) save possibly for minor differences in appearance, are the same as the imported goods in all material respects, including physical characteristics, quality and reputation;

but does not include goods which incorporate or reflect engineering, development work, design work, plans or sketches undertaken in Zimbabwe;

“price actually paid or payable” in relation to imported goods, means the sum of—

- (a) all payments that have been made, or are to be made, in relation to such goods, by or on behalf of the importer—
  - (i) to the seller; or
  - (ii) to any person related to the seller, unless the Commissioner is satisfied that the seller has not derived and will not derive any direct or indirect benefit from the payment; or
  - (iii) to any other person for the direct or indirect benefit of the seller;
 in accordance with the contract of sale or any other contract, agreement or arrangement, whether formal or informal, for doing anything to increase the value of the goods; and
- (b) the value as determined by the Commissioner of any consideration or services rendered, or to be rendered, directly or indirectly, by or on behalf of the importer—
  - (i) to the seller;
  - (ii) to any person related to the seller, unless the Commissioner is satisfied that the seller has not derived and will not derive any direct or indirect benefit from the payment; or
  - (iii) to any other person for the direct or indirect benefit of the seller;

[Definition amended by Act 17 of 1999]

“royalty” means an amount paid or credited as consideration for—

- (a) the making, use, exercise or selling of an invention or the right to make, use, exercise or sell an invention; or
- (b) the use of, or the right to use—
  - (i) a design or trade mark;
  - (ii) confidential information; or
  - (iii) any machinery, implement, apparatus or other equipment;

or

- (c) the supply of scientific, technical, industrial, commercial or other knowledge or information; or
- (d) any assistance that is ancillary and subsidiary to, and is furnished as a means of enabling the application or enjoyment of any matter falling within paragraph (a), (b) or (c);
- (e) a total or partial forbearance in respect of any matter falling within paragraph (a), (b) or (c);

“transaction value”, in relation to any goods, means the value determined in terms of section *one hundred and six*;

“similar goods”, in relation to imported goods, means goods which—

- (a) are manufactured in the same country as the imported goods, whether by the same or a different manufacturer; and
- (b) though not alike in all respects to the imported goods, have like characteristics and component materials which enable them to perform the same functions as and to be commercially interchangeable with the imported goods;

but does not include goods which incorporate or reflect engineering, development work, design work, plans or sketches undertaken in Zimbabwe;

“unit price”, in relation to imported goods that are sold, means the price of the goods in accordance with the contract of sale, divided by the number of the units of the goods.

(2) In the determination of whether or not any goods are similar to other goods for the purposes of this Part, regard shall be had, among other factors, to the quality of the goods, their reputation and their trademark, if any.

(3) For the purposes of this Part, persons shall be deemed to be related to each other only if—

- (a) they are officers or Commissioners of one another's businesses; or
- (b) they are partners in business; or
- (c) they are employer and employee; or
- (d) in the case of bodies corporate, any other person directly or indirectly owns, controls, or holds five *per centum* or more of the issued 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.

(4) Persons who are associated in business with one another in that the one is the sole agent, sole distributor or sole concessionaire, however described, of the other shall be deemed to be related to each other for the purposes of this Part only if they are so deemed in terms of subsection (3).

### **105 Value for duty purposes**

(1) For the purpose of assessing the amount of any duty payable on any imported goods and for the purpose of any declaration or oath which may be required by this Act or any other enactment in relation to any question of value or duty in connection with the importation of goods or goods which are likely to be imported, the value of such goods shall, subject to this Act, be the transaction value thereof as established or determined in terms of sections *one hundred and six* to *one hundred and twelve*.

(2) If the value of any goods required to be entered separately is one dollar or less, no account shall be taken of such value.

### **106 Transaction value: primary method of valuation**

(1) Subject to this Act, the value for duty purposes of any imported goods shall be the transaction value of the goods, that is to say, the price actually paid or payable for the goods when sold for export to Zimbabwe, adjusted in terms of section *one hundred and thirteen*, if—

- (a) there are no restrictions as to the disposal or use of the goods by the buyer, other than restrictions which—
  - (i) are imposed or required by law; 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 of the goods is not subject to any condition or consideration for which a value cannot be determined; and
- (c) no part of the proceeds of any subsequent resale, disposal or use of the goods by the buyer will accrue directly or indirectly to the seller, unless an appropriate adjustment can be made in terms of section *one hundred and thirteen*; and
- (d) subject to subsection (2), the buyer and the seller are not related.

(2) The fact that a buyer and a seller are related shall not in itself be a ground for not accepting the transaction value, where—

- (a) in the opinion of the Commissioner, such relationship did not influence the price actually paid or payable for the goods concerned; or
- (b) the importer proves to the satisfaction of the Commissioner that the transaction value closely approximates to one of the following values—
  - (i) the transaction value of identical or similar goods sold at or about the same time as the goods to be valued at comparable commercial and quantity levels to buyers in Zimbabwe who are not related; or
  - (ii) the value, determined in terms of section *one hundred and nine*, of identical or similar goods imported into Zimbabwe at or about the same time as the goods to be valued.

[Subsection amended by Act 17 of 1999]

### **107 Transaction value of identical goods: first alternative method**

(1) Subject to section *one hundred and eight* and of this section, if the value for duty purposes of any imported goods cannot be established in terms of section *one hundred and six*, their value for duty purposes shall be the transaction value of identical goods which are—

- (a) sold for export to Zimbabwe at the same commercial level and in substantially the same quantity as the goods to be valued; and
- (b) exported to Zimbabwe at or about the same time as the goods to be valued.

(2) Where no sale such as is referred to in paragraph (a) of subsection (1) is found, the value for duty purposes of the imported goods concerned shall be established for the purposes of this section by a sale of identical goods that are sold for export to Zimbabwe at a different commercial level and additionally, or alternatively, in different quantities from the goods to be valued, adjustments being made to take account of differences in price attributed to commercial level and additionally, or alternatively, to quantity.

(3) In establishing the value for duty purposes of any imported goods in terms of this section, all adjustment shall be made to take account of significant differences in the costs and charges referred to in section *one hundred and thirteen* between the goods to be valued and the identical goods concerned arising from differences in distances and modes of transport.

(4) If, in the application of this section, more than one transaction value is determined, the lowest such value shall be taken as the value for duty purposes of the goods to be valued.

(5) An importer who wishes any imported goods to be valued in terms of this section shall, on request, produce to the proper officer either—

- (a) a copy of a bill of entry on the basis of which the Department accepted the value of imported goods which were identical to the goods to be valued and which were entered within three months of the date of the goods to be valued; or
- (b) sufficient information to enable the proper officer to trace a bill of entry referred to in paragraph (a).

### **108 Transaction value of similar goods: second alternative method**

(1) Subject to section *one hundred and nine* and of this section, if the value for duty purposes of any imported goods cannot be established in terms of section *one hundred and six* or one hundred and seven, their value for duty purposes shall be the transaction value of similar goods that are—

- (a) sold for export to Zimbabwe at the same commercial level and in substantially the same quantity as the goods to be valued; and
- (b) exported to Zimbabwe at or about the same time as the goods to be valued.

(2) Subsections (2) to (5) of section *one hundred and seven* shall apply, *mutatis mutandis*, to the valuation of goods in terms of this section as if references in those subsections to identical goods were references to similar goods.

### **109 Deductive value: third alternative method**

(1) Subject to the provisions of section *one hundred and eleven*, if the value for duty purposes of any imported goods cannot be established in terms of section *one hundred and six*, *one hundred and seven* or *one hundred and eight*, their value for duty purposes shall be established in terms of this section:

Provided that, if prior to the commencement of the valuation of any imported goods the importer so requests, the Commissioner shall attempt to determine their value in terms of section *one hundred and ten* and, if their value cannot be so determined, it shall then be established in terms of this section.

[Subsection amended by Act 17 of 1999]

(2) Subject to this section, if the goods to be valued, or identical or similar imported goods, are sold in Zimbabwe at or about the time of importation of the goods to be valued and in the same condition as that in which they were imported, the value for duty purposes of the goods to be valued shall be based on the unit price at which the goods to be valued, or the identical or similar imported goods, as the case may be, are so sold in Zimbabwe in the greatest aggregate quantity to persons who are not related to the importer.

(3) If the goods to be valued, or identical or similar imported goods, are not sold in Zimbabwe at or about the time of importation of the goods to be valued but are otherwise sold in Zimbabwe as provided in subsection (2),

the value for duty purposes of the goods to be valued shall be based, subject to this section, on the unit price at which the goods to be valued, or identical or similar imported goods, as the case may be, are sold in the greatest aggregate quantity in such a sale transacted at the earliest date after the importation of the goods to be valued, but not later than ninety days after such importation.

(4) If the goods to be valued, or identical or similar imported goods, are not sold in Zimbabwe in the same condition as that in which they were imported, then, whether or not the importer so requests, the value for duty purposes of the goods to be valued shall be based, subject to this section, on the unit price at which the goods to be valued, or the identical or similar imported goods, as the case may be, are sold after further processing in the greatest aggregate quantity to persons in Zimbabwe who are not related to the importer.

(5) In valuing goods in terms of this section, deductions shall be made, where appropriate, for—

- (a) commissions usually paid or agreed to be paid, or additions usually made for profit and general expenses, in connection with sales in Zimbabwe of goods of the same class or kind as the goods to be valued, irrespective of the county of exportation;
- (b) any costs of transportation and the cost of loading, unloading, handling and insurance and associated costs incidental to the transportation of the goods within Zimbabwe from their place of importation;
- (c) any duty or tax payable in Zimbabwe by reason of the importation or sale of the goods;
- (d) in the case of goods to which the provisions of subsection (4) apply, any increase in the value attributable to the further processing referred to in that subsection.

(6) For the purpose of establishing the unit price of any goods in terms of this section, an officer may accept a sales invoice or price list relating to the goods concerned at the relevant time.

#### **110 Computed value: fourth alternative method**

(1) Subject to section *one hundred and eleven* and this section, if the value for duty purposes of any imported goods cannot be established in terms of section *one hundred and six*, *one hundred and seven*, *one hundred and eight* or *one hundred and nine*, their value for duty purposes shall be the computed value of the goods as determined by the Commissioner in terms of this section.

[Subsection amended by Act 17 of 1999]

(2) The computed value of any imported goods shall be an amount computed in accordance with generally accepted accounting principles and shall be arrived at on the basis of information supplied by the producer of the goods in question, taking into account the following factors—

- (a) the value of the materials used in producing the goods to be valued; and
- (b) the costs, charges and expenses incurred by the producer in, or in connection with, the production of the goods to be valued; and
- (c) packing costs or charges for materials or labour incurred in connection with the goods to be valued; and
- (d) the value of any of the goods and services referred to in paragraph (b) of subsection (1) of section *one hundred and thirteen*, determined and apportioned to the goods being imported as referred to in that section, whether or not such goods and services have been supplied free of charge or at a reduced cost; and
- (e) the cost of transport and insurance and associated costs incidental to delivery of the imported goods at the port or place of export in the country of exportation; and
- (f) profit and general expenses usually added by producers in the country of export in sales of goods of the same class or kind as the goods to be valued when sold by the producers to purchasers who are not related to those producers at the time of the sale.

#### **111 Fall-back method of valuation: final alternative method**

(1) If the value for duty purposes of any imported goods, other than non-merchandise goods as defined in subsection (1) of section *one hundred and twelve*, cannot be established or determined in terms of sections *one hundred and six* to *one hundred and ten*, the Commissioner shall establish it, subject to this section—

- (a) on the basis of a previous determination; or
- (b) by applying any of the provisions of section *one hundred and six* to *one hundred and nine* with such modifications and adaptations as he considers reasonable and necessary in the circumstances; or
- (c) by using any other reasonable means consistent with the principles and general provisions of the Agreements as the Commissioner considers appropriate in the circumstances of the particular case.

(2) The Commissioner shall base any determination in terms of subsection (1) on information available in Zimbabwe.

(3) The Commissioner shall not base any determination in terms of subsection (1) on any of the following—

- (a) the selling price in Zimbabwe of goods manufactured in Zimbabwe; or
- (b) a system which provides for the acceptance of the higher of two alternative values; or
- (c) the price of goods on the domestic market of the country of exportation of the goods to be valued; or
- (d) the cost of production of the goods to be valued or of identical or similar goods; or
- (e) the price of the goods to be valued, when sold for export to a country other than Zimbabwe; or

- (f) a system of minimum customs values; or
- (g) arbitrary or fictitious values.

(4) Whenever the transaction value of imported goods is to be determined in terms of this section, the importer shall produce to the proper officer such documentary evidence relating to the determination as the proper officer may require.

[Subsection amended by Act 17 of 1999]

### **111A Method of valuation in cases where truth of accuracy of importer's statement is in doubt**

If the Commissioner or proper officer has reason to doubt the truth or accuracy of any statement made by the importer of any goods for the purposes of determining the transaction value of the goods in terms of section *one hundred and six*—

- (a) the Commissioner or proper officer shall require the importer to provide further information to prove the accuracy of the statement; and
- (b) if, after considering any further information that the importer may have provided in terms of paragraph (a), the Commissioner or proper officer still doubts the truth or accuracy of the statement, he shall reject the statement and require the goods to be valued by whichever of the methods defined in sections *one hundred and seven* to *one hundred and eleven* is appropriate.

[Section amended by Act 17 of 1999]

### **112 Valuation of goods imported privately**

(1) In this section—

“non-merchandise goods” means goods imported by an individual for his own use in Zimbabwe but not for trade purposes.

(2) If, in the opinion of the Commissioner, the declared value for duty purposes of non-merchandise goods—

- (a) does not reflect a bona fide open market sale price between unrelated parties; or
- (b) has not been established or has been incorrectly declared by the importer;

the Commissioner may determine the value on the basis of a previous determination or, if there is no such determination, by applying any of the provisions of section *one hundred and six* to *one hundred and ten*, with such modifications and adaptations as he considers reasonable and on the basis of any information available to him.

[Subsection amended by Act 17 of 1999]

### **113 Adjustments to be made in calculating value for duty purposes of imported goods**

(1) In determining the value for duty purposes of any imported goods in terms of section *one hundred and six*, there shall be added to the price actually paid or payable for the goods—

- (a) the following, to the extent that they are incurred by the buyer but are not included in the price actually paid or payable—
  - (i) commission and brokerage except buying commission incurred in the actual purchase of the goods; and
  - (ii) the cost of containers which are treated as being one for customs purposes with the goods in question; and
  - (iii) the cost of packing, whether for labour or materials;

and

- (b) the value, apportioned to the imported goods as considered appropriate by the Commissioner, of any of the following goods and services if supplied directly or indirectly by the importer free of charge or at reduced cost, for use in connection with the production and sale for export of the imported goods, to the extent that such value has not been included in the price actually paid or payable—
  - (i) materials, components, parts and similar items incorporated in the goods to be valued; and
  - (ii) tools, dies, moulds and similar articles used in the production of the goods to be valued; and
  - (iii) materials consumed in the production of the goods to be valued; and
  - (iv) engineering, development work, art work, design work, plans and sketches undertaken elsewhere than in Zimbabwe and necessary for the production of the goods to be valued;

[Subsection amended by Act 17 of 1999]

and

- (c) royalties and licence fees, including any payments for patents, trade marks or copyright and for the right to distribute or resell the goods, but not including charges for the right to reproduce the goods in Zimbabwe, which the buyer is required to pay, directly or indirectly, as a condition of sale of the goods for export to Zimbabwe, to the extent that such royalties and fees are not included in the price actually paid or payable for the goods to be valued; and
- (d) the value of any part of the proceeds of any subsequent resale disposal or use of the goods to be valued that accrues directly or indirectly to the seller.

(2) In determining the value for duty purposes of any imported goods in terms of sections *one hundred and six* to *one hundred and twelve*, there shall be added to the price actually paid or payable for the goods—

- (a) the cost of transport and insurance from the place of manufacture to the place of export and all other charges and expenses incidental to placing the goods on board the means of transport by which the goods are removed from the country of exportation, if such cost is not included in the price actually paid or payable for the goods to be valued; and
- (b) if the goods in question have to be exported to Zimbabwe through another country, freight, insurance and other charges from the country of supply to the country where the goods are placed on board the means of transport for direct transportation to Zimbabwe, if such cost is not included in the price actually paid or payable for the goods to be valued; and
- (c) the cost of freight and insurance from the place where the goods were placed on board the means of transport by which they were removed to Zimbabwe to the place of importation in Zimbabwe, if such cost is not included in the price actually paid or payable for the goods to be valued:

Provided that—

- (i) where the goods to be valued were imported by air transport, the cost of freight and insurance shall be deemed to be fifteen *per centum* of the free on board value of the goods to be valued plus any charges and expenses referred to in paragraph (b), unless the importer satisfies the proper officer to the contrary;
- (ii) where the goods to be valued were imported by air transport free of charge or at reduced cost or are commercial goods brought in as passengers' baggage, the cost of freight and insurance shall be deemed to be fifteen *per centum* of the free on board value of the goods to be valued plus charges and expenses referred to in paragraph (b);
- (iii) where the goods to be valued were imported by any transport other than air transport, the cost of insurance shall be deemed to be one *per centum* of the free on board value of the goods to be valued unless the importer satisfies the proper officer to the contrary;
- (iv) where the goods to be valued were imported by any transport, other than air transport, free of charge, or at reduced cost or are commercial goods brought in as passengers' baggage or by means of transport owned by the importer and there is no documentary evidence of the delivery cost from the place where the goods are loaded into the importer's means of transport, the cost of freight shall be deemed to be—
  - A. five *per centum* of the free onboard value of goods, in addition to the proved sea, air or other freight charges from the country of original export, where applicable, when the goods were transported from Botswana, South Africa, Lesotho, Swaziland, Mozambique, Zambia, Namibia or Malawi;
  - B. seven and one-half *per centum* of the free on board value of the goods, in addition to the proved sea, air or other freight charges from the country of original export, where applicable, when the goods were transported from any country in Africa other than a country referred to in paragraph A of this proviso;
- (v) an importer shall, on demand, produce to an officer a statement of air, sea and other freight charges whenever goods referred to in subparagraph A or B of proviso (iv) are to be valued; and
- (d) in the case of goods imported by post, all charges for postage and insurance which are reflected on or in any document accompanying the postal article:

Provided that, where the postage and insurance cannot be ascertained in this manner, the postage and insurance shall be deemed to be fifteen *per centum* of the free on board value of the goods to be valued.

(3) In determining the value for duty purposes of any imported goods in terms of sections *one hundred and six to one hundred and twelve*, there shall be deducted from the price actually paid or payable for the goods, to the extent that they are included therein amounts equal to—

- (a) the cost of transportation, loading, unloading, handling, insurance and associated costs incidental to the transportation of the goods within Zimbabwe from their place of importation; and
- (b) buying commission, if identified separately from the price actually paid or payable for the goods.

#### **114 Bill of entry or release of goods not to constitute valuation**

Neither the acceptance by an officer of a bill of entry stating the value of any imported goods nor the release by an officer of any imported goods following the presentation of such a bill of entry shall constitute a determination of the value of such goods for the purposes of this Part.

#### **115 Conversion of foreign currency and payment of duty in foreign currency in certain cases**

(1) When the value or cost of any imported goods, or any element that is required to be included in such value or cost, is expressed in the currency of a foreign country, it shall be converted to the currency of Zimbabwe at the selling rate for that foreign currency, as designated by the Commissioner in consultation with the Reserve Bank of Zimbabwe, applicable as a customs rate at the time the goods concerned were entered in terms of this Act:

Provided that where one or more special rates in addition to the general rate at which the Zimbabwe dollar may be exchanged for United States dollar are specified in the Exchange Control (Exchange Rate) Direction, 2002 (Statutory Instrument 223 of 2002) or in any other statutory instrument amending or replacing that Direction, the Minister may, by instruction to the Commissioner published in the *Gazette*, determine that a special rate shall apply in respect of certain goods specified in the instruction.

(2) The Minister may, notwithstanding section 41 of the Reserve Bank Act [*Chapter 22:15*] or anything provided by or under the Exchange Control Act [*Chapter 22:05*], require every person, including a resident of Zimbabwe, who imports any item of goods (hereafter in this section called a “luxury item”) declared by the Minister by notice in a statutory instrument to be a luxury item, to pay any duty and import or value-added tax payable on such item in United States dollars, Euros or any other currency denominated under the Exchange Control (General) Order, 1996 (Statutory Instrument 110 of 1996).

(3) In calculating the duty payable on any luxury item, the value for duty purposes and the duty payable shall be calculated in the same way as for goods that are not luxury items, except that the Zimbabwe dollar duty and import or value-added tax thus arrived at shall be converted at the general rate referred to in the proviso to subsection (1) into United States dollars, Euros or any other currency denominated under the Exchange Control (General) Order, 1996 (Statutory Instrument 110 of 1996):

Provided that where any amount of duty and import or value-added tax thus payable may require payment to be made in coins, the Commissioner is authorised to increase or reduce the amount to the nearest figure to enable payment to be made in notes only.

[Section substituted by Act 10 of 2003

## **116 Value for purpose of excise duty and surtax on goods locally manufactured**

(1) In this section—

“dutiable value”, in relation to goods, means the value determined in terms of subsection (2);

“factory cost” means the sum of all the costs, direct and indirect, incurred by the manufacturer in the manufacture, finishing and packing of goods—

(a) before their removal from the licensed premises of the manufacturer; or

(b) for use in the manufacture of other goods on the licensed premises of the manufacturer;

and includes, where the goods are manufactured on behalf of another person from materials supplied by or on behalf of that person, the cost of the materials supplied by or on behalf of that person and any costs incurred in delivering those materials to the licensed premises of the manufacturer;

“goods” means goods subject to excise duty or surtax;

“selling price” means the price at which the manufacturer sells any goods in the ordinary course of trade to merchants in Zimbabwe for warehousing without payment of the excise duty or surtax thereon.

(2) The value for the purposes of assessing the amount of excise duty or surtax payable on goods manufactured in Zimbabwe shall be the value as determined by the Commissioner from time to time.

(3) In determining the dutiable value of any goods, the Commissioner shall have regard to any information supplied to him by the manufacturer or any other information available to him and shall, as far as practicable in the light of such information, determine the dutiable value as—

(a) the factory cost plus twenty-five *per centum* of such cost or such percentage as may be prescribed in relation to any class of goods; or

(b) the selling price, if any, if that price is greater than the amount referred to in paragraph (a).

(4) The manufacturer of any goods shall, within one month after the receipt of a request from the Commissioner or within such further period as the Commissioner may allow, submit to the Commissioner a declaration in such form as the Commissioner may require, giving an analysis of—

(a) the factory cost; and

(b) the amount by which the factory cost is exceeded by—

(i) the selling price, if any; and

(ii) the price, including the excise duty or surtax, if any, at which the manufacturer sells the goods in the ordinary course of trade to merchants in Zimbabwe.

(5) A declaration for the purposes of subsection (4) shall be prepared at the expense of the manufacturer by an accountant or auditor approved by the Commissioner and shall be signed by the manufacturer and the accountant or auditor who prepared it.

(6) The Commissioner shall, if—

(a) the declaration referred to in subsection (4) is, in his opinion, satisfactory; and

(b) it appears to him that the determination made in terms of subsection (2) was incorrect;

again determine the dutiable value in accordance with subsection (3).

(7) If the declaration referred to in subsection (4)—

(a) is not submitted in accordance with this section; or

(b) is submitted but is, in the opinion of the Commissioner, deficient, inaccurate or for any other reason unsatisfactory;  
the Commissioner shall reconsider the determination made in terms of subsection (2) in the light of such information as may be available to him, and if it appears to him, in the light of that information, that the determination made in terms of that subsection was incorrect, he shall again determine the dutiable value in accordance with subsection (3).

(8) If, by virtue of any determination made in terms of subsection (6) or (7), the dutiable value of goods is less than the dutiable value determined in terms of subsection (1), any excess of excise duty or surtax which has been paid on such goods shall be refunded to the manufacturer notwithstanding anything contained in section *one hundred and twenty-five*.

[Subsection amended by Act 17 of 1999]

### **117 Value of exported goods**

The value for customs purposes of any exported goods shall be—

- (a) the free on board value; or
- (b) in the case of goods for which there is no free on board value, the value as determined by the Commissioner.

Provided that in the case of goods which are exported in substantially the same state as they were imported into Zimbabwe, the free on board value shall not be less than the value for duty purposes determined in terms of section *one hundred and five*.

[Section amended by Act 17 of 1999]

### **118 Duty-paid value**

(1) In this section—

“duty” includes any import tax which is payable in terms of the Value Added Tax Act [*Chapter 23:12*].

[Definition amended by Act 12 of 2002]

(2) The duty-paid value of any goods or articles shall be—

- (a) subject to paragraph (c), in the case of goods which are imported or attempted to be imported, the value for duty purposes of such goods assessed in terms of this Part; or
- (b) subject to paragraph (c), in the case of goods which are exported or attempted to be exported, the value of such goods assessed in terms of section *one hundred and seventeen*; or
- (c) in the case of any goods or articles the value of which cannot be assessed in terms of paragraph (a) or (b), the value of such goods or articles as determined by the Commissioner;

and includes, in the case of any such goods, the duty, if any, payable thereon.

[Subsection amended by Act 17 of 1999]

### **119 Appeals against valuation of goods**

(1) Any person who is aggrieved by any determination of the Commissioner in terms of this Part may, subject to section *one hundred and ninety-six* and after payment of the amount of any duty or tax demanded by the Commissioner in respect of the goods concerned, appeal to the High Court against such determination.

(2) If on an appeal in terms of this section the High Court determines that a lesser amount was payable by way of duty or tax than the amount actually paid by the appellant in terms of subsection (1), the Commissioner shall refund the amount overpaid in accordance with section *one hundred and twenty-five*.

[Subsection amended by Act 17 of 1999]

## **PART XI**

### **REBATES, REFUNDS AND REMISSIONS OF DUTY**

### **120 Suspension, drawback, rebate, remission or refund of duty**

(1) Regulations in terms of section *two hundred and thirty-five* may provide for—

- (a) the suspension of any of the duties appearing in the customs tariff, the excise tariff or the surtax tariff;
- (b) the granting of a drawback, rebate, remission or refund of duty.

(2) Any suspension, rebate, remission or refund referred to in subsection (1) may be made or granted with retrospective effect if it is deemed expedient so to do.

(3) The Commissioner may in his discretion—

- (a) remit duty on any single consignment of goods where the free on board value of the consignment does not exceed a prescribed amount;
- (b) under such conditions as he may specify, remit all or part of the duty due on goods temporarily imported in terms of section *one hundred and twenty-four* which have been seriously damaged by accident or circumstances beyond the control of the importer.

(4) Regulations referred to in subsection (1) may provide that any suspension, drawback, rebate, remission or refund of duty shall be subject to such condition, restriction or other requirement referred to therein as may be approved by the Minister and additionally, or alternatively, the Commissioner.

[Subsection amended by Act 17 of 1999]

(5) In regulations referred to in subsection (1) provision may be made for the payment of a fee upon—

- (a) the registration of a person in terms of the regulations as a manufacturer under rebate; and
- (b) the registration of a person in terms of the regulations as a user of spirits under rebate; and
- (c) the authorization of a person in terms of the regulations as a user of spirits under rebate;

and for the payment of an annual fee by any person who is so registered or authorized.

(6) In regulations referred to in subsection (1), the Minister shall endeavour, so far as is practicable, to provide for appropriate suspensions, rebates, remission or refunds of duty in respect of—

- (a) capital goods and equipment for manufacturing or for use in industry, commerce, agriculture and mining; and
- (b) commercial vehicles of a net mass of more than one tonne; and
- (c) books and equipment for use in schools and educational and training institutions; and
- (d) essential medicines and medical equipment; and
- (e) goods donated for welfare or relief purposes.

### **121 Claims for exemption; burden of proof on claimant**

When any claim is made for exemption from or drawback, rebate, refund or remission of any duty, fee or charge in accordance with this Act, the burden of proof shall lie upon the claimant to show that he is entitled to such exemption, drawback, rebate, refund or remission.

### **122 Goods for President to be exempt from duty**

A rebate, remission or refund of any duty shall be granted on goods imported into or acquired from duty paid stocks or stocks in bond within Zimbabwe for the use of the President.

### **123 Certain goods for former President to be exempt from duty**

Subject to such terms and conditions as may be prescribed, a rebate, remission or refund of any duty shall be granted on such goods as may be prescribed which are imported into or acquired from duty paid stocks or stocks in bond within Zimbabwe for the use of any former President who is in receipt of a pension in terms of the Presidential Pension and Retirement Benefits Act [*Chapter 2:05*].

### **124 Temporary imports free of duty**

The Commissioner may, under such conditions as he thinks fit, permit the temporary importation of goods without payment of duty thereon on importation for the purpose of being repaired or for any other purpose approved by him, and may finally remit the duties ordinarily payable on such goods if they are exported from Zimbabwe within a period fixed by him, which period shall not exceed twelve months, upon proof to his satisfaction of such export.

[Section amended by Act 17 of 1999]

### **125 Refunds generally**

(1) Except as otherwise provided in this Act, refunds of duty shall only be made in accordance with this section.

(2) Applications for a refund of duty overpaid shall be presented to an officer in the form prescribed, and if he considers that an application is based on reasonable grounds, such officer shall submit it to the Commissioner for consideration.

(3) If the Commissioner is satisfied that the applicant has paid duty exceeding the amount due, he shall authorize a refund to be made to the applicant of the amount overpaid.

[Subsection amended by Act 17 of 1999]

(4) No refund of duty paid in excess or in error shall be granted in terms of this section unless the application therefor is received by an officer within a period of three years from the date when such duty was paid.

(5) The Commissioner shall pay interest, calculated at a rate to be fixed by the Minister by statutory instrument, on any amount of duty overpaid that is not refunded by him or her within thirty days of the date when it was paid, or the date when the person liable for the payment of the duty claimed the refund, whichever is the late date, unless the overpayment was due to an incomplete or defective return or other error on the part of the person liable for the payment of the duty, and not to an error on the part of the Commissioner.

[Subsection inserted by Act 18 of 2004]

### **126 Remission of duty upon loss or destruction of goods**

If the Commissioner is satisfied that—

- (a) before their removal from customs control goods were destroyed by accident or lost by accident, without going into consumption, either on board ship or on an aircraft or other vehicle or while in a pipeline or in landing, loading, transportation or handling; and
  - (b) every reasonable effort was made and precaution taken to prevent their loss or destruction;
- the Commissioner shall remit or refund the duty payable on the goods.

[Section amended by Act 17 of 1999]

## PART XII

### EXCISE AND SURTAX MANAGEMENT

#### 127 Liability for excise duty or surtax

(1) Where any excise duty or surtax has been imposed on goods manufactured or produced in Zimbabwe, the manufacturer of such goods shall be liable for the payment of the duty, and such liability shall continue until the goods have been accounted for in terms of this Act.

(2) Where any goods referred to in subsection (1) have been manufactured or produced otherwise than in accordance with this Act, any person having the ownership or possession of, or a beneficial interest in, such goods at any time before entry thereof has been made or the requirements of this Act have been fulfilled, and the agent of any such person, shall be liable for the payment of the duty, and such liability shall continue until the goods have been accounted for in terms of this Act.

[Proviso repealed by Act 18 of 2000]

#### 128 Licence to manufacture or produce goods liable to excise or surtax

(1) Subject to subsection (2), no person shall manufacture on any premises—

- (a) any of the goods set out in the excise tariff;
- (b) any potable liquid, other than honey beer or opaque beer which is not designated opaque beer, containing more than one comma seven *per centum* of absolute alcohol;
- (c) such of the goods set out in the surtax tariff as may be specified for the purposes of this section by the Minister by notice in the *Gazette*;

otherwise than in accordance with the conditions of a licence or while the licence authorizing him to manufacture the goods or liquid is suspended.

(2) A licence to distil spirits shall entitle the licensee to distil or produce all types of spirits and wine, and a licence to manufacture tobacco shall entitle the licensee to manufacture cigarettes, cigarette tobacco, pipe tobacco, cigars and snuff, but in every other case where more than one of the commodities set out in the excise tariff or the surtax tariff are manufactured, mixed, brewed, distilled or produced on any premises, separate licences shall be required in respect of each commodity.

(3) Every licence shall, whenever issued or renewed, expire on the 31st December in the year in respect of which it was issued.

(4) Any person who contravenes this section shall be guilty of an offence and liable to a fine not exceeding level seven or to imprisonment for a period not exceeding one year to both such fine and such imprisonment and, in addition to any other penalty which may be imposed, all goods subject to excise duty or surtax, whether or not such duty or surtax has been paid, and all machinery, utensils and materials for the manufacture of such goods found in his possession or on the premises not licensed under this section shall be liable to forfeiture.

[Subsection amended by Act 22 of 2001]

#### 129 Applications for licences: information to be supplied by applicant, etc.

(1) An applicant for a licence shall—

- (a) make application in writing to the Commissioner; and
- (b) furnish such information as to—
  - (i) the nature of the goods liable to excise duty or surtax which the applicant proposes to manufacture; and
  - (ii) the process of manufacture which the applicant proposes to adopt; and
  - (iii) the premises at which and the machinery and equipment with which the goods liable to excise duty or surtax are to be manufactured;

as the Commissioner may require.

(2) The Commissioner may refuse to issue a licence to an applicant unless the applicant has submitted to the Commissioner a list in the appropriate form describing in such detail as the Commissioner may require—

- (a) the machinery, equipment and vessels capable of use in connection with the manufacture of goods liable to excise duty or surtax to be kept or installed in each room, building or other place at the applicant's premises and the purpose for which each piece of machinery, equipment and vessel is to be used; and additionally, or alternatively
- (b) the rooms, buildings and other places at the applicant's premises to be used for or in connection with the manufacture of goods liable to excise duty or surtax and the nature of the operations to be carried out in each room, building and other place.

(3) The Commissioner may, on the request of a manufacturer of goods liable to excise duty or surtax, amend at any time the list submitted by the manufacturer in terms of subsection (2).

[Subsection amended by Act 17 of 1999]

(4) If—

- (a) machinery, equipment or vessels capable of use in connection with the manufacture of goods liable to excise duty or surtax which are not described in a list submitted in terms of subsection (2) or a list amended in terms of subsection (3) are brought into, kept or installed in the licensed premises in respect of which the list was submitted; or
- (b) machinery, equipment or vessels described in a list such as is referred to in paragraph (a) are—
  - (i) kept or installed in a room, building or other place on the licensed premises in respect of which the list was submitted which, according to the list, is not a room, building or other place where they are to be kept or installed; or
  - (ii) used for any purpose other than the purpose described in the list; or
- (c) goods liable to excise duty or surtax are manufactured in a room, building or other place at the licensed premises in respect of which a list such as is referred to in paragraph (a) was submitted which, according to the list, is not a room, building or other place to be used for that purpose;

the licensee shall be guilty of an offence and liable to a fine not exceeding level seven or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment:

Provided that the provisions of this subsection shall not apply in relation to anything done with the permission of a proper officer or in accordance with the instructions given in terms of section *one hundred and forty-eight*.

[Subsection amended by Act 22 of 2001]

### **130 Stills kept or used otherwise than for manufacture of spirits**

- (1) No person shall keep or use a still unless—
  - (a) he is licensed to distil spirits; or
  - (b) he—
    - (i) is the holder of a certificate referred to in paragraph (b) of subsection (2); and
    - (ii) keeps and uses the still in accordance with the conditions fixed by the Commissioner in terms of paragraph (a) of subsection (2).
- (2) The Commissioner—
  - (a) may authorize the keeping or use of a still for the purpose of—
    - (i) the manufacture of goods other than spirits; or
    - (ii) the performance of laboratory work, analysis and experiments, including experiments in the manufacture of spirits, and the purification of alcohol for those purposes;
 in accordance with such conditions as the Commissioner may in each case fix; and
  - (b) shall issue a certificate of registration in respect of any still the keeping and use of which he has authorized in terms of paragraph (a); and
  - (c) may cancel the certificate of registration issued in respect of any still which is kept or used otherwise than in accordance with the conditions fixed by him in terms of paragraph (a); and
  - (d) may remit the duty on spirits produced by the holder of a certificate of registration when using a still for the purposes specified in subparagraph (ii) of paragraph (b) of subsection (1).

[Subsection amended by Act 17 of 1999]

- (3) Any person who—
  - (a) contravenes subsection (1); or
  - (b) contravenes or fails to comply with any condition fixed by the Commissioner in terms of paragraph (a) of subsection (2)

shall be guilty of an offence and liable to a fine not exceeding level seven or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment.

[Subsection substituted by Act 22 of 2001]

### **131 Exemption from licensing requirements and from payment of duty in certain circumstances**

(1) Notwithstanding anything to the contrary contained in this Act, and subject to this section, any person may manufacture for his own personal or domestic use, but not for sale or disposal for profit to any other person, the following goods—

- (a) fermented liquor containing more than one comma seven *per centum* of absolute alcohol; and
- (b) tobacco in the form of cigars, cigarettes, pipe tobacco or snuff.

(2) No licence shall be required in respect of the premises on which such goods are manufactured in terms of subsection (1) and goods manufactured and consumed in terms of that subsection shall not be liable to duty.

(3) Any person who sells or disposes of for profit goods manufactured in terms of subsection (1) shall be guilty of an offence and liable to a fine not exceeding level seven or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment.

[Subsection amended by Act 22 of 2001]

(4) Nothing in this section shall be deemed to affect the operation of any provision in any other enactment relating to the manufacture, sale or consumption of any goods mentioned in subsection (1).

### **132 Power of Commissioner to authorize manufacture of certain goods for experimental purposes**

(1) Notwithstanding anything to the contrary contained in this Act, the Commissioner may, subject to this section and the provisions of any rules made by the Commissioner, authorize a person to manufacture for experimental purposes but not for sale or disposal for profit the following goods—

- (a) cigarettes;
- (b) pipe tobacco;
- (c) cigarette tobacco;
- (d) cigars.

(2) No licence shall be required in respect of the premises on which goods referred to in subsection (1) are manufactured in terms of that subsection and such goods shall not be liable to duty if they are disposed of in terms of rules made by the Commissioner.

(3) If a person who is authorized by the Commissioner in terms of subsection (1) to manufacture goods referred to in that subsection fails to comply with the provisions of rules made by the Commissioner, the Commissioner may cancel the authority granted by him in terms of subsection (1).

(4) Any person authorized by the Commissioner in terms of subsection (1) to manufacture the goods referred to in that subsection who sells or disposes of such goods otherwise than in accordance with rules made by the Commissioner shall be guilty of an offence and liable to a fine not exceeding level seven or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment.

[Subsection amended by Act 17 of 1999 and by Act 22 of 2001]

### **133 Refusal of licence**

The Commissioner shall have a discretion to refuse any application for a new licence, and the applicant shall have the right of appeal against such refusal to the President whose decision shall be final.

[Section amended by Act 17 of 1999]

### **134 Refusal and cancellation of licences when offences have been committed**

(1) The Commissioner shall have a discretion to refuse to renew the licence of any person who has contravened any provision of this Act or has failed to comply with any rule made by the Commissioner in terms of this Act, and may in his discretion cancel any current licence which has been issued to such a person.

(2) Any contravention of this Act by a manager or responsible representative of the applicant or licensee or any failure by such a person to comply with any rule made by the Commissioner in terms of this Act shall be deemed to be a contravention or failure by the applicant or licensee.

[Subsection amended by Act 17 of 1999]

(3) The applicant or licensee shall have a right to appeal to the Minister against any action taken by the Commissioner in terms of this section and the decision of the Minister shall be final.

[Subsection substituted by Act 18 of 2000]

### **135 Suspension of licence**

(1) If the holder of any licence fails to carry out any duty imposed upon him by this Act with respect to his premises or any buildings, appliances, stock-books or the like, or the mode of conducting his business, the Commissioner, after having given one month's notice in writing requiring the omission to be rectified or the irregularities to be corrected, may, upon failure by the licensee to comply with the notice, declare in writing that the licence is suspended, and such suspension shall continue until withdrawn by the Commissioner upon full compliance with the requirements of the law.

(2) If the requirements of the law are not complied with within a period to be specified by the Commissioner, the licence may be cancelled by him.

[Subsection amended by Act 17 of 1999]

### **136 Licensee to enter into bond**

(1) No licence entitling a person to manufacture goods subject to excise duty or surtax shall be issued until the applicant therefor has entered into a bond, with sufficient surety to be approved by the Commissioner, in a sum likewise to be approved, for the security of excise duty or surtax or both excise duty and surtax and for compliance with this Act.

[Subsection amended by Act 17 of 1999]

(2) The conditions of the bond shall be that the applicant—

- (a) shall not engage in any attempt by himself or in collusion with others to defraud the State of any duty or surtax on any goods manufactured by him; and
- (b) shall render truly and completely all the returns, statements and inventories prescribed or required under any of the provisions of this Act; and
- (c) shall in all respects comply with all the requirements of this Act with respect to the manufacturing of goods liable to excise duty or surtax and shall pay such duty or surtax as and when required under the provisions of this Act; and
- (d) shall comply with such other conditions as the Commissioner may require.

(3) The Commissioner may in his discretion at any time require additional or new security to be given.

[Subsection amended by Act 17 of 1999]

### **137 Conditions to grant of licence**

(1) No licence shall be granted in respect of any premises which appear to the Commissioner from their situation or otherwise, with reference to surrounding buildings or places of business, to be so constructed or arranged as to endanger the collection of revenue.

(2) No licence shall be granted in respect of any premises unless the premises are situated within sixteen kilometres of a town in which a custom house is established:

Provided that the Commissioner may grant a licence in respect of premises situated at a greater distance than that so specified if the applicant for a licence provides suitable office accommodation, free of rent, for an officer to supervise the premises and satisfactory board and lodging for and at a reasonable charge to such officer, or if other arrangements are made to the satisfaction of the Commissioner for the safeguarding of revenue.

[Subsection amended by Act 17 of 1999]

### **138 Transfer of licence**

A licence may be transferred by the Commissioner to an approved successor of the licence holder carrying on the business upon the same premises.

[Section amended by Act 17 of 1999]

### **139 Change of premises**

If the holder of a licence obtains the permission of the Commissioner to remove his business to other premises, approved as hereinbefore provided, such change of premises may be noted by the Commissioner on the licence, and such licence shall thereafter apply to the new premises.

[Section amended by Act 17 of 1999]

### **140 Name of licensee to be exhibited on premises**

Every holder of a licence shall have his name securely affixed in a conspicuous place on the outside of the licensed premises in legible letters of at least fifty millimetres in height.

### **141 No other business to be carried on licensed premises**

Unless he has obtained the written permission of the Commissioner to do so, no manufacturer shall carry on any business on premises licensed in terms of section *one hundred and twenty-eight* other than the business for which the licence was issued.

[Section amended by Act 17 of 1999]

### **141A Premises may be locked by officer**

An officer may cause any licensed premises to be locked with customs locks for so long as he deems fit, and no person shall during such period remove or break such lock or enter such premises or remove any goods therefrom without the permission of the officer.

[Section inserted by Act 18 of 2000]

### **142 Books to be kept and returns to be rendered by persons engaged in manufacture of commodities liable to excise duty or surtax**

(1) Every manufacturer of goods liable to excise duty or surtax shall—

- (a) keep a book in which shall be clearly recorded in the English language an account of all goods manufactured or partially manufactured by him during each month, the quantity sold, used or otherwise disposed of, the excise duty paid thereon and the quantity on hand at the end of the month and, if such information is required by the Commissioner, the names and addresses of the persons to whom the goods have been sold or delivered and, in addition, every manufacturer of tobacco shall keep an accurate account of all receipts of raw or leaf tobacco, whether in the leaf or other form, and disposals thereof, whether in the form of manufactured tobacco or not, in respect of each month, and the stock on hand at the end of each month;
- (b) if he is a manufacturer of tobacco, transmit to the proper officer, on or before the 20th of each month, a correct and legible return, in duplicate, in the form approved by the Commissioner, of the quantity of goods manufactured by him and the quantity of manufactured tobacco which was manufactured by him during the previous month, the quantity of such goods removed from his licensed premises or otherwise disposed of during that month, the quantity of such goods on hand at the end of that month, the quantity of raw or leaf tobacco or manufactured tobacco received by him during that month and the quantity of such tobacco removed from his licensed premises or otherwise disposed of during that month,
- (c) if he is not a manufacturer of tobacco, transmit to the proper officer, on or before the 20th of each month, a correct and legible return, in duplicate, in the form approved by the Commissioner, of the quantity of goods removed from his licensed premises or otherwise disposed of during the previous month and such details of the quantity of goods manufactured or partially manufactured during that month and the quantity of such goods on hand at the end of that month as the Commissioner may require;

- (d) remit to the proper officer, with the return referred to in paragraph (b) or (c), the amount of duty payable in respect of the goods which are specified in the return as having been removed from his licensed premises or otherwise disposed of during the period to which the return and particulars relate:

Provided that, subject to the approval of the Commissioner and to such conditions as he may fix, manufactured or partially manufactured goods intended for further manufacture or for blending or packing may be removed without payment of duty from any licensed premises to any other licensed premises.

[Subsection amended by Act 17 of 1999]

(2) A manufacturer who uses any goods mentioned in the excise tariff or the surtax tariff, which have been manufactured upon his licensed premises, in the manufacture of other goods upon those premises shall pay the excise duty or surtax on the goods so used in addition to any other duty which may be payable on the finished product and shall, in respect of the goods so used, comply with subsection (1):

Provided that this subsection shall not apply where—

- (a) a licensee uses—
- (i) spirits produced on his licensed premises for the manufacture upon those premises of spirits (other than synthetic or imitation brandy, gin or rum) as defined in paragraph (c) of the definition of that term in section *two*;
  - (ii) wines produced on his licensed premises in the manufacture upon the premises of other wines;
  - (iii) motor spirit, power paraffin, illuminating or heating paraffin, distillate fuels or residual fuels produced on his licensed premises in the manufacture upon such premises of other motor spirit, power paraffin, illuminating or heating paraffin, distillate fuels or residual fuels; or
- (b) a tobacco manufacturer uses tobacco manufactured upon his licensed premises in the manufacture upon those premises of cigars, cigarettes, pipe tobacco or snuff; or
- (c) appropriate rebates or remissions of duty have been granted in terms of section *one hundred and twenty*.
- (3) For the purposes of subsection (1)—

“month” includes such period, ending in each calendar month, as the Commissioner may authorize in writing in respect of a manufacturer.

[Subsection amended by Act 17 of 1999]

### **143 Books to be kept on licensed premises**

Every manufacturer of goods liable to excise duty or surtax shall keep such book as is required by section *one hundred and forty-two* on his premises at all times accessible to an officer for his inspection, shall allow such officer at any time to inspect it or to make notes therefrom or to remove it if he considers it necessary to do so and shall allow him to enter any part of the premises and take account of the materials used or to be used in the manufacture of such goods.

### **144 Submission of bill of entry when payment of excise duty or surtax is made**

(1) Any person paying any excise duty or surtax, other than surtax on cigarettes, shall, when making such payment present to the proper officer a bill of entry in the prescribed form together with such additional copies of such bill of entry as may be required by that officer.

(2) When goods, other than cigarettes, which are liable to surtax are imported through the post, the surtax shall be collected in the manner prescribed for the collection of customs duty.

### **145 Duty to be paid on surplus stock**

When a surplus is found on licensed premises in the stock of goods liable to duty, the manufacturer shall forthwith pay duty on so much of the surplus as is not accounted for to the satisfaction of the Commissioner.

[Section amended by Act 17 of 1999]

### **146 Duty to be paid in respect of deficiency in stock, etc.**

(1) When a deficiency is found on licensed premises in the stock of goods liable to excise duty or surtax the manufacturer shall, subject to the provisions of this Act, forthwith pay duty on the amount of the deficiency less any allowance which may be granted in accordance with the provisions of this Act.

(2) If the Commissioner is satisfied that—

- (a) goods liable to duty were—
- (i) lost in the course of and by reason of the process of their manufacture; or
  - (ii) destroyed by accident, or lost by accident without going into consumption, in the course of manufacture; or
  - (iii) destroyed by accident or lost, by accident or otherwise, without going into consumption, in the course of manipulation;

in or at a place on licensed premises which is not a place deemed to be a warehouse in terms of subsection (5) of section *seventy-one*; or

- (b) wines or spirits liable to excise duty or surtax were destroyed by accident or lost, by accident or otherwise, without going into consumption, whilst in a wine or spirit store or a place on licensed premises set aside for the ageing of wines or spirits; or
- (c) motor spirit, power paraffin, illuminating or heating paraffin, distillate fuels or residual fuel oils liable to excise duty or surtax were destroyed by accident or lost, by accident or otherwise, whilst on the licensed premises of the manufacturer, without going into consumption; or
- (d) goods liable to excise duty or surtax were destroyed by accident or lost, without going into consumption, whilst in transit in bond or in transit for export in bond or under a non-duty paid warrant for their removal;

and that every reasonable effort was made and precaution taken to prevent their loss or destruction, the Commissioner shall remit the duty or the excise duty or surtax, as the case may be, payable on the goods.

[Subsection amended by Act 17 of 1999]

#### **147 Entry and search of premises**

(1) Where there are reasonable grounds for believing that it is necessary to do so for the prevention, investigation or detection of an offence in terms of this Act, an officer may at all times enter and search any premises licensed in terms of section *one hundred and twenty-eight* or the premises of any person who sells goods liable to excise duty or surtax or who is reasonably suspected of manufacturing or selling such goods in contravention of this Act and may seize upon such premises any goods, together with all books, accounts or documents relating thereto, in respect of which a contravention of this Act is reasonably suspected of having taken place.

(2) An officer may either remove such goods or, pending removal, seal the premises in which they are contained.

#### **148 Where processes in licensed premises are to be carried out and goods kept**

(1) The proper officer may give instructions in writing to any manufacturer specifying in what parts of licensed premises and under what conditions—

- (a) any process in the manufacture is to be carried on; and
- (b) materials for use in manufacture and manufactured goods liable to excise duty or surtax respectively are to be kept.

(2) A manufacturer who fails to comply with such instructions shall be guilty of an offence and liable to a fine not exceeding level four or to imprisonment for a period not exceeding three months or to both such fine and such imprisonment.

[Subsection amended by Act 22 of 2001]

#### **149 Supervision of operations**

(1) An officer may supervise any operation connected with the manufacture or disposal of goods liable to excise duty or surtax.

(2) All premises, machinery, utensils, pipes and vessels used for the purposes of manufacturing goods liable to excise duty or surtax shall be—

- (a) of a pattern or type approved by the Commissioner; and
- (b) installed, marked, numbered and distinguished in accordance with the provisions of regulations.

[Subsection amended by Act 17 of 1999]

#### **150 Tables for calculating quantities of goods liable to excise duty or surtax**

For the purpose of calculating the full quantity of goods liable to excise duty or surtax which have been produced on any licensed premises, tables may be prescribed showing the quantity of such goods which shall be deemed to have been produced from a given quantity of material, or the quantity of fully manufactured goods which shall be deemed to have been produced from a given quantity of partly manufactured goods.

#### **151 Obligations of manufacturers of goods liable to excise duty or surtax**

(1) Every manufacturer of goods liable to excise duty or surtax shall provide free of charge such lighting, office accommodation, equipment, assistance and other facilities as may be prescribed to enable officers to exercise their powers of inspection and supervision under this Act.

(2) Any person who contravenes subsection (1) shall be guilty of an offence and liable to a fine not exceeding level four.

[Subsection inserted by Act 22 of 2001]

#### **152 Licensee to provide storerooms, plugs, taps, etc.**

(1) The Commissioner may require a licensee to provide any store or room and to lock or secure any warehouse, store-room, place, still, vessel, utensil or fitting, or to provide and affix a prescribed meter to any vessel or pipe on the licensed premises, and such licensee shall, to the satisfaction of the proper officer, provide, affix, repair and renew all plugs, cocks, taps, covers, fastenings and other requisites for the purpose of enabling officers to affix locks or seals thereto or otherwise to secure the same.

[Subsection amended by Act 17 of 1999]

(1a) Any person who fails to comply with a requirement of the Commissioner in terms of subsection (1) shall be guilty of an offence and liable to a fine not exceeding level four.

[Subsection inserted by Act 22 of 2001]

(2) In the event of any failure on the part of the licensee to comply with subsection (1) an officer may make good the defect at the expense of the licensee.

### **153 Damage to locks, pipes, safes, etc.**

(1) If on any licensed premises any meter, rod, lock, key or fitting is tampered with or damaged, or if any pipe, cock, fastening or fitting connected with a safe, receiver or charger is pierced or damaged, the licensee shall forthwith repair or renew the article in question to the satisfaction of the proper officer, or an officer may effect such repair or renewal at the expense of the licensee.

(2) If on any licensed premises any goods liable to excise duty or surtax are lost as the result of any deliberate or negligent breakage of, tampering with or damage to any of the articles mentioned in subsection (1) or to any lock or seal affixed by an officer on such premises, the licensee of such premises shall, in addition to liability for the cost of repair or renewal of such articles, lock or seal, be liable for the payment of duty on any such lost goods.

(3) If on any licensed premises any person breaks, tampers with or damages any of the articles mentioned in subsection (1) or any lock or seal affixed by an officer, he shall be guilty of an offence and liable to a fine not exceeding level seven or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment.

[Subsection amended by Act 22 of 2001]

### **154 Erection of safes, receivers and requisites in connection therewith**

(1) Every distiller shall, before using any still for distilling any low-wines, feints or spirits, erect and keep erected in his distillery a secure safe and receiver, or safes and receivers, for low-wines, feints or spirits:

Provided that where an alcoholometer is used the Commissioner may dispense with the necessity for receivers.

(2) The worm end of every still shall be enclosed in the safe erected in terms of subsection (1), and such safe shall communicate only by a closed metal pipe with the respective receivers for low-wines, feints or spirits, or with the alcoholometer, when such is used.

(3) Every still, safe and receiver and the pipes connected therewith shall be constructed and provided with fastenings, cocks, taps or other requirements for the reception of revenue locks or rods to the satisfaction of the Commissioner.

(4) Only such rods and revenue locks and keys as shall be approved and provided by the Commissioner at State expense shall be used in any distillery. Every safe and receiver shall be kept locked unless opened for a lawful purpose under the supervision of an officer.

[Section amended by Act 17 of 1999]

### **155 Vats and butts**

(1) Every vat and butt, other than the receivers, required to be kept at any distillery for the reception of low-wines, feints or spirits for redistillation shall be constructed and erected in accordance with the regulations.

(2) The Commissioner may specify the conditions for the running off of low-wines, feints or spirits from the receivers for re-distillation and for the gauging and marking of all vats and other vessels.

[Section amended by Act 17 of 1999]

### **156 Ascertaining capacity of vats, etc.**

The capacity of all receivers, fixed vats or butts and of movable casks in a distillery shall be ascertained in such manner as shall be specified by the Commissioner, and all the weights and appliances necessary for that purpose shall be supplied by the distiller.

[Section amended by Act 17 of 1999]

### **157 Strength to be as denoted by hydrometer**

All spirits shall be deemed to be of the strength denoted by a hydrometer as approved and supplied by the Commissioner and as ascertained by an officer.

[Section amended by Act 17 of 1999]

### **158 Spirits store**

(1) Every distiller shall provide at his distillery such suitable and secure spirits stores as may be required and approved by the Commissioner, and the said spirits stores shall be set apart solely for the storing of spirits distilled or blended in the distillery.

[Subsection amended by Act 17 of 1999]

(2) The spirits stores shall be placed under two locks, namely, a revenue lock, for which the distiller shall provide at his own expense all necessary fastenings, and a private lock, the key of which shall be kept by the distiller.

(3) The spirits stores shall be kept locked at all times except when an officer is in attendance.

### **159 Receipt into spirits store**

(1) All spirits distilled by a distiller shall be placed and kept in stores provided in terms of section *one hundred and fifty-eight* and shall be conveyed directly from the spirit receiver to such stores.

(2) No spirits which have been removed from the licensed premises of a distiller shall be brought back into a spirits store.

### **160 Storing of manufactured wines**

(1) Every manufacturer of wines shall provide at his licensed premises a suitable and secure wine store approved by the Commissioner.

[Subsection amended by Act 17 of 1999]

(2) The store shall be set apart solely for the storing of wines which have been produced on those licensed premises, and all wines produced on such premises by the manufacturer shall be conveyed directly to such store.

(3) The store shall be placed under two locks, namely, a revenue lock, for which the manufacturer shall provide at his own expense all necessary fastenings, and a private lock, the key of which shall be kept by the manufacturer.

(4) The store shall be kept locked at all times except when an officer is in attendance.

(5) No wines which have been removed from the premises of a manufacturer shall be brought back into any wine store.

(6) Any person who contravenes subsection (1) or (5) shall be guilty of an offence and liable to a fine not exceeding level four.

[Subsection inserted by Act 22 of 2001]

### **161 Removal of and securing of duty on spirits or wines**

No spirits shall be removed from a spirits store and no wine shall be removed from a wine store until an officer has re-gauged every vessel of spirits or wine to be removed and until the duty thereon has been secured to the satisfaction of the Commissioner.

[Section amended by Act 17 of 1999]

### **162 Opening of store in absence of officer**

If a distiller or a manufacturer of wine or any person employed by a distiller or manufacturer of wine opens or connives at the opening of the locks or doors of a spirits store or a wine store except in the presence of an officer, or removes any spirits or wine except as provided by law, or by any contrivance or device removes or conceals any spirits or wine, either before or after they are stored, he shall be guilty of an offence and liable to—

(a) a fine not exceeding level twelve or three times the duty-paid value of the spirits or wine concerned, whichever is the greater; or

(b) imprisonment for a period not exceeding five years;

or to both such fine and such imprisonment.

[Subsection amended by Act 22 of 2001]

### **163 Officer to take stock**

(1) An officer shall take stock of all spirits in a distillery and all wine upon the premises of a manufacturer of wine on the last day of every month or as soon as possible thereafter.

(2) In this section—

“month” has the meaning attributed thereto by subsection (3) of section *one hundred and forty-two*.

### **164 Temporary exemption of manufacturers of wine from fruit grown in Zimbabwe and manufacturers of opaque beer**

(1) The Commissioner may, in writing and for such period as he may fix, exempt from all or any of the provisions of this Part any manufacturer of wine from fruit grown within Zimbabwe; or

(2) In granting an exemption in terms of subsection (1) the Commissioner may—

(a) direct that the manufacturer shall comply with such terms and conditions as the Commissioner may fix; and

(b) make such amendments, adaptations and modifications to any provision of this Part regulating or controlling the manufacture of wine as may appear to him to be necessary to meet the circumstances of the particular case.

(3) The Commissioner may at any time, with the approval of the Minister, cancel any exemption granted to a manufacturer in terms of subsection (1).

(4) A manufacturer who fails to comply with any term or condition fixed by the Commissioner in granting an exemption in terms of subsection (1) shall be guilty of an offence and liable to a fine not exceeding level seven or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment.

[Subsection amended by Act 17 of 1999 and by Act 22 of 2001]

## **165 Prohibitions in respect of brewing**

(1) No brewer shall conceal any worts or beer so as to prevent an officer from taking an account thereof or, without the permission of an officer, add to worts or beer any substance which increases the quantity or gravity thereof after such quantity or gravity has been ascertained by an officer.

(1a) Any person who contravenes subsection (1) shall be guilty of an offence and liable to a fine not exceeding level seven or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment.

[Subsection inserted by Act 22 of 2001]

(2) For the purposes of this section “beer” does not include opaque beer which is not designated opaque beer.

## **166 Prohibitions in respect of worts, wash, low-wines, etc.**

(1) No distiller shall in his distillery—

- (a) use or add to any worts, wash, low-wines, feints or spirits any substance which interferes with the ascertaining by means of the prescribed saccharometer or hydrometer of their specific gravity or true strength; or
- (b) without the written permission of the proper officer previously obtained, have in his distillery any worts or wash not made in that distillery or mix any worts or wash made in his distillery with worts or wash made elsewhere.

(2) Any person who contravenes subsection (1) shall be guilty of an offence and liable to a fine not exceeding level seven or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment.

[Subsection inserted by Act 22 of 2001]

## **167 Spirits, worts, etc., illicitly kept**

If any worts or wash, low-wines, feints or spirits are found in any unauthorized part of any licensed premises, or in any vessels other than those duly marked and provided for their reception, or in any premises or place not authorized for their reception, they shall be liable to forfeiture and any person responsible for placing such articles in any unauthorized place, premises or vessels shall be guilty of an offence and liable to a fine not exceeding level five or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

[Subsection amended by Act 22 of 2001]

## **168 Removing or selling tobacco in respect of which any provision of this Act has been contravened to be an offence**

Any person who—

- (a) removes or permits to be removed from licensed premises any tobacco in respect of which any contravention of this Act has taken place; or
- (b) sells, offers or exposes for sale or has in his possession for sale any tobacco in respect of which any contravention of this Act has to his knowledge taken place;

shall be guilty of an offence and liable to a fine not exceeding level seven or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment.

[Subsection amended by Act 22 of 2001]

## **169 Restriction of weight of cigarettes which may be manufactured**

No person shall manufacture for sale within Zimbabwe any cigarettes which have a weight of more than two kilograms per thousand cigarettes.

## **170 Removal of goods liable to excise duty or surtax**

Any person who removes or assists in, permits or connives at the removal of any goods liable to excise duty or surtax from the premises of a manufacturer, except in accordance with the prescribed procedure, shall be guilty of an offence and liable to a fine not exceeding level seven or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment.

[Subsection amended by Act 22 of 2001]

## **171 Procedure on cessation of manufacture of goods liable to excise duty or surtax**

(1) If a person licensed in terms of section *one hundred and twenty-eight* intends to cease manufacturing goods in respect of which the licence was issued, he shall give the Commissioner three months' written notice of his intention so to cease manufacture.

(1a) Any person who contravenes subsection (1) shall be guilty of an offence and liable to a fine not exceeding level four or to imprisonment for a period not exceeding three months or to both such fine or such imprisonment.

[Subsection inserted by Act 22 of 2001]

(2) If a person licensed in terms of section *one hundred and twenty-eight* ceases to manufacture goods in respect of which the licence has been issued, or if his licence is not renewed or is cancelled, he shall, within one month after that date, render to the proper officer a true and complete return of his transactions since his last monthly return, and shall then and there pay the duty or surtax on the balance of his stock on hand or disposed of, on which the duty or surtax has not previously been paid.

(3) Failing the rendering of a return in terms of subsection (1) or payment of duty or surtax by the manufacturer concerned, the proper officer shall seize any stock held by the manufacturer and sell by public auction so much thereof as will be sufficient to cover the duty or surtax payable on the whole quantity and the expenses in connection with the seizure and sale, and shall return the remainder of the stock, if any, to the manufacturer or his representative:

Provided that, if a licence has been cancelled or has not been renewed as a result of non-compliance by the licensee with the provisions of this Act, the whole of the stock on hand at the time of the cancellation of the licence shall be liable to forfeiture.

(4) Nothing contained in subsection (3) shall be deemed to deprive the State of any right it may have against the property or the estate of the manufacturer concerned or those of his or its sureties in respect of any duty which may remain unpaid after such sale or forfeiture as is provided for in subsection (3), nor shall such sale or forfeiture relieve the manufacturer of liability to prosecution under this Act.

## **172 Loss of goods liable to excise duty or surtax in warehouses**

No action shall lie against the State or any person in its employment in respect of the loss of or damage to spirits or other goods liable to excise duty or surtax while stored in a receiver, spirits store or warehouse, or in respect of any incorrect or improper delivery therefrom or thereto.

## **PART XIIA**

### **SPECIAL EXCISE DUTY ON SALES OF SECOND-HAND VEHICLES**

[Part inserted by Act 8 of 2005]

## **172A Interpretation in Part XIIA**

In this Part—

"Charging Act" means the Finance Act [*Chapter 23:04*] or any other enactment by which rates of tax are fixed;

"second-hand motor vehicle" means a motor vehicle registered or required to be registered in terms of the Vehicle Registration and Licensing Act [*Chapter 13:14*] that is sold or disposed of to any person at any time after it is so registered;

"special excise duty" means the special excise duty on sales or disposals of second-hand motor vehicles referred to in section *one hundred and seventy-two B*;

"proper officer" means an officer of the Zimbabwe Revenue Authority designated by the Commissioner to be responsible for assessing, collecting and enforcing the payment of excise duties in terms of this Part.

## **172B Special excise duty on sales of second-hand motor vehicles**

Subject to this Part, there shall be charged, levied and collected, for the benefit of the Consolidated Revenue Fund, a special excise duty on the value of second-hand motor vehicles sold, transferred or otherwise disposed of to any person at such rate as may be fixed by the Charging Act:

Provided that no special excise duty shall be charged, levied or collected on the sale, transfer or disposal of any second-hand motor vehicle—

- (a) between companies under the same control, in the course of or in furtherance of a scheme of reconstruction of a group of companies or a merger or other business operation which, in the opinion of the Commissioner-General, is of a similar nature; or
- (b) between spouses married under the Customary Marriages Act [*Chapter 5:05*] or the Marriage Act [*Chapter 5:11*], or between a parent and his or her child of such a marriage; or
- (c) by way of inheritance; or
- (d) to a private voluntary organisation.

## **172BB Liability for and date of payment of excise duty on sales of second-hand motor vehicles, keeping of records and making of returns in respect thereof and refunds of overpayments**

(1) The following are liable to pay special excise duty on the value of second-hand motor vehicles sold, transferred or otherwise disposed of to any person—

- (a) a motor dealer as defined in section 2(1) of the Value Added Tax Act [*Chapter 23:12*], if the second-hand motor vehicle is sold by or through that motor dealer; or
- (b) the buyer of a second-hand motor vehicle, if it is sold otherwise than by or through a motor dealer referred to in paragraph (a).

(2) Every motor dealer shall, in respect of each second-hand motor vehicle sold by or through him or her—

- (a) maintain a record showing the amount paid for the motor vehicle and the amount of special excise duty withheld from each such amount, and such record shall be retained by the motor dealer and shall be available for scrutiny by an officer; and
- (b) remit each amount of special excise duty withheld in terms of paragraph (a) to any branch, division or department of the Zimbabwe Revenue Authority on or before the twentieth day of the month following

that on which payment of the special excise duty was made, together with a return referred to subsection (3).

(3) When remitting any amount of special excise duty in terms of subsection (2)(b) the motor dealer shall furnish together with the remittance a return in such form as may be prescribed by the Commissioner-General showing the name and address of each buyer of a second-hand motor vehicle in relation to which the remittance is made, and the date of the sale.

(4) Subject to subsection (6), any motor dealer who fails to withhold or to pay to the Commissioner-General any amount of special excise duty in terms of subsection (2) shall be personally liable for the payment to the Commissioner-General of—

(a) the amount of special excise duty which he or she failed to withhold or to pay to the Commissioner-General; and

(b) a further amount equal to such special excise duty.

(5) The amounts for the payment of which a motor dealer is liable in terms of subsection (4)—

(a) shall be debts due by the motor dealer to the State; and

(b) may be sued for and recovered by action by the Commissioner-General in any court of competent jurisdiction.

(6) The Commissioner-General may, if he or she is satisfied that a failure to withhold or to pay to him or her special excise duty was not due to an intent to evade the provisions of this section, waive the payment of the whole or such part as he or she thinks fit or repay the whole or such part as he or she thinks fit of any amount referred to in subsection (4)(b).

(7) If any motor dealer liable to special excise duty under this section—

(a) fails to keep such record as is required by subsection (2)(a) or fails to produce such record when required by an officer to do so; or

(b) fails to make in such record any entry required to be made therein or fraudulently makes any entry in such record; or

(c) erases or obliterates any entry in such record; or

(d) mutilates or tears therefrom any leaf or page; or

(e) by himself or herself or through the agency or with the assistance of any other person, destroys, conceals or makes away with such record; or

(f) refuses to allow an officer at any time to inspect such record or obstructs or hinders him or her in such inspection; or

(g) neglects or refuses to furnish any return specified in subsection (2)(b) within the time specified for the furnishing of such return; or

(h) sends in a false return; or

(i) neglects or refuses to give such further information with respect to the disposal by or through him or her of second-hand motor vehicles as an officer may from time to time require;

he or she shall be guilty of an offence and liable to a fine not exceeding level seven or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment.

(8) If it is proved to the satisfaction of the Commissioner-General that any person has paid special excise duty in excess of the amount properly chargeable in terms of this Part, the Commissioner-General shall authorise a refund in so far as it has been overpaid.

[Section inserted by Act 6 of 2006]

### **172C Special excise duty to be paid before change of ownership of second-hand motor vehicle registered**

No registering officer in terms of the Vehicle Registration and Licensing Act [*Chapter 13:14*] shall register the change of ownership of a second-hand motor vehicle unless there is submitted to the registering officer by the new owner of the second-hand motor vehicle a certificate issued by the proper officer stating that the seller of the second-hand motor vehicle has paid the special excise duty payable in terms of section *one hundred and seventy-two B* on the sale or disposal of the motor vehicle.

### **172D Value of second-hand motor vehicle on which special excise duty payable**

(1) If the proper officer is of the opinion that the sale value of the second-hand motor vehicle is less than the fair value of the second-hand motor vehicle, he or she may determine the fair value of that motor vehicle, and thereupon the special excise duty shall be calculated in accordance with the fair value as determined or the sale value, whichever is the greater amount.

(2) In determining the fair value in terms of subsection (1), the proper officer shall have regard to any valuation of the second-hand motor vehicle concerned made on behalf of the person liable to pay special excise duty by a member of such institution or association of motor dealers or valuers as is prescribed by the Commissioner by notice in the *Gazette*.

(3) If the fair value of a second-hand motor vehicle as determined by the proper officer—

- (a) exceeds the amount of the sale value by not less than one-third of such sale value, the costs of any valuation made by a person referred to in subsection (2) shall be paid by the person liable for the payment of the special excise duty;
  - (b) does not exceed such sale value, the costs of such valuation shall be borne by the proper officer.
- (4) Subsections (2) and (3) shall not apply in respect of the purchase of a motor vehicle sold by public auction, unless the proper officer is satisfied that the sale was not a *bona fide* sale by public auction, or that there was collusion between the seller and the purchaser or their agents.

## PART XIII

### OFFENCES, PENAL PROVISIONS AND PROCEDURE

#### **173 False statements by persons arriving in or departing from Zimbabwe**

- (1) Any person who—
- (a) on or after arriving in Zimbabwe or being on a railway train destined for Zimbabwe; or
  - (b) on departing from Zimbabwe or being on a railway train leaving Zimbabwe;

is questioned by an officer as to whether he has upon his person or in his possession any goods, whether dutiable or otherwise, or goods the importation or exportation of which is prohibited, restricted or controlled and who denies that he has any such goods upon his person or in his possession or fails to mention any dutiable, prohibited or restricted goods which he has upon his person or in his possession shall be guilty of an offence if such goods are discovered to be or, at the time of the denial or of the statement, to have been upon his person or in his possession.

(1a) Any person who is guilty of an offence in terms of subsection (1) shall be liable to a fine not exceeding level seven or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment.

[Subsection inserted by Act 22 of 2001]

- (2) In subsection (1)—  
“goods” includes Zimbabwean and foreign currency.

#### **174 False invoices, false representation and forgery**

- (1) Any person who—
- (a) produces any false invoice or an invoice framed so as to deceive or makes any false representation in regard to the nature, the quantity or the value of any goods or the country in which such goods are grown, produced or manufactured; or
  - (b) forges any document required under this Act or any law relating to customs or excise; or
  - (c) under false pretences or with intent to defraud or to evade the provisions of this Act or any law relating to customs or excise or by making any false statement, affidavit or declaration, procures or attempts to procure any document required under this Act or any law relating to customs and excise which is incorrect in any material particular; or
  - (d) being required to make or render any report, statement, document, bill of entry, declaration or return or to supply any information demanded or asked for or to answer any question, neglects or refuses to do so or makes or renders any untrue or false report, statement, document, bill of entry, representation, declaration, return or answer or conceals or makes away with any goods required to be accounted for by this Act or any law relating to customs or excise; or
  - (e) imports or attempts to import or assists in or is accessory to or connives at the importation or attempted importation of any goods illegally or without payment of the duty thereon; or
  - (f) deals with or assists in dealing with any goods contrary to this Act or any law relating to customs or excise;

shall be guilty of an offence so, however, that nothing in this Act shall be taken to require any person who has acted as counsel or attorney for any person to disclose any privileged communication made to him in that capacity.

- (2) Any person who—
- (a) uses or attempts to use any document which has been forged with intent to defeat this Act or any law relating to customs or excise; or
  - (b) otherwise than in accordance with this Act, buys or receives or has in his possession any goods required to be accounted for by this Act or any law relating to customs or excise before they have been so accounted for; or
  - (c) otherwise than in accordance with this Act, has in his possession any goods liable to forfeiture under this Act or any law relating to customs or excise;

shall be guilty of an offence, unless he produces evidence to show that he did not know—

- (i) that the document was forged; or
- (ii) that duty on the goods had not been paid or secured or that the goods had not been accounted for in terms of this Act or any law relating to customs or excise; or

(iii) that the goods were liable to forfeiture; as the case may be.

(2a) Any person who is guilty of an offence in terms of subsection (1) or (2) shall be liable to—

(a) a fine not exceeding level twelve or three times the duty-paid value of the goods concerned, whichever is the greater; or

(b) imprisonment for a period not exceeding five years;

or to both such fine and such imprisonment.

[Subsection inserted by Act 22 of 2001]

(3) For the purposes of this section, the forgery of a document is the making of a false document, knowing it to be false, with the intention that it shall in any way be used or acted upon as genuine, whether within Zimbabwe or not, and making a false document includes making any material alteration in a genuine document, whether by addition, insertion, obliteration, erasure, removal or otherwise.

### **175 Importation and possession of blank invoices**

Any person, other than a visitor, who imports or possesses any blank or incomplete invoice or other similar document capable of being completed and used as an invoice for goods from outside Zimbabwe shall be guilty of an offence and liable to a fine not exceeding level seven or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment.

[Subsection amended by Act 22 of 2001]

### **175A Manufacture, use or possession of customs date stamps**

Any person who unlawfully makes, uses or possesses a customs date stamp or a stamp capable of being used as a customs date stamp shall be guilty of an offence.

[Section inserted by Act 18 of 2000]

### **176 Obstruction of officers**

Any person who assaults, resists, hinders, obstructs, threatens, abuses or does any act that is likely to undermine the authority of—

(a) an officer in the course of his duties; or

(b) any person aiding or assisting an officer in carrying out his duties;

shall be guilty of an offence and liable to a fine not exceeding level seven or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment.

[Subsection amended by Act 22 of 2001]

### **177 Removing, altering or defacing marks or seals**

Any person who wilfully removes any customs seal from any ship, aircraft, vehicle or package without the authority of an officer or in accordance with the regulations, or who wilfully alters, defaces, obliterates or imitates any mark placed by an officer on any package shall be guilty of an offence and liable to a fine not exceeding level seven or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment.

[Subsection amended by Act 22 of 2001]

### **178 Certain responsibilities of master, pilot or person in charge of vehicle**

(1) Whenever any lock, mark or seal has been placed by an officer upon any goods on board any ship, aircraft or vehicle, or when the hatchways of a ship have been fastened down by an officer, the master of the ship, the pilot of the aircraft or the person in charge of the vehicle, as the case may be, shall ensure that—

(a) the lock, mark or seal is not opened, altered or broken; and

(b) such goods are not secretly removed; and

(c) such hatchways are not opened without the consent of an officer;

and if he fails so to ensure the master of the ship, the pilot of the aircraft or the person in charge of the vehicle, as the case may be, shall be guilty of an offence, unless he proves that he took all reasonable precautions to prevent any such act.

(2) Whenever any lock, mark or seal has been placed by an officer upon any valve, meter or other appliance or apparatus used to control or record the flow of goods through or from a pipeline, the operator of the pipeline shall ensure that the lock, mark or seal is not opened, altered or broken without the prior authority of an officer, and if he fails so to ensure the operator of the pipeline shall be guilty of an offence, unless he proves that he took all reasonable precautions to prevent any such act.

(3) Any person who contravenes section (1) or (2) shall be guilty of an offence and liable to a fine not exceeding level seven or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment.

[Subsection inserted by Act 22 of 2001]

### **179 Removing or breaking locks placed on warehouse**

(1) Any person who removes or breaks any lock placed on a warehouse by an officer in terms of section *seventy-nine* shall be guilty of an offence and any person who removes any goods from a warehouse without the permission of the officer shall be guilty of an offence.

(2) Any person who is guilty of an offence in terms of subsection (1) shall be liable to—

- (a) a fine not exceeding level twelve or three times the duty-paid value of the spirits or wine concerned, whichever is the greater; or
  - (b) imprisonment for a period not exceeding five years;
- or to both such fine and such imprisonment.

[Subsection inserted by Act 22 of 2001]

### **180 Failure to make full declaration of sealable goods**

If, when required by an officer to make a declaration of sealable goods in terms of this Act—

- (a) the master of a ship, the pilot of an aircraft or the person in charge of a vehicle fails to make a full disclosure of any sealable goods which are the unconsumed stores of the said ship, aircraft or vehicle; or
  - (b) the master of a ship, the pilot of an aircraft, the person in charge of a vehicle or any member of the crew of such ship, aircraft or vehicle, fails to make a full disclosure of any sealable goods which are the property of or in the possession of such master, pilot, person or member of the crew, as the case may be;
- such master, pilot, person or member of the crew aforesaid shall be guilty of an offence and liable to a fine not exceeding level seven or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment.

[Subsection amended by Act 22 of 2001]

### **181 Bribery and collusion**

(1) If any officer—

- (a) directly or indirectly asks for or takes, in connection with any of his duties in terms of this Act, any payment or other reward whatsoever, whether pecuniary or otherwise, not being a payment or reward that he is lawfully entitled to claim or receive; or
- (b) enters into or acquiesces in any agreement to do, abstain from doing, permit, conceal or connive at any act or thing whereby the State is or may be defrauded or which is otherwise unlawful, being an act or thing relating to the administration of this Act;

he shall be guilty of an offence.

(2) If any person—

- (a) directly or indirectly offers or gives to any officer any payment or other reward whatsoever, whether pecuniary or otherwise; or
- (b) proposes or enters into any agreement with any officer;

in order to induce him to do, abstain from doing, permit, conceal or connive at any act, omission or thing, as the case may be, whereby the State is or may be defrauded or which is otherwise unlawful, being an act, omission or thing relating to the administration of this Act, or otherwise to take any course contrary to his duty, he shall be guilty of an offence.

(3) Any person who is guilty of an offence in terms of subsection (1) or (2) shall be liable to

- (a) a fine not exceeding level fourteen or three times the value of the payment or reward concerned, whichever is the greater; or
- (b) imprisonment for a period not exceeding twenty years;

or to both such fine and such imprisonment.

[Subsection amended by Act 22 of 2001]

(4) The court convicting a person of an offence in terms of subsection (1) or (2) may order the forfeiture to the State of any payment or reward that forms the subject of the offence.

[Subsection inserted by Act 22 of 2001]

### **182 Smuggling**

(1) Any person who smuggles any goods shall be guilty of an offence and liable to—

- (a) a fine not exceeding level twelve or three times the duty-paid value of the goods, whichever is the greater; or
- (b) imprisonment for a period not exceeding five years;

or to both such fine and such imprisonment.

[Subsection amended by Act 22 of 2001]

(2) If the smuggling of goods referred to in subsection (1) was discovered by the use of any mechanical scanning device, the person smuggling the goods shall be liable, in addition to any other penalty to which he or she may be liable under this Act, to pay a civil penalty equivalent to the value of goods in question.

[Subsection inserted by Act 12 of 2006]

(3) The Commissioner General may, by action in any court of competent jurisdiction, recover from a person smuggling the goods referred to in subsection (2) the penalty there provided, and such penalty, once recovered, shall form part of the funds of the Zimbabwe Revenue Authority and be used for the purpose of maintaining mechanical scanning devices used by the Authority to detect smuggling.

[Subsection inserted by Act 12 of 2006]

### **183 Importation of prohibited or restricted thing to be an offence**

If any thing is imported in contravention of section *forty-seven* or *forty-eight*, the person importing it shall be guilty of an offence and liable to—

- (a) a fine not exceeding level twelve or three times the duty-paid value of the goods, whichever is the greater; or
  - (b) imprisonment for a period not exceeding five years;
- or to both such fine and such imprisonment.

[Subsection amended by Act 22 of 2001]

### **184 Miscellaneous offences**

Any person who—

- (a) supplies the means or materials for or assists in establishing or repairing, maintaining or working any still the keeping and using of which has not been authorized in terms of this Act, knowing at the time when he so supplies or assists that it was such a still; or
- (b) has upon his premises or in his custody or under his control or purchases, sells or otherwise disposes of any goods liable to excise duty or surtax which have been manufactured in breach of this Act, unless such person proves that he was unaware that such goods were so manufactured; or
- (c) is found without lawful excuse in any place where the illegal manufacture of goods liable to excise duty or surtax is being carried out; or
- (d) without lawful authority, imports any goods liable to excise duty or surtax after they have been exported from Zimbabwe; or
- (e) not being a person licensed to manufacture goods liable to excise duty or surtax, has, without lawful authority, in his possession, custody or control any manufactured or partly manufactured goods liable to excise duty or surtax upon which such duty or surtax has not been paid; or
- (f) falsely holds himself out to be an officer; or
- (g) fraudulently claims a refund, rebate, remission or drawback to which he is not entitled; or
- (h) makes improper use of any licence, permit or document issued under this Act or any other law relating to customs or excise; or
- (i) damages, destroys or disposes of any goods in order to prevent the seizure thereof by an officer or any other person authorized to seize them; or
- (j) in order to prevent the securing of any goods seized under this Act, rescues, damages or destroys such goods; or
- (k) rescues any person apprehended for any offence under this Act or prevents any such apprehension; or
- (l) imports any goods in pursuance of a bill of entry in which a false declaration has been made;
- (m) .....

[Paragraph repealed by Act 18 of 2001]

(n) breaks or tampers with a seal or fails to observe an embargo on or an order to examine containers or packages or any other order in connection with the movement or unpacking of containers; shall be guilty of an offence and liable to—

- (a) a fine not exceeding level twelve or three times the duty-paid value of the goods that are the subject of the offence, whichever is the greater; or
  - (b) imprisonment for a period not exceeding five years;
- or to both such fine and such imprisonment.

[Section amended by Act 22 of 2001]

### **185 Warehousing irregularities**

(1) If any goods entered for warehousing—

- (a) are not carried into and deposited in the warehouse; or
- (b) after deposit in the warehouse, are taken out of the warehouse without entry and clearance; or
- (c) having been entered and cleared for exportation, are not duly exported;

the owner of such goods, or the proprietor or occupier of the warehouse, or the person responsible for the handling of the goods, shall be guilty of an offence, unless he proves that he took all reasonable precautions to prevent the act which constituted the offence.

[Subsection amended by Act 22 of 2001]

(2) Any person who is guilty of an offence in terms of subsection (1) shall be liable to a fine not exceeding level seven or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment.

[Subsection inserted by Act 22 of 2001]

(3) Any goods that are the subject of an offence in terms of subsection (1) shall be liable to forfeiture.

[Subsection inserted by Act 22 of 2001]

### **186 Penalties for failure to keep books, etc., in connection with manufacture of goods liable to excise duty or surtax**

If any manufacturer of goods liable to excise duty or surtax—

- (a) fails to keep such book as is required by section *one hundred and forty-two* or fails to produce such book when required by an officer to do so; or
- (b) fails to make in such book any entry required to be made therein or fraudulently makes any entry in such book; or
- (c) erases or obliterates any entry in such book; or
- (d) mutilates or tears therefrom any leaf or page; or
- (e) by himself or through the agency or with the assistance of any other person, destroys, conceals or makes away with such book; or
- (f) refuses to allow an officer at any time to inspect such book or obstructs or hinders him in such inspection; or
- (g) neglects or refuses to furnish any return specified in section *one hundred and forty-two* within the time specified for the furnishing of such return; or
- (h) sends in a false return; or
- (i) neglects or refuses to give such further information as to his operations in the manufacture of goods liable to excise duty or surtax, or the disposal thereof, as an officer may from time to time require;

he shall be guilty of an offence and liable to a fine not exceeding level seven or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment, and, in addition to any other penalty which may be imposed, all goods subject to excise duty or surtax and all spirits, mixtures, compounds or preparations of such goods found in his possession or on his premises shall be liable to forfeiture, whether or not excise duty or surtax has been paid thereon.

[Subsection amended by Act 22 of 2001]

### **187 Offences relating to use of ships, aircraft or vehicles**

(1) If—

- (a) any ship, aircraft or vehicle is used in smuggling or in the unlawful importation, exportation or conveyance of any prohibited or restricted goods; or
- (b) any ship approaches the shores or banks of Zimbabwe and fails to bring to for boarding upon being lawfully required to do so; or
- (c) any ship loiters in the vicinity of the shores or banks of Zimbabwe and does not depart within twenty-four hours after being required to depart by an officer; or
- (d) any goods on any ship, aircraft or vehicle are thrown overboard, staved or destroyed to prevent seizure;

the master of the ship, the pilot of the aircraft or the person in charge of the vehicle, as the case may be, shall be guilty of an offence, unless he proves that he took all reasonable precautions to prevent the act which constituted the offence.

(1a) Any person who is guilty of an offence in terms of subsection (1) shall be liable to—

- (a) a fine not exceeding level twelve or three times the duty-paid value of any goods concerned, whichever is the greater; or
- (b) imprisonment for a period not exceeding five years;

or to both such fine and such imprisonment.

[Subsection inserted by Act 22 of 2001]

(2) In subsection (1)—

“goods” includes Zimbabwean and foreign currency.

### **188 Goods and ships, aircraft, vehicles or other things liable to forfeiture**

(1) Any goods which are the subject matter of an offence under this Act shall be liable to forfeiture.

(2) Any ship, aircraft, vehicle or other thing used for the removal of goods which—

- (a) are liable to forfeiture; or
- (b) are being exported or have been imported or otherwise dealt with contrary to or not in accordance with—
  - (i) the provisions of this Act or any other law relating to customs or excise; or
  - (ii) any enactment prohibiting, restricting or controlling the importation or exportation of such goods; shall itself be liable to forfeiture.

(3) Any ship, aircraft or vehicle which—

- (a) has false bulkheads, false bows, double sides or bottoms or any secret or disguised place whatsoever adapted for the purpose of concealing goods; or
- (b) has in or about it any hole, pipe or device adapted for the purpose of smuggling goods;

shall be liable to forfeiture.

(4) Any person who uses any ship, aircraft or vehicle referred to in subsection (3) shall be guilty of an offence unless he proves that he was unaware of its condition.

(5) Any person who is guilty of an offence in terms of subsection (4) shall be liable to a fine not exceeding level seven or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment.

[Subsection inserted by Act 22 of 2001]

## 189 Concealed goods

Any package having concealed within it any goods not enumerated in the bill of entry or other document relating to that package or having its contents packed so as to deceive an officer shall be liable to forfeiture together with the full contents thereof.

## 190 Forfeited packages, containers or utensils

- (1) If any package is found to contain goods which—
  - (a) are liable to forfeiture; or
  - (b) are being exported or have been imported or otherwise dealt with contrary to or not in accordance with—
    - (i) this Act or any other law relating to customs or excise; or
    - (ii) any enactment prohibiting, restricting or controlling the importation or exportation of such goods;

such package and the full contents thereof shall be liable to forfeiture.

(2) If any goods liable to excise duty or surtax, or the materials for making such goods, are forfeited, all casks, cases, containers or utensils containing them shall also be forfeited.

## 191 Substitution of other goods for goods actually liable to seizure

(1) Where any goods subject to duty become liable to seizure in terms of section *one hundred and ninety-three*, whether or not duty has been paid thereon, an officer may, instead of seizing those goods, seize from the stock of the person from whom those goods would have been seized—

- (a) in the case of, spirits, the equivalent quantity as absolute alcohol, of other spirits which are subject to excise duty or surtax;
- (b) in the case of goods other than spirits, the equivalent quantity of other like goods liable to duty;

and the spirits or goods so seized shall be dealt with in terms of section *one hundred and ninety-three*.

(2) In subsection (1) “duty” includes any import tax which is payable in terms of the Value Added Tax Act [*Chapter 23:12*].

[Section substituted by Act 18 of 2000]

## 192 Embargo on goods which have passed out of customs control

(1) If at any time an officer has reason to believe that the correct duty has not been paid on any goods which have passed out of customs control, or that there has been or may be in respect of those goods a contravention of any of the provisions of this Act or any other law relating to the importation of goods, he may, within a period of six years from the date of importation, removal from bond or delivery from factory in the case of excisable goods, seize or place an embargo on those goods, wheresoever or in possession of whomsoever found, and until the embargo has been withdrawn no person shall remove such goods from the place indicated by the officer or in any deal therewith, except with the permission of the officer.

[Subsection amended by Act 18 of 2001]

(1a) Any person who removes any goods in contravention of subsection (1) shall be guilty of an offence and liable to a fine not exceeding level seven or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment.

[Subsection inserted by Act 22 of 2001]

(2) In subsection (1)—

“duty” includes any import tax which is payable in terms of the Value Added Tax Act [*Chapter 23:12*].

[Definition amended by Act 12 of 2002 with effect from 1st January, 2004.]

## 193 Procedure as to seizure and forfeiture

(1) Subject to subsection (3), an officer may seize any goods, ship, aircraft or vehicle (hereinafter in this section referred to as articles) which he has reasonable grounds for believing are liable to seizure.

(2) In this section—

“duty” includes any import tax which is payable in terms of the Value Added Tax Act [*Chapter 23:12*].

[Definition amended by Act 12 of 2002 with effect from 1st January, 2004.]

“goods” includes Zimbabwean and foreign currency;

“liable to seizure”, in relation to articles, means articles

- (a) liable to forfeiture under this Act or any other law relating to customs or excise; or
- (b) the subject matter of an offence under or a contravention of any provision of—
  - (i) this Act or any other law relating to customs or excise; or
  - (ii) any enactment prohibiting, restricting or controlling the importation or exportation thereof;

notwithstanding the fact that no person has been convicted of such offence or contravention.

(3) No seizure shall be made in terms of subsection (1) where more than six years have elapsed since the articles first became liable to seizure:

Provided that goods imported in contravention of section *forty-seven*, *forty-eight* or *one hundred and seventy-four* or exported or attempted to be exported in contravention of section *sixty-one* shall be liable to seizure at any time from any person;

[Subsection substituted by Act 27 of 2001]

(4) All articles which have been seized in terms of subsection (1) shall be taken forthwith and delivered to a place of security under the control of a proper officer:

Provided that if such articles are of such a nature that they cannot be removed to a place of security, the officer seizing them may declare them as having been secured in the place where he found them.

(5) If an officer has seized articles in terms of subsection (1), or would have seized articles in terms of that subsection but for the fact that he could not find or recover them, he shall report the fact to the Commissioner, setting out his reasons why he considers such article liable to seizure.

(6) Subject to subsection (9), where an officer has reported in terms of subsection (5), the Commissioner may—

- (a) either unconditionally or subject to such conditions, whether as to the payment of a fine imposed in terms of subsection (1) of section *two hundred* or otherwise, as he may fix, order all or any of the articles to be released from seizure; or
- (b) declare all or any of the articles to be forfeited; or
- (c) if the articles could not be found or recovered, declare that the person from whom the articles would have been seized shall pay to the Commissioner an amount equal to the duty-paid value of such articles:

Provided that if any of the articles are of a dangerous or perishable nature, the Commissioner may direct that they be sold out of hand or, if they cannot be sold, that they be destroyed or appropriated to the State.

[Subsection amended by Act 17 of 1999]

(7) If any amount referred to in paragraph (c) of subsection (6) is not paid on demand, the Commissioner may recover the amount by civil action in a court of competent jurisdiction.

(8) The Commissioner may authorize the payment of compensation in respect of any articles dealt with in terms of the proviso to subsection (6) if such articles would have been released from seizure in terms of paragraph (a) of that subsection but for the fact that they have been so dealt with.

(9) The Commissioner shall not exercise his powers in terms of—

- (a) paragraph (b) of subsection (6) while proceedings may be instituted in terms of paragraph (a) of subsection (12) or, if such proceedings have been instituted, until they have been concluded in his favour;

[Paragraph amended by Act 29 of 1998]

(b) paragraph (c) of subsection (6)—

- (i) if the person concerned satisfies the Commissioner that, although he possessed the articles concerned when they were liable to seizure, had they in fact been seized from his possession, the Commissioner would have been compelled by the provisions of subsection (16) to order their release from seizure; or
- (ii) if he has already exercised his powers in terms of that paragraph in respect of the articles concerned and the amount referred to in that paragraph has been paid;

[Paragraph amended by Act 29 of 1998]

(c) paragraph (b) or (c) of subsection (6)—

- (i) if criminal proceedings have been instituted in relation to the articles concerned, until they have been abandoned or discontinued or are concluded otherwise than with the conviction of the accused; or
- (ii) if criminal proceedings have been instituted in relation to the articles concerned and the court has found that those articles were not involved in an offence as described in subsection (2) of section *two hundred and nine*;

Provided that no court sitting as a criminal court for any purposes of this Act shall make any order for the return of articles seized in terms of this section, and no such articles shall be returned except by the Commissioner-General acting in accordance with this Act or by order made by a court of appropriate jurisdiction in which the person from whom the articles have been seized has instituted separate civil proceedings for their return.

[Proviso inserted Act 29 of 2004]

(10) Subject to subsection (11), whenever articles are seized in terms of this section the officer so seizing shall give to the person from whom the articles have been seized or the owner of the articles a notice in writing specifying the articles which have been seized and informing such person of the provisions of subsection (12).

[Subsection amended by Act 29 of 1998]

(11) Notice in terms of subsection (10) shall be deemed to have been duly given to the person concerned—

- (a) if delivered to him personally; or

- (b) if addressed to him and left or forwarded by post to him at his usual or last known place of abode or business; or
- (c) where he is unknown or where he has no address within Zimbabwe or his address is unknown, by publication of notice of seizure in the *Gazette*.

[Subsection amended by Act 29 of 1998]

(12) Subject to section *one hundred and ninety-six*, the person from whom the articles have been seized or the owner thereof may institute proceedings for—

- (a) the recovery of any articles which have not been released from seizure by the Commissioner in terms of paragraph (a) of subsection (6); or
- (b) the payment of compensation by the Commissioner in respect of any articles which have been dealt with in terms of the proviso to subsection (6);

within three months of the notice being given or published in terms of subsection (11), after which period no such proceedings may be instituted.

[Subsection amended by Act 29 of 1998 and by Act 27 of 2001]

(13) If proceedings are not instituted in terms of subsection (12), any articles declared to be forfeited shall without compensation vest in the President and may, by direction of the Commissioner, be sold or destroyed or appropriated to the State.

[Subsection amended by Act 29 of 1998]

(14) If articles are sold or appropriated to the State in terms of the proviso to subsection (6) or subsection (13), the Commissioner may make such payments as he deems fit in respect of—

- (a) expenses in connection with the articles incurred within twelve months of their seizure by any person whose lien for those expenses has been destroyed by the seizure of the articles; and
- (b) carriage charges, including portage charges, payable by the State to any carrier, warehouse rent and storage charges, including storage charges payable by the State to any carrier:

Provided that the Commissioner shall not pay more than—

- (a) is realized from the sale of the articles concerned; or
- (b) in the case of articles appropriated in terms of the proviso to subsection (6) or subsection (13), the value of the articles estimated by the Commissioner;

less any duty payable on the articles and any expenses incurred in connection with the sale of the articles.

[Subsection amended by Act 29 of 1998]

(15) For the avoidance of doubt it is hereby declared that any action taken in terms of this section shall not—

- (a) prevent the institution of criminal proceedings against a person from whom articles have or would have been seized; or
- (b) prevent the imposition of a fine in terms of section *two hundred*; or
- (c) affect the liability for the payment of duty in respect of articles seized and dealt with in terms of this section; or
- (d) entitle any person to claim a refund of duty paid in respect of articles seized and dealt with in terms of this section.

(16) Notwithstanding anything to the contrary contained in this section, the Commissioner shall order to be released from seizure—

- (a) any goods if, in proceedings instituted in terms of subsection (12), the matters referred to in paragraph (a) of subsection (3) of section *two hundred and nine* are proved;
- (b) any ship, aircraft, vehicle or other thing if, in proceedings instituted in terms of subsection (12), the matters referred to in paragraph (b) of subsection (3) of section *two hundred and nine* are proved;

Provided that this subsection shall not apply to goods imported in contravention of section *forty-seven* or *forty-eight* or exported or attempted to be exported in contravention of section *sixty-one*.

[Subsection amended by Act 29 of 1998]

(17) Subject to the Revenue Authority Act [*Chapter 23:11*], the Commissioner may delegate to an officer in the Department any of the functions conferred or imposed upon him by this section.

[Subsection substituted by Act 17 of 1999]

(18) A delegation of functions in terms of subsection (17)—

- (a) may be revoked or modified by the Commissioner at any time; and
- (b) shall not preclude the exercise by the Commissioner of the function so delegated.

[Section inserted by Act 17 of 1999]

(19) Anything done by an officer in the exercise of a function delegated to him by the Commissioner in terms of subsection (1)—

- (a) may be set aside or revised, subject to this Act, by the Commissioner; and
- (b) shall be deemed, until set aside, to have been done by the Commissioner.

[Section inserted by Act 17 of 1999]

(20) Subsection (17) shall be construed as being additional to, and not as derogating from, the Commissioner's powers of delegation under any other law.

[Section inserted by Act 17 of 1999]

## 193A .....

[Section inserted by Act 18 of 2000 and repealed by Act 27 of 2001]

### 194 Creditors not to attach articles until disposed of in terms of section 193

Articles that have been seized in terms of section *one hundred and ninety-three* shall not be liable to attachment or any other form of execution at the instance of—

- (a) a creditor of the owner of the articles; or
- (b) a creditor of the person from whom the articles were seized;

until the articles have been disposed of or otherwise dealt with in terms of that section.

### 195 Authority for delivery of seizure under bond

Notwithstanding the provisions of section *one hundred and ninety-three*, if any ship, aircraft, vehicle, goods or other things are seized in terms of subsection (1) of that section, the Commissioner may in his discretion order the delivery thereof on payment in cash, or on security of a bond with sufficient sureties to be approved by him, of an amount sufficient to cover the duty-paid value of the articles seized in case of forfeiture. If such ship, aircraft, vehicle, goods or other things are eventually declared to be forfeited, the Commissioner may, in place of such forfeiture, pay the duty-paid value thereof into the Consolidated Revenue Fund and cancel the bond.

[Section amended by Act 17 of 1999]

### 196 Notice of action to be given to officer

(1) No civil proceedings shall be instituted against the State, the Commissioner or an officer for anything done or omitted to be done by the Commissioner or an officer under this Act or any other law relating to customs and excise until sixty days after notice has been given in terms of the State Liabilities Act [*Chapter 8:15*].

[Subsection amended by Act 17 of 1999]

(2) Subject to subsection (12) of section *one hundred and ninety-three*, any proceedings referred to in subsection (1) shall be brought within eight months after the cause thereof arose, and if the plaintiff discontinues the action or if judgment is given against him, the defendant shall receive as costs full indemnity for all expenses incurred by him in or in respect of the action and shall have such remedy for the same as any defendant has in other cases where costs are given by law.

[Subsection amended by Act 29 of 1998]

### 197 Tender of amends and effect thereof

Any officer may, within one month after notice has been given in terms of section *one hundred and ninety-six*, tender amends to the party complaining or to any legal practitioner or agent representing that party, and may plead such tender in bar to any proceedings, together with any other plea, and if the court finds the amends sufficient it shall give judgment for the defendant, except as to the amends tendered. In such event, or if the plaintiff discontinues his action, the defendant shall be entitled to costs, but if upon the trial of any such action the court finds that no amends were tendered, or that they were not sufficient, or finds against the defendant upon any such other plea, the court shall give judgment for the plaintiff with such damages as it may think proper, together with the costs of the action.

### 198 Court may refuse costs

If any action is brought by any person against the Minister, the Commissioner or any officer for or on account of any seizure, wherein judgment has been given for the plaintiff, and if the court before which the action was tried finds and adjudges that there was reasonable cause for seizure, the court may refuse to grant the plaintiff costs.

[Section amended by Act 17 of 1999]

### 199 Pest-infected or harmful goods

(1) If, after obtaining such expert advice as may be available, the Commissioner is of the opinion that any goods which are under the control of the Department—

- (a) have become infected with any pest which may spread any human, plant or animal disease; or
- (b) are likely to be prejudicial to the health of any human being, plant or animal;

he may direct that such goods and the containers in which they are packed be seized, if they have not already been seized in terms of section *one hundred and ninety-three*, and destroyed or otherwise dealt with in any manner which he may consider suitable.

(2) No person shall be entitled to claim compensation on account of any action taken under the provisions of subsection (1).

[Subsection amended by Act 17 of 1999]

### 200 Imposition of fine by Commissioner

(1) If any person has contravened any provision of this Act and has admitted to the contravention, he shall pay a fine determined by the Commissioner, which does not exceed the maximum penalty provided by this Act for the offence in question:

Provided that if criminal proceedings have been instituted against the person concerned for such offence, the power conferred by this subsection shall not be exercised without the prior approval of the Attorney-General.

[Subsection substituted by Act 18 of 2000]

(2) The Commissioner shall, at the request of a person referred to in subsection (1), furnish to him a certificate setting out the nature of the offence, the date of its occurrence and the fine imposed under subsection (1), and such certificate may be used by the person referred to in subsection (1) as prima facie proof of the facts stated therein.

[Subsection amended by Act 18 of 2000]

(3) If any fine imposed in terms of subsection (1) is not paid on demand, the Commissioner may institute civil action for its recovery in any court of competent jurisdiction.

[Subsection amended by Act 17 of 1999]

(4) The imposition of a fine under subsection (1) shall not be treated as a conviction of the person concerned of a criminal offence and no prosecution for the offence shall thereafter be competent.

[Subsection amended by Act 18 of 2000]

(5) Nothing in this section shall in any way affect liability to forfeiture of the goods or payment of duty or other charges thereon.

[Subsection substituted by Act 18 of 2000]

(6) Wherever a person admits a contravention of this Act in terms of subsection (1) and the Commissioner has made a declaration of forfeiture in terms of subsection (6) of section *one hundred and ninety-three*, such declaration shall be final and the provisions of subsection (13) of that section shall apply.

[Subsection substituted by Act 18 of 2000]

(7) Subject to the Revenue Authority Act [*Chapter 23:11*], the Commissioner may delegate to an officer in the Department the power to propose and impose fines in terms of subsection (1).

[Subsection substituted by Act 17 of 1999]

(8) Any person admitting to any contravention of this Act upon whom a fine has been imposed by an officer to whom the power to impose fines has been assigned in terms of subsection (7) may, within three months of paying such fine, appeal to the Commissioner against the imposition of such fine.

[Subsection amended by Act 17 of 1999 and by Act 18 of 2000]

(9) A fine imposed by an officer referred to in subsection (7) shall be reviewed by such senior officer in the Department as the Commissioner may appoint for the purpose, and the senior officer may confirm the fine or may recommend to the Commissioner that it be amended.

[Subsection substituted by Act 17 of 1999]

(10) The Commissioner in considering any appeal brought in terms of subsection (8) or any recommendation made in terms of subsection (9) may reduce or set aside the fine imposed and, in the event that the fine is set aside, criminal proceedings may be instituted notwithstanding subsection (4).

[Subsection amended by Act 17 of 1999]

(11) .....

[Subsection repealed by Act 17 of 1999]

## **201 Liens and preferences**

(1) The correct amount of duty payable in respect of any goods shall, from the time when it should have been paid, constitute a debt due to the State by the person concerned and shall, at any time after it becomes due, be recoverable in a court of competent jurisdiction by proceedings in the name of the Commissioner, and any goods in a bonded warehouse or in the custody of the Department and belonging to that person, and any goods afterwards imported or entered for export by the person by whom the duty is due, shall, while still under the control of the Department, be subject to a lien for such debt and may be detained by the Department until such debt is paid, and the claims of the State shall have priority over the claims of all persons upon the said goods of whatever nature and may be enforced by sale or other proceedings if the debt is not paid within three months after the date upon which it became due.

(2) Where any person who, under the provisions of this Act, is indebted to the State in respect of any sum due for duty becomes insolvent, then in any proceedings concerning his insolvency the claim of the Commissioner for such sum shall rank for preference next after any mortgage, charge or lien or any prior registered special mortgage bond or any pledge or right of retention upon such assets or any part thereof, and shall rank equally with any claim which may be made on behalf of the State in respect of income tax.

(3) In this section—

“duty” includes any import tax which is payable in terms of the Value Added Tax Act [*Chapter 23:12*].

[Definition amended by Act 17 of 1999]

## **201A Power to appoint agent for collection of duty**

(1) For the purpose of subsection (1)—

“person” includes—

- (a) the People’s Own Savings Bank constituted in terms of the People’s Own Savings Bank Act [*Chapter 24:22*] and any financial institution registered or required to be registered in terms of the Banking Act [*Chapter 24:20*] or the Building Societies Act [*Chapter 24:02*]; and
- (b) a partnership or company.

(2) The Commissioner may, if he thinks it necessary, declare any person to be the agent of any importer or excise manufacturer, and the person so declared an agent shall be the agent of such importer or excise manufacturer for the purposes of paying any duty due in terms of this Act, and, notwithstanding anything to the contrary contained in any other law, may be required to pay any duty due from any moneys in any current account, deposit account, fixed deposit account or savings account or from any other moneys, including pensions, salary, wages or any other remuneration, which may be held by him for, or due by him to, the importer or excise manufacturer whose agent he has been declared to be.

(3) For the purpose of this section, the Commissioner may require any person to give him within a specified period information in respect of any moneys, funds or other assets which may be held by him for or due by him to, any importer or excise manufacturer.

(4) Any person who fails to comply with any provision of this section with which it is his duty to comply shall incur a penalty of five *per centum* of the unrecovered revenue for every day during which the default continues, and every such penalty shall be recoverable by the Commissioner by action in any court of competent jurisdiction.

[Section inserted by Act 18 of 2000]

## **202 Interest on unpaid duty and payment of fines and duties by instalments**

(1) Where goods—

(a) have been released from customs control; or

(b) are found to be liable to seizure because they are smuggled goods;

and duty is determined to be payable under this Act or any law relating to customs or excise, interest at the prescribed rate shall be payable on so much of the duty as has not been paid, and, in the case of smuggled goods, duty thereon shall be deemed to have been unpaid—

(c) from the date when they were required to be duly entered under this Act; or

(d) where the date referred to in paragraph (c) cannot be ascertained, from such date as the Commissioner shall fix, not being a date earlier than six years from the date when the goods were found to be liable to seizure.

[Subsection substituted by Act 2 of 2005]

(2) Subject to such conditions, including the payment of interest at the prescribed rate, as the Commissioner may consider necessary, the Commissioner may permit any fine imposed by him under this Act, or any duty found, after the goods have been released from customs control, to be payable under this Act or any law relating to customs or excise, to be paid by instalments of such amounts and at such times as he may fix.

[Section substituted by Act 15 of 2002]

## **203 Impounding of documents**

The Commissioner may impound or retain any document presented in connection with any entry or required to be produced under this Act, and the person otherwise entitled to such document shall on application be given in lieu thereof a copy of the document duly certified by the Commissioner, and the certified copy shall be admissible in evidence at any trial to the same extent and in the same manner as the original would be admissible.

[Subsection amended by Act 17 of 1999]

## **204 Burden of proof**

(1) When any goods are stopped, seized or placed under embargo under this Act or would have been so stopped, seized or placed under embargo but for the fact that they could not be found or recovered, and in any proceedings under this Act other than a prosecution, if any question arises as to whether the duties have been paid on the goods or whether the goods have been lawfully imported or lawfully laden or are being lawfully exported, the burden of proof of the affirmative of these facts shall be on the person who owns, owned or claims such goods, as the case may be.

(2) When, for any purpose under this Act, it is necessary to prove the country of origin or local content of any goods, the onus of proof of such origin shall be upon the owner or the importer of such goods and not upon an officer.

(3) Any invoice or other document submitted or used by an importer or any other person for the purpose of any of the provisions of this Act may be produced as evidence by or on behalf of the Commissioner or prosecution in any civil or criminal proceedings without calling the person who prepared it or signed it.

[Subsection amended by Act 17 of 1999]

(4) In subsection (1)—

“duties” includes any import tax which is payable in terms of the Value Added Tax Act [*Chapter 23:12*].

[Definition amended by Act 12 of 2002]

## **205 Evidence in certain circumstances**

(1) In any prosecution on account of the non-payment of duty on goods liable to excise duty or surtax, and in any proceedings for the recovery of duty on such goods, instituted against a manufacturer, any statement in any record kept by or on behalf of such manufacturer to the effect that such goods of a particular quantity or strength

have been manufactured or held in stock by him at any time shall be admissible as evidence of the fact that he had at that time manufactured or held in stock goods liable to excise duty or surtax of that quantity or strength.

(2) If in any such prosecution or proceedings such person claims that he has disposed of or used any goods liable to excise duty or surtax in such manner as not to be subject to excise duty or surtax, the burden of proving that such goods have been so disposed of or used shall be upon him.

## **206 Calculation of duty-paid value of currency for purpose of certain offences**

For the purposes of any offence under this Act for which the maximum fine that may be imposed is determined according to the duty-paid value of goods involved in the offence, the duty-paid value of any Zimbabwean or foreign currency involved in the offence shall be deemed to be—

- (a) in the case of Zimbabwean currency, its current monetary value;
- (b) in the case of foreign currency, its current value in Zimbabwean currency.

[Section substituted by Act 22 of 2001]

## **207 Certain offences to have extra-territorial operation**

Subsection (1) and paragraph (a) of subsection (2) of section *one hundred and seventy-four*, sections one hundred and seventy-six and one hundred and seventy-seven, subsection (1) of section *one hundred and seventy-eight*, sections one hundred and eighty and one hundred and eighty-one, paragraphs (f), (g), (h), (i), (j) and (l) of section *one hundred and eighty-four* and section *two hundred and eleven* shall have extra-territorial operation.

[Section amended by Act 22 of 2001]

## **208 Special jurisdiction of magistrates**

Notwithstanding anything contained in the Magistrates Court Act [*Chapter 7:10*], but without derogation from any greater jurisdiction conferred by that Act or any other enactment where a person is convicted of an offence in terms of this Act—

- (a) a court of a regional magistrate shall have special jurisdiction to impose a fine not exceeding level fourteen or imprisonment for a period not exceeding seven years or both such fine and such imprisonment;

[Paragraph substituted by Act 22 of 2001]

- (a1) a court of a provincial or senior magistrate shall have special jurisdiction, on summary trial or on remittal by the Attorney-General, to impose a fine not exceeding level twelve or imprisonment for a period not exceeding five years or both such fine and such imprisonment;

[Paragraph inserted by Act 22 of 2001]

- (b) a court of a magistrate, other than a regional, provincial or senior magistrate, shall have special jurisdiction to impose, on summary trial or on remittal by the Attorney-General of the case for trial or sentence, a fine not exceeding level eight or imprisonment for a period not exceeding two years or both such fine and such imprisonment.

[Paragraph amended by Act 22 of 2001]

## **209 Additional penalties which may be imposed**

(1) Without derogation from the provisions of section *one hundred and ninety-three*, a court may, in addition to passing sentence—

- (a) in the case of a conviction for an offence under this Act, give summary judgment in favour of the Commissioner for the amount of any duty which should have been paid by the person convicted and has not been paid;
- (b) in the case of a conviction for an offence under this Act or any other law involving, in terms of subsection (2), any articles—
  - (i) subject to subsection (3), declare any such articles to be forfeited to the State; or
  - (ii) if—
    - A. any articles referred to in subparagraph (i) cannot, by virtue of the provisions of subsection (3), be forfeited; or
    - B. the court is satisfied that it would not be equitable to order the forfeiture of the articles; or
    - C. the articles cannot be found or recovered;give summary judgment in favour of the Commissioner for an amount equal to the duty-paid value of the articles.

[Subsection amended by Act 17 of 1999]

(2) An offence shall, for the purposes of subsection (1), be deemed to involve any articles if it appears from the facts proved or admitted before the court as part of the offence that—

- (a) in the case of goods, they are the subject-matter of an offence under or a contravention of this Act or any other law relating to customs or excise or any enactment prohibiting, restricting or controlling the importation or exportation thereof, whether or not the offence or contravention is charged before the court;
- (b) in the case of any ship, aircraft, vehicle or other thing, not being goods referred to in paragraph (a)—
  - (i) it has been used for the removal of any goods referred to in paragraph (a); or

- (ii) it has—
  - A. false bulkheads, false bows, double sides or bottoms or any secret or disguised place whatsoever; or
  - B. in or about it any hole, pipe or device;  
adapted for the purpose of concealing or smuggling goods.

(3) A court shall not, in terms of subparagraph (i) of paragraph (b) of subsection (1), declare forfeited to the State—

(a) .....

[ Paragraph repealed by Act 18 of 2000]

(b) any ship, aircraft, vehicle or other thing if it is proved that the ship, aircraft, vehicle or other thing is not the property of the person convicted and that its owner was unaware that—

- (i) the ship, aircraft, vehicle or other thing was being used for the removal of goods referred to in paragraph (a) of subsection (2) and unable to prevent such use; or
- (ii) the ship, aircraft, vehicle or other thing was adapted for the purpose of concealing or smuggling goods as described in subparagraph (ii) of paragraph (b) of subsection (2);

(c) any articles unless or until the owner thereof has been given an opportunity of being heard:

Provided that—

- (i) this subsection shall not apply to goods which have been imported in contravention of section *forty-seven* or *forty-eight* or exported or attempted to be exported in contravention of section *sixty-one*;
- (ii) paragraph (c) shall not apply where the court is satisfied that there are good reasons why the owner concerned cannot be given an opportunity of being heard.

(4) Where any articles are declared to be forfeited to the State in terms of subparagraph (i) of paragraph (b) of subsection (1), subsections (10) and (14) of section *one hundred and ninety-three* shall apply, *mutatis mutandis*, in respect thereof.

(5) For the purpose of determining the amount of any unpaid duty or of the duty-paid value of any articles for the purposes of paragraph (a) or subparagraph (ii) of paragraph (b) of subsection (1) or of the convicted person's liability to pay the same, the court may refer to the proceedings and evidence at the trial or hear further evidence, either upon affidavit or verbal, and a judgment given by a court in terms of paragraph (a) or subparagraph (ii) of paragraph (b) of subsection (1) shall have the same force and effect and may be executed in the same manner as if the judgment had been given in a civil action instituted in the court.

(6) Where the owner of any articles which have been declared forfeited to the State in terms of subparagraph (i) of paragraph (b) of subsection (1) is aggrieved by the decision of the court as to the forfeiture thereof, he may appeal therefrom as if it were a conviction by the court making the declaration.

(7) If any declaration in terms of subparagraph (i) of paragraph (b) of subsection (1) is set aside or varied, the court convicting the person concerned may thereafter give summary judgment in terms of subparagraph (ii) of paragraph (b) of subsection (1).

(8) If any declaration made under subparagraph (i) of paragraph (b) of subsection (1) is set aside or varied after the sale in terms of this Act of the articles declared to be forfeited, the owner of the articles may, at his option—

- (a) upon payment to the Commissioner of the amount of any payments made in terms of paragraph (a) of subsection (14) of section *one hundred and ninety-three*, obtain possession of the articles from any person in possession thereof, in which case the latter person shall be entitled to claim from the Commissioner the amount received by the Commissioner from the sale thereof, less any costs incurred by the Commissioner in connection with the sale thereof; or
- (b) claim from the Commissioner the amount received by the Commissioner from the sale thereof, less any costs incurred by the Commissioner in connection therewith and the amount of any payments made in terms of paragraph (a) of subsection (14) of section *one hundred and ninety-three*.

[Subsection amended by Act 17 of 1999]

(9) Nothing in this section contained shall be deemed to affect any provision of any enactment under which any thing may be forfeited to the State and the provisions of this section shall be deemed to be additional to and not in substitution of any such provision.

(10) In this section—

“articles” means any goods or any ship, aircraft, vehicle or other thing;

“duty” includes any import tax which is payable in terms of the Value Added Tax Act [*Chapter 23:12*].

[Definition amended by Act 12 of 2002]

“goods” includes Zimbabwean and foreign currency.

## PART XIV

### GENERAL

#### **210 Secrecy**

(1) An officer who in the course of his duties has acquired any information relating to any person, firm or business shall not disclose such information, except—

- (a) for the purposes of this Act or for the official compilation of statistics; or
- (b) when required or ordered to do so by court; or
- (c) to the extent that it is necessary in order to give effect to any obligations of Zimbabwe in terms of any international convention, treaty or agreement; or
- (d) where in the opinion of the Commissioner such information is or may be relevant to prove the commission of—
  - (i) an offence in terms of this Act or any other law; or
  - (ii) an act of misconduct by a person employed by the State.

[Subsection amended by Act 17 of 1999]

(2) Any officer who contravenes subsection (1) shall be guilty of an offence and liable to a fine not exceeding level six or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment.

[Subsection inserted by Act 22 of 2001]

#### **210A Use of information for private gain**

(1) No officer shall, for his personal gain, make use of any information which as come to his knowledge in the exercise of his functions under this Act.

(2) Any officer who contravenes subsection (1) shall be guilty of an offence and liable to -

- (a) a fine not exceeding level ten or double the amount of his gain, whichever is the greater; or
- (b) imprisonment for a period not exceeding five years

or to both such fine and such imprisonment.

[Section substituted by Act 22 of 2001]

#### **211 Oaths and affidavits**

The Commissioner or any officer designated by him shall have and is hereby vested with power and authority to administer an oath or to attest an affidavit in every case in which by this Act or by any other law relating to customs and excise an oath or affidavit is permitted or required, and any person who makes a false statement upon any oath or in any affidavit sworn before the Commissioner or any such officer shall be guilty of an offence and liable to a fine not exceeding level seven or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

[Subsection amended by Act 17 of 1999 and by Act 22 of 2001]

#### **212 Entries, oaths, etc., made outside Zimbabwe to be of full force and effect in Zimbabwe**

Any bill of entry, writing, oath or declaration required to be made by this Act or any other law relating to customs or excise shall, if made outside Zimbabwe to or before a Zimbabwean customs officer, be binding and of full force and effect in Zimbabwe.

#### **213 Translation of foreign documents**

Where any document written in a language other than English is presented to any officer for any purpose connected with this Act, the Commissioner may require a translation into the English language, to be made at the expense of the owner, by such person as the Commissioner may approve.

[Section amended by Act 17 of 1999]

#### **214 Conditions and enforcement of bonds**

(1) The conditions of any bond executed in terms of this Act and the enforcement thereof shall not be construed as exempting any person from any prosecution to which he may be liable under this Act or any other law in respect of matters provided in such conditions.

(2) In any proceedings for the enforcement of a bond entered into in terms of this Act, the sum stated therein shall be deemed to be liquidated damages, calculated to reimburse the State for loss occasioned by breach of any of the conditions thereof.

#### **215 Fresh security**

If at any time the Commissioner is not satisfied with the sufficiency or form of any security previously given, he may require a fresh security, and a fresh security shall be given accordingly.

[Section amended by Act 17 of 1999]

#### **216 Joint and several liability of subscribers to bond**

Unless otherwise provided therein, any bond executed in terms of this Act shall bind the subscribers thereto jointly and severally for the full amount stated therein.

#### **216A Licensing of clearing agents**

- (1) In this section—

“clearing agent” means a person who—

- (a) for gain, acts for an importer, exporter, manufacturer or the holder of a licence; or
- (b) holds himself out as carrying on the business of acting for importers, exporters, manufacturers or holders of licences;

in performing any function under, or complying with any requirement of, this Act;

“clearing agents licence” means a licence issued in terms of subsection (4).

(2) The Commissioner may appoint and license any person as a clearing agent, subject to this section, any regulations and such other conditions and safeguards as the Commissioner may specify.

(3) No person shall perform any act as a clearing agent unless he holds a clearing agents licence.

(4) No person other than a company or partnership shall be licensed as a clearing agent.

(5) An application for a clearing agents licence shall be made in the prescribed form, furnishing such information as may be prescribed.

(6) If the Commissioner approves the application he shall call upon the applicant to enter into a bond, with sufficient surety, to the satisfaction of the Commissioner for the due observance of all relevant provisions of this Act, and issue a licence after payment of the prescribed licence fee.

(7) A clearing agents licence shall expire on the 31st December of the year in which it was issued, and may be renewed when necessary.

(8) A clearing agents licence shall not be transferable.

(9) The Commissioner may reject an application for a new licence or refuse to renew a licence or cancel or suspend any licence if the applicant or holder of such licence has—

- (a) given false or misleading information in an application to be licensed; or
- (b) persistently failed to comply with any provision of this Act or any other law; or
- (c) been convicted of an offence under the Act or any other offence involving fraud, bribery or misrepresentation.

[Section substituted by Act 18 of 2000]

(10) Any person who, without being licensed as a clearing agent—

- (a) for gain, acts for an importer, exporter, manufacturer or the holder of a licence; or
- (b) holds himself or herself out as carrying on the business of acting for importers, exporters, manufacturers or holders of licences;

in performing any function under, or complying with any requirement of, this Act, shall be guilty of an offence and liable to a fine not exceeding level seven or to imprisonment for a period not exceeding six months or to both such fine and imprisonment.

[Section inserted by Act 29 of 2004]

## **217 Security to be given for due observance of Act**

The Commissioner may require—

- (a) any importer;

[Paragraph amended by Act 18 of 2000]

or

- (b) any agent appointed by the master of a ship, the pilot of an aircraft or the operator of a pipeline in terms of section *thirty-five* or *fifty-nine*, who transacts customs business; or
- (c) any vehicle owner or other person carrying goods which are required to be accounted for in terms of this Act;

to give security to the Commissioner’s satisfaction for the due observance of all relevant provisions of this Act, and any such person shall comply with any such requirement.

[Subsection substituted by Act 29 of 1998 and by Act 17 of 1999]

## **218 Liabilities of agent and principal**

(1) An agent appointed by any master, pilot, importer or exporter, or any person who represents himself to any officer as the agent of any master, pilot, importer or exporter and is accepted as such by that officer, shall be liable for the fulfilment, in respect of the matter in question, of all obligations, including the payment of duty, imposed upon such master, pilot, importer or exporter by this Act or any other law relating to customs or excise:

Provided that an agent may not sign on behalf of the importer a declaration of value required in terms of section *forty-two*.

(2) Every master, pilot, importer or exporter, or any owner of goods in a bonded warehouse, container depot or any manufacturer licensed in terms of section *one hundred and twenty-eight* shall be responsible for any act committed by any person acting in his place or on his behalf, whether the said act was done within Zimbabwe or beyond its boundaries, and the person so acting shall, if within Zimbabwe, likewise be liable to prosecution under this Act or any other law relating to customs or excise.

(3) Any person who appoints an agent to carry out any requirements of this Act on his behalf shall be responsible for any action of his agent while acting on his behalf and shall be liable to prosecution for any contravention of this Act committed by his agent while acting on his behalf.

### **219 Written authority to transact business on behalf of another**

If any person makes an application to an officer to transact any business on behalf of another person, such officer may require the person so applying to produce a written authority in the form approved by the Commissioner from the person on whose behalf he purports to act and, in default of the production of such authority, may refuse to transact such business.

[Section amended by Act 17 of 1999]

### **220 Expense and risk of handling goods**

All handling of and dealing with goods for the purpose of any law relating to customs or excise shall be performed by, or at the expense and risk of, the importer or exporter or the manufacturer of goods liable to excise duty or surtax, as the case may be, and where goods are examined at a warehouse, at the expense and risk of the owner of the goods.

### **221 Abandonment of goods**

(1) Any importer who has imported any goods may, if he is the lawful owner of the goods and if they have not been removed from customs control, offer to abandon such goods to the Commissioner.

(2) If an offer in terms of subsection (1) is accepted by the Commissioner—

- (a) any duty due on the goods shall be remitted or, if it has already been paid, refunded to the importer; and
- (b) the goods shall become the property of the State to be disposed of as the Commissioner may direct so, however, that the importer shall be liable for any expenses incurred by the Commissioner in connection with—

- (i) the landing of the goods or their removal to a State warehouse or other place of security approved by a proper officer; or
- (ii) the destruction of the goods.

[Subsection amended by Act 17 of 1999]

### **222 Sellers of goods to produce proof of payment**

(1) Any person being in possession or control of imported goods or goods which are liable to duty under this Act, and any person who offers for sale, exports or attempts to export such goods or has such goods entered in his books or mentioned in any document referred to in section *two hundred and twenty-three* shall, when requested by an officer so to do, produce proof as to the place where entry of the goods was made and any duty due thereon was paid and also the date of entry and the marks and numbers of the packages concerned, which marks and numbers shall correspond with the documents produced in proof of entry or the payment of duty. If he himself did not pay the duty or make entry of the goods, such person shall produce such evidence as will enable the officer to locate and question the person who did make such entry and payment in respect of the goods.

(2) Any person failing to produce the proofs or evidence required in terms of subsection (1) shall be liable for the unpaid duty, and shall pay the duty to the Commissioner within the time specified by the Commissioner.

[Subsection substituted by Act 18 of 2000]

### **223 Persons carrying on business to keep proper books and records**

(1) Every person carrying on in Zimbabwe any business which involves handling or dealing in goods shall keep or cause to be kept within Zimbabwe—

- (a) reasonable and proper records and books of account in the English language of all his transactions; and
- (b) the bills of entry, bills of lading, rail notes, invoices and all other documents relating to any goods required to be accounted for in terms of this Act or any other law relating to customs and excise;

and shall if required at any time within a period of six years after the date of the importation, purchase or exportation of any goods, produce to an officer for inspection and if necessary for attachment by him, such records, documents and books of account including, where applicable, a printout or other reproduction of any information stored in a computer or other information retrieval system.

(2) Any person who fails to comply with subsection (1) shall be guilty of an offence and liable to a fine not exceeding level seven or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment.

[Subsection amended by Act 22 of 2001]

### **224 Claims and refunds**

When any amount of duty has been underpaid or erroneously refunded, the person who should have paid such amount or to whom the refund has erroneously been made shall pay such amount or repay the amount erroneously refunded on demand being made by the proper officer.

### **225 Imposition of tariffs and amendment thereof**

(1) Subject to subsection (2), the Minister may, by statutory instrument—

- (a) impose tariffs of customs duties, excise duties and surtax; and

(b) amend or replace any tariff referred to in paragraph (a);  
and the duties set out in any such tariff shall be charged, levied and collected accordingly.

(2) If any statutory instrument made under subsection (1) is not confirmed by a Bill which—

(a) passes its second reading stage in Parliament on one of the twenty-eight days on which Parliament next sits after the statutory instrument came into operation; and

(b) becomes law not later than six months after the date of such second reading;

the statutory instrument shall become void as from its date of commencement, and so much of the tariff as was imposed, amended or replaced by the statutory instrument shall be deemed not to have been so imposed, amended or replaced, as the case may be.

(3) When any excise duty or surtax is imposed in terms of this section and no provision or, in the opinion of the Minister, inadequate or inappropriate provision exists in any enactment for the collection and management thereof, the President may make regulations for the collection and management of such duty or surtax which shall remain in force until Parliament has made provision for the collection and management of that duty or surtax.

(4) If a notice published in or with or as a supplement to the *Gazette*, including a notice so published before the date of commencement of the Finance Act, 2000—

(a) refers to the existence of a separate volume containing the customs tariff or any part of it; and

(b) states that the volume concerned is the true statutory instrument imposing, amending or replacing the customs tariff or any part of it, as the case may be; and

(c) states that copies of the volume concerned can be purchased at any Government Printer's office;

it shall be deemed that the volume concerned is the true statutory instrument as stated in paragraph (b) and that it was published in or with or as a supplement to the *Gazette* in accordance with subsection (1) of section 20 of the Interpretation Act [*Chapter 1:01*].

[Subsection inserted by Act 18 of 2000]

## **226 Rates of duty in relation to time of importation, exportation or entry**

Subject to this Act—

(a) goods imported into Zimbabwe shall be liable to the rates of customs duty and surtax which are applicable to those goods at the time when they are imported or at the time when they are entered for consumption, whichever is the later:

Provided that—

(i) except in the case of goods properly taken out of bond or in the circumstances specified in provisos (ii) and (iii), the duty shall not be less than that payable at the time of importation;

(ii) if, within six months after the importation of any goods or after such longer period as the Commissioner may allow, the importer satisfies the proper officer that the goods were eligible for entry under a conditional tariff suspension or a conditional suspension, rebate or remission of duty, the importer shall be entitled to a refund of any excess duty paid by him;

(iii) goods shall be eligible for entry under a conditional tariff suspension or a conditional suspension, rebate or remission of duty notwithstanding that the goods were temporarily imported in terms of section *one hundred and twenty-four* before the conditional tariff suspension or the conditional suspension, rebate or remission of duty, as the case may be, became applicable to the goods;

[Subsection amended by Act 17 of 1999]

(b) goods which have been manufactured in Zimbabwe and are liable to excise duty or surtax, shall be liable to the rates of duty which are applicable to those goods at the time when they are delivered from the place of manufacture for consumption or are used or otherwise disposed of by the manufacturer.

## **227 Circumstances in which payment of proposed duty or increased duty may be deferred**

When a new duty is imposed or the rate of an existing duty is increased in terms of subsection (1) of section *two hundred and twenty-five*, the actual payment of the new duty or increased duty may, be deferred if the person responsible for the payment of the duty and a surety approved by the proper officer enter into a bond providing for the payment of the new duty or increased duty as soon as an Act has been promulgated authorizing and imposing the same.

## **228 Refund of duty imposed in terms of section 225 (1)**

If any duty imposed in terms of subsection (1) of section *two hundred and twenty-five* is not enacted or is reduced on enactment, any person who has paid such duty shall on application be entitled to a refund—

(a) in the case of a duty not enacted, of the amount of such duty paid by him; and

(b) in the case of a duty reduced on enactment, of an amount equal to the difference between the duty paid by him and that enacted.

## **229 Refund of new duty imposed in terms of section 225 (1)**

(1) If Parliament does not enact any new duty or increase of duty imposed in terms of subsection (1) of section *two hundred and twenty-five*, or enacts a lower increase of any duty so imposed, any person who has paid such duty shall on application be entitled to a refund—

- (a) in the case of a new duty not enacted, of the amount of such duty paid by him; and
- (b) in the case of an increase of duty not enacted, of an amount equal to the difference between the duty paid by him and the existing duty; and
- (c) in the case of a lower increase of duty being enacted, of an amount equal to the difference between the duty paid by him and the new increased duty.

(2) If Parliament—

- (a) does not enact a reduction in a rate of duty made in terms of subsection (1) of section *two hundred and twenty-five*; or
- (b) enacts a less reduction in the rate of the duty referred to in paragraph (a) than that made in terms of subsection (1) of section *two hundred and twenty-five*; or
- (c) does not enact a withdrawal of duty made in terms of subsection (1) of section *two hundred and twenty-five*; or
- (d) enacts the duty referred to in paragraph (c) at a reduced rate;

no payment by way of duty under-collected or duty not collected shall be required from any person in respect of goods properly entered at the reduced rate of duty or, as the case may be, duty-free during the period when the rate of duty was reduced or, as the case may be, the duty was withdrawn in terms of subsection (1) of section *two hundred and twenty-five*.

## **230 Seller under contract may recover any increase and purchaser may deduct any decrease of duty**

(1) Whenever any duty is imposed or increased on any goods and such goods, in pursuance of a contract made before the duty or increased duty became payable, are thereafter delivered to and accepted by the purchaser, the seller of the goods may, in the absence of agreement to the contrary, recover from the purchaser as an addition to the contract price a sum equal to any amount paid by him by reason of the said duty or increase.

(2) Whenever any duty is withdrawn or decreased on any goods and such goods, in pursuance of a contract made before the withdrawal or decrease becomes effective, are delivered thereafter, the purchaser of the goods may, in the absence of agreement to the contrary, if the seller has in respect of those goods had the benefit of the withdrawal or decrease, deduct from the contract price a sum equal to the said duty or decrease.

(3) This section shall also apply to a contract for the hiring of any goods, and the words “seller” and “purchaser” shall correspondingly be construed as including the person from whom and the person to whom the goods are hired.

## **231 Fee for correction of bill of entry**

For the correction of any bill of entry accepted in terms of this Act the Commissioner may charge such accounting fee as may be prescribed.

[Section amended by Act 17 of 1999]

## **232 State warehouse**

(1) The Commissioner may appoint any premises in Zimbabwe to be a State warehouse into which goods may be taken and lodged until the requirements of this Act have been satisfied.

(2) Whenever any goods are taken to and secured in a State warehouse, the proper officer shall charge warehouse rent on such goods at such rates as may be prescribed for such period as the goods remain therein:

Provided that the Commissioner may, having regard to the circumstances of the detention of goods in a State warehouse—

- (a) instruct the proper officer to waive; or
- (b) himself remit or refund; the whole or any part of the rent payable or, as the case may be, paid on the goods.

[Subsection amended by Act 17 of 1999]

(3) Any officer who has the custody of any goods may refuse delivery thereof from a State warehouse or other place of security until he has received proof satisfactory to him that—

- (a) the person claiming the goods is lawfully entitled to such goods; and
- (b) all the relative provisions of this Act have been satisfied; and
- (c) the duties, removal charges, including portage charges incurred by the State in connection with such removal, and rent due in respect of the goods have been paid; and
- (d) carriage charges due to any carrier have been paid.

(4) The State shall in no case be liable in respect of any loss or diminution of or accident to any goods in any State warehouse. The proper officer shall, however, give a receipt for the goods merely for the purpose of showing that a certain number of packages has been received into the warehouse.

(5) If an order for the removal of any goods from a State warehouse has been given by the proper officer and the person to whom such order has been granted does not, within such period as the proper officer may allow, comply with it, such goods may, notwithstanding any other provisions of this Act, at the discretion of the Commissioner, be dealt with as if they were goods in respect of which entry had not been made in terms of section *thirty-nine*.

[Subsection amended by Act 17 of 1999]

### **233 Measures**

All duties shall, unless otherwise specially provided, be charged, paid and received on and according to the measures established by law in Zimbabwe, and in all cases where duties are imposed according to any specific quantity the same shall be deemed to apply proportionately to any greater or less quantity.

### **234 Goods in transit**

- (1) All goods in transit shall be—
  - (a) entered in terms of section *thirty-nine*; and
  - (b) exported within such time as prescribed and shall not be diverted for local consumption without written authority of the Commissioner and without the duty due being paid and shall be subject to such provisions as may be prescribed.

(2) The owner of any goods in transit shall give sufficient security in the sum as determined by the Commissioner for the payment of duties on such goods and compliance with the provisions of this Act and any other law relating to the import and export of goods. Such security shall not be released until evidence has been produced to the satisfaction of the Commissioner that such goods have been exported.

[Section substituted by Act 18 of 2000]

### **235 Making of regulations**

(1) The Minister may, make such regulations as he may deem expedient to prescribe anything to be prescribed under the provisions of this Act, to give force or effect to this Act or for its better administration.

- (2) The Minister may, in the exercise of the powers conferred upon him by subsection (1), provide for—
  - (a) the entry, before or after their arrival in Zimbabwe, of goods dispatched to Zimbabwe by railway train, or by road or air transport, the removal of such goods from transit sheds or customs areas in which they are held and the taking of delivery of such goods and the charges to be paid by importers on failure to make entry of or to remove or take delivery of such goods within prescribed periods;  
[Paragraph amended by Act 29 of 2004]
  - (b) the regulation of the removal of wines and spirits from licensed premises or from one part of licensed premises to another part of licensed premises;
  - (c) the regulation of—
    - (i) the storage on licensed premises of goods on which duty has been paid;
    - (ii) the reprocessing on licensed premises of goods on which duty has been paid;
    - (iii) the notices to be given by licensees in respect of—
      - A. goods acquired by them or received at their licensed premises; and
      - B. operations to be performed on their licensed premises;
  - (d) the specifying or fixing of allowances such as are referred to in subsection (4) of section *sixty* and the goods in respect of which those allowances may be made and any other matter for which provision is under this Act to be made by, in or in accordance with the provisions of regulations;
  - (e) the manner in which complaints as to the dumping of goods or the granting of any bounty or subsidy in respect of goods shall be made and the investigation thereof by a board or person appointed as an investigating authority for the purpose;
  - (f) the forms to be used for the purposes of this Act;
  - (g) the keeping of records, books and other documents and the making of returns and the giving of information by manufacturers of goods liable to excise duty or surtax;
  - (h) the prescribing of standards for the purposes of this Act by reference to the British Pharmacopoeia, the specifications of the British Standards Institute and the like;
  - (i) prescribing the fees which shall be paid—
    - (i) in respect of each licence issued or renewed in terms of this Act;
    - (ii) on the clearance of goods on importation, warehousing or removal from warehouse or exportation;
  - (j) the matters referred to in section *one hundred and twenty*;
  - (k) the administration and control of the export processing zones declared in terms of the Export Processing Zones Act [*Chapter 14:09*];
  - (l) surcharges to be paid in respect of the late payment of duty;

[Paragraph inserted by Act 4 of 1996]

- (l) without derogation from subsection (7), giving effect to the obligations of Zimbabwe under any international treaty or agreement relating to the importation or exportation of goods and additionally, or alternatively, the duties payable in respect thereof.

[Paragraph inserted by Act 17 of 1999]

- (m) the designation at ports of entry of parking spaces for vehicles, the conditions for the parking of vehicles thereat, the creation of offences and imposition of penalties for the parking of vehicles in contravention of those conditions, the payment of deposit fines for breaches of such offences, and the impoundment of vehicles in respect of which it is alleged that any offence against regulations made in terms of this paragraph has been committed.

[Paragraph inserted by Act 6 of 2006]

(3) In regulations providing for matters referred to in paragraph (e) of subsection (2) the Minister may provide that—

- (a) the board or person charged with the investigation of a complaint as to the dumping of goods or the granting of any bounty or subsidy in respect of goods shall have any or all of the powers, rights, privileges and duties conferred or imposed upon a commissioner by the Commissions of Inquiry Act [Chapter 10:07], with or without modifications; and
- (b) any or all of the provisions of the Commissions of Inquiry Act [Chapter 10:07], with or without modifications, shall apply to an inquiry held for the purpose of investigating a complaint referred to in paragraph (a) and to persons summoned to give evidence or giving evidence at such an inquiry.

(5) If, in regulations providing for matters referred to in paragraph (a) of subsection (2), provision is made for the entry of goods before their arrival in Zimbabwe, the provisions of sections *forty* and *forty-two* shall apply, *mutatis mutandis*, to the goods as if they had been imported into Zimbabwe.

(6) If, in terms of regulations providing for matters referred to in paragraph (a) of subsection (2), charges become payable by an importer, the Commissioner may institute proceedings for the recovery of the charges in any competent court.

[Subsection amended by Act 17 of 1999]

(7) The Minister may make regulations to give effect to agreements entered into with the Governments of Zambia and Malawi in relation to the Zimbabwe Railways, the Agricultural Research Council of Central Africa, the Central African Power Corporation and the Central African Airways Corporation and the provisions of such regulations shall have force and effect notwithstanding anything inconsistent therewith in this Act or any other law relating to customs and excise.

(8) Regulations made in terms of this section may provide penalties for contraventions thereof, but no such penalty shall exceed a fine of level seven or imprisonment for a period of six months or both such fine and such imprisonment.

[Subsection inserted by Act 22 of 2001]

### **236 Making of orders**

(1) The Minister may, by order in the *Gazette*—

- (a) fix the hours of attendance of officers at customs aerodromes, custom houses, customs posts, ports and warehousing ports appointed in terms of subsection (1) of section *fourteen*; and
- (b) prescribe the fees which shall be paid for the attendance of officers at places referred to in paragraph (a) outside the hours of attendance referred to in that paragraph.

(2) The Minister may, by order in the *Gazette* or otherwise—

- (a) fix or provide for the fixing of the hours of attendance of officers at customs posts and ports appointed in terms of subsection (2) of section *fourteen*, licensed premises, bonded warehouses and other places at which the attendance of officers is required by or under or for the purposes of the administration of this Act; and
- (b) prescribe the fees which shall be paid for the attendance of officers at places referred to in paragraph (a) outside the hours of attendance referred to in that paragraph.

(3) The Minister may, in the exercise of the powers conferred upon him by this section—

- (a) make different provision with respect to different places and classes of places and different classes of officers; and
- (b) require the giving of guarantees for the payment of any fees imposed in terms of this section by persons requesting the attendance of officers outside the prescribed hours of attendance.

### **237 Making of rules**

The Commissioner may make rules not inconsistent with this Act or any other enactment in respect of any matter where this Act provides that such matter is to be dealt with in accordance with rules made by the Commissioner.

[Section amended by Act 17 of 1999]

### **238 Delegation of Commissioner's functions**

The Commissioner may, subject to such conditions as he may impose, assign to an officer any duties, powers and functions conferred or imposed upon him, other than those conferred or imposed by this section and, subject to such exceptions as may be made therein, sections *one hundred and ninety-three*, *two hundred and two hundred and thirty-seven*.

[Section amended by Act 17 of 1999]

### **239 Calculation of interest payable under this Act**

Where—

- (a) any interest is payable under section *one hundred and twenty-five* or *two hundred and two*; and
- (b) the rate at which such interest is payable has with effect from any date been altered; and
- (c) such interest is payable in respect of any period or any number of months or any part of a month which commenced before the said date;

the interest to be determined in respect of that portion of such period which ended immediately before the said date or in respect of any such months or part of a month which commenced before the said date shall be calculated as if the said rate had not been so altered.

[Section inserted by Act 18 of 2004]