

LAWS OF BRUNEI

CHAPTER 36

CUSTOMS

5 of 1954
15 of 1962
12 of 1982

Amended by
S 99/59
S 163/68
S 24/85
S 23/89

LAWS OF BRUNEI

CHAPTER 36

CUSTOMS

ARRANGEMENT OF SECTIONS

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SCHEDULE

CUSTOMS ACT

An Act to amend and consolidate the law relating to customs and the importation and exportation of goods and to provide for the recording of statistics thereof

Commencement: 1st January 1955 [GN 10/55]

PART I

PRELIMINARY

1. This Act may be cited as the Customs Act. Short title.

2. (1) In this Act — Interpretation.
 - “agent” in relation to a vessel, includes chinchew and comprador; [S 24/85]
[S 23/89]

 - “aircraft” includes any kind of craft which may be used for the conveyance of passengers or goods by air;

 - “the Controller” means the Controller of Customs;

 - “customs airport” means any place which has been prescribed as a customs airport;

 - “customs duty” means any import duty, export duty, surtax, surcharge or cess, imposed by or under this Act;

 - “customs’ laws” includes any enactment relating to customs, importation or exportation which has effect in Brunei Darussalam;

*NOTE — Not in operation on the first revision date, the minor amendments effected by the Ports Enactment 1981 have been included.

Cap. 144.

“customs port” means any port within the meaning of the Ports Act prescribed to be a customs port;

“customs warehouse” means a warehouse or other place established by the Minister of Finance with the approval of His Majesty the Sultan and Yang Di-Pertuan under section 57 for the deposit of dutiable goods;

“denatured” means effectually rendered unfit for human consumption to the satisfaction of the Controller;

“dutiable goods” means all goods subject to the payment of customs duty;

“export” means to take or cause to be taken out of Brunei Darussalam, by land, sea or air to place any goods in a vessel, conveyance or aircraft for the purpose of such goods being taken out of Brunei Darussalam by land sea or air:

Provided that goods *bona fide* in transit, including goods which have been transhipped, shall not, for the purpose of levy of customs duties, be deemed to be exported unless they are or become uncustomed goods;

“exporter” includes any person by whom any goods (including goods transferred from an importing aircraft or ship) are exported from Brunei Darussalam or supplied for use as aircraft’s or ship’s stores, and also the owner, or any person acting on his behalf, and any person who for customs purposes signs any document relating to goods exported or intended for exportation or supplied or intended for supply as aircraft’s or ship’s stores as aforesaid;

“goods” includes animals, birds, fish, plants and all kinds of moveable property;

“hover” in the case of a vessel in territorial waters means to linger without apparent lawful purpose, whether such vessel be moving or not moving;

“import” means to bring or cause to be brought into Brunei Darussalam by land, sea or air;

Provided that goods *bona fide* in transit, including goods for transshipment, shall not, for the purpose of levy of customs duties, be deemed to be imported unless they are or become uncustomed goods;

“importer” includes and applies to any owner or other person for the time being possessed of or beneficially interested in any goods at and from the time of importation thereof until such goods are duly removed from customs control;

“inland custom station” means a place prescribed for the collection duties under paragraph (7) of section 133 and in relation to any prescribed route under paragraph (5) of section 133 means a place so prescribed for that route;

“in transit” means taken or sent from any country and brought into Brunei Darussalam by land, sea or air (whether or not landed or transhipped in Brunei Darussalam) for the sole purpose of being carried to another country either by the same or another conveyance;

“legal landing place” means any place for the landing and shipping of goods within the limits of a post defined under the Ports Act and any other place which has been prescribed as a legal place for the landing and shipping of goods;

Cap. 144.

“licensed warehouse” means a warehouse or other place licensed for the warehousing of dutiable goods under section 58;

“liquor” includes all liquids containing more than 2 per centum or pure alcohol by weight but does not include denatured spirits;

“local craft” means any junk, *tongkang*, *perahu*, *kumpit* or other similar type of vessel, and any steam or motor vessel under 15 net registered tons;

“master” means any person (except a pilot or harbour master) having for the time being control or charge of a vessel;

“the Minister” means the Minister responsible for finance;

“officer of customs” means —

(a) the Controller;

(b) any Deputy Controller, Senior Superintendent, Superintendent, Assistant Superintendent or Supervisor of Customs;

(c) any member of the Department of Trade and Customs authorised under the hand of the Controller to act as such;

(d) the persons authorised by section 5 to exercise the powers of senior officers of customs or of officers of customs and any person appointed by His Majesty to act as an officer of customs;

“owner” in respect of a ship includes every person acting as agent for the owner or who receives freight or other charges payable in respect of the ship;

“owner” in respect of goods includes any person (other than an officer of customs acting in his official capacity) being or holding himself out to be the owner, importer, exporter, consignee, agent or

person in possession of, or beneficially interested in, or having any control of, or power of disposition over, the goods;

“petroleum” includes the liquids commonly known by the name of rock oil, Rangoon oil, Burma oil, kerosene and kerosene substitutes, paraffin oil, petrol, gasoline, benzol, benzoline, benzine, naphtha, and any like inflammable liquid, whether a natural product or one that is made from petroleum, coal, schist, shale or any other bituminous substance, or from any products thereof;

“pilot of an aircraft” means every person having or taking command or charge of an aircraft;

“Ports Department warehouse” means a Government warehouse controlled and managed by the Controller of Ports under the Ports Act;

Cap. 144.

“preferential tariff” means the tariff of the different rates of duty imposed by order of Minister of Finance with the approval of His Majesty the Sultan and Yang Di-Pertuan under subsection (2) of section 8;

“preventive vessel” means any vessel employed for the prevention of smuggling or for any other purpose relating to the customs;

“prohibited goods” means goods the import or export of which is prohibited, either absolutely or conditionally by an order under section 28 or by any other written law for the time being in force in Brunei Darussalam;

“proper officer of customs” means any officer of customs acting in the fulfilment of his duties under this Act, whether such duties are assigned to him specially or generally, or expressly or by implication;

“sea” includes inland water;

Provided that His Majesty in Council may from time to time by order in the *Gazette* amend such Schedule;

“senior officer of customs” means any officer included in paragraphs (a) and (b) of the definition of officer of customs and also any other officer of customs authorised by this Act or under the hand of the Controller to act as a senior officer of customs;

“sufferance wharf” means any place other than an approved place of loading or unloading at which the senior officer of customs may, in his discretion, and under such conditions and in such manner as he may direct, either generally or in any particular case, allow any goods to be loaded or unloaded;

“uncustomed goods” means goods in respect of which a breach of the provisions of this Act or of any subsidiary legislation made thereunder has been committed;

“value” in relation to imported goods means the price which an importer would give for the goods on a purchase in the open market if the goods were delivered to him at the place of payment of duty and if freight, insurance, commission and all other costs, charges and expenses (except any customs duties) incidental to the purchase and delivery at such place had been paid;

“vessel” includes any ship or boat or any other description of vessel used in navigation;

“warehouse” means a place for the deposit of goods under customs control.

(2) For the purposes of this Act, goods shall be deemed to be under customs control whilst they are deposited or held in

any Ports Department warehouse, customs or licensed warehouse, post office, or in any vessel, conveyance, aircraft or place from which they may not be removed except with the permission of the proper officer of customs.

PART II

ADMINISTRATION AND POWERS OF OFFICERS

3. (1) The Controller shall be the chief officer of customs and shall have the superintendence of all matters relating to the customs, subject to the direction and control of the Minister.

Administra-
tion.

(2) Deputy Controllers, Senior Superintendents, Superintendents, Assistant Superintendents and Supervisors of Customs shall be subject to the general direction and supervision of the Controller, and, subject thereto, shall have and exercise all powers conferred on the Controller by or under this Act, other than those conferred by section 20.

4. All officers of customs shall be deemed to be public servants within the meaning of the Penal Code.

Officers of
customs to be
public
servants.
Cap. 22.

5. For the purposes of this Act, subject to the general direction and supervision of the Controller, and all police officers not below the rank of Inspector shall have and may exercise all the powers by this Act conferred on senior officers of customs, and all police officers below the rank of Inspector shall have and may exercise all the powers by this Act conferred on officers of customs.

Powers of
Police
Officers.

6. (1) Every officer of customs other than a senior officer of customs when acting against any person under this Act shall, if not in uniform, on demand declare his office and produce to the person against whom he is acting such authority card as the Controller or, in the case of a police officer, the chief police officer, may direct to be carried by such officers.

Authority
cards to be
produced.

(2) It shall not be an offence for any person to refuse to comply with any request, demand or order made by any officer

of customs acting or purporting to act under this Act if such officer being an officer other than a senior officer of customs is not in uniform and refuses to declare his office and produce his authority card, on demand being made by such person.

Persons employed on customs duty to be deemed proper officers for such service.

7. Every person employed on any duty or service relating to the customs by the orders or with the concurrence of the Controller (whether previously or subsequently expressed) shall be deemed to be the proper officer for that duty or service; and every act required by law at any time to be done by, or with any particular officer nominated for such purpose, if done by or with any person appointed by the Controller to act for such particular officer, shall be deemed to be done by or with such particular officer.

PART III

LEVYING OF CUSTOMS DUTIES

Power of Minister of Finance to fix customs duties by orders.
[S 23/89]

8. (1) Minister of Finance with the approval of His Majesty the Sultan and Yang Di-Pertuan may, from time to time, by order signified in the *Gazette*, fix the customs duties to be levied on any goods imported into or exported from Brunei Darussalam and to be paid by the importer or exporter, as the case may be.

(2) Any such order may impose different rates of import duty upon goods which are shown to the satisfaction of the Controller —

(a) to have been consigned from a part of the prescribed countries and either —

- (i) to be the produce of the prescribed countries; or
- (ii) to have been manufactured in the prescribed countries;

(such duties to be distinguished in the order as duties imposed under the preferential tariff), and

(b) upon goods not shown to the satisfaction of the Controller to have been so consigned and produced or manufactured (such duties to be distinguished as duties imposed under the General Tariff).

(3) Notwithstanding the provisions of subsection (2) no goods shall be admitted under the preferential tariff unless the importer shall comply with any regulations made under this Act in that behalf.

(4) Without prejudice to any other remedy, any customs duty payable under Act may be recovered as a civil debt due to the Government.

(5) For the purpose of this section the expression “prescribed countries” means the countries which have been specified as prescribed countries by order made under this section. [S 23/89]

9. The Controller may, from time to time, by notification in the *Gazette*, fix, for the purpose of the levy and payment of customs duties, the value of any dutiable goods. Power to fix value.

10. (1) The proper officer of customs may value, weigh, measure or otherwise examine, or may cause to be valued, weighed, measured or otherwise examined any dutiable or uncustomed goods for the purpose of ascertaining the duty leviable thereon. Valuation by proper officer of customs.

(2) When a value, weight or quantity of any goods has been assessed by the proper officer of customs, such value, weight or quantity shall be presumed to be correct until the contrary is proved.

11. (1) The Minister may, by order, exempt, subject to such conditions as he may deem fit to impose, any class or description of goods or persons from the payment of the whole or any part of any customs duty which may be payable. Powers of exemption.
[S 122/59]
[S 112/61]
[S 184/64]

(2) The Minister may in any particular case —

(a) exempt any person from the payment of the whole or any part of the customs duties which may be payable by such person on any goods; or

(b) may direct the refund to any person of the whole or any part of the customs duties which have been paid by such person on any goods,

and in granting such exemption or directing such refund the Minister may impose such conditions as he may deem fit.

(3) Any goods in respect of which an exemption from the payment of customs duties has been granted under the provisions of subsection (1) or (2) shall be deemed to be dutiable goods until the conditions, if any, subject to which the exemption from duty was granted are fulfilled and shall be liable to all other charges, not being customs duties, to which they would be subject if no such exemption had been granted.

Re-imposition
of duty.

12. (1) If any goods on which customs duty has not been paid by reason of an exemption granted under section 11, cease to comply with the conditions subject to which such exemption was granted or cease to be kept or used by the person or for the purposes qualifying them for such exemption, such goods shall, upon such cesser, become liable to the customs duty to which they would have been liable if they had not been the subject of an exemption, and the person to whom such exemption was granted and any person found in possession of such goods shall be jointly and severally liable to pay such customs duty:

Provided that if the Controller is satisfied that at the time when any such goods become liable to customs duty the value thereof is less than the value at the time when exemption was granted he shall fix the value thereof as at the time when such goods become liable to customs duty and duty shall be paid accordingly.

(2) If any goods, which are liable to customs duty under subsection (1) and on which such duty has not been paid, are found in the possession or on the premises of any person other than the person authorised to possess them under the terms of such exemption, such goods shall, until the contrary is proved,

be deemed to be uncustomed goods within the meaning of this Act.

13. It shall be lawful for the Controller, if it is proved to his satisfaction that any money has been overpaid as customs duties or as warehouse rent or as any other charge under this Act, to order the refund, of the money so overpaid:

Return of duty or other charges overpaid.

Provided that no such refund shall be allowed unless a claim in respect thereof is made within one year after the overpayment was made.

14. Whenever —

(a) through inadvertence, error, collusion, misconception on the part of any officer of customs, or through misstatement as to value, quantity or description by any person, or for any other reason, the whole or any part of any customs duties or other moneys payable under this Act have not been paid; or

Payment of duty, etc., short paid or erroneously refunded.

(b) the whole or any part of such customs duties or other moneys, after having been paid, have been, owing to any cause, erroneously refunded, the person liable to pay such customs duties or other moneys or the person to whom such refund has erroneously been made, as the case may be, shall pay the deficiency or repay the amount paid to him in excess, on demand being made within 12 months from the date on which customs duty was payable or deficient customs duty was paid or the refund was made, as the case may be, and without prejudice to any other remedy for the recovery of the amount due, any dutiable goods belonging to such person which may be in any customs or licensed warehouse may be detained until such customs duty or deficiency be paid or the refund be paid, as the case may be.

15. Where any goods, whether made or produced within Brunei Darussalam or not, being of a class or description liable to any import duty are re-imported into Brunei Darussalam after exportation therefrom, and it is shown to the satisfaction of the

Duty on goods re-imported.

senior officer of customs that any duty chargeable in respect of the goods prior to their exportation was duly paid, either prior to exportation or at any subsequent time, and either that no drawback of any such duty was allowed on exportation, or that any drawback so allowed has been repaid, and

(a) if it is further shown as aforesaid that the goods have not been subjected to any process abroad, the goods shall be exempt from any such duty when the same are re-imported into Brunei Darussalam, unless the rate of duty chargeable on goods of the same class or description at the time when the same are imported into Brunei Darussalam shall exceed the rate paid on the said goods as import duty on first importation, in which case such goods shall be chargeable with duty at a rate equal to the difference between the rate at which the duty previously paid was calculated and the rate in force at the date when such goods are re-imported into Brunei Darussalam;

(b) if the goods at the time when the same are re-imported into Brunei Darussalam are of a class or description liable to an import duty *ad valorem* and it is further shown as aforesaid that the goods have been subjected to a process of repair, renovation or improvement abroad, but that their form or character has not been changed, such goods shall be chargeable with duty as if the amount of the increase in the value of the goods attributable to the process were the whole value thereof and where any sum has been contracted to be paid for the execution of the process, the sum shall be *prima facie* evidence of the that amount, but without prejudice to the powers of the proper officer of customs as to the ascertainment of the value of the goods for the purpose of assessing duty thereon *ad valorem*:

Provided that if the rate of duty chargeable on goods of the same class or description at the time when the same are re-imported into Brunei Darussalam shall exceed the rate paid on the said goods on first importation, then in such case, in addition to the *ad valorem* import duty chargeable hereunder according to

the amount of the increase in the value of the goods attributable to the process, such goods shall be chargeable with additional duty calculated in the manner set out in paragraph (a), as if such goods had not been subjected to any process or repair, renovation or improvement abroad.

16. (1) If any dutiable goods which have been imported are, by unavoidable accident, lost, damaged or destroyed at any time after their arrival within Brunei Darussalam, and before removal from customs control, the Controller may remit the whole or any part of the customs duty payable thereon.

Remission of import duty on goods lost, damaged or destroyed before or after removal from customs control.

(2) After removal of any goods from customs control no abatement of customs duties shall be allowed on any such goods —

(a) on account of damage; or

(b) on account of any claim to pay duty at a preferential rate, unless notice in writing of such claim has been given at or before the time of such removal.

(3) After removal of any goods from customs control no abatement of export duty shall be allowed on any such goods on account of damage, theft or loss.

17. The rate of import duty and the valuation (if any) applicable to any goods shall be —

Calculation of import duty.

(a) in the case of goods lawfully imported —

(i) if such goods (other than petroleum in a licensed warehouse) are warehoused the rate and valuation in force on the day on which the removal of the goods is authorised by the proper officer of customs;

(ii) if such goods consist of petroleum which is in a licensed warehouse, the rate in force on the day on which such petroleum is removed from such warehouse;

- (iii) if such goods are imported by post, the rate and valuation in force on the day on which duty is assessed by the proper officer of customs; and
- (iv) in any other case, the rate and valuation in force on the day on which such goods are released by the proper officer of customs;

(b) in the case of uncustomed goods, the rate and valuation in force on the day on which such goods became uncustomed goods, if known, or the rate and valuation in force on the day of seizure, whichever is the higher.

Calculation of
export duty.

18. The rate of export duty and the valuation (if any) applicable to any goods shall be —

(a) in the case of goods lawfully exported, the rate and valuation in force on the day on which a receipt is issued for the payment of duty:

Provided that when payment of duty in arrears has been permitted under the provisions of section 73 the rate and valuation shall be the rate and valuation in force on the day on which the goods are released by the proper officer of customs, or, as the case may be, by an officer appointed under any law for the time being in force in Brunei Darussalam relating to the collection of export duties on goods exported from Brunei Darussalam;

(b) in the case of uncustomed goods, the rate and valuation in force on the day on which such goods became uncustomed goods, if known, or the rate and valuation in force on the day of seizure, whichever is the higher.

Time of
importation
and
exportation
when duty is
imposed or
repealed.

19. Whenever by virtue of an order made under subsection (1) of section 8 a customs duty is fixed on any goods which previously were not dutiable goods or any customs duty on goods is abolished or when the importation or exportation of any

goods is prohibited or any such prohibition abolished by an order made under section 28 and it becomes necessary for the purpose of this Act to determine the time at which an importation or exportation of any goods made and completed shall be deemed to have had effect, such importation or exportation shall, notwithstanding anything in this Act contained, be deemed to be —

(a) in the case of importation by sea, the time at which the vessel importing such goods had actually come within the limits of the customs port to which such goods are consigned;

(b) in the case of importation by land, the time at which such goods come within Brunei Darussalam;

(c) in the case of importation by air, the time at which the aircraft lands at a customs airport;

(d) in the case of exportation by sea, the time at which shipment of such goods on board the vessel by which they were exported commenced;

(e) in the case of exportation by land, the time at which such goods leave Brunei Darussalam;

(f) in the case of exportation by air, the time at which the aircraft leaves a customs airport;

20. If any question arises as to whether any particular goods are or are not included in a class of goods appearing in an order made under subsection (1) of section 8, such question shall be decided by the Controller.

Questions in respect of goods deemed to be dutiable.

PART IV

IMPORTATION AND EXPORTATION

21. (1) No goods imported by sea shall be landed —

Time and place of landing goods inwardly.

(a) except at a legal landing place or sufferance wharf;

(b) until permission to do so has been received from the proper officer of customs; and,

(c) except on such days and during such times as may be prescribed, unless permission to land goods on other days and during other times has been granted by the proper officer of customs.

(2) Except with the permission of the proper officer of customs, no such goods —

(a) after having been landed or unshipped shall be transhipped; or

(b) after having been put into any boat or craft to be landed shall be removed into any other boat or craft previously to their being landed.

(3) The foregoing provisions of this section shall not apply to fresh fish, whether packed with ice or not, which is landed from any vessel licensed for the purpose of fishing under any written law for the time being in force in Brunei Darussalam or Sarawak or Sabah.

Places of landing of goods imported by air.

22. No goods imported by air shall be landed except at a customs airport.

Time and place imported by land.

23. No goods imported by land shall be imported except at a prescribed place of import and where a route has been prescribed by such route and on the days and during the times prescribed for such importation unless permission to import goods on other days and during other times has been granted by the proper officer of customs.

Time and place of loading goods for export by sea.

24. No goods shall be loaded, or water-borne to be loaded for exportation by sea —

(a) except at a legal landing place or sufferance wharf;

(b) except on such days and during such times as may be prescribed, unless permission to load goods on other days and during other times has been granted by the proper officer of customs.

25. No goods shall be exported by land except at a prescribed place of export and, where a route has been prescribed, by such route and on such days and during such time as may be prescribed unless permission to export goods on other days and during other times has been granted by the proper officer of customs.

Time and place of export by land.

26. No goods shall be exported by air except at a customs airport.

Exportation by air.

27. The Controller may exempt any person from all or any of the provisions of sections 21, 22, 23, 24, 25, and 26 on such conditions as he may deem fit to impose.

Exemption from provisions of sections 21 to 26.

28. Minister of Finance with the approval of His Majesty the Sultan and Yang Di-Pertuan may, by order provide for —

Power of Minister of Finance to prohibit imports or exports.

(a) prohibiting the importation into, or the exportation from, Brunei Darussalam or any part thereof, either absolutely or conditionally, or from or to any specified country, territory or place outside Brunei Darussalam, or the removal from one place to another place in Brunei Darussalam of any goods or class of goods; and

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(b) prohibiting the importation into, or the exportation from, Brunei Darussalam or any part thereof, or removal from one place to another place in Brunei Darussalam of any goods or class of goods, except at specified ports or places.

29. The Controller may, at his discretion, either generally or in a particular case or in respect of a particular area, require security to be given by any person moving dutiable goods within

Power of Controller to require security.

Brunei Darussalam and where any such security has been required to be given no person shall move such goods unless such security has been given. Such security shall not exceed the amount of duty leviable on such goods.

PART V

CLEARANCE

Arriving vessels, unless exempted to produce last clearance.

30. The master or the agent of every vessel arriving at any customs port and not being a vessel to which the exemption under section 36 applies shall produce to the proper officer of customs on arrival the clearance, or other document which it is usual to grant, granted at the last port of call whether such place be situate within or without Brunei Darussalam, and the proper officer of customs may retain the same and the master or the agent of any vessel who fails to comply with the provisions of this section shall be guilty of an offence.

No vessel, unless exempted to sail without clearance.

31. (1) No vessel whether laden or in ballast, not being a vessel to which the exemption under section 36 applies, shall depart from any port in Brunei Darussalam until a clearance has been granted by a proper officer of customs.

(2) Such officer shall not issue a clearance for any vessel until the master of such vessel has declared to that officer the name of the Nation or State to which he claims that she belongs and that officer shall thereupon inscribe that name on the clearance.

(3) If any such vessel shall leave or attempt to leave any port without a clearance the master of the vessel and also the owner and any person who sends or attempts to send the vessel to sea, if that owner or person is party or privy to the offence, shall be guilty of an offence against this Act, and the vessel if she has not left the territorial waters of Brunei Darussalam, may be detained.

(4) Clearances shall be in the form prescribed.

32. (1) If the master of any vessel shall obtain a clearance and shall not sail within 48 hours thereafter, he shall report to the proper officer of customs his reason for not sailing, and if so required obtain a fresh clearance.

Master of vessel not sailing within 48 hours after clearance to report to proper officer of customs.

(2) If the master of any vessel shall fail to comply with the provisions of this section he shall be guilty of an offence against this Act, and the vessel may be detained.

33. The master or agent of any vessel shall, at the time applying for clearance —

Documents to be furnished on applying for clearance.

(a) unless exempted by the senior officer of customs, deliver to the proper officer of customs a list of all goods, dutiable on export, for delivery at another port in Brunei Darussalam;

(b) answer to the proper officer of customs such questions concerning the departure and destination of the vessel as are demanded of him.

34. The proper officer of customs shall endorse upon the clearance granted the list of goods submitted under the provisions of section 33, or at his discretion shall firmly attach the list submitted to the clearance.

List of goods to be endorsed on or attached to the clearance.

35. The proper officer of customs may refuse to grant clearance to any vessel until —

When clearance may be refused.

(a) the provisions of section 33 shall have been complied with;

(b) the provisions of section 53 concerning local craft shall have complied with; and

(c) all charges and penalties due by such vessel or by the owner or master thereof and all duties payable in respect of any goods shipped therein shall have been duly paid, or their payment secured by such guarantee or by deposit at such rate as the proper officer of customs directs; or the agent (if any) of the vessel shall have delivered to the proper officer of customs a declaration

in writing to the effect that he will be liable for all such charges and penalties as aforesaid, and shall have furnished security for the discharge of the same if so required.

Vessels
exempted
from requiring
clearance.

36. (1) The provisions of this Part shall not apply to vessels of the following classes, namely—

(a) vessels other than vessels propelled by mechanical power engaged solely in fishing and licensed for the purpose of fishing under any written law for the time being in force in Brunei Darussalam or Sabah or Sarawak;

(b) vessels whose movements are confined to navigable rivers upstream of a customs station situated at or near the mouth of such river;

(c) privately owned pleasure vessels not plying for hire and not carrying cargo;

(d) vessels of a class in respect of which an order under subsection (2) is in force.

(2) The Minister may, by order, exempt either absolutely or conditionally, any class of vessels from the operation of this Part.

Application
to aircraft.

37. The provisions of this Part shall apply, with such modifications and adaptations as may be necessary, in respect of aircraft arriving at, or departing from, any customs airport.

PART VI

GENERAL PROVISIONS AFFECTING VESSELS IN TERRITORIAL WATERS

Vessels in
territorial
waters.

38. (1) The master of any vessel in territorial waters shall obey any signal made to him from a preventive or police vessel or any instructions given by an officer of customs or police

officer in uniform from any other vessel or any place requiring him to stop or to heave to or to perform any other act.

(2) The master of any vessel found without lawful excuse in territorial waters or without a clearance for a customs port in Brunei Darussalam, or carrying cargo or passengers or both without a proper manifest of such, or found to have passed the customs port named in the papers of such vessel without having made entry and declared at such port, shall be liable on conviction before a magistrate to a fine of \$8,000 and to imprisonment for a term of 12 months.

(3) Any vessel found in the circumstances described in subsection (2) shall be liable to seizure by any officer of customs or police officer and shall be escorted to a convenient port in Brunei Darussalam and may there be detained by such officer of customs or police officer for a period not exceeding 14 days.

(4) Upon an application by the Solicitor General or any senior officer of customs or police officer in any proceedings commenced against the master of such vessel, or if no such proceedings are commenced then upon notice of such application being served on the master, owner or agent or affixed in some prominent place on such vessel, the provisions of subsections (1) and (2) of section 357 of the Criminal Procedure Code shall apply to such vessel and to its cargo and to everything on such vessel as if it were produced before the Court as having been used in the commission of an offence and any magistrate may make any orders for custody, sale, destruction or confiscation authorised under such subsections.

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(5) An appeal shall lie from any order of a magistrate under subsection (4) at the instance of the master, owner or agent of such vessel as if from a conviction by such magistrate

(6) Nothing contained in subsections (2) and (3) shall apply to —

(a) any vessel the master of which satisfies the magistrate that its entry into the waters of Brunei

Darussalam was due to circumstances beyond his control and that its entry and the reason therefore was at the first possible opportunity reported to the nearest customs or police authority and that after such entry no person on board or connected with the vessel has done any act contrary to any written law; or

(b) any local craft if the person in charge thereof of can shew to the satisfaction of a senior officer of customs or magistrate that he has come from a place of departure from which it is unusual to grant or carry clearances or manifests.

Hovering.

39. (1) If any vessel hovers within territorial waters and on examinations is found to be conveying goods dutiable on import or goods of a class the importation of which is prohibited, the master and every member of the crew of such vessel shall be presumed, until the contrary is proved, to have imported uncustomed or prohibited goods, as the case may be.

(2) If any vessel hovers within territorial waters and on examination is found not to be carrying of the goods referred to in subsection (1), such vessel shall be presumed, until the contrary is proved, to be hovering for the purpose of receiving dutiable goods upon which export duty has not been paid or prohibited goods exported contrary to a prohibition and the master and every member of the crew of such vessel shall be guilty of an offence against this act.

Goods unaccounted for to be deemed uncustomed.

40. If goods, other than *bona fide* ship's stores, are found by a proper officer of customs in any vessel in territorial waters and such goods are not correctly accounted for in the manifest or other documents which ought to be aboard such vessel, then such goods shall be deemed to be uncustomed goods and shall be liable to seizure.

Missing goods deemed to have been illegally landed.

41. If in any vessel in territorial waters the quantity of any goods entered in the manifest or other documents which ought to be aboard such vessel, is found by a proper officer of customs to be short, and the deficiency is not accounted for to the satisfaction of such officer, then such goods shall be deemed to have been illegally landed in Brunei Darussalam.

42. When in exercise of the powers conferred by this Act, a proper officer of customs boards any vessel, the master of such vessel shall provide such officer with suitable shelter and accommodation on the vessel remains in territorial waters.

Proper officer of customs may board vessel.

43. (1) When in exercise of the powers conferred by this Act, a proper officer of customs boards any vessel, he shall have free access to every part of the vessel, and shall have the power to fasten down hatchways or entrances to holds, to mark any goods before landing, and to lock-up, seal, mark or otherwise secure any goods, including ship's stores, on board such vessel; and no hatchway or entrance, after having been fastened down by such officer, shall be opened, and no lock, seal or mark shall be opened, broken or altered without the consent of the proper officer of customs while the vessel is within the limits of the customs port or before any goods are delivered to be landed.

Power to seal up and secure hatchways goods, etc., and use of ship's stores.

(2) Ship's stores on board a vessel may be used on such vessel without payment of import duty to such an extent and under such conditions as the Controller may, in his absolute discretion, permit.

44. (1) No dutiable or prohibited goods shall be carried in any local craft except with the permission of the Controller and subject to such conditions as the Controller may impose.

Prohibition of carriage of dutiable goods in local craft.

(2) Such permission may be granted either generally, by notification in the *Gazette*, in respect of all local craft or any class or classes of local craft, or specially, in writing under the hand of the Controller or an officer authorised by him in that behalf, in respect of a particular local craft.

(3) This section shall not apply to any local craft lawfully engaged in transporting cargo from or to a vessel to or from a legal landing place.

45. After the arrival of any vessel within territorial waters —

(a) bulk shall not be broken;

Bulk not to be broken, etc.

(b) no alteration shall be made in the stowage of the cargo so as to facilitate the unloading of any part of

the cargo, before the permission to land goods required by paragraph (b) of subsection (1) of section 21 has been received by the master of such vessel; and

(c) no package shall at any time be opened on board such vessel, without proper cause shown to a senior officer of customs.

Application
to aircraft.

46. The provisions of this Part shall apply, with such modifications and adaptations, as may be necessary, in respect of aircraft arriving at, or departing from, any customs airport.

PART VII

MANIFESTS

Master of
arriving vessel
to present
inward
manifest.

47. (1) Save as provided in subsection (3), the master or agent of every vessel, other than a local craft, arriving in any customs port, shall, within 24 hours after the arrival and before any cargo is unshipped, present to the proper officer of customs at the customs office a true inward manifest of the vessel, substantially in the prescribed form, certified by such master or agent, together with a duplicate copy thereof, containing all particulars as to marks, numbers and contents of each package intended to be landed at the customs port, together with the names of shippers and consignees of the same, if known to him, and the proper officer of customs may, at his discretion, demand, in addition, a complete manifest of the whole cargo of the vessel and a complete list of stores on board such vessel.

(2) A separate transshipment manifest shall be presented in duplicate in the prescribed form in respect of goods to be transhipped at the customs port.

(3) Where it is shown to the satisfaction of the proper officer of customs that it is not practicable to present an inward manifest or a transshipment manifest within a reasonable time after the arrival of a vessel the proper officer of customs may permit cargo to be landed or transhipped prior to presentation of the manifest, but no cargo so landed shall, except with the permission of the proper officer of customs, be delivered to the

importer or consignee or his agent until such time as the manifest has been presented to, and scrutinised by, the proper officer of customs.

48. In any case in which such master or agent is unable to ascertain the particulars of any inward or transshipment cargo or the names of the consignees thereof, he shall sign the declaration, endorsed upon the prescribed form, that he has exercised due diligence to ascertain the particulars of such cargo and the names of the consignees and shall therein enumerate the packages in respect of which his information is defective.

Provision for cases where all particulars are not known.

49. The master of every local craft, whether carrying cargo or not, arriving in any customs port shall attend in person at the customs office and make a written or oral declaration in the prescribed form or manner of all the cargo to be landed from his vessel.

Person in charge of local craft to make declaration on arrival.

50. (1) On completion of the discharge of cargo or within 2 months of such discharge or within such further period as the proper officer of customs may allow, the master or agent of the vessel shall present to the proper officer of customs a certified statement in duplicate of the outturn of such cargo and shall enumerate therein any alteration in the manifest due to short shipment, short landing, over landing or any other cause.

Correction to be made on completion of discharge and liability of master.

(2) If any goods entered in the manifest of any vessel are not accounted for to the satisfaction of the proper officer of customs within 2 months of the presentation of such statement or within such further period as such officer may allow, the master or the agent of the vessel shall be liable to pay to such officer on demand a sum not exceeding \$100, and in addition, in the case of dutiable goods, the agent shall be liable to pay to such officer on demand the amount of duty leviable thereon or, when the correct duty cannot be assessed, an amount not exceeding \$1,000.

(3) If the person liable to the penalties laid down in subsection (2) refuses or fails to pay the penalties demanded of him the senior officer of customs may sue for and recovery such penalties in a Court of a Magistrate.

Pilot or agent of arriving aircraft to present inward manifest.

51. The pilot or agent of every aircraft arriving at a customs airport shall, before any cargo is delivered, present to the proper officer of customs at the customs office a true inward manifest of the aircraft, substantially in the prescribed form, certified by such pilot or agent, together with a duplicate copy thereof, containing all particulars as to marks, numbers and contents of each package consigned to such customs airport, together with the names of consignors and consignees if known to him, and the proper officer of customs may, at his discretion, demand, in addition, a complete manifest of the whole cargo of the aircraft and a complete list of stores on the aircraft.

Outward manifest of vessel to be presented.

52. The owner or agent of any vessel, other than a local craft, leaving any customs port shall, within 2 days of the departure of such vessel, present to the proper officer of customs at the customs office a true outward manifest of the vessel, substantially in the prescribed form, certified by such owner or agent, together with a duplicate copy thereof, containing all particulars as to marks, numbers and contents of each package shipped at the customs port and the names of the shippers and consignees of the same.

Person in charge of local craft to make declaration before departure.

53. The master of any local craft, whether carrying cargo or not, leaving any customs port shall, before the departure of such vessel, attend in person at the customs office, and make a written or oral declaration in the prescribed form or manner of all cargo shipped on board his vessel and the port or ports of destination of such cargo, and if no cargo is being carried he shall make a declaration accordingly:

Provided that in the case of a local craft which in the circumstances mentioned in, and under the provisions of, section 55 is deemed to leave such customs port, no declaration shall be required if the proper officer of customs is satisfied that declaration has already been made at a customs port further upstream.

Pilot of departing aircraft to present outward manifest.

54. The pilot or agent to any aircraft leaving any customs airport shall, before the departure of such aircraft, present to the proper officer of customs at the customs office a true outward manifest of the aircraft, substantially in the prescribed form, certified by such pilot or agent, together with a duplicate copy

thereof, containing all particulars as to marks, numbers and contents of each package loaded at such customs airport and the name of the consignors and consignees of the same.

55. Every local craft proceeding up or down a navigable river, at or near the mouth of which there is a customs port, shall stop at such port and shall, for the purposes of this Part, be deemed to arrive at or leave, as the case may be, such customs port.

Local craft arriving at or leaving certain navigable rivers.

56. The provisions of this Part shall not apply to any vessel to which the exemption referred to in section 36 applies or to any aircraft not engaged in carrying goods.

Saving in respect of exempted vessels and certain aircraft.

PART VIII

WAREHOUSING

57. The Minister with the approval of His Majesty the Sultan and Yang Di-Pertuan may by order signified in the *Gazette* establish and maintain customs warehouses, wherein dutiable goods may be deposited and kept without payment of duty, at any customs port, customs airport, place of import or export or at any inland customs station and may prescribe the amount to be paid as warehouse rent on goods deposited in such warehouses and remit any amount payable as rent.

The Minister may establish customs warehouse.
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58. (1) The Controller may, at his absolute discretion, on payment of such fees as may be fixed by him in each case, grant a licence to any person, hereinafter in this section referred to as the licensee, for warehousing goods liable to customs duties in a place or places specified in such licence.

Licensed warehouse.

(2) Any such licence shall be for such period and subject to such conditions as the Controller in each case may specify in the licence and may at any time be withdrawn by the Controller in his absolute discretion.

(3) A senior officer of customs, or any officer of customs deputed by him for the purpose, shall at all times have access to any licensed warehouse.

(4) If it appears at any time that in any licensed warehouse there is a deficiency in the quantity of dutiable goods which ought to be found therein, the licensee of such warehouse shall, in the absence of proof to the contrary, be presumed to have illegally removed such goods and shall, without prejudice to any proceedings under this Act, be liable to pay to the proper officer of customs the duty leviable on the goods found deficient:

Provided that if it is shown to the satisfaction of the Controller that such deficiency has been caused by unavoidable leakage, breakage or other accident, the Controller may remit the whole or any part of the customs duty leviable on the goods found deficient.

All goods to be deposited in a warehouse on arrival.

59. (1) Subject to the provisions of section 66, all goods imported into Brunei Darussalam shall, on first arrival or landing, be deposited by the importer or his agent in a Ports Department, customs or licensed warehouse or in a warehouse approved by the Controller.

Provided that, subject to such conditions as the Controller may impose either generally, by order or in any special case —

(a) the Controller, if satisfied that on account of the weight, quantity or bulk or any such goods or for any other reason it is not practicable to deposit such goods in a warehouse, may exempt such goods from being so deposited and such goods whilst kept in any other place shall be deemed to be under customs control;

(b) such goods on first landing at a customs airport where there is no warehouse may be dealt with as the Controller may direct; and

(c) where the bill of lading, invoice or other document concerning any goods landed at a customs port or customs airport show them to be consigned to any person at any place in Brunei Darussalam where there is a senior officer of customs then a senior officer of customs at such customs port or customs airport may in

his discretion permit such goods to be forwarded to that place in which event such goods shall be deemed for the purposes of this Part to have first arrived on reaching such place and shall for the purposes of Part IX not be deemed to have been imported or landed until their arrival at such place.

(2) No goods deposited in a warehouse or exempted from being deposited, under subsection (1), shall be removed from such warehouse or from any place except with the permission of the proper officer of customs.

(3) Dutiable goods deposited in a warehouse not being a customs or licensed warehouse, shall be removed therefrom within 10 days or such extended time as the senior officer of customs may allow, of their being so deposited and if the goods are not so removed, the proper officer of customs may remove them to a Ports Department or customs warehouse at the expense of the owner of such goods.

(4) The provision of this section shall not apply—

(a) to goods imported by post;

(b) to goods imported by land or by sea at places of import where there is no customs warehouse;

(c) to passengers baggage, containing personal effects only.

60. (1) A warehouse deposit receipt shall be issued by the proper office of customs for all dutiable goods deposited in a customs warehouse;

Warehouse
deposit
receipts.

Provided that in the case of dutiable goods imported by land no such receipt shall be issued except at the request of the importer or his agent.

(2) Where the warehouse deposit receipt is lost, a copy of such receipt duly certified by the proper office of customs shall be supplied to the owner of the dutiable goods or his agent on delivery of an indemnity bond approved by a senior officer of

customs and delivered to him at the customs office, securing the Government against any claim for loss owing to wrong delivery of the goods deposited.

(3) The holder or endorsee in due course of a warehouse deposit receipt or a certified copy thereof granted under the provision of subsection (2) shall be deemed, for the purpose of this Act, to be the owner of the goods deposited, and delivery to the holder or endorsee or the agent of the holder or endorsee of such warehouse deposit receipt or certified copy thereof shall be a good and lawful delivery.

Power to open and examine packages.

61. A senior officer of customs may, at any time, direct that any goods or package lodged in any Ports Department, customs or licensed warehouse shall be opened, weighed or otherwise examined, and after such goods or package has been so opened or examined, may cause the same to be sealed or marked in such manner as he sees fit.

Detention of goods where doubt exists.

62. (1) The proper officer of customs may detain in a customs warehouse any goods if he is in doubt whether such goods are dutiable or not.

(2) In every such case the proper officer of customs shall forthwith make a report to a senior officer of customs, who shall, without undue delay, decide whether such goods are dutiable or not.

(3) If any such goods are found not to be dutiable, no warehouse rent, handling or other charges shall be payable in respect thereof.

(4) The proper officer of customs, in his discretion and subject to such conditions as he may think fit, may permit the deposit of non-dutiable goods in a customs warehouse.

Protection of Government from liability.

63. The Government shall not be liable to make good any loss sustained in respect of any goods by fire, theft, damage or other cause while such goods are in any customs warehouse or in the lawful custody or control of any officer of customs, unless such loss is caused by the wilful neglect, or default of an officer

of customs or of a person employed by the Government in connection with the customs.

64. No officer of customs or other person employed by the Government in connection with the customs shall be liable to make good any loss sustained in respect of any goods by fire, theft, damage or other cause while such goods are in any customs warehouse or in the lawful custody or control of such officer or any other officer of customs or person employed in connection with customs unless such loss is caused by his wilful neglect, or default.

Protection of officer of customs from liability.

65. The owner of any goods deposited in a customs warehouse or his agent shall pay to the proper officer of customs the warehouse rent at the prescribed rates which may be due in respect of such goods.

Payment of warehouse rent.

Such rent shall be payable at the end of each month whether or not a demand in respect thereof is made and if not so paid may be recovered as a civil debt due to the Government.

66. No goods of an inflammable nature or of such a nature as to be likely to cause detriment to other goods shall be deposited in any customs warehouse without the sanction of a senior officer of customs, and if any such goods are landed lawfully outside the limits of a port declared under the Ports Act they may be deposited, at the expense and risk of the importer thereof, in any place but are such limits as aforesaid that a senior officer of customs may deem fit, and whilst so deposited such goods shall be deemed to be in a customs warehouse, and unless within a period of 14 days they have been duly cleared or warehoused in some approved warehouse, shall at the expiration of that period, be liable to be dealt with in the same manner as goods of a similar nature actually deposited in a customs warehouse. Such goods shall be chargeable with such expenses for securing, watching and guarding the same until sold, cleared or warehoused as aforesaid, as the senior officer of customs may deem fit.

Dangerous goods.

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67. (1) Goods of a perishable nature deposited in a customs warehouse shall be cleared forthwith, and if not so cleared a senior officer of customs may sell such goods.

Government lien over goods deposited in a customs warehouse.

(2) Goods of an inflammable nature deposited in a customs warehouse shall be cleared within 14 days of the date of deposit.

(3) Goods not of a perishable or inflammable nature deposited in a customs warehouse shall be cleared within 6 months of the date of deposit: Provided that a senior officer of customs may permit any goods to remain deposited for such further periods of not less than one month at a time and not exceeding 12 months in the aggregate as he may in his discretion think fit.

(4) If any goods are not cleared within the time specified in subsection (2) or (3) or if any warehouse rent in respect of any goods is not duly paid in the manner provided by section 65, a senior officer of customs may, after giving not less than 14 days notice in writing to the owner (if the name and address of such owner are known to him), or after due notice in the *Gazette* (if the name and address of such owner are not known to him), sell such goods by auction.

(5) The proceeds of the sale of any such goods shall be applied to the payment of any customs duties, warehouse rent, port dues and rates and other charges which may be due in respect of such goods or of any other goods deposited by the owner of such goods, and the surplus, if any, shall be paid to the owner of such goods, and if the owner cannot be found within 2 months of the sale, such surplus shall be paid to general revenue of Brunei Darussalam.

(6) If at the sale of any goods no sufficient bid is forthcoming to defray the customs duties, warehouse rent, port dues and rates and other charges which are due in respect of such goods, and goods shall be forfeited to Government and shall be disposed of in such manner as the Controller may direct.

(7) Every auction sale under this section shall be conducted by or in the presence of a senior officer of customs.

68. No dutiable goods shall be removed from Ports Department customs control except—

Removal of dutiable goods from a warehouse.

(a) after payment of the import duty payable thereon;

(b) if such goods are in a Ports Department or customs or licensed warehouse, under such conditions as the Controller may impose, for deposit in another customs or licensed warehouse; or

(c) under such conditions as the Controller may impose, for re-export from Brunei Darussalam;

and in no case shall any goods be removed from a customs warehouse until all warehouse rent and other charges due in respect thereof have been paid:

Provided that petroleum in a licensed warehouse may be removed therefrom before payment of the import duty if security has been lodged to the satisfaction of the Controller by which payment of duty is guaranteed within such time as the Controller may allow.

69. Goods arriving in Brunei Darussalam for transshipment and landed at a customs port to await the arrival of the vessel to which they are intended to be transhipped shall, if they are dutiable on import or on export or prohibited to be imported or exported, or belong to a class of such goods, be deposited in a Ports Department, customs or licensed warehouse or in a warehouse approved by the Controller and shall be liable to warehouse rent at the appropriate prescribed rates applicable to such goods under the Ports Acts or this Act, or, if such rates are not prescribed, at the appropriate prescribed rates applicable under the Ports Act or this Act, to goods warehouse prior to export:

Landing of goods for transshipment.

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Provided that the Controller may exempt any particular goods from the operation of this section.

70. (1) All necessary operations relating to the loading, shipping, unloading, unshipping, landing, carrying, weighing,

Weighing and handling fees.

opening, unpacking, repacking, bulking, sorting and marking of goods, including passenger's baggage, whether warehoused or not, shall be performed by or at the expense of the owner, importer, exporter, consignor, consignee or agent as the case may be:

Cap. 144. Provided that outside the limits of a port declared under the Ports Act the proper officer of customs may, at his discretion, direct that any such operations shall be performed by officers of customs or other persons under his control, and in any such case such operation shall be performed at the expense of the owner, importer, exporter, consignor, consignee or agent as the case may be.

(2) The Minister may prescribe the charges to be paid for operations performed under this section by officers of customs or other persons under the control of the proper officer of customs and may remit any charge due.

PART IX

DECLARATION OF GOODS

A — Dutiable goods

Declaration of dutiable goods imported.

71. (1) Every importer of dutiable goods, warehoused under the provisions of section 59 or exempted from being warehoused by virtue of paragraph (a) of the proviso to subsection (1) of section 59 shall, before removal of such goods or any part thereof from customs control or if such goods are not removed within a period of 10 days from the date on which they were landed, within such period, make personally or by his agent to the proper officer of customs at such warehouse, a declaration, substantially in the prescribed form of the goods imported, and in any particular case the proper officer of customs may, by notice in writing, require the importer either personally or by his agent to submit such declaration within 3 days of the receipt of such notice, and the importer shall be required to comply with such notice if it is within his power to do so:

Provided that in the case of goods imported by land such declaration shall be made on arrival at the inland customs station on the prescribed route within such time after arrival in Brunei Darussalam of such goods as may be prescribed.

(2) Every importer of dutiable goods exempted from being warehoused under the provisions of subsection (1) of section 59 shall, upon arrival of such goods at a place of import, make personally or by his agent to the proper officer of customs at such place of import, a declaration, in such manner or in such form as may be prescribed, of the goods imported, and shall pay the duties and other charges leviable thereon.

(3) The addressee of any dutiable goods imported by post shall, on demand by the proper officer of customs, make personally or by his agent to such officer a declaration, substantially in the prescribed form, of the goods imported.

72. (1) The declaration referred to in section 71 shall give a full and true account of the number and description of packages and of the description, weight, measure or quantity, and value of all such dutiable goods, and of the country of origin of such goods:

Declaration to give a full and true account.

Provided that if it is shown to the satisfaction of the proper officer of customs that such goods are urgently required for home consumption and that it is not within the power of the importer to furnish all the details required, such officer may, at his discretion, release the goods on payment of such duty as he may estimate to be leviable thereon, together with a deposit of such amount as such officer may determine not exceeding such estimated duty and on an undertaking being given by the importer or his agent to furnish a correct declaration within 2 months or such further period as the proper officer of customs may allow.

(2) On the submission of a correct declaration the proper amount of duty and other charges leviable shall be assessed and any money paid and deposited in excess of such amount shall be returned to the importer or his agent and in default of such submission within the aforesaid period the

deposit shall be forfeited and paid into the general revenue of Brunei Darussalam.

Declaration of dutiable goods to be exported.

73. (1) Every exporter of dutiable goods shall —

(a) personally or by his agent make a declaration in the prescribed form, of the goods to be exported. Such declaration shall be made to the proper officer of customs specified in subsection (2);

(b) produced such goods to such proper officer of customs; and

(c) pay the export duty and any other charges leviable thereon to such proper officer of customs:

Provided that, the Controller may permit the export of any goods without prior payment of duty —

(a) if it is shown to his satisfaction that unnecessary delay will be occasioned in ascertaining the net weight of the goods before the export thereof is permitted; and

(b) if security has been given to his satisfaction for the payment of duty within such time as he may determine.

(2) The declaration referred to in paragraph (a) of subsection (1) shall be made at the time and to the officer of customs hereunder specified, that is to say —

(a) if export is to be by sea, before such goods are shipped, or water-borne to be shipped, to the proper officer of customs at the customs port of shipment;

(b) if goods are exported by land, before export, to the proper officer of customs at the inland customs station on the prescribed route; or

(c) if goods are to be exported by air, before export, to the proper officer of customs at the customs airport.

(3) The declaration referred to in paragraph (a) of subsection (1) shall give a full and true account of the number and description of packages and of the description, weight, measure or quantity, and value of all such dutiable goods, and the country of origin of such goods.

B — Non-dutiable goods

74. (1) When any goods which are not dutiable on import are imported by sea or air, the importer thereof shall, before taking delivery of such goods and in any case not later than 10 days after the arrival of the vessel or aircraft in which such goods are imported, make personally or by his agent to the proper officer of customs at the customs port at which such goods are landed, or at the customs airport at which such goods are imported, a declaration substantially in the prescribed form, giving particular of the goods imported.

Declaration of non-dutiable goods imported by sea or air.

(2) No owner, master or agent of any vessel, and no pilot or agent of any aircraft arriving at any customs port or airport shall deliver any inward cargo consisting of goods which are not dutiable until he has been authorised to do so by the proper officer of customs to whom the declaration referred to in subsection (1) has been made.

75. When any goods which are not dutiable on import are imported by land, the importer thereof shall within 48 hours of the arrival of such goods at the inland customs station on the prescribed route make personally or by his agent to the proper officer of customs at the such inland customs station a written or verbal declaration substantially in the prescribed form, giving particulars of the goods imported, and shall not proceed till this has been done.

Declaration of non-dutiable goods imported by land.

76. (1) When any goods which are not dutiable on export are exported by sea or air the exporter thereof shall, before such goods are shipped or waterborne to be shipped or loaded into

Declaration of non-dutiable goods exported by sea or air.

aircraft, make personally or by his agent to the proper officer of customs at the customs port at which such goods are to be shipped or at the customs airport at which such goods are to be loaded, a declaration substantially in the prescribed form, giving particulars of the goods to be exported.

(2) No owner, master or agent of any vessel, and no pilot or agent of any aircraft shall allow any goods which are not dutiable on export to be shipped or loaded until he has been authorised by the proper officer of customs to do so.

Declaration of non-dutiable goods exported by land.

77. When any goods which are not dutiable on export are exported by land, the exporter thereof shall make personally or by his agent to the proper officer of customs at the inland customs station on the prescribed route a declaration, substantially in the prescribed form, giving particulars of the goods to be exported, and shall not proceed till this has been done.

Declarations to give a full and true account.

78. The declarations referred to in section 74, 75, 76 and 77 shall give a full and true account of the particulars for which provision is made in the respective prescribed forms:

Provided that, if, in the case of imported goods, any of the particulars required be unknown to the importer thereof, delivery of such goods may be given on a written undertaking of the importer or his agent to furnish the necessary information to the proper officer of customs, within 10 days of such undertaking or such further period as the proper officer of customs may allow and if the importer or his agent fails to furnish the information as required by the undertaking he shall be deemed to have failed to make the required declaration.

C — General Provision

Passengers' baggage, etc., and postal goods exempted.

79. The provisions of this Part shall not apply—

(a) to accompanies passengers' baggage or personal effects;

(b) to fresh fish locally taken; and

(c) except as provided by subsection (3) of section 71, to any goods sent by post.

80. Nothing in this Part contained shall release any person from any obligation imposed by or under any written law for the time being in force in Brunei Darussalam regulating the movement of any special goods or currency.

Saving provision.

81. (1) No person shall act as agent for transacting business relating to the import or export of any goods or luggage or the entry or clearance of any vessel, except with the permission of a senior officer of customs.

Control of agents.

(2) When any person applies to a senior officer of customs for permission to act as agent on behalf of another person, such officer may require the applicant to produce a written authority from the person on whose behalf he is to act and in default of the production of such authority such officer may refuse such permission.

(3) Before granting such permission, a senior officer of customs may require such agent to give such security as he may consider adequate for the faithful and incorrupt conduct of such agent and of his clerks acting for him both as regards the customs and his employers.

(4) A senior officer of customs may suspend or cancel any permission granted under this section, if the agent commits any breach of this Act or of any regulation made hereunder or if he fails to comply with any direction given by an officer of customs with regard to the business transacted by the agent.

(5) Any person aggrieved by the decision of a senior officer of customs in respect of any of the following matters, that is to say —

(a) refusal to grant permission;

(b) the nature or the amount of security required from the agent;

(c) suspension or cancellation of the permission, may, within one month from the date on which the decision is notified to him, appeal to the Controller, whose decision shall be final.

(6) Any person who acts as agent when permission has not been granted to him under this section or while such permission is cancelled or suspended, or who makes or causes to be made a declaration of any goods without being duly authorised for that purpose by the proprietor or consignee of such goods shall be guilty of an offence: Penalty, a fine of \$4,000.

(7) The clerk or servant of any person or firm who deposits with a senior officer of customs a signed authority authorising him so to do may transact business generally at any customs office on behalf of such person or firm:

Provided that a senior officer of customs may refuse to transact business with such clerk or servant unless such person or a member of such firm identifies such clerk or servant to such officer as empowered to transact such business.

Person in charge of goods imported, etc., by land to be deemed agents.

82. Notwithstanding anything contained in section 81 the person in charge of any goods imported or exported by land, who makes the declaration required by this Part shall be deemed to be the agent of the importer or exporter, as the case may be.

Copies of declaration.

83. Every declaration required to be made under this Act shall be in duplicate or in such other number of copies, as the person, to whom such declaration is required to be made, may direct.

PART X

DRAWBACK

Conditions under which drawback may be paid.

84. (1) When any goods, other than goods affected by section 86, upon which import duty has been paid are re-exported, nine-tenths of the duties calculated in accordance with

the provisions of subsection (2) may be repaid as drawback, if —

(a) the goods are identified to the satisfaction of a senior officer of customs at the customs port or customs airport at which such goods are shipped or loaded for re-export, or at the place of re-export;

(b) the drawback claimed in respect of any one consignment of re-exported goods is not less than \$100;

(c) the goods are re-exported within 12 months of the date upon which the duty was paid;

(d) payment of drawback upon goods of a class to which the goods to be re-exported belong has not been prohibited by regulations made under this Act;

(e) written notice has been given to a senior officer of customs at or before the time of re-export that a claim for drawback will be made, and such claim is made and established to the satisfaction of a senior officer of customs within 3 months of the date of re-export; and

(f) except as provided by section 87, the goods have not been used after importation.

(2) The amount of drawback allowed shall be calculated at the rate of the customs duty levied at the time of import.

85. Every person claiming drawback on any goods re-exported shall, personally or by his agent, make to a senior officer of customs a declaration, substantially in the prescribed form, that such goods have actually been re-exported and have not been relanded and are not intended to be relanded at any customs port, customs airport or place in Brunei Darussalam or within any port of Brunei Darussalam, where goods of a like description are liable to import duty.

Declaration by claimant.

86. The Controller may, at his discretion, allow drawback of import duty on goods which suffer deterioration or damage and

Drawback on destroyed goods.

are destroyed in the presence of a senior officer of customs, if the conditions set out in section 84 in respect of re-exported goods are fulfilled in respect of such destroyed goods, and the provision of section 84 and 85 shall, with such modifications as the circumstances of the case may require, apply to such destroyed goods.

Refund to visitors and owners of samples.

87. When any personal effects or other goods which have been imported by visitors to Brunei Darussalam for their personal use, or samples imported by commercial travellers, or trade samples or such other goods as may be prescribed, on which import customs duty has been paid are re-exported within 3 months from the date of importation or within such further period as the Controller may, either generally or in any special case allow, the Controller may allow a drawback of such import duty.

Export and re-import of trade samples free of duty.

88. The Controller may, in any case, at his discretion and subject to such restriction as he may deem fit to impose, allow any goods, which on the exportation thereof have been declared as trade samples, to be re-imported free of duty.

Drawback on imported goods used in manufacture.

89. Where any goods are prescribed to be goods in respect of which drawback may be allowed on re-export as part or ingredient of any goods manufactured in Brunei Darussalam and such prescribed goods are so re-exported by the manufacturer as part or ingredient of any goods manufactured in Brunei Darussalam, then, if import duty has been paid on such prescribed goods the Controller may, on such re-export, allow to the manufacturer a drawback of the duty so paid at such rates as may be prescribed, if —

(a) the goods exported have been manufactured on premises approved by the Controller;

(b) provision to the satisfaction of the Controller has been made for the control and supervision on such premises of the deposit and issue for use of the prescribed goods;

(c) such books of account are kept as the Controller may require for the purpose of ascertaining

the quantity of the prescribed goods used in such manufacture;

(d) such prescribed goods have been imported by the manufacturer; and

(e) such prescribed goods are re-exported within 12 months of the date upon which import duty was paid.

PART XI

MISCELLANEOUS

90. On demand of the proper officer of customs the importer or exporter of any goods or his agent shall produce to such officer all invoices, bill of landing, certificates of origin or of analysis and any other documents, which such officer may require to test the accuracy of any declaration made by such importer or exporter to any officer of customs.

Documents to be produced on demand.

91. Every person required by the officer of customs to give information on any subject into which it is such officer's duty to enquire under this Act and which it is in such person's power to give shall be legally bound to give such information.

Persons legally bound to give information.

92. Every notice or document, required by this Act or by any regulation made hereunder, to be served on any person may be served personally upon such person or may be served by sending such notice or document to him by registered post at his usual or last known place of abode, and in the latter case shall, except for the notice referred to in subsection (4) of section 67, be deemed to have been served on him at the time at which it would have been delivered to him in the ordinary course of the post.

Service of notices.

93. (1) Notwithstanding anything in this Act contained, every passenger or other person arriving in or leaving Brunei Darussalam shall declare all dutiable or prohibited goods in his possession, either on his person or in any baggage or in any vehicle, to the proper officer of customs, and if he fails so to do such goods shall be deemed to be uncustomed goods.

Baggage of passengers.

(2) The baggage of passengers may be examined and delivered in such manner as the Controller may direct, and it shall be the duty of the person in charge of such baggage to produce, open, unpack and repack such baggage.

The proper officer of customs may take samples.

94. (1) The proper officer of customs may at any time, if his duty requires, take samples of any goods to ascertain whether they are goods of a description liable to any customs duty, or to ascertain the customs duty payable on such goods or for such other purposes as the proper officer of customs may deem necessary, and such samples may be disposed of in such manner as the Controller shall direct.

(2) No payment shall be made for the cost of any sample taken but the proper officer of customs shall, on demand, give a receipt for any such sample.

Packing of dutiable goods.

95. No dutiable goods shall be packed in any manner calculated to deceive an officer of customs so that a proper account of such goods may not be taken.

Addition or deduction of new or altered import duties in the case of contract.

96. (1) Where any new import duty is imposed or where any such duty is increased, and any goods in respect of which the duty is payable are delivered after the day on which the new or increased duty takes effect, in pursuance of a contract made before that day, the seller of the goods may, in the absence of agreement to the contrary, recover from the purchaser of the goods as an addition to the contract price, a sum equal to any amount paid by him in respect of the goods on account of the new duty or increase of duty, as the case may be.

(2) Where any import duty is cancelled or decreased and any goods affected by the duty are delivered after the day on which the duty is cancelled or the decrease in the duty takes effect, in pursuance of a contract made before that day, the purchaser of the goods, in the absence of agreement to the contrary, may if the seller of the goods has had in respect of those goods the benefit of the cancellation or decrease of the duty, deduct from the contract price a sum equal to the amount of the duty or decrease of duty, as the case may be.

PART XII

SEARCH, SEIZURE AND ARREST

97. (1) Whenever it appears to any magistrate, upon written information upon oath, and after any enquiry which he may think necessary, that there is reasonable cause to believe that in any dwelling house, shop, or other building or place, there are concealed or deposited any prohibited or uncustomed goods or goods liable to forfeiture under this Act or under any regulation made hereunder, or as to which any offence under this Act or such regulation has been committed, or any books or documents relating to any such goods such magistrate may issue a warrant authorising any officer of customs named therein, by day or night and with or without assistance—

Magistrate
may issue
search
warrant.

(a) to enter such dwelling-house, shop, or other building or place and there to search for and seize and goods reasonably suspected of being prohibited or uncustomed goods, or goods liable to forfeiture under this Act or any regulation made hereunder, or as to which any offence under this Act or such regulation is suspended to have been committed, and any books or documents which may reasonably be believed to contain information as to any offence under this Act or any regulation made thereunder.

(b) to arrest any person or persons being in such dwelling-house, shop, building or place, in whose possession such goods as aforesaid may be found, or whom such officer may reasonably suspect to have concealed or deposited such goods.

(2) Such officer may if it is necessary so to do—

(a) break open any outer or inner door of such dwelling-house, shop, or other building or place and enter thereunto;

(b) forcibly entry such place and every part thereof;

(c) remove by force any obstruction to such entry, search, seizure and removal as he is empowered to effect;

(d) detain every person found in such place until such place has been searched.

When search may be made without warrant.

98. Whenever it appears to any senior officer of customs that there is reasonable cause to believe that in dwelling-house, shop, or other building or place there are concealed or deposited any prohibited or uncustomed goods or goods liable to forfeiture under this Act or any regulation made thereunder or as to which an offence under this Act or such regulation has been committed, and if he has reasonable grounds for believing that by reason of the delay in obtaining a search warrant such goods are likely to be removed, such officer may exercise in, upon and in respect of such dwelling-house, shop, or other building or place all the powers mentioned in section 97 in as full and ample a manner as if he were authorised so to do by a warrant issued under that section.

Power to search vessels and aircraft.

99. (1) A proper officer of customs may —

(a) go on board any vessel or aircraft in any customs port or customs airport or place or within territorial waters;

(b) require the master of such vessel or the pilot of such aircraft to give such information relating to the vessel or aircraft, cargo, stores, crew, passengers or voyage as he may deem necessary;

(c) rummage and search all parts of such vessel or aircraft for prohibited or uncustomed goods;

(d) examine all goods on board and all goods then being loaded or unloaded;

(e) demand all documents which ought to be on board such vessel or aircraft; and

(f) require all or any such documents to be brought to him for inspection;

and the master of any vessel and the pilot of any aircraft refusing to allow such officer to board or search such vessel or aircraft, or refusing to give such information or to produce such documents on demand shall be guilty of an offence against this Act.

(2) If any place, box or chest on board such vessel or aircraft is locked and the key withheld, such officer may break open any such place, box or chest.

(3) If any goods be found concealed on board any vessel or aircraft, they shall be deemed to be uncustomed goods.

100. Every senior officer of customs shall be entitled to exercise in and upon and in respect of any vessel, aircraft, landing place or wharf all the powers mentioned in section 97 in as full and ample a manner as if he were authorised so to do by a warrant issued under that section.

Senior officers of customs to exercise powers of search.

101. (1) The person in charge or in control of any vehicle arriving at a prescribed place of import and export shall, on arrival at such place, produce his vehicle to the proper officer of customs, and shall, if so required, move his vehicle to another place for examination, and shall not proceed until permission to do so has been given by the proper officer of customs.

Officers of customs may stop and search conveyances.

(2) Any officer of customs may stop and examine any vehicle for the purpose of ascertaining whether any uncustomed or prohibited goods are contained therein, and the person in control or in charge of such vehicle shall, if required so to do by such officer, stop such vehicle and allow such officer to examine the same.

102. Any proper officer of customs may examine any goods in the course of being imported or exported or intended to be imported or exported and may for the purposes of such examination bring the same to a customs office and may open any package or receptacle.

Power to open packages and examine goods.

Search of
persons
arriving in
Brunei
Darussalam.

103. Any person landing, or being about to land, or having recently landed, from any vessel or aircraft, or leaving any vessel or aircraft in territorial waters, whether for the purpose of landing or otherwise, or entering or having recently entered Brunei Darussalam by land shall, on demand by any proper officer of customs either permit his person, goods and baggage to be searched by such officer, or together with such goods and baggage accompany such officer to a customs office of police station and there permit his person, goods and baggage to be searched by an officer of customs:

Provided that —

(a) any person who requests that his person be searched in the presence of a senior officer of customs shall not be searched except in the presence of and under the supervision of such officer, but such person may be detained until the arrival of such officer, or taken to any customs office or police station where such officer may be found;

(b) the goods and baggage of any person who requests to be present when they are searched and so present himself within a reasonable time shall not be searched except in his presence;

(c) no female shall be searched except by a female.

Seizure of
goods the
subject of an
offence.

104. (1) All goods in respect of which there has been, or there is, reasonable cause to suspect that there has been committed any offence against this Act or any regulation made hereunder, or any breach of any of the provisions of this Act or of any regulation made hereunder or of any restriction or condition subject to or upon which any licence or permit has been granted, together with any receptacle, package, conveyance, vessel not exceeding 200 tons nett registered tonnage, or aircraft, in which the same may have been found or which has been used in connection with such offence or breach, and any books or documents which may reasonably be believed

to have a bearing on the case, may be seized by any officer of customs in any place either on land or in territorial waters.

(2) All such goods and such receptacles, packages, conveyances, vessels or aircraft shall, as soon as conveniently may be, be delivered into the care of a proper officer of customs whose duty it is to receive the same.

(3) Whenever any goods, conveyances, vessels or aircraft are seized under this Act, the seizing officer shall forthwith give notice in writing of such seizure and the grounds thereof to the owner of such goods, if known, either by either by delivering such notice to him personally or by post at his place of abode; if known:

Provided that such notice shall not be required to be given where such seizure is made on the person, or in the presence of the offender or the owner or his agent, or in the case of a vessel or an aircraft, in the presence of the master or pilot, as the case may be.

(4) The provisions of this section relating to the seizure of goods shall apply to all the contents of any package or receptacle in which the same are found and to any article used to conceal the same.

(5) The provisions of this section relating to the seizure of any vessel or aircraft shall apply also to the tackle, equipment and furnishing of such vessel or aircraft.

(6) The provisions of this section relating to the seizure of conveyances shall apply to all equipment thereof and to any animal by which the same is drawn.

(7) Any goods of a perishable nature or any animal seized under the provisions of this section may be sold forthwith and the proceeds of sale held to abide the result of any prosecution or claim.

105. When any conveyance, vessel or aircraft has been seized under this Act, a senior officer of customs may, at his discretion, temporarily return such conveyance, vessel or aircraft to the owner of the same on security being furnished to the satisfaction

Release of
conveyance,
vessel or
aircraft under
bond.

of such officer that the conveyance, vessel or aircraft shall be surrendered to him on demand.

Powers of
arrest.

106. (1) Any officer of customs may arrest without warrant —

(a) any person found committing or attempting to commit, or employing or aiding any person to commit, or abetting the commission of, an offence against this Act or any regulation made hereunder;

(b) any person whom he may reasonably suspect to have in his possession any uncustomed or prohibited goods or any goods liable to seizure under this Act;

(c) any person against whom a reasonable suspicion exists that he has been guilty of an offence against this Act or any regulation made hereunder,

and may search or cause to be searched, any person so arrested:

Provided that no female shall be searched except by a female.

(2) Every person so arrested shall be taken to a police station.

(3) If any person liable to arrest under this Act is not arrested at the time of committing the offence for which he is so liable, or after arrest makes his escape, he may at any time afterwards be arrested and be dealt with as if he had been arrested at the time of committing such offence.

PART XIII

PROVISIONS AS TO TRIALS AND PROCEEDINGS

Who may
prosecute.

107. Prosecutions in respect of offences committed under this Act or any regulation made hereunder may be conducted by a senior officer of customs specially authorised in writing in that behalf by the Controller.

108. Notwithstanding the provisions of any written law to the contrary, a Court of a Magistrate shall have jurisdiction to try any offence under this Act and to award the full punishment for any offence.

Court of a Magistrate to have full jurisdiction.

109. If in any prosecution in respect of any good seized for non-payment of duties or for any other cause of forfeiture or for the recovery of any penalty or penalties or for the condemnation or forfeiture of any vessels or goods or for any offence under this Act, any dispute arises whether the customs duties have been paid in respect of such goods, or whether the same have been lawfully imported or exported or lawfully landed or loaded, or concerning the place whence such goods were brought or where such goods were loaded, then and in every such case the burden of proof thereof shall lie on the defendant in such prosecution.

Burden of proof.

110. When any goods suspected of being prohibited or uncustomed or otherwise liable to seizure have been seized, it shall be sufficient to open, examine, and if necessary test the contents of 10 per centum only of each description of package or receptacle in which such goods are contained and the Court shall presume that the goods contained in the unopened packages or receptacles are of the same nature, quantity and quality as those found in the similar packages or receptacles which have been opened.

Proportional examination or testing of goods seized to be accepted by courts.

111. (1) In any prosecution for a breach of a provision of this Act or of any regulation made hereunder, a certificate of analysis purporting to be under the hand of an analyst shall, on production thereof by the prosecutor, be sufficient evidence of the facts stated therein unless the defendant requires that the analyst be called as a witness, in which case he shall give notice thereof to the prosecutor not less than 7 clear day before the day on which the summons is returnable.

Evidence of analysis may be given in writing.

(2) In like manner a certificate of analysis purporting to be under the hand of an analyst shall, on production thereof by the defendant, be sufficient evidence of the facts stated therein, unless the prosecutor requires that the analyst be called as a witness.

(3) A copy of the certificate referred to in subsection (1) or (2) shall be sent to the defendant or the prosecutor as the case may be at least 7 clear days before the day fixed for the hearing, and if it is not so sent the Court may adjourn the hearing on such terms as it may think proper.

(4) Analysts are by this Act bound to state the truth in certificates of analysis under their hands.

(5) In this section the word “analyst” includes —

(a) any person employed for the time being wholly or partly on analytical work in any department of the Government;

(b) any chemist employed by the Governments of Brunei Darussalam, Malaysia and Singapore: Provided that no such chemist shall, without his consent, be called as a witness in connection with any report signed by him;

(c) any other person to whom this section may be declared by the Minister, by notification in the *Gazette*, to apply.

(6) If an analyst is called by the defendant as provided by subsection (1), he shall be called at the expense of the defendant unless the Court otherwise directs.

(7) If in any trial or proceeding under this Act it is necessary to determine the alcoholic content of any liquor, the certificate of a senior officer of customs as to such alcoholic contents shall be accepted as if such officer were an analyst and in any such case the provisions of subsections (1), (4) and (6) shall apply in the same manner and to the same extent as if such officer were an analyst.

Proof as to
registration or
licensing of
vessels in
Brunei
Darussalam.

112. Where in any prosecution under this Act it is relevant to ascertain particulars as to the registration or licensing of any vessels registered or licensed in any port of Brunei Darussalam, a certificate purporting to be signed by the officer responsible under any written law for the time being in force in Brunei

Darussalam for such registration or licensing shall be *prima facie* evidence as to all particulars concerning such registration or licensing contained therein, and the burden of proving the incorrectness of any particular stated in such certificate shall be on the person denying the same.

113. Notwithstanding the provisions of the Criminal Procedure Code the period of imprisonment imposed by any Court in respect of the non-payment of any fine under this Act, or in respect of the default of a sufficient distress to satisfy any such fine, shall be such period as in the opinion of the Court will satisfy the justice of the case, but shall not exceed in any case the maximum fixed by the followed scale:

Imprisonment for non payment of fine.

<i>Where the fine</i>	<i>The period may extend to</i>
does not exceed \$100	2 months
exceeds \$100 but does not exceed \$1,000	4 months
exceeds \$1,000 but does not exceed \$5,000	6 months

with 2 additional months for every \$1,000 after the first \$5,000 of the fine until a maximum period of 3 years is reached.

114. On any trial before any Court and in any proceeding on appeal to any Superior Court, relating to the seizure of goods subject to forfeiture under this Act, the Court shall proceed to such trial or hear such appeal on the merits of the case only, without enquiring into the manner or form of making any seizure, except insofar as the manner and form of seizure may be evidence on such merits.

Manner of seizure no to be enquired into on trial or on appeal.

115. (1) Except as hereinafter provided, no witness in any civil or criminal proceeding shall be obliged or permitted to disclose the name or address of an informer or the substance of the information received from him or to state any matter which might lead to his discovery.

Protection of informers from discovery.

(2) If any books, documents or papers which are in evidence or liable to inspection in any civil or criminal proceeding whatsoever contain any entry in which any informer is named or described or which might lead to his discovery, the Court shall cause all such passages to be concealed from view or to be obliterated so far only as may be necessary to protect the informer from discovery.

(3) If on the trial for any offence against this Act or any regulation made thereunder the Court after full enquiry into the case believes that the informer wilfully made in his complaint a material statement which he knew or believed to be false or did not believe to be true, or if in any other proceeding the Court is of opinion that justice cannot be fully done between the parties thereto without the discovery of the informer, it shall be lawful for the Court to require the production of the original complaint, if in writing, and permit enquiry, and require full disclosure, concerning the informer.

Goods liable to seizure liable to forfeiture.

116. All goods liable to seizure under the provision of this Act shall be liable to forfeiture.

Court to order disposal of goods seized.

117. Any order for the forfeiture or for the release of anything liable to forfeiture under the provisions of this Act shall be made by the Court before which the prosecution with regard thereto has been held, and an order for the forfeiture of goods shall be made if it is proved to the satisfaction of the Court that an offence against this Act or any regulation made thereunder had been committed and that the goods were the subject matter of or were used in the commission of the offence notwithstanding that no person may have been convicted of such offence.

Goods seized in respect of which there is no prosecution, deemed to be forfeited if not claimed within one month.

118. (1) If there be no prosecution with regard to any goods seized under this Act such goods shall be taken and deemed to be forfeited at the expiration of one calendar month from the date of seizure unless a claim thereto is made before that date in the manner hereinafter set forth.

(2) Any person asserting that he is the owner of such goods and that they are not liable to forfeiture may personally or

by his agent authorised in writing give written notice to a senior officer of customs that he claims the same.

(3) On receipt of such notice the senior officer of customs shall refer the claim to the Controller who may direct that such goods be released or may direct such senior officer of customs, by information in the prescribed form, to refer the matter to a Magistrate for his decision.

(4) The Magistrate shall issue a summons requiring the person asserting that he is the owner of the goods and the person from whom they were seized to appear before him, and upon their appearance or default to appear, due service of such summons being proved, the Magistrate shall proceed to the examination of the matter and on proof that an offence against this Act or any regulation made hereunder has been committed and that such goods were the subject matter, or were used in the commission, of such offence shall order the same to be forfeited, or may in the absence of such proof order their release.

(5) In any proceedings under subsection (4) the provisions of section 109 shall apply to the person asserting that he is the owner of the goods and to the person from whom they were seized as if such owner or person had been the defendant in a prosecution under this Act.

119. The Minister may order any goods seized under this Act, whether forfeited or not, to be delivered to the owner or other person entitled thereto, upon such terms and conditions as he may deem fit.

Goods seized may be delivered to owner or other person.

120. Nothing in this Act contained shall be deemed to prevent the prosecution, conviction and punishment of any person according to the provisions of any other written law for the time being in force in Brunei Darussalam, but so that no person shall be punished more than once for the same offence.

Conviction under other law.

121. (1) Any senior officer of customs may compound any offence, which is prescribed to be a compoundable offence, by accepting from the person reasonably suspected of having committed such offence a sum of money not exceeding \$500.

Compounding of offences.

(2) In like manner the proper officer of customs, not being a senior officer of customs, may compound any offence which is prescribed to be compoundable by such officer, by accepting from the person reasonably suspected of having committed such offence a sum of money not exceeding \$20.

(3) On the payment of such sum of money the person reasonably suspected of having committed an offence, if in custody shall be discharged, any properties seized shall be released and without prejudice to civil proceedings for the recovery of any duty which has not been paid no further proceedings shall be taken against such person or property in respect of such offence.

Power of senior officer of customs to purchase goods in certain cases.

122. (1) Notwithstanding any provisions in this Act or in any regulations made hereunder relating to penalties which may be imposed for any offence committed, if, upon the examination of any imported goods which are chargeable with duty upon the value thereof, it appears to a senior officer of customs that the value of such goods as declared by the importer and according to which duty has been or is sought to be paid is not the value thereof, it shall be lawful for the senior officer of customs to detain the same, in which case he shall —

(a) give notice in writing to the importer of the detention of such goods, and

(b) within 15 days after the detention of such goods, determine and give notice in writing to the importer either that the value of the goods was correctly declared by the importer and permit the same to be delivered, or that such goods shall be retained for the public use of Brunei Darussalam, in which latter case he shall cause the value at which the goods were declared by the importer, together with an addition of 10 per centum, and the duties already paid to be paid to the importer in full satisfaction of such goods; or he may permit such person to declare the goods according to such value and on such terms as he may direct.

(2) Such goods, if retained, shall be disposed of for the benefit of Brunei Darussalam, and if the proceeds arising therefrom, in case of sale, exceed the sums so paid, and all charges incurred by Brunei Darussalam, such surplus shall be disposed of as the Minister may direct.

123. No person shall in any proceedings before any Court in respect of the seizure of any goods seized in exercise or the purported exercise of any power conferred under this Act, be entitled to the costs of such proceedings or to any damages or other relief other than an order for the return of such goods or the payment of their value unless such seizure was made without reasonable or probable cause.

No costs or damages arising from seizure to be recoverable unless seizure without reasonable or probable cause.

PART XIV

OFFENCES AND PENALTIES

124. (1) Whoever —

(a) makes, orally or in writing, or signs any declaration, certificate or other document required under this Act which is untrue or incorrect in any particular;

Penalty on making incorrect declarations and on falsifying documents.

(b) makes, orally or in writing, or signs any declaration or document, made for consideration of any officer of customs on any application presented to him, which is untrue or incorrect in any particular;

(c) counterfeits or falsifies, or uses, when counterfeited or falsified, any document which is or may be required under this Act or any document used in the transaction of any business or matter relating to customs;

(d) fraudulently alters any documents, or counterfeits the seal, signature, initials or other mark of, or used by, any officer of customs for the verification of any such document on for the security of any goods or any other purpose in the conduct of business relating to customs;

(e) being required under this Act to make a declaration of dutiable goods imported or exported, fails to make such declaration as required; or

(f) fails or refuses to produce to a proper officer of customs any document required to be produced under the provisions of sections 90,

shall be guilty of an offence: Penalty, imprisonment for 12 months and a fine of \$40,000.

(2) When any such declaration, whether oral or written, or any such certificate or other document as is referred to in paragraphs (a), (b) and (c) of subsections (1) has been proved to be untrue or incorrect or counterfeited or falsified in whole or in part, it shall be no defence to allege that such declaration, certificate or other document was made or used inadvertently or without criminal or fraudulent intent, or that the person signing the same, was not aware of, or did not understand the contents of, such document, or where any declaration was made or recorded in English or Malay by interpretation from any other language, that such declaration was misinterpreted or not fully interpreted by any interpreter provided by the declarant.

Penalty on refusing to answer questions or on giving false information.

125. (1) Whoever, being required under this Act to give any information which may reasonably be required by a proper officer of customs and which it is in his power to give, refuses to give such information or furnishes as true information which he knows or has reason to believe to be false, shall be guilty of an offence: Penalty, imprisonment for 6 months and a fine of \$8,000.

(2) When any such information is proved to be untrue or incorrect in whole or in part it shall be no defence to allege that such information or any part thereof was furnished inadvertently or without criminal or fraudulent intent, or was misinterpreted or not fully interpreted by an interpreter provided by in the informant.

Penalty for various smuggling offences.

126. (1) Whoever —

(a) is concerned in importing or exporting any uncustomed goods or any prohibited goods contrary to such prohibition whether such uncustomed or prohibited goods be shipped, unshipped, delivered or not;

(b) ship, unships, delivers or assists or is concerned in the shipping, unshipping or delivery of any uncustomed goods or any prohibited goods contrary to such prohibition;

(c) illegally removes or withdraws or in any way assists or is concerned in the illegal removal or withdrawal of any goods from any control;

(d) knowingly harbours, keeps, conceals, or is in possession of, or permits, suffers, causes or procures to be harboured, kept or concealed, any uncustomed or prohibited goods;

(e) is in any way knowingly concerned in conveying, removing, depositing or dealing with any uncustomed or prohibited goods with intent to defraud the Government of any duties thereon, or to evade any of the provisions of this Act or to evade any prohibition applicable to such goods;

(f) being a passenger or other person, is found to have in his baggage or upon his person or otherwise in his possession, after having denied that he has any dutiable or prohibited goods in his baggage or upon his person or otherwise in his possession, any dutiable or prohibited goods; or

(g) is in any way knowingly concerned in any fraudulent evasion or attempt at fraudulent evasion of any customs duty, or in evasion or attempt at evasion of any prohibition of import or export,

shall be guilty of an offence: Penalty —

- (i) in the case of uncustomed goods, such goods being dutiable goods, be liable for the first offence to a fine of not less than 6 times the amount of the duty or \$40,000, whichever is the lesser amount, and of not more than 20 times the amount of duty or \$40,000 whichever is the greater amount and for the second or any subsequent offence to imprisonment for a term of 2 years:

Provided that when the amount of duty cannot be ascertained the penalty may amount to a fine of \$40,000;

- (ii) in the case of uncustomed goods, such goods not being dutiable or prohibited, be liable to a fine of twice the value of the goods or \$8,000 whichever is the greater amount:

Provided that where the value cannot be ascertained the penalty may amount to a fine of \$8,000;

- (iii) in the case of prohibited goods, be liable to a fine of not less than twice the value of the goods or \$40,000, whichever is the lesser amount and of not more than 5 times the value of the goods or \$40,000 whichever is the greater amount:

Provided that where the value of the goods cannot be ascertained the penalty may amount to a fine of \$40,000.

(2) In any prosecution under this section or section 130 any uncustomed or prohibited goods shall be deemed to be uncustomed or prohibited goods, as the case may be, to the knowledge of the defendant unless the contrary be proved by such defendant.

127. Every person who —

(a) assaults or obstructs any officer of customs or other public servant or any person acting in his aid or assistance, or duly employed for the prevention of smuggling, in the execution of his duty or in the due seizing of any goods liable to seizure under this Act;

(b) rescues or endeavours to rescue, or causes to be rescued, any goods which have been duly seized; or

(c) before or after any seizures staves, breaks or otherwise destroys any package or goods to prevent the seizure thereof or the securing of the same,

Penalty for assaulting or obstructing officers of customs and rescuing goods.

shall be guilty of an offence against this Act:

Penalty —

(i) for a first offence, imprisonment for 9 months and a fine of \$16,000; and

(ii) for the second or subsequent offence imprisonment for 18 months, and a fine of \$40,000.

128. (1) If any officer of customs or other person duly employed for the prevention of smuggling —

(a) makes any collusive seizure or delivers up or makes any agreement to deliver up or not to seize any vessel or aircraft or other means of conveyance, or any goods liable to seizure;

(b) accepts, agrees to accept, or attempts to obtain, any bribe, gratuity, recompense or reward for the neglect or non-performance of his duty; or

(c) conspires or connives with any person to import or export or is in any way concerned in the importation or exportation of any goods liable to customs duties or any goods prohibited to be imported or

Penalty for offering or receiving bribes.

exported for the purpose of seizing any vessel, aircraft or conveyance or any goods and obtaining any reward for such seizure or otherwise,

every such officer so offending shall be guilty of an offence against this Act: Penalty, imprisonment for 3 years and a fine of \$40,000, and every person who gives or offers or promises to give or procures to be given any bribe, gratuity, recompense or reward to, or makes any collusive agreement with, any such officer of person as aforesaid to induce him in any way to neglect his duty or to do, conceal or connive at any act whereby any of the provisions of any other law relating to imports or to exports may be evaded, shall be guilty as an abettor and so punishable under this Act.

(2) Any officer of customs who is found when on duty to have in his possession any moneys in contravention of any departmental regulation issued in writing shall be presumed, until the contrary is proved, to have received the same in contravention of paragraph (b) of subsection (1).

(3) If an officer of customs has reasonable suspicion that another officer of customs junior in rank to him has in his possession any money received in contravention of paragraph (b) of subsection (1) he may search such other officer.

Penalty for offences not otherwise provided for.

129. Every omission or neglect to comply with, and every act done or attempted to be done contrary to, the provisions of this Act, or any breach of the conditions and restrictions subject to, or upon which, any licence or permit is issued under this Act, shall be an offence against this Act and in respect of any such offence for which no penalty is expressly provided the offender shall be liable to a fine of \$16,000.

Attempts and abetments.

130. Whoever attempts to commit any offence punishable under this Act, or abets the commission of such offence, shall be punished with the punishment provided for such offence.

Offences by bodies of persons and by servants and agents.

131. (1) Where an offence against this Act or any regulation made hereunder has been committed by a company, firm, society or other body or persons, any person who at the time of the commission of the offence was director, manager, secretary

or other similar officer or a partner of the company, firm, society or other body of persons or was purporting to act in such capacity shall be deemed to be guilty of that offence unless he proves that the offence was committed without his consent or connivance and that he exercised all such diligence to prevent the commission of the offence as he ought to have exercised, having regard to the nature of his functions in that capacity and to all the circumstances.

(2) Where any person would be liable under this Act to any punishment, penalty or forfeiture for any act, omission, neglect or default he shall be liable to the same punishment, penalty or forfeiture for every such act, omission, neglect or default of any clerk, servant or agent, or of the clerk or servant of such agent provided that such act, omission, neglect or default was committed by such clerk, or servant in the course of his employment or by such agent when acting on behalf of such person or by the clerk or servant of such agent when acting in the course of his employment in such circumstances that had such act, omission, neglect or default been committed by the agent his principal would have been liable under this section.

132. The Controller may order such rewards as he may deem fit to be paid to any officer or other person for services rendered or expenses incurred in connection with the detection of cases of smuggling or of offences under this Act, or in connection with any seizures made under this Act.

Rewards.
[S 23/89]

PART XV

GENERAL

133. Minister of Finance with the approval of His Majesty the Sultan and Yang Di-Pertuan may make regulations to provide for —

Power to make
regulations.
[S 23/89]

(1) the powers and duties to be exercise and performed by officers of customs.

(2) the conditions subject to which goods may be imported under the preferential tariff.

(3) the fees to be paid by the masters or agents of vessels or by pilots of aircraft or agents of aircraft or by the persons in charge of vehicles or by the importers or exporters of goods or their agents in respect of the services of officers of customs rendered on request beyond the ordinary hours prescribed and the conditions under which such services may be rendered.

(4) the amount to be paid as warehouse rent on goods deposited in warehouses other than the Ports Department, customs or licensed warehouses.

(5) the fees, if any, to be paid for permits and licences, other than warehouse licences.

(6) frontier areas and for regulating or prohibiting, either absolutely or conditionally, the movement of goods or persons within such areas for the purposes of this Act.

(7) prohibiting the payment of drawback upon the re-exportation of any specified goods or class of goods.

(8) specifying the goods dutiable on import in respect of which drawback may be allowed on re-export as part or ingredient of any goods manufactured in Brunei Darussalam and for fixing the rate of drawback thereon.

(9) compounding offences.

(10) defining any goods for the purposes of this Act.

(11) penalties for any contravention or failure to comply with any of the provisions of any regulation made under this section or with the restrictions or conditions of any licence or permission granted under any such regulations:

Provided that no such penalty shall exceed the penalty prescribed under section 129.

(12) any matter which requires to be prescribed hereunder.

(13) the conduct of all matters relating to the collection of customs duties including the time of payment thereof.

(14) customs ports and legal landing places within those customs ports or at any other places for the landing and shipping of goods imported or exported, and defining the limits of such ports and landing places and prescribing the goods that may be landed or shipped thereat.

(15) places of import and export and the routes to be used for the import and export of goods by land.

(16) customs airports for the import and export of goods by air.

(17) inland customs stations at which customs duties may be collected.

(18) the days and times during which any customs office, or customs or licensed warehouse may be open for business and the times during which any goods may be landed, shipped or loaded at any customs port or customs airport or imported or exported by land at any place of import and export.

(19) the control by officers of customs of traffic carried on in local craft or coasting vessels in the territorial or inland waters of Brunei Darussalam.

(20) the flag to be flown by vessels employed for the prevention of smuggling.

(21) the forms to be used under this Act and may prescribe forms which require by reference to a code or otherwise the classification of —

- (a) place of import or export;
- (b) country or port of shipment or destination;
- (c) country of origin;
- (d) goods imported or exported; and

(e) quantity, value or other details, and the supplying of such particulars as may facilitate the keeping of trade statistics in connection with importation and exportation.

(22) the deposit, custody and withdrawal of goods in and from customs and licensed warehouses and warehouses and the management and control of the same.

(23) the manner in which dutiable or prohibited goods shall or shall not be packed, and for regulating or prohibiting the inclusion of dutiable or prohibited goods in the same package or receptacle with non-dutiable goods.

(24) standard containers in which dutiable goods shall be exported.

(25) the opening and examination of packages imported, or exported by post for assessment of duty on dutiable goods and detection of attempts to evade the payment of customs duty.

(26) the issue of licences.

(27) the stock books to be kept by licensees and the method of keeping the same.

(28) the method of importing, exporting, transporting or removing any goods under a licence or permit.

(29) the manner in which goods may be transhipped, or goods in transit may be moved.

(30) the manner in which intoxicating liquor shall be denatured in a customs or licensed warehouse.

(31) the conditions under which any goods may be moved in transit through Brunei Darussalam.

(32) permits and other documents to be carried by local craft or barges transporting cargo from or to vessels in a customs port.

(33) the amounts to be paid as wharf dues in respect of Government warehouses other than Ports Department warehouses.

(34) generally for giving effect to the provisions of this Act.

134. Where it is provided in this Act that the decision on any matter rests with the Controller then unless it is specifically provided that such decision is at the absolute discretion of the Controller, any person aggrieved by such decision may appeal therefrom to His Majesty in Council whose decision shall be final.

Appeal from
decision of
Controller.

135. The Controller may charge such fee as he may consider reasonable in respect of any act or service done or rendered by the Customs Department which is not required to be done or rendered under this Act and for which no fee is prescribed by any written law.

Power of
Controller to
charge fees.

SCHEDULE

(section 2)

SCHEDULE TERRITORIES

All Independent Members of the Commonwealth and territories for whose international relations any of those countries is wholly or in part responsible.

The Republic of Ireland and Burma.