

# CUSTOMS ACT 2005

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REPUBLIC OF KIRIBATI  
(No 2 of 2005)

I assent,

Beretitenti  
2005

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

Commencement:  
2005

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

**PART I—PRELIMINARY**

**1. Short title and commencement**

- (1) This Act may be cited as the *Customs Act 2005*.
- (2) This Act shall come into force three months following the publication of assent by the Beretitenti.

**2. Interpretation**

- (1) In this Act, unless the context otherwise requires, or this Act provides a definition for the purposes of a specific provision—
  - ‘accompanying document’ means a document specified by the Minister under section 3 as one that must accompany required information;
  - ‘aircraft’ means anything that flies;
  - ‘anyone’ includes a corporate entity;
  - ‘binding ruling’ means a ruling made under section 65(3);
  - ‘Board’ means the Internal Revenue Board created by the *Internal Revenue Board Act 1990*;
  - ‘class of entry’ means one of the classes of entries listed in section 30, and includes an informal clearance document;
  - ‘clearance inwards’ means the document given under section 19(2);
  - ‘clearance outwards’ means the document given under section 55(2);
  - ‘commercial document’, in relation to goods, means a document or other record prepared in the ordinary course of business for the purposes of a commercial transaction involving the goods or the carriage of the goods;
  - ‘compliance warrant’ means a warrant issued under section 90(3);
  - ‘Comptroller’ means the Comptroller of Customs appointed under section 10;
  - ‘container’ means a container within the meaning of the *Customs Convention on Containers*, done at Geneva on 2 December 1972, as amended from time to time;

‘corporate entity’ means—

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

‘customs agent’ means a person licensed under section 98;

‘customs area’ means an area designated under section 120(1)(a);

‘customs officer’ means a person mentioned in section 12;

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

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

‘customs value’ means the value of goods determined under Subdivision 4 of Division 1 of Part VII for the purposes of levying *ad valorem* duties of customs on imported goods;

‘discharge report’ means the report made under section 23;

‘duty’ means—

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

‘entry for temporary purposes in Kiribati’ means an entry made under section 30(4);

‘entry for use in Kiribati’ means an entry made under section 30(2);

‘export duty’ means the tax imposed by section 78;

‘export entry’ means an entry made under section 54;

‘export tariff order’ means an order made under section 79;

‘forfeited goods’ means the goods listed in section 122(1);

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

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

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

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

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

‘he or she’ includes a corporate entity;

‘import duty’ means the tax imposed by section 63;

‘import tariff order’ means an order made under section 64;

‘informal clearance’ means a clearance made under section 31;

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

- ‘Kiribati Customs Service’ means that part of the Ministry designated by the Minister under section 8;
- ‘master’ means the person in charge or command of transport;
- ‘outturn report’ means the report made under section 24;
- ‘owner’ includes any person who is or claims to be possessed of or beneficially interested in the goods, or to have control or power of disposition of the goods, including the person who imported the goods, or—
- (a) the customs agent; or
  - (b) the person authorised under section 29(2)(b),
- who acted on behalf of the owner in relation to the imported goods;
- ‘PICTA’ means the *Pacific Island Countries Trade Agreement*, done at Nauru on 18 August 2001, as amended from time to time;
- ‘PICTA origin goods’ means goods that originate from a PICTA country, as determined by the Rules of Origin;
- ‘places under customs control’ mean those places listed in section 16;
- ‘post-transaction assessment’ means an assessment performed under Part IX;
- ‘private warehouse’ means a warehouse that may only accept goods owned by the private warehouse licensee;
- ‘prohibited exports’ means the goods listed in the table in Schedule 5;
- ‘prohibited imports’ means the goods listed in the table in Schedule 3;
- ‘provisional entry’ means an entry made under section 32;
- ‘public auction’ means an auction conducted under Division 5 of Part IV;
- ‘public warehouse’ means a warehouse that may accept goods entered for warehousing from anyone;
- ‘refund’ means a refund of import duty;
- ‘remission’ means a waiver of import duty payable on deteriorated, destroyed or damaged imported goods;
- ‘replacement entry’ means an entry made under section 33;
- ‘required information’ means the information that must be provided to a customs officer before he or she makes a decision under a section of this Act in which the term appears, that has been specified by the Minister under section 3;
- ‘restricted exports’ means the goods listed in the table in Schedule 6;
- ‘restricted imports’ means the goods listed in the table in Schedule 4;
- ‘rights document’ means a document prepared under section 88;
- ‘Rules of Origin’ means the rules contained in PICTA;
- ‘Rules of Valuation’ means the Rules of Valuation contained in the *Agreement of Implementation of Article VII of the General Agreement on Tariffs and Trades*, in Annex 1A of GATT 1994 (as incorporated into the WTO Agreement);
- ‘ship’ means anything that floats on or hovers over water;
- ‘state warehouse’ means a warehouse designated as such by the Comptroller under section 121(1)(c);

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

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

‘transport’ means anything bringing goods and people into or out of Kiribati;

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

‘valuation provisions’ means the methods to be followed to work out the customs value of goods contained in Subdivision 4 of Division 1 of Part VII;

‘warehouse licensee’ means someone who has—

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

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

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

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

### **3. Required information**

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

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

- (1) A person may provide required information to a customs officer—
  - (a) on paper; or
  - (b) electronically.

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

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

Goods are taken to have been imported into Kiribati when—

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

#### **6. Time of exportation**

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

#### **7. When goods are entered**

Goods are taken to have been entered when—

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

### **PART II—ESTABLISHMENT OF THE KIRIBATI CUSTOMS SERVICE AND THE GENERAL POWERS OF OFFICERS**

#### **8. The Kiribati Customs Service**

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

#### **9. Customs seal**

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

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

#### **10. The Comptroller of Customs**

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

**11. Comptroller may delegate powers**

- (1) The Comptroller may delegate in writing any of his or her powers or functions (other than the function to review decisions made by customs officers in section 99 and the power to impose an administrative penalty under Division 4 of Part XIII) to—
  - (a) a named customs officer; or
  - (b) a customs officer holding a designated position or class of position within the Kiribati Customs Service.
- (2) A delegation may be changed or cancelled at any time in writing.
- (3) When delegating power, the Comptroller may place limits and conditions on how, when or in what circumstances a delegate may exercise powers.
- (4) This section sets out the only way by which the Comptroller may delegate any of his or her powers or functions.

**12. Customs officers**

A customs officer is—

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

**13. General powers of customs officers**

- (1) The table in Schedule 1 sets out the general powers of customs officers.
- (2) Column 2 of the table in Schedule 1 specifies the power a customs officer may exercise.
- (3) Column 3 of the table in Schedule 1 specifies where the power may be exercised.
- (4) A customs officer must only exercise his or her general powers if he or she has grounds to believe it is necessary to do so to ensure compliance with this Act.
- (5) A customs officer exercising the power to examine goods under customs control listed as item 7 in the table in Schedule 1 must also follow the procedure as to how to examine goods in places under customs control set out in section 39.
- (6) A customs officer exercising the power to search a person listed as item 13 in the table in Schedule 1 must also follow the rules for searching people set out in Schedule 2.
- (7)
  - (a) A customs officer who seizes goods from a person in exercise of the power listed as item 16 in the table in Schedule 1 must give the person a written document setting out—
    - (i) the description of the goods seized; and
    - (ii) the reason for the seizure; and
    - (iii) what the person may do to challenge the seizure.
  - (b) However, a failure to give the person the document required by paragraph (a) does not make the seizure unlawful.

**14. Indemnity**

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

**PART III—CUSTOMS CONTROL****15. When goods are under customs control**

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

**16. Places under customs control**

These are places under customs control—

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

**PART IV—THE MOVEMENT OF GOODS AND PEOPLE INTO KIRIBATI****DIVISION 1—EARLY REPORTING OF CARGO****17. A master of transport must make a cargo report**

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

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

*NOTE: A master can make a cargo report using a person designated by the owner of the transport under section 27.*

## DIVISION 2—UNLOADING THE TRANSPORT

### 18. Transport to touch down or land only at a designated port

Subject to section 26, the master of transport entering Kiribati must only touch down or land at a designated port.

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

### 19. Actions upon arrival

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

*NOTE:* A master who—

- does not follow a lawful direction of a customs officer (Schedule 8, item 30); or
  - does not do everything needed to allow a customs officer to board a vessel (Schedule 8, item 22); or
  - breaks bulk (Schedule 8, item 24); or
  - fails to take reasonable steps to prevent people from boarding the transport before a customs officer (Schedule 8, item 21); or
  - fails to take reasonable steps to prevent goods or people from leaving the transport before a clearance inwards has been issued or the movement is authorised by a customs officer (Schedule 8, item 23),
- commits an offence.

- (2) Where a customs officer has grounds to believe that this Act has been complied with, the officer must issue a clearance inwards.
- (3) Where a customs officer has grounds to believe that this Act has not been complied with, the officer must provide a document (called in this section ‘the request document’), setting out the things the master must do before a clearance inwards is issued.
- (4) A customs officer must not issue a clearance inwards until the master has complied with the request document.
- (5) If the master does the things set out in the request document, a customs officer must issue a clearance inwards.

- (6) A customs officer may require stores that are—
- (a) alcoholic products; or
  - (b) tobacco products,
- (other than a reasonable quantity of the products for the consumption of passengers and crew remaining on board the transport) to be placed in a sealed compartment.

## **20. People must remain on board transport until a clearance inwards has been issued**

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

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

## **21. Goods should be removed from cleared transport as soon as possible**

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

*NOTE: Unless otherwise authorised, the goods must then stay in the customs area until they are entered (section 35).*

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

## **22. People must not board or leave transport under customs control without approval**

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

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

## **23. Discharge report**

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

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

as soon as possible after the unloading procedure concludes.

*NOTE: The master of transport is liable to pay import duty if goods contained in the cargo report are not unloaded into a customs area (section 75(2)(a)).*

## 24. Outturn report

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

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

*NOTE 1: Section 21(2) requires goods unloaded from transport to be immediately moved to a customs area.*

*NOTE 2: The occupier of a customs area who cannot account for goods must pay the import duty (section 75(2)(b)).*

## 25. Transport carrying goods entered for transit

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

## 26. Exceptions to Division 2

- (1) Despite section 18, this Division does not apply where—
  - (a) due to force of weather; or
  - (b) because of mechanical failure; or
  - (c) the Comptroller has given approval,
 transport carrying goods into Kiribati lands somewhere other than a designated port.
- (2) If subsection (1) applies, the master of transport must—
  - (a) report the goods and the names of the people on board; and
  - (b) follow any directions given by a customs officer given so as to—
    - (i) allow the transport to be given a clearance inwards; and
    - (ii) ensure goods remain under customs control.

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

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

## 27. Owners of transport must appoint a designated person

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

## DIVISION 3—THE ENTRY OF IMPORTED GOODS

## 28. What must be entered?

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

- (a) passengers' accompanied baggage; and

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

must be entered.

*NOTE 1: Goods on which duty is payable that are taken from a place under customs control without the payment of import duty are forfeited goods (section 122(1)(d)).*

*NOTE 2: Most goods that are being exported from Kiribati must also be entered (section 54).*

## **29. Making an entry**

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

*NOTE 1: Section 28 requires most goods imported into Kiribati to be entered.*

*NOTE 2: Unentered goods may be auctioned (section 45).*

- (2) A person who wishes to make an entry must make the entry—
  - (a) himself or herself; or
  - (b) through a person named in a document given to a customs officer, which authorises the person named in the document to act as owner in relation to a particular transaction; or
  - (c) through a customs agent.
- (3) A person must not make an entry through any other person.

*NOTE 1: A person who allows anyone else to enter goods on his or her behalf (other than a person to whom section 29(2) applies) commits an offence (Schedule 8, item 35).*

*NOTE 2: A person who enters goods on behalf of anyone else without being a person to whom section 29(2) applies commits an offence (Schedule 8, item 36).*

## **30. Classes of entry**

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

### *Use in Kiribati*

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

### *Warehousing*

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

- (b) the identity of the licensee.

*Temporary use in Kiribati*

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

*Transit*

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

*Transshipment*

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

**31. Informal clearance**

- (1) Despite section 29, where—
  - (a) a person leaving transport is carrying goods on which import duty is payable—
    - (i) themselves; or
    - (ii) in his or her baggage; or
  - (b) a postal article has been imported into Kiribati on which less than \$500 of import duty is payable; or
  - (c) a customs officer has grounds to believe it is impractical for a person to make a class of entry,
 a customs officer may fill out an informal clearance.
- (2) An informal clearance under subsection (1) shall record—
  - (a) the owner of the goods; and
  - (b) the goods; and
  - (c) the amount of import duty and other charges payable on the importation of the goods.
- (3) Where—
  - (a) a customs officer completes filling out an informal clearance; and
  - (b) all taxes and charges are paid,
 the goods are taken to have been entered.

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

### 32. Provisional entry

- (1) An owner who cannot complete an entry because he or she has insufficient information to do so may apply to the Comptroller to make a provisional entry by providing the required information necessary for the Comptroller to determine whether—
  - (a) the tariff classification and statistical code are correct; and
  - (b) the amount of duty being offered is approximately correct.
- (2) Despite section 29, where a customs officer has grounds to believe—
  - (a) the tariff classification and the statistical code are correct; and
  - (b) the amount of import duty the owner estimates to be the amount payable is approximately correct (called in this section ‘the estimated amount’); and
  - (c) the owner pays 150% of the estimated amount to the customs officer,  
the Comptroller must treat the provisional entry as if it were an entry.
- (3) The owner must perfect the provisional entry within six months of having applied for it, by providing a customs officer with the information necessary to make a correct entry for the goods (called in this section ‘the perfecting information’).
- (4) If the owner does not provide the perfecting information within six months from the day he or she applied to make a provisional entry, the amount paid under subsection (2)(c) will be taken to be the correct amount of import duty payable on the importation of goods.

*NOTE: If an owner provides the perfecting information within six months, he or she may apply for a refund for the difference between the amount paid and the correct amount of import duty payable on the importation of goods, as the owner satisfies the criterion that the person has paid more duty than they are required to by law (section 85).*

### 33. Replacement entries

An owner may replace—

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

### 34. Correcting information on an entry

An owner may correct information, other than—

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

by providing the new information to a customs officer.

*NOTE: Changes to class of entry and warehouse licensee are governed by section 33.*

## DIVISION 4—CONTROLLING UNENTERED GOODS

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

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

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

*NOTE 1: The occupier of a customs area who cannot account for goods must pay the import duty (section 71(2)(b)).*

*NOTE 2: Goods on which duty is payable that are taken from a place under customs control without the payment of import duty are forfeited goods (section 122(1)(d)).*

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

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

*NOTE 1: The occupier of a customs area or warehouse licensee who cannot account for goods must pay the import duty (section 75(2)(b)).*

*NOTE 2: Goods on which duty is payable that are taken from a place under customs control without the payment of import duty are forfeited goods (section 122(1)(d)).*

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

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

*NOTE 1: A warehouse licensee who cannot account for goods must pay the import duty (section 75(2)(b)).*

*NOTE 2: Goods on which duty is payable that are taken from a place under customs control without the payment of import duty are forfeited goods (section 122(1)(d)).*

### **38. Goods must be kept safe**

Where, in a document, the Comptroller asks—

- (a) the occupier of a customs area; or
- (b) a warehouse licensee; or
- (c) an owner who has—
  - (i) entered goods for transit; and
  - (ii) moved the goods from the customs area they were taken to after being unloaded from the transport which imported the goods into Kiribati; or
- (d) an owner who has—
  - (i) entered goods for transshipment; and
  - (ii) moved the goods from the customs area they were taken to after being unloaded from the transport which imported the goods into Kiribati; or
- (e) an owner who has—
  - (i) applied for access to his or her goods under customs control; and

- (ii) has moved the goods from the place they were located at the time of making the application,

to account for goods, the person must do so.

*NOTE: An occupier, licensee or owner who cannot account for goods must pay the import duty (section 75(2)(b)).*

### **39. Examining goods**

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

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

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

#### 40. Examining documents

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

- (a) telling him or her to attend the place indicated in the document to—
  - (i) provide commercial documents; and
  - (ii) answer questions,
 relating to goods under customs control referred to in the document; and
- (b) informing him or her that if he or she does not comply with the request within one month of the day the customs officer issued the notice, his or her goods may be sold at public auction.

#### 41. Access to goods

- (1) A person, other than—
  - (a) a customs officer; or
  - (b) the occupier of a customs area; or
  - (c) an employee of the occupier of a customs area; or
  - (d) a warehouse licensee; or
  - (e) an employee of a warehouse licensee; or
  - (f) a person entitled to access goods under this Act or any other law of Kiribati; or
  - (g) a person allowed access to goods under customs control so they may then destroy them; or
  - (h) a person who has entered goods for transit or transshipment who has been allowed by a customs officer to move goods; or
  - (i) a person allowed to access goods under subsection (2); or
  - (j) someone allowed to touch baggage under section 51,
 must not touch goods under customs control without reasonable excuse.

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

*NOTE 2: Section 51 deals with who may handle baggage in a customs area at which passengers' baggage is being examined.*

- (2) An owner may gain access to his or her goods under customs control or take goods under customs control into his or her care, so as to—
  - (a) preserve them; or
  - (b) improve the packaging or marketability of the goods; or
  - (c) work out the quantity imported; or
  - (d) prepare them for shipment,
 by providing the Comptroller with the required information necessary to enable the Comptroller to decide whether allowing the owner access to goods would pose either a risk to either the revenue or public safety.

- (3) The Comptroller may—
  - (a) allow access; or
  - (b) allow access subject to conditions; or
  - (c) refuse access.
- (4) A person must abide by any conditions made by the Comptroller when accessing his or her goods.
- (5) The goods remain under customs control.

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

*NOTE 2: An owner allowed access under subsection (2) who cannot account for goods must pay the import duty (section 75(2)(b)).*

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

Where a customs officer has grounds to believe—

- (a) the correct amount of import duty has been paid; and
- (b) all other fees and charges payable under this Act have been paid; and
- (c) all taxes and charges (however described) payable on the importation of goods under any other law of Kiribati have been paid; and
- (d) any other requirement under this Act or any other law of Kiribati has been satisfied,

on goods entered for use in Kiribati or for temporary use in Kiribati, the officer must immediately issue a release for the goods for delivery.

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

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

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

*NOTE: Goods that are not re-entered for warehousing after two years may be sold at public auction (section 45).*

### DIVISION 5—DEALING WITH UNENTERED GOODS

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

- (1) If, 10 days (or such longer period as the Comptroller allows) after goods arrive in Kiribati, goods under customs control remain as unentered goods, the Comptroller may direct—
  - (a) a customs officer; or
  - (b) the owner; or
  - (c) the occupier of the customs area at which the goods are located,
 to move the unentered goods to a state warehouse or a public warehouse.
- (2) Instead, the Comptroller may deem the goods to be in a state warehouse.

- (3) The Comptroller may—
- (a) take any steps that are necessary to—
    - (i) preserve the goods; and
    - (ii) ensure the goods stay under customs control; and
  - (b) move the goods from one state warehouse to another; and
  - (c) charge the owner the reasonable costs incurred in doing any of these things.
- (4) For the avoidance of doubt, an owner is liable to pay state warehouse fees for goods deemed to be in a state warehouse pursuant to subsection (2), in addition to any costs charged under subsection (3).

*NOTE 1: The Minister may set state warehouse fees (section 125(1)(b)(ii)).*

*NOTE 2: Unentered goods that are (or are deemed to be) in a state warehouse for more than one month may be auctioned (section 45).*

#### **45. Goods may be auctioned**

Goods—

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

may be disposed of in a public auction.

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

- (1) The Comptroller must publicly notify the time and place where the auction is to be conducted, and a description of the goods to be auctioned, at a time—
- (a) in the case of all goods other than perishable goods – one month before the time the auction is to be conducted; or
  - (b) in the case of perishable goods – for as long a period as is possible in the circumstances.
- (2) The Comptroller must take all reasonable steps to tell the owner that his or her goods are going to be sold.
- (3) If the owner of goods referred to in section 45(a) can satisfy the conditions for entry set out in section 30 prior to the commencement of the auction, the Comptroller must withdraw the goods from auction.

- (4) If the owner of goods referred to in section 45(b) attends an examination of the goods prior to the commencement of the auction, the Comptroller must withdraw the goods from auction.
- (5) If the owner of goods referred to in section 45(c) produces the requested documents to the Comptroller prior to the commencement of the auction, the Comptroller must withdraw the goods from auction.
- (6) If the owner of goods referred to in section 45(d) re-enters the goods prior to the commencement of the auction, the Comptroller must withdraw the goods from auction.

#### **47. The public auction process**

- (1) At any auction, the goods sold must fetch the sum (called in this section ‘the reserve price’) of—
  - (a) the amount of import duty the Comptroller estimates as payable on the goods (if any); and
  - (b) any other taxes and charges payable under—
    - (i) this Act; or
    - (ii) any other law of Kiribati; and
  - (c) the costs involved in conducting the auction.
- (2) If, at the auction, the goods do not reach the reserve price, title in the goods passes to the Republic.
- (3) The Comptroller may dispose of the goods referred to in subsection (2) in any manner the Comptroller sees fit (including destroying them).
- (4) If the goods reach the reserve price, title in the goods passes to the highest bidder, upon payment of the price.
- (5) The person to whom title in the goods has passed under subsection (4) must immediately remove the goods from a place under customs control.
- (6) If a person to whom title in the goods has passed pursuant to subsection (4) fails to remove them from a place under customs control within seven days, the Comptroller may again auction the goods by following the procedures set out in sections 46 and 47.
- (7) Where goods have been sold at auction at a price in excess of the reserve price, the original owner of the goods may, within one year of the day of the auction, make application to the Comptroller to be paid the difference between the reserve price and the price at which the goods were sold (called in this section ‘the surplus’). The owner must provide the required information necessary for the Comptroller to determine that he or she is eligible to be paid the surplus.
- (8) If, having received an application made under subsection (7), the Comptroller is satisfied that the applicant is eligible to be paid the surplus, the Comptroller must pay the surplus to the applicant.

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

### 48. Responsibilities of masters not unloading goods in Kiribati

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

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

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

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

- (4) If a customs officer has grounds to believe the transport will not unload or load goods in Kiribati, the officer may direct the master to do such things as are necessary to—
  - (a) ensure compliance with this Act; and
  - (b) grant a clearance outwards.
- (5) For the avoidance of doubt, the power to direct a person under subsection (4) includes the power to direct the master to attend an office of the Kiribati Customs Service to provide such information as the officer directs.
- (6) If the master follows a direction made under subsection (4) then, despite section 55, he or she does not need to make an application for a clearance outwards.

## DIVISION 7—PASSENGERS AND CREW

### 49. Information must be provided on arrival

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

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

### 50. A person must not leave customs control until permitted

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

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

### 51. Baggage

- (1) The only people entitled to touch the baggage of a person entering Kiribati in a customs area where passengers' baggage is being examined are—
  - (a) the owner of the baggage; or
  - (b) a customs officer; or
  - (c) a person performing a function under any law of Kiribati; or

- (d) an employee of the entity controlling the customs area.

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

*NOTE 2: If baggage is in an area other than a place where passengers' baggage is being examined, section 41 applies.*

- (2) Baggage cannot be removed from a customs area where passengers' baggage is being examined until—
- (a) all requirements under any law of Kiribati dealing with the importation of goods have been complied with; and
  - (b) a customs officer has approved its removal from the customs area.
- (3) A customs officer may mark passengers' baggage for security purposes.

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

- (1) A customs officer must seize goods (called in this section 'discovered goods') on a person entering Kiribati or in the person's baggage if—
- (a) import duty is payable on the goods; and
  - (b) the person entering Kiribati did not indicate to a customs officer that the goods were on them, or in his or her baggage.
- (2) The customs officer must—
- (a) detain the goods; and
  - (b) give the person a document, explaining that—
    - (i) the discovered goods may be released to the person if the person pays an amount equivalent to 200% of the duty (called in this section 'the required sum') that would usually have been payable on the goods within one month (called in this section 'the required time');
    - (ii) otherwise the goods are forfeited.
- (3) If the person pays the required sum within the required time, a customs officer must release the discovered goods to the person.

## DIVISION 8—IMPORT OF SHIPS AND AIRCRAFT

### **53. Import of ships and aircraft**

- (1) Where a ship or an aircraft is imported into Kiribati otherwise than as goods contained in transport, the ship or aircraft shall be deemed to have been imported as goods contained in transport and unloaded as such on its arrival in Kiribati.
- (2) Where—
- (a) a ship or an aircraft has entered Kiribati; and
  - (b) has not been entered in accordance with Division 3 of Part IV; and
  - (c) the Comptroller, after making such enquiries as he or she considers appropriate, has grounds to believe that the ship or aircraft might have been imported into Kiribati,
- the Comptroller may serve, in accordance with subsection (5), a notice in respect of the ship or aircraft stating that, if the ship or aircraft remains in Kiribati throughout the period of

30 days commencing on the day on which the notice was served, the ship or aircraft shall be deemed to have been imported into Kiribati and may be forfeited.

- (3) Where a notice has been served under subsection (2) in respect of a ship or an aircraft the Comptroller may, if he or she considers that, having regard to weather conditions or any other relevant matter, extend the period specified in the notice by serving, in accordance with subsection (5), a notice in respect of the ship or aircraft stating that that period has been extended and specifying the period by which it has been extended.
- (4) Where a notice has been served under subsection (2) in respect of a ship or an aircraft the Comptroller may, before the expiration of the period specified in the notice or, if that period has been extended under subsection (3), that period as extended, revoke that notice by serving, in accordance with subsection (5), a notice in respect of the ship or aircraft stating that the first-mentioned notice is revoked.
- (5) The Comptroller shall serve a notice under subsection (2), (3) or (4) by causing the notice to be affixed to a prominent part of the ship or aircraft.
- (6) Where the Comptroller serves a notice under subsection (2), (3) or (4) he or she shall, as soon as practicable after serving the notice, publish a copy of the notice in the *Gazette* and in a newspaper circulating generally in Kiribati.
- (7) Where—
  - (a) the Comptroller has served a notice under subsection (2) in respect of a ship or an aircraft;
  - (b) the Comptroller has complied with subsection (6) in respect of the notice;
  - (c) the notice has not been revoked under subsection (4);
  - (d) the ship or aircraft has remained in Kiribati throughout the period specified in the notice or, if that period has been extended under subsection (3), that period as extended; and
  - (e) an entry has not been made in respect of the ship or aircraft during that period or that period as extended, as the case requires,

on the expiration of that period or that period as extended (as the case requires), the ship or aircraft shall be deemed to have been imported into Kiribati and are forfeited goods.

## PART V—THE EXPORT OF GOODS FROM KIRIBATI

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

- (1) All goods, other than—
  - (a) containers that have not been entered; and
  - (b) baggage; and
  - (c) postal packages containing goods with a value of less than \$20; and
  - (d) goods in free circulation in Kiribati taken on board transport as stores; and
  - (e) goods being exported from Kiribati to satisfy the terms of conditional entry into Kiribati,
 must be entered for export.

- (2) A person may make an export entry by providing a customs officer with the required information necessary to identify—
  - (a) the goods the subject of the entry; and
  - (b) the taxes and charges payable on the exportation of goods from Kiribati (if any); and
  - (c) the overseas port to which the goods are going.
- (3) A person who has made an export entry must take the goods to a customs area as soon as possible.
- (4) If a person has made a customs entry but a decision has been made not to export the goods, the person must tell a customs officer as soon as possible.

### **55. Leaving the country**

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

## **PART VI—PROHIBITED AND RESTRICTED IMPORTS AND EXPORTS**

### **56. Prohibited imports**

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

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

### **57. Restricted imports**

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

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

**58. Prohibited exports**

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

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

**59. Restricted exports**

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

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

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

Despite sections 56 and 57, prohibited imports may be imported, and restricted imports may be imported without compliance with any required condition, if they are—

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

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

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

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

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

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

**PART VII—THE DUTIES****DIVISION 1—IMPORT DUTY***Subdivision 1—Creation of a Tax Called Import Duty***63. Import duty**

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

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

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

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

- (1) The Minister, acting in accordance with the advice of the Cabinet, may make an order, known as an import tariff order, to—
  - (a) set rates of duty payable on the importation of specified goods at a particular time; or
  - (b) identify goods, or quantities or classes of goods that are exempt from import duty; or
  - (c) identify goods, or classes of goods that may receive a reduction in or exemption from import duty if the owner of the goods follows conditions set out in the order,
 by publishing the order in the *Gazette*.
- (2) Without limiting subsection (1), an import tariff order may—
  - (a) adopt the Harmonized System as the basis of the tariff of Kiribati; and
  - (b) require imported goods to be classified according to the General Rules for the Harmonized System.
- (3) All goods must be classified to one of the items of the import tariff order.
- (4) For the avoidance of doubt, even if an import tariff order adopts the Harmonized System as the basis of the tariff of Kiribati, the order may add additional items to it for either tariff or statistical purposes.

- (5) An import tariff order may set different rates of duty payable depending on the country or customs territory of origin of the goods.
- (6) An import tariff order must specify the day when the order takes effect. However, an order must not specify a day earlier than the day the *Gazette* notice containing the order was published.
- (7) The Comptroller must give anyone who asks for the import tariff order the order in force on the day the person asks.

*Subdivision 3—Working Out the Origin of Imported Goods*

**65. Working out the origin of imported goods**

- (1) The origin of imported goods is to be determined using the Rules of Origin.
- (2) Despite subsection (1), a person who has grounds to believe that he or she is going to import PICTA origin goods may apply for a binding ruling by providing the Comptroller with the required information necessary for the Comptroller to determine whether the goods subject to the application (called in this section ‘subject goods’) are of PICTA origin, no earlier than six months before the person believes he or she will be importing the goods.
- (3) On the basis of the information received in the application, the Comptroller must make a binding ruling, setting out—
  - (a) the subject goods; and
  - (b) the country of origin of the goods; and
  - (c) the reasons for the decision,
 within 30 days of receiving the application.
- (4) A customs officer working out import duty on the importation of subject goods must always treat subject goods as having originated from the country indicated in the ruling for six months from the day the owner first imported the subject goods into Kiribati.
- (5) If it is necessary to determine the origin of goods for countries or customs territories other than countries a party to PICTA, then—
  - (a) the Rules of Origin must still be used; but
  - (b) the word ‘party’ should be read, where the context requires, as ‘country or customs territory’.
- (6) The Comptroller must give anyone who asks for the Rules of Origin the Rules in force on the day the person asks.

*Subdivision 4—Working Out the Customs Value of Imported Goods*

**66. Valuation provisions of WTO Agreement to apply in Kiribati**

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

**67. Value to be worked out on a ‘free on board’ (FOB) basis**

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

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

**68. Interpretation**

(1) In this Subdivision, unless the context otherwise requires,—

‘buying commissions’ means the fees paid by an owner to the owner’s agent for the service of representing the owner abroad in the purchase of goods being valued;

‘identical goods’ means imported goods that—

- (a) are the same in all respects, including physical characteristics, quality and reputation, as the goods being valued, except for minor differences in appearance that do not affect the value of the goods; and
- (b) were produced in the same country as the goods being valued were produced; and
- (c) were produced by or on behalf of the producer of the goods being valued,

but does not include goods which incorporate or reflect engineering, development, artwork, design work, plans and sketches for which no adjustment has been made under section 71 because such elements were undertaken in Kiribati;

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

‘produced’ includes grown, manufactured or mined;

‘similar goods’ means imported goods that—

- (a) closely resemble the goods being valued in respect of component materials and parts and characteristics, and are functionally and commercially interchangeable with the goods being valued, having regard to the quality and reputation of the goods and the goods being valued; and
- (b) were produced in the same country as the goods being valued were produced; and
- (c) were produced by or on behalf of the producer of the goods being valued,

but does not include goods which incorporate or reflect engineering, development, artwork, design work, plans and sketches for which no adjustment has been made under section 71 because such elements were undertaken in Kiribati;

‘transaction value’ means the value determined in accordance with section 70.

(2) For the purposes of this Subdivision, if—

- (a) there are no goods that were produced by or on behalf of the person who produced the goods being valued; and

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

## **69. Related parties**

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

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

- (1) Unless excluded under this Subdivision, the customs value of a good shall be its transaction value.
- (2) The transaction value of goods being imported into Kiribati is the price actually paid or payable for the goods when sold for export to Kiribati adjusted in accordance with section 71, provided that—
  - (a) there are no restrictions as to the disposition or use of the goods by the owner other than restrictions which—
    - (i) are imposed or required by a law of Kiribati; or
    - (ii) limit the geographical area in which the goods may be resold; or
    - (iii) do not substantially affect the value of the goods; and
  - (b) the sale or price is not subject to some condition or consideration for which a value cannot be determined with respect to the goods being valued; and
  - (c) no part of the proceeds of any subsequent resale, disposal or use of the goods by the owner will accrue directly or indirectly to the seller, unless an appropriate adjustment can be made in accordance with section 71; and
  - (d) the owner and the seller are not related within the meaning of section 69 or, where the owner and the seller are related, the transaction value is acceptable for customs purposes under subsection (4).

- (3) Where a customs officer has reason to believe that the relationship between the owner and the seller has influenced the price actually paid or payable for goods being imported, the officer must give the owner a document, indicating—
  - (a) that the customs officer has reason to believe the relationship between the owner and the seller influenced the price actually paid or payable on the goods being imported; and
  - (b) asking the owner to provide information within seven days (or such longer period as the officer may allow) proving that the price actually paid or payable was not influenced by the relationship between the owner and the seller.
- (4) Where the owner and seller are related, the transaction value shall be acceptable for customs purposes and the goods valued under subsection (2) if—
  - (a) the relationship between the buyer and the seller did not influence the price actually paid or payable for the goods; or
  - (b) the owner demonstrates that the transaction value closely approximates—
    - (i) the transaction value in sales to unrelated buyers of identical goods or similar goods for export to Kiribati;
    - (ii) the customs value of identical goods or similar goods as determined under Article 5 of the Rules of Valuation; or
    - (iii) the customs value of identical goods or similar goods as determined under Article 6 of the Rules of Valuation, occurring at or about the same time.
- (5) In applying the tests set out in subsection (4)(b), due account must be taken of—
  - (a) demonstrated differences in commercial levels and quantity levels; and
  - (b) the amounts referred to in section 71; and
  - (c) costs incurred by the seller in sales in which the seller and the buyer are not related, being costs that are not incurred by the seller in sales in which the seller and the buyer are related.
- (6) The tests set out in subsection (4)(b) are to be used at the initiative of the owner and only for comparison purposes. Substitute values may not be established under subsection (4)(b).

#### **71. Adjustments to the price actually paid or payable**

- (1) In determining the customs value under section 70, there shall be added to the price actually paid or payable for the goods being valued (to the extent they have not been included in the price actually paid or payable for the goods)—
  - (a) commissions and brokerage, except for buying commissions; and
  - (b) the cost of packages which, under the General Rules for the Harmonized System, are taken to be as one with the goods in question; and
  - (c) the cost of packing (whether for labour or materials); and
  - (d) the value (apportioned reasonably and in accordance with generally accepted accounting principles) of—
    - (i) materials, components, parts and similar items incorporated in the goods being valued; and

- (ii) tools, dies, moulds and similar items used in the production of the goods being valued; and
- (iii) materials consumed in the production of the goods being valued; and
- (iv) engineering, development, artwork, design work, plans and sketches undertaken elsewhere than in Kiribati, which is necessary for the production of the goods being valued,

that have been supplied directly or indirectly by the owner free of charge or at a reduced cost for use in connection with the production and sale for export of the goods being valued; and

- (e) royalties and licence fees in respect of the goods being valued, including payments in respect to patents, trade marks and copyrights, that the owner must pay, either directly or indirectly, as a condition of sale of the goods, but excluding charge for the right to reproduce the goods in Kiribati; and
  - (f) the value of any part of the proceeds of any subsequent resale, disposal or use of the goods being valued that accrues directly or indirectly to the seller.
- (2) In determining the customs value under section 70, there shall be deducted from the price actually paid or payable for the goods being valued (to the extent they have been included in the price actually paid or payable for the goods)—
- (a) charges for the construction, erection, assembly or maintenance of the goods or technical assistance, undertaken after importation of the goods into Kiribati; and
  - (b) the cost of transport after importation of the goods into Kiribati; and
  - (c) Kiribati taxes and charges payable on the importation of the goods into Kiribati, if such costs or charges can be distinguished from the price actually paid or payable.
- (3) Additions and deductions to the price actually paid or payable for goods being valued must be made on the basis of objective and quantifiable information that clearly establishes the accuracy of the amount to be added or deducted.
- (4) No additions or deductions are to be made to the price actually paid or payable for goods being valued in determining their customs value except as provided in this section.

## **72. Alternative methods of working out customs value**

- (1) Where a customs officer cannot work out the customs value of goods using transaction value, the officer must use the valuation methods in the order set out in Articles 2 to 7 of the Rules of Valuation, until the officer can determine a customs value.
- (2) Where a customs officer works out the customs value of goods being valued under this section, the officer must provide the owner with copies of—
  - (a) the Rules of Valuation; and
  - (b) the Interpretative Notes,
 the officer used to work out the customs value.

## **73. Customs value must be expressed in Australian dollars**

- (1) Customs value must be expressed in Australian dollars.

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

*Subdivision 5—The Time when Import Duty is Worked Out*

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

Import duty is calculated—

- (a) if goods are entered before the goods are imported – as at the day the goods were entered; or
- (b) if goods are entered after the goods are imported – as at the day the goods were brought to a designated port; or
- (c) if goods—
  - (i) are consumed on transport whilst in Kiribati; or
  - (ii) are alcohol or tobacco products found to be missing from a container on transport sealed by a customs officer at any time prior to the departure of the transport from Kiribati,
 as at the day the master applies for a clearance outwards; or
- (d) if goods—
  - (i) have not been entered; and
  - (ii) a person entrusted with the goods has been unable to account for the goods under section 38,
 as at the day the Comptroller decided the person had not accounted for the goods.

*Subdivision 6—Working Out Who Must Pay Import Duty and How it is to be Paid*

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

- (1) The owner of goods must pay import duty.
- (2) Despite subsection (1)—
  - (a) the master of transport must pay the duty for goods listed in the cargo report that are not accounted for, unless it can be proved that goods were unloaded into a customs area; or
  - (b) where—
    - (i) the Comptroller has asked a person under section 38 to account for goods; and
    - (ii) the person can not,
 that person must pay import duty.

**76. How must duty be paid?**

Import duty must be paid to the Comptroller, by—

- (a) cash;
- (b) cheque; or
- (c) any other method the Comptroller may allow.

**77. Minimum duty payable**

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

### DIVISION 2—EXPORT DUTY

**78. Export duty**

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

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

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

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

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

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

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

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

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

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

**83. How must export duty be paid?**

Export duty must be paid to the Comptroller, by—

- (a) cash;
- (b) cheque; or
- (c) any other method the Comptroller may allow.

**84. Minimum duty payable**

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

## PART VIII—REFUND AND REMISSION OF DUTY

### 85. Refund of duty

- (1) A person who—
  - (a) has reason to believe that he or she has paid more import or export duty than required by law; or
  - (b) has—
    - (i) paid import duty on goods; and
    - (ii) will not be receiving the goods,

is entitled to a refund of duty if, within 12 months from the day the duty was paid, he or she provides the Comptroller with the required information necessary to allow the Comptroller to determine whether the circumstances set out in this section existed.
- (2) An owner who has paid import duty on goods which were contrary to order or requirement, and who can prove—
  - (a) he or she has not used the goods; and
  - (b) the goods have been exported,

is entitled to a refund of duty if, within three months from the day the duty was paid, he or she provides the Comptroller with the required information necessary to allow the Comptroller to determine whether the circumstances set out in this section exist.
- (3) An owner who has received a remission is entitled to a refund of import duty paid prior to receiving the remission by providing the Comptroller with the required information necessary to allow the Comptroller to determine how much import duty should be repaid to the person following the remission.
- (4) The Comptroller must decide within 30 days of receiving an application for refund under this section whether a refund should be paid.
- (5) Where the Comptroller has grounds to believe a refund is payable, the Comptroller must immediately refund the duty to the applicant.
- (6) The Comptroller must not approve a refund for less than \$20.

### 86. Remission of import duty

- (1) An owner is entitled to a remission of import duty—
  - (a) where goods under customs control have, while they were under customs control,—
    - (i) deteriorated; or
    - (ii) become damaged; or
    - (iii) been destroyed; or
  - (b) where goods have been manufactured in a licensed warehouse under the conditions of a customs warehouse, scrap remains.
- (2) An owner may apply to the Comptroller for a remission by providing the Comptroller with the information necessary to—
  - (a) allow a customs officer to perform the duties set out in this section; and

- (b) if goods are to be destroyed, to decide whether the destruction should be performed in the presence of a customs officer.
- (3) When applying for a remission, the owner must indicate whether he or she is going to—
    - (a) enter the goods for use in Kiribati; or
    - (b) destroy the goods, and then whether the owner proposes to—
      - (i) enter the scrap for use in Kiribati; or
      - (ii) abandon the scrap; or
    - (c) abandon the goods; or
    - (d) export the goods.
  - (4) If an owner does not indicate what he or she is going to do with the goods referred to in a remission application, the Comptroller must not consider it.
  - (5) When an owner wants to enter the goods for use in Kiribati, then, notwithstanding the valuation provisions that usually apply—
    - (a) the Comptroller must work out a customs value for the goods; and
    - (b) that value will be used as the customs value when working out how much import duty is payable; and
    - (c) the Comptroller must remit the difference between—
      - (i) the import duty worked out by the Comptroller; and
      - (ii) the import duty that would have been payable had the goods not been damaged or deteriorated.
  - (6) Where a person wants to destroy the goods, the Comptroller may direct a person not to destroy the goods unless a customs officer is present. Otherwise, the Comptroller may allow a person access to his or her goods to destroy them.
- NOTE: It is an offence not to follow a direction of a customs officer (Schedule 8, item 30).*
- (7) Where the Comptroller has grounds to believe that the goods have been destroyed, the officer must remit all the import duty that would have been payable on them.
  - (8) Where the owner of goods wishes to enter for use in Kiribati the scrap created from the destruction of the goods—
    - (a) notwithstanding the valuation provisions that usually apply, the Comptroller must work out the customs value for the scrap; and
    - (b) the owner must enter the goods as scrap; and
    - (c) the Comptroller must remit the difference between—
      - (i) the import duty worked out by the Comptroller; and
      - (ii) the import duty that would have been payable had the goods not been destroyed.
  - (9) Where an owner wants to abandon the goods or the scrap created from the destruction of goods that has been permitted under this section—
    - (a) the Comptroller must remit the import duty that is payable on the goods; and
    - (b) once the Comptroller remits the duty, title in the goods is vested in the Republic; and
    - (c) the Comptroller may deal with the goods as he or she sees fit (including destroying them).

- (10) Where an owner wants to export the goods, the Comptroller must remit the customs duty once the person enters the goods for export.

## **PART IX—POST-TRANSACTION ASSESSMENTS**

### **87. A customs officer may conduct a post-transaction assessment at premises**

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

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

### **88. Entering premises**

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

### **89. What happens when an occupier consents to a post-transaction assessment?**

- (1) Where an occupier consents to a post-transaction assessment, a customs officer may stay on the premises, and—
- (a) examine commercial documents; and
  - (b) take extracts from commercial documents; and
  - (c) examine the commercial systems that generate commercial documents; and
  - (d) take away documents for copying; and

- (e) ask questions of—
  - (i) the occupier; or
  - (ii) an employee of the occupier present at the premises; and
- (f) ask the occupier to assist him or her in the post-transaction assessment.

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

## **90. What happens when an occupier does not consent to a post-transaction assessment?**

- (1) Where an occupier—
  - (a) refuses consent for a post-transaction assessment; or
  - (b) withdraws consent for a post-transaction assessment,
 a customs officer may apply to a Magistrate for a compliance warrant.
- (2) In applying to a Magistrate for a compliance warrant under subsection (1), a customs officer must say, by information on oath, that—
  - (a) he or she has grounds to believe that there are commercial documents relating to goods that have been imported or exported from Kiribati in the previous three years on the premises; and
  - (b) the officer gave the occupier a rights document; and
  - (c) the occupier either—
    - (i) refused consent for a post-transaction assessment; or
    - (ii) removed consent to continue a post-transaction assessment.
- (3) Where a Magistrate is satisfied the grounds set out in subsection (2) have been made out, he or she must grant a compliance warrant to the officer, in the form set out in Schedule 7.
- (4) A compliance warrant may be exercised by the customs officer named in the warrant at any time during daylight hours for seven days following the grant of the warrant.
- (5) The customs officer named in the warrant, assisted by such other officers as the officer may require and using such reasonable force as is necessary, may—
  - (a) enter the premises named in the compliance warrant; and
  - (b) search the premises for commercial documents; and
  - (c) examine the systems that generate commercial documents; and
  - (d) require the occupier to assist him or her in the post-transaction assessment.; and
  - (e) require the occupier to answer questions in relation to the goods imported or exported by the occupier over the last three years; and
  - (f) examine documents; and
  - (g) take extracts from commercial documents; and
  - (h) take commercial documents away for copying.

## **91. Copying documents**

- (1) Where a customs officer takes a document away for copying, the officer must give the occupier a receipt setting out the type of document that has been taken away.

- (2) If a customs officer takes a document away for copying, the officer must—
- (a) make a copy of the document as soon as possible; and
  - (b) return the original document to the occupier as soon as the copy is made.

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

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

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

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

## **PART X—RECOVERING SHORTPAID DUTY**

**94. Comptroller may recover duty shortpaid**

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

## **PART XI—LICENSING**

### **DIVISION 1—WAREHOUSE LICENSING**

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

- (1) A person may apply to be—
  - (a) a public warehouse licensee; or
  - (b) a private warehouse licensee,
 by providing the Comptroller with the required information necessary to determine whether the applicant can manage and account for goods under customs control.
- (2) The Comptroller must consider any application received under subsection (1) and make a decision within 30 days of receiving it.
- (3) If the Comptroller has grounds to believe the person can manage and account for warehoused goods, the Comptroller must issue the person a warehouse licence.

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

## **96. Manufacturing in a warehouse**

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

## DIVISION 2—CUSTOMS AGENT LICENSING

### **97. Customs agents**

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

- (4) The Comptroller may revoke a licence.

## **PART XII—REVIEW**

### **98. When a customs officer must provide a statement of reasons**

- (1) A person who disagrees with a decision made by a customs officer, other than a decision made under—
- (a) Part IV (*The movement of goods and people into Kiribati*), other than section 41; and
  - (b) Part V (*The exportation of goods from Kiribati*); and
  - (c) Part XII (*Review*); and
  - (d) Part XIII (*Offences, prosecutions and administrative penalties*), other than Division 4 of that Part,

may give the customs officer who made the decision a document asking for a statement of reasons as to why the decision (called in this Part ‘the reviewable decision’) was made, within 30 days of being informed of the decision.

- (2) A customs officer who made the reviewable decision referred to in subsection (1) must provide the person requesting a statement of reasons a written document setting out—
- (a) why the particular decision was made; and
  - (b) the matters they considered when making the decision,
- within 30 days of receiving the request for a statement of reasons.

### **99. Review by the Comptroller**

- (1) A person who has received a statement of reasons provided under s.98(2) may (unless the Comptroller made the decision) ask the Comptroller to reconsider a reviewable decision within 30 days of receiving the statement of reasons.

*NOTE 1: The Board reviews decisions made personally by the Comptroller (s.100).*

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

- (2) The request for a review—
- (a) must be contained in a document; and
  - (b) may attach any documentation the person wants the Comptroller to consider.
- (3) The Comptroller must make a decision within 30 days of receiving a request for a review.
- (4) After considering the information provided under subsection (2), the Comptroller may—
- (a) confirm the original decision; or
  - (b) vary the decision; or
  - (c) set aside the decision, and make his or her own decision in lieu thereof.
- (5) The Comptroller must only consider—
- (a) the information provided under subsection (2); and
  - (b) the statement of reasons provided by the customs officer under section 98(2).

- (6) The Comptroller must provide a document to the person requesting the review which tells the person—
  - (a) what the Comptroller has decided; and
  - (b) the reasons for making that decision.

#### **100. Review by the Board**

- (1) Where a reviewable decision has been made personally by the Comptroller (and not a delegate), and the person to whom the decision relates has received a statement of reasons provided by the Comptroller under section 98(2), the person may, within 30 days of receiving the statement of reasons, ask the Board to review the Comptroller's decision.
- (2) The request for a review—
  - (a) must be contained in a document; and
  - (b) may attach any documentation the person wants the Board to consider.
- (3) The Board must make a decision within 30 days of receiving a request for a review.
- (4) After considering the information provided under subsection (2), the Board may—
  - (a) confirm the original decision; or
  - (b) vary the decision; or
  - (c) set aside the decision, and make its own decision in lieu thereof.
- (5) The Board must only consider—
  - (a) the information provided under subsection (2); and
  - (b) the statement of reasons provided by the Comptroller under section 98(2).
- (6) The Board must provide a document to the person requesting the review which tells the person—
  - (a) what it has decided; and
  - (b) the reasons for making that decision.

#### **101. Appeal to the Board**

- (1) Where the Comptroller has reviewed a decision under section 99(4), the person to whom the decision relates may, within 30 days of receiving the Comptroller's decision, appeal the Comptroller's decision to the Board.
- (2) The appeal—
  - (a) must be contained in a document; and
  - (b) may attach any documentation the person wants the Board to consider.
- (3) The Board must make a decision within 30 days of receiving an appeal.
- (4) After considering the information provided under subsection (2), the Board may—
  - (a) confirm the original decision; or
  - (b) vary the decision; or
  - (c) set aside the decision, and make its own decision in lieu thereof.

- (5) The Board must only consider—
  - (a) the information provided under subsection (2); and
  - (b) the information considered by the Comptroller under section 99(5); and
  - (c) the Comptroller's decision provided under section 99(6).
- (6) The Board must provide a document to the person making the appeal which tells the person—
  - (a) what it has decided; and
  - (b) the reasons for making that decision.

### **102. Appeal to the High Court**

- (1) Where the reviewable decision considered by the Board under either section 100(4) or section 101(4) deals with a matter other than—
  - (a) the assessment of duty; or
  - (b) the seizure of goods,the person who requested the review or made the appeal (as the case may be) may, within 30 days of receiving the Board's decision, appeal to the High Court on a question of law only, and the notice of appeal shall state the question of law that will be raised on the appeal.
- (2) Where the High Court considers that the Board has made an error of law, the Court shall refer the matter to the Board with such directions as the Court may consider appropriate, and the Board must—
  - (a) reconsider its decision; and
  - (b) make another decision according to law.

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

- (1) Where the reviewable decision considered by the Board under either section 100(4) or section 101(4) deals with the assessment of duty, the person who requested the review or made the appeal (as the case may be) may, within 30 days of receiving the Board's decision, apply to the High Court for a review of the assessment.
- (2) Where the High Court considers that the Board has assessed duty at a rate higher than is appropriate in the circumstances of the case, the Court shall refer the matter to the Board with such directions as the Court may consider appropriate, and the Board must—
  - (a) reconsider its decision; and
  - (b) assess the duty to be paid at the rate determined by the Court.

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

- (1) Where the reviewable decision considered by the Board under either section 100(4) or section 101(4) deals with the seizure of goods (other than under a search warrant), the person who requested the review or made the appeal (as the case may be) may, within 30 days of receiving the Board's decision, apply to the High Court for a review of the seizure.
- (2) Where the High Court considers that the goods were seized without lawful authority, it shall order that the goods be returned to the person from whom they were seized.

**105. Case stated**

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

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

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

**PART XIII—OFFENCES, PROSECUTIONS AND ADMINISTRATIVE PENALTIES****DIVISION 1—OFFENCES****107. Offences**

- (1) The offences under this Act are set out in the table in Schedule 8.
- (2) Column 2 of the table in Schedule 8 sets out who may be prosecuted for a particular offence.
- (3) Column 3 of the table in Schedule 8 sets out the elements of the offence for which someone may be prosecuted.
- (4) Column 4 of the table in Schedule 8 sets out the maximum penalty that can be imposed on someone convicted of the offence.

**DIVISION 2—CUSTOMS PROSECUTIONS****108. Time for prosecutions**

A prosecution for an offence under this Act (called in this Part a ‘customs prosecution’) must be commenced within seven years from the date of the offence.

**109. Where offences are taken to have happened**

An offence under this Act will be taken to have been committed—

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

**110. Comptroller may conduct a customs prosecution**

Subject to section 42(4) of the *Constitution*, the Comptroller may commence and conduct any customs prosecution.

*NOTE:* Section 42(4) of the *Constitution* deals with the Attorney-General’s control of criminal proceedings.

**111. Evidential provisions**

- (1) In a customs prosecution, proof that—
  - (a) the proper duty was paid in relation to the importation or exportation of goods; or

- (b) goods were lawfully—
  - (i) imported; or
  - (ii) exported; or
  - (iii) brought into use in Kiribati; or
  - (iv) unloaded from transport,

lies with the defendant.

- (2) In any proceedings, an averment from a customs officer that—
  - (a) a person is a customs officer; or
  - (b) goods were destroyed or thrown overboard to prevent seizure; or
  - (c) goods the subject of the proceedings were of a certain value; or
  - (d) an offence was committed at a particular place,
 will be taken to be evidence of the fact, unless the defendant can prove the contrary.

### **112. Some answers to questions not to be used in evidence**

Where any provision of this Act allows a customs officer to require a person to answer a question about something, the information contained in the person's answer cannot be used as evidence in a prosecution other than a prosecution for knowingly making a false or misleading statement to a customs officer on duty.

### **113. The application of seals**

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

## DIVISION 3—SEARCH WARRANTS AND WRITS OF ASSISTANCE

### **114. Applying for search warrants and writs of assistance**

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

- (4) Where the Magistrate forms an opinion that the customs officers executing a search warrant may require assistance in the execution of the warrant, the Magistrate must issue a writ of assistance in the form set out in Schedule 10.
- (5) A warrant remains in force for the period specified by the Magistrate in the warrant.
- (6) A writ of assistance remains in force for the period of the search warrant for which the writ of assistance is issued.

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

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

**DIVISION 4—ADMINISTRATIVE PENALTIES**

**116. Imposition of administrative penalty**

- (1) Subject to section 118, where the Comptroller has grounds to believe that an entry of goods made under section 29 contains an error or omission and that, as a result,—
  - (a) an amount of duty payable under this Act has not been paid or would not have been paid; or
  - (b) the entry is otherwise materially incorrect,the Comptroller may give the owner a document stating that unless, within 30 days of the date the document was served, the owner satisfies the Comptroller that the person is entitled under section 118 to be exempted from the imposition of a penalty the Comptroller will issue a penalty notice under subsection (2).

- (2) Where an owner who has received a document of the type referred to in subsection (1) does not, within the time allowed, satisfy the Comptroller that he or she is entitled under section 118 to be exempted from the imposition of a penalty under this section, the Comptroller shall issue a notice (called in this Division a 'penalty notice') to the owner requiring him or her to pay, in addition to any duty payable, a penalty in the sum of—
  - (a) in any case where, as a result of the error or omission, an amount of duty payable under this Act has not been or would not have been paid - the greater of—
    - (i) \$50; or
    - (ii) an amount equal to 20% of the duty unpaid or that would not have been paid, up to a maximum amount of \$10,000; or
  - (b) in any case to which paragraph (a) does not apply, where the error or omission has resulted in the entry being materially incorrect - \$50 in respect of each such entry.
- (3) The due date for the payment of any penalty imposed under this section is 30 days from the date on which notice of the penalty is given by the Comptroller.
- (4) Where the penalty is paid the owner is not liable to prosecution for an offence in relation to the error or omission and the goods in relation to which the error or omission occurred are not liable to seizure.
- (5) Nothing in subsection (4) applies to a prosecution or seizure in relation to goods that have been forfeited by reason of the importation of the goods that are prohibited or otherwise unlawful.
- (6) For the purposes of this section, an entry is materially incorrect if it contains an error or omission in relation to—
  - (a) the identity of the overseas supplier;
  - (b) the identity of the owner;
  - (c) the identity of the person making the entry;
  - (d) the identification of the transport on which the goods were imported, or its voyage number;
  - (e) the Bill of Lading, Air Waybill or container identification details;
  - (f) the supplier's invoice number and date, and the invoice amount;
  - (g) the classification of the goods under the import tariff order;
  - (h) the statistical quantity of the goods;
  - (i) the country of currency in which the goods are traded;
  - (j) the description of the goods;
  - (k) the customs value;
  - (l) the country or customs territory of origin of the goods;and
  - (m) the country from which the goods have been exported.
- (7) Where any penalty imposed remains unpaid by the due date for payment, there shall be imposed—
  - (a) an additional penalty of 5% of the amount of the penalty unpaid by the due date; and
  - (b) an additional penalty of 2% of the amount of the penalty, including any additional penalty, unpaid at the end of the period of one month after the due date; and

- (c) an additional penalty of 2% of the amount of the penalty, including any additional penalty, unpaid at the end of each succeeding period of one month.
- (8) Notwithstanding subsection (7), the Comptroller may, in his or her discretion, remit or refund the whole or any part of any additional penalty imposed under that subsection.

**117. Obligation to pay penalty not suspended by request for review or appeal**

- (1) The obligation to pay and the right to recover any penalty imposed under section 116 are not suspended by any request for a review or appeal or other legal proceedings.
- (2) If the request for review or appeal results in a reduction or setting aside of the penalty any amount paid shall forthwith be refunded to the owner.

**118. No penalty in certain cases**

- (1) An owner is not liable to the imposition of a penalty under section 116 if—
  - (a) he or she has voluntarily disclosed the error or omission to a customs officer before a customs officer has notified him or her that—
    - (i) the goods to which the entry relate have been selected for examination under section 39; or
    - (ii) documentation is required to be provided in relation to that entry under section 40.
  - (b) he or she satisfies the Comptroller that he or she formed a view as to the relevant facts pertaining to the entry which, while incorrect, was reasonable having regard to the information available to him or her when the entry was prepared; or
  - (c) he or she satisfies the Comptroller that he or she acted in good faith on information provided by the supplier of the goods to which the entry relates, and reliance on the accuracy or completeness of the information was reasonable in the circumstances; or
  - (d) the total correct customs value of the goods to which the error on the entry relates is less than \$1000; or
  - (e) a charge for a customs offence has been filed in court in relation to the error or omission; or
  - (f) the period between the date of lodgement of the entry and the date on which the error or omission was first detected exceeds three years.
- (2) Where an entry has been made through a customs agent or a person to whom section 29(2) applies, the person making the entry is not liable to the imposition of a penalty under section 116 if he or she satisfies the Comptroller that he or she acted in good faith on information provided by the person on whose behalf they were acting, and reliance on the accuracy or completeness of the information was reasonable in the circumstances.

**PART XIV—MISCELLANEOUS****DIVISION 1—OTHER RESPONSIBILITIES OF THE COMPTROLLER****119. Surety**

- (1) The Comptroller may require a person who is—
  - (a) requesting a licence to do something under this Act; or
  - (b) licensed to do something under this Act; or
  - (c) seeking access to goods under customs control under this Act; or
  - (d) the occupier of a customs area; or
  - (e) proposing to enter goods on which the import duty payable is less than the duty usually payable if the person obeys conditions,  
to provide an amount of surety that the Comptroller believes is necessary to ensure either the protection of the revenue or compliance with this Act.
- (2) The Comptroller must not ask for more surety than is reasonably necessary in the circumstances in which the request for surety is made.
- (3) A person who is asked to provide surety may provide surety in any form that the Comptroller is prepared to accept.
- (4) If a person is asked to provide surety and he or she refuses, the Comptroller must—
  - (a) in the case of someone licensed under Division 1 of Part XI – revoke the licensee’s warehouse licence; and
  - (b) in the case of someone occupying a customs area designated under section 120(1)(a) – cancel the customs area designation of the place occupied by the occupier; and
  - (c) in all other cases – not make the relevant decision that gave rise to the request for surety until the person provides the surety requested by the Comptroller.

**120. Designations**

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

**121. Identity cards**

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

## DIVISION 2—FORFEITED GOODS

**122. Forfeited goods**

- (1) Goods—
- (a) concealed on transport;
  - (b) concealed under customs control;
  - (c) concealed from a customs officer;
  - (d) on which import duty is properly payable, taken from a place under customs control without the payment of import duty;
  - (e) that are prohibited imports;
  - (f) that are prohibited exports placed on board transport for export;
  - (g) entered for temporary use in Kiribati that have not been exported within the time provided for in section 30(5);
  - (h) that are restricted imports used contrary to a specified condition;
  - (i) forfeited under section 52(2)(b)(ii);
  - (j) that are ships and aircraft forfeited under section 53(7);
  - (k) that are eligible to be sold in a public auction; and
  - (l) that have been substantially misdeclared or under-valued, are forfeited goods.
- (2) Title in forfeited goods vests in the Republic, unless the decision to seize the goods is set aside on review or appeal under Part XII.
- (3) The Board may dispose of forfeited goods as it sees fit.

## DIVISION 3—OTHER PROVISIONS

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

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

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

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

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

**125. Minister may set working fees and hours, etc.**

- (1) The Minister may, by notice published in the *Gazette*, set—
  - (a) the working hours for the Kiribati Customs Service; and
  - (b) fees payable for—
    - (i) working outside working hours; and
    - (ii) storing goods at a state warehouse; and
  - (c) conducting an examination of goods whilst in a state warehouse.
- (2) The Minister must only set a fee that is the approximate cost of providing the service for which the fees are charged.

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

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

**127. Privacy**

A customs officer must not provide another person or agency with information unless such provision of information is—

- (a) required under a law of Kiribati; or
- (b) reasonably necessary for the enforcement of the criminal law, or a law imposing a criminal penalty; or
- (c) necessary to protect the public revenue.

**128. Regulations**

The Beretitenti, acting in accordance with the advice of the Cabinet, may make regulations prescribing matters necessary or convenient to be made for carrying out or giving effect to this Act.

**129. Repeal and transitional provisions**

- (1) The *Customs Act* 1993 (called in this section ‘the old Act’) is repealed.
- (2) For the avoidance of doubt, any subsidiary legislation made under the *Customs Ordinance* that remained in force following its repeal by the old Act is repealed.

- (3) At the commencement of this Act—
- (a) the official designated as the Comptroller of Customs under section 108 of the old Act will be the Comptroller of Customs under this Act; and
  - (b) anyone appointed a customs officer under section 108 of the old Act will be taken to be customs officers appointed under this Act; and
  - (c) any place designated as a—
    - (i) port; or
    - (ii) place of loading or unloading within a port; or
    - (iii) boarding station within a port; or
    - (ii) an aerodrome,under section 114 of the old Act will be taken to be a designated port for the purpose of this Act; and
  - (d) any place designated as a—
    - (i) customs area; or
    - (ii) state warehouse,under section 115 of the old Act will be taken to be a customs area for the purpose of this Act.

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

## SCHEDULE 1

(SECTION 13(1))

## THE GENERAL POWERS OF CUSTOMS OFFICERS

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

<i>Item №</i>	<i>Powers a customs officer may exercise</i>	<i>Where the power may be exercised</i>
11	Search anything entering or leaving a place under customs control.	At places under customs control
12	<p>Stop and search any form of transport (including vehicles) anywhere in Kiribati where a customs officer has reason to believe the transport contains—</p> <ul style="list-style-type: none"> <li>(a) goods on which import duty has not been paid; or</li> <li>(b) prohibited imports; or</li> <li>(c) restricted imports being used contrary to conditions.</li> </ul>	Anywhere in Kiribati
13	<p>Where an officer has reasonable grounds to believe a person has—</p> <ul style="list-style-type: none"> <li>(a) contravened this Act; or</li> <li>(b) goods believed to have been removed from a customs area without payment of import duty,</li> </ul> <p>to search him or her.</p>	Anywhere in Kiribati
14	Arrest anyone where the officer has reasonable cause to believe they have breached this Act, and to take them as soon as possible to a Magistrates' Court to be dealt with under law.	Anywhere in Kiribati
15	Have the same powers as police officers with respect to customs offences.	Anywhere in Kiribati
16	Seize goods the officer has reasonable grounds to believe are forfeited goods.	Anywhere in Kiribati

## SCHEDULE 2

(SECTION 13(4))

## THE RULES FOR SEARCHING PEOPLE

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

## SCHEDULE 3

(SECTION 56)

## PROHIBITED IMPORTS

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

## SCHEDULE 4

(SECTION 57)

## RESTRICTED IMPORTS

<i>Item N<sup>o</sup></i>	<i>Goods</i>	<i>Restriction</i>
1	Absolute alcohol.	May only be imported in the quantities permitted by the Minister, acting in accordance with the advice of the Cabinet.
2	Ethyl Alcohol, as defined in the <i>British Pharmacopœia</i> , as published from time to time.	May only be imported in the quantities permitted by the Minister, acting in accordance with the advice of the Cabinet.
3	Earth, soil, loam, sand, mud, dust, clay, ashes, and similar substances from any other source other than soil.	May only be imported if the goods originate in, and are imported directly from— (a) Australia; or (b) New Zealand; or (c) Fiji; or (d) the Solomon Islands; or (e) Hawaii, and are accompanied by a certificate given by an agricultural or scientific officer in the employment of the government of the country of origin of the goods which proves to the Comptroller that the goods are free from disease and any harmful form of animal, insect or plant life.
4	Goods the importation of which is subject to conditions imposed by any law of Kiribati.	Compliance with any conditions for importation set out under that law.

## SCHEDULE 5

(SECTION 58)

## PROHIBITED EXPORTS

<i>Item N<sup>o</sup></i>	<i>Goods</i>
1	Goods of any kind, the exportation of which is prohibited under a law of Kiribati.

## SCHEDULE 6

(SECTION 59)

## RESTRICTED EXPORTS

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



## SCHEDULE 8

(SECTION 107)

## OFFENCES

<i>Item №</i>	<i>Person who may be prosecuted</i>	<i>Offence</i>	<i>Maximum penalty</i>
1	Anyone	Knowingly evading the payment of import or export duty	A fine of \$5000 or treble the amount of duty evaded (whichever is the higher), imprisonment for two years and forfeiture of the goods
2	Anyone	Concealing goods under customs control	A fine of \$5000, imprisonment for two years and forfeiture of the goods
3	Anyone	Knowingly possessing goods on which import duty properly payable has not been paid	A fine of \$5000, imprisonment for two years and forfeiture of the goods
4	Anyone	Knowingly making a false or misleading statement to a customs officer	A fine of \$5000 and imprisonment for two years
5	Anyone	Knowingly importing a prohibited import	A fine of \$5000, imprisonment for two years and forfeiture of the goods
6	Anyone	Knowingly importing a restricted import contrary to a condition under which the goods may be imported	A fine of \$5000, imprisonment for two years and forfeiture of the goods
7	Anyone	Knowingly exporting a prohibited export	A fine of \$5000, imprisonment for two years and forfeiture of the goods
8	Anyone	Knowingly exporting a restricted export contrary to a condition under which the goods may be exported	A fine of \$5000, imprisonment for two years and forfeiture of the goods
9	Anyone	Knowingly holding themselves out to be a customs agent without being licensed by the Comptroller under Part XI	A fine of \$5000 and imprisonment for two years
10	Anyone	Committing an offence under this Act using a weapon	Imprisonment for 30 years
11	Anyone	Maliciously shooting at— (a) a customs officer; or (b) any form of transport carrying a customs officer, whilst the officer is on duty.	Imprisonment for 30 years
12	Anyone	Intimidating a customs officer	A fine of \$1000 and imprisonment for one year

<i>Item No</i>	<i>Person who may be prosecuted</i>	<i>Offence</i>	<i>Maximum penalty</i>
13	Anyone	Intentionally stopping— (a) a customs officer; or (b) anyone named in a search warrant; or (c) anyone assisting a customs officer executing a search warrant or writ of assistance,  from executing a search warrant or writ of assistance (as the case may be)	A fine of \$2000 and imprisonment for two years
14	Anyone	Intentionally stopping a customs officer from executing a compliance warrant	A fine of \$2000 and imprisonment for two years
15	A customs officer	Accepting a form of benefit for not performing any part of his or her duty	A fine of \$2000 and imprisonment for two years, with mandatory disqualification from employment in the civil service for five years
16	A customs officer	Making an agreement with anyone not to perform his or her duty	A fine of \$2000 and imprisonment for two years, with mandatory disqualification from employment in the civil service for five years
17	(a) An owner; or (b) if export duties are being levied, an exporter	Failing to retain, for the required period, commercial documents relating to— (a) goods imported; or (b) if export duties are being levied, goods exported from Kiribati	A fine of \$2000 and imprisonment for two years
18	Anyone	Preventing a customs officer on duty from lawfully exercising the general powers of a customs officer	Where violence is used against the customs officer - a fine of \$2000 and imprisonment for two years; otherwise a fine of \$500 and imprisonment for three months
19	Anyone	Refusing to answer a question that a customs officer is entitled to ask the person under this Act	A fine of \$500 and imprisonment for three months
20	A master of transport	Touching down or landing anywhere in Kiribati other than a designated port, without approval from the Comptroller, unless the transport touched down or landed somewhere else due to— (a) force of weather; or (b) mechanical failure	A fine of \$500 and imprisonment for three months

<i>Item №</i>	<i>Person who may be prosecuted</i>	<i>Offence</i>	<i>Maximum penalty</i>
21	A master of transport	Failing to take reasonable steps to prevent people boarding transport before a customs officer	A fine of \$500 and imprisonment for three months
22	A master of transport	Failing to do everything that is needed to allow a customs officer to board the transport	A fine of \$500 and imprisonment for three months
23	A master of transport	Failing to take reasonable steps to stop goods or people leaving transport without— (a) a clearance inwards; or (b) the approval of a customs officer	A fine of \$500 and imprisonment for three months
24	A master of transport	Allowing bulk to be broken before— (a) a clearance inwards is issued; or (b) the approval of a customs officer is given	A fine of \$500 and imprisonment for three months
25	A master of transport not unloading goods in Kiribati	Failing to report the arrival of transport within 48 hours of arriving in Kiribati	A fine of \$500 and imprisonment for three months
26	A master of transport	Leaving Kiribati without obtaining a clearance outwards	A fine of \$500 and imprisonment for three months
27	Anyone	Leaving transport that has arrived in Kiribati before— (a) a clearance inwards has been made; or (b) a customs officer has approved the person leaving the transport	A fine of \$500 and imprisonment for three months
28	A person who has left transport arriving in Kiribati from another country	Leaving the place under customs control where the transport arrived without the permission of a customs officer	A fine of \$500 and imprisonment for three months
29	Anyone	Boarding or leaving transport under customs control without the approval of a customs officer	A fine of \$500 and imprisonment for three months
30	Anyone	Failing to follow a lawful direction given under this Act to the person by a customs officer	A fine of \$500 and imprisonment for three months
31	Anyone	Failing to abide by a lawful condition specified by a customs officer	A fine of \$500 and imprisonment for three months

<i>Item №</i>	<i>Person who may be prosecuted</i>	<i>Offence</i>	<i>Maximum penalty</i>
32	Anyone	Touching goods or baggage under customs control without— (a) being authorised under either section 41 or section 51; or (b) reasonable excuse	A fine of \$500 and imprisonment for three months
33	Anyone	Making an entry without the authorisation of an owner	A fine of \$500 and imprisonment for three months
34	Anyone	Loading prohibited exports onto transport for the purposes of export	A fine of \$500 and imprisonment for three months
35	Anyone	Allowing someone who is not— (a) a customs agent; or (b) someone authorised under section 29(2)(b), to enter goods on his or her behalf	A fine of \$500 and imprisonment for three months
36	Anyone	Entering goods on behalf of another person without being— (a) a customs agent; or (b) someone authorised under section 29(2)(b),	A fine of \$500 and imprisonment for three months
37	Anyone	Attempting to commit an offence under this Act	Half the maximum fine and half the maximum period of imprisonment provided for on conviction for the substantive offence





**CUSTOMS ACT 2005****EXPLANATORY MEMORANDUM**

This Act replaces the *Customs Act 1993*, which needs to be updated, particularly to take account of international developments in the area of customs administration and the recent ratification by Kiribati of the *Pacific Island Countries Trade Agreement (PICTA)* and the *Pacific Agreement on Closer Economic Relations (PACER)*.

PICTA and PACER are the initial steps by countries in the Pacific towards the creation of a single regional market, with the intention of establishing a free trade area. Passage of this legislation is a step towards meeting our obligations under PICTA and will facilitate the adoption of the necessary administrative provisions for compliance.

The new legislation also reflects a change in work practices within the Customs Service (KCS). The KCS is adopting a modern approach to administering the customs border, which uses compliance and risk management techniques to replace the previous 'physical control' approach, through core Customs procedures such as ship and aircraft clearance, cargo accounting, passenger processing, bonded warehouse control, entry processing and post transaction assessments.

The following notes highlight changes to the regime that was established by the former legislation. The other elements of the former Act have been continued, although reorganised somewhat and clarified using the 'plain English' style. The Act is divided into 14 Parts.

**Part I**

Part I deals with preliminary matters, including definitions. It should be noted that the legislation will not come into force until three months after the Beretitenti gives his assent. This is to allow the KCS sufficient time to finalise the new administrative procedures that will be introduced as a consequence of the new law. One change introduced in this Part is the provision allowing importers to communicate with the KCS electronically (s.4(1)). This is intended to lead to more efficient communication from both sides.

**Part II**

Part II establishes the KCS and the offices of Comptroller of Customs and other Customs Officers. The general powers of customs officers are set out in Schedule 1.

**Part III**

Part III sets out when goods and people are under 'customs control'. This is important, as it delineates when customs officers can exercise their powers (particularly the general powers of customs officers to ask questions, examine goods and give directions) to ensure compliance with the legislation.

**Part IV**

Part IV deals with the movement of goods and people into Kiribati. The master of transport (basically ships and aircraft) must report information about the goods they are carrying seven days before arrival (for ships) and two hours before arrival (for aircraft). The early reporting of cargo is essential to allow an adequate risk assessment to be conducted, so consignments carrying high revenue or community protection risks can be identified and risk treatments applied.

The Part then sets out the requirements that must be followed so the transport can unload the goods and people on it. Unless authorised by a customs officer, goods must remain under customs control at the place they were unloaded. If goods leave customs control without authorisation, the person given custody of the goods must pay the import duty that is owing.

The owners of goods are obliged to enter most goods that have entered Kiribati for either: use in Kiribati; warehousing; temporary use in Kiribati; transit; or transshipment.

The concept of entering goods for transit by unloading goods at one Kiribati port (for example Betio), so goods can be carried to another port (for example, Kiritimati Island), is new to Kiribati law. Masters of transport taking goods entered for transit have the same reporting requirements as those bringing goods into Kiribati from overseas, but unlike the current legislation, transport taking transit goods no longer need to be specially licensed to carry transit goods.

Goods may be entered 10 days before arrival, but must be entered on arrival. After 10 days, KCS may require unentered goods to be taken to either a state warehouse or a public warehouse. Alternatively, goods may be deemed to be in a state warehouse. Goods that remain in a state warehouse for longer than a month can be sold at public auction.

Passengers and crew of transport are obliged to provide information to customs officers at the time they are leaving transport. To ensure that undeclared goods are not imported contrary to law, people must not leave the customs area they arrived at (for example, the arrivals area at the airport) until permitted by a customs officer. If someone is found to have dutiable goods they have not declared, they must pay 200% of the duty that would have been payable on the goods. Otherwise, the undeclared goods are forfeited.

This Part also makes special provision for deeming ships or aircraft to have been imported.

### **Part V**

Part V concerns the exportation of goods. Most goods leaving Kiribati must be entered for export. The Part sets the procedures that must be followed by the master of transport leaving Kiribati to enable KCS to provide a clearance outwards.

### **Part VI**

Part VI provides for prohibited or restricted imports and exports. The Schedules list goods that are prohibited or restricted. The Minister, acting in accordance with the advice of Cabinet, can change the Schedules.

### **Part VII**

Part VII establishes a tax called import duty, which sets out an amount of duty payable on the importation of goods (including goods that are exempt from duty, or eligible for a reduced rate of duty). It permits the Minister, acting in accordance with the advice of Cabinet, to make an Import Tariff Order, which sets out the rates at which duty is payable.

It anticipates the KCS will use the Harmonized Commodity Description and Coding System Nomenclature (as it is amended from time to time), made under the *International Convention on the Harmonized Commodity Description and Coding System* as the basis of its tariff (most countries do).

The provision also makes clear that different duty rates might be levied on particular goods, which satisfy conditions set out in the Import Tariff Order. A further change is the shift of the provisions governing duty exemption and for temporary imports from the Act to the Tariff Order. This change is proposed as these matters impact on determining the duty actually payable on imported goods. By having these matters covered by the Order it will offer greater flexibility, making it easier to amend them in future to meet changing circumstances for imported goods.

The legislation adopts the methods for valuation agreed by the WTO. The WTO Rules of Valuation set out seven ways to determine the customs value of goods. One of them, “transaction value”, is used almost exclusively in Kiribati. Its terms are set out in the legislation. The six remaining methods of valuation are quite complex. It is extremely unlikely that they would be used in Kiribati. For this reason, only the “transaction value” method of calculating customs value is set out in detail. If another valuation method is needed, the legislation then refers users to the terms of the Rules of Valuation, which will govern how to calculate customs value. To ensure transparency, if KCS is seeking to rely on any of the other methods in the Rules of Valuation, they must provide a copy of the Rules to the importer.

To identify what goods are of PICTA origin, the Rules of Origin as set out in Annex I of PICTA are incorporated into the new legislation by reference, for the reasons discussed above.

The legislation sets out who is liable to pay import duties in particular circumstances.

The remainder of the Part then deals with how export duties are worked out, should Government choose to impose them. As a general proposition, export duty is worked out in the same manner as import duty. The person who enters goods for export must pay the export duty.

### **Part VIII**

This Part sets out when an owner of goods can claim a refund of duty or a remission of duty.

### **Part IX**

Post Transaction Assessments are an integral part of a control regime based on compliance and risk management – an approach to controlling goods recently adopted by the KCS. This Part set out the Rules that must be followed when conducting such an assessment. A person must keep commercial documents relating to imported or exported goods for seven years – the same time as is required by the *Income Tax Act 1990*.

A customs officer may, with the consent of the occupier, enter premises and look at commercial documents, and the systems that generate them. If the occupier refuses, a customs officer can apply to a magistrate for a compliance warrant. The occupier must then let the customs officer conduct the assessment, and must assist.

The Part makes clear that information gathered may only be used for the purposes of collecting unpaid duty. It cannot be used in a prosecution. Officers will only be able to examine documents related to exports if export duties have been imposed.

### **Part X**

This Part allows the Comptroller three years to recover shortpaid duty, or wrongly paid refunds.

### **Part XI**

This Part allows the Comptroller to licence people to either be a public warehouse licensee (who can accept goods under customs control from anyone) or a private warehouse licensee (who can only accept goods owned by them). It also sets out how licensees who have a licence to manufacture goods in a warehouse can bring the goods imported to account.

The Part also allows the Comptroller to licence someone as a customs agent. Owners can authorise other people to act for other people on a one-off basis, or use a customs agent. Otherwise, only an owner will be able to enter goods.

### **Part XII**

This Part establishes the review rights people have to challenge a KCS decision. A customs officer must provide a person who has been disappointed with a customs decision with a statement of reasons for why the officer made the decision. The Comptroller can review a decision, and then, if the person is still not satisfied, have the matter reviewed by the Internal Revenue Board. If the person still thinks there is an error of law, they can appeal to the High Court.

The Part also confers on courts the power to review a decision to seize goods as well as to challenge decisions of KCS to demand unpaid duty.

### **Part XIII**

This Part creates in a Schedule the offences that can be prosecuted under this legislation. It then specifies that a prosecution can be commenced up to seven years after the commission of the offence. However, as an alternative to prosecution, there is now the power to impose an administrative penalty. This is expected to simplify the process of dealing with minor breaches of the law. This Part also places the burden of proving that the proper duty was paid, or that goods were lawfully imported, exported or brought into use in Kiribati, or unloaded from transport lies with the defendant. This is traditional in customs legislation.

The procedures for obtaining search warrants and writs of assistance are set out, as are the powers that officers and others have when executing them.

### **Part XIV**

This final Part sets out a number of general provisions. The more important matters dealt with in this Part include the circumstances when the Comptroller can seek sureties from people and the identification of forfeited goods. Regulations may be made by the Beretitenti (acting in accordance with the advice of the Cabinet) that are necessary for the effective implementation of the Act.

David Lambourne  
Solicitor-General  
8 October 2004

**CERTIFICATE OF THE CLERK OF THE MANEABA NI MAUNGATABU**

This printed impression has been carefully examined by me with the Bill which passed the Maneaba ni Maungatabu on 9 June 2005 and is found by me to be a true and correctly printed copy of the said Bill.

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Ioataake Timeon  
Clerk of the Maneaba ni Maungatabu

**Published by exhibition at the Maneaba ni Maungatabu this**

**day of \_\_\_\_\_, 2005.**

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Ioataake Timeon  
Clerk of the Maneaba ni Maungatabu