

## **TABLE OF CONTENTS**

### **ENACTED BY THE PARLIAMENT OF LESOTHO**

1 Short title and Commencement

#### **PART I- PRELIMINARY**

2 Interpretation

3 Application of this Act

4 Agreements for assistance in administration of this Act

5 Customs co-operation with other countries

6 Delegation of duties and powers of Commissioner General

#### **PART II – POWERS AND DUTIES OF COMMISSIONER GENERAL**

7 General Powers and Duties of Commissioner General

8 Commissioner General to hold consultations with Stakeholders

9 Designation of customs officers

10 Confidentiality

#### **PART III - APPOINTMENT OF PLACES OF ENTRY AND EXIT AND CUSTOMS CONTROLLED AREAS**

11 Designation of places of entry and exit

12 Restrictions on use of places of entry or exit

13 Designation of Enquiry points

14 Places of entry or exit in terms of international agreements with other countries

15 Places of entry for aircraft

16 Calls or landings resulting from forced circumstances

17 Places of entry or exit for cross-border trains

18 Places of entry or exit for vehicles

- 19 Places of entry or exit for persons
- 20 Places of entry or exit for goods
- 21 Exemptions
- 22 Information sharing agreements
- 23 Customs controlled areas
- 24 Customs control of goods
- 25 Customs control of persons
- 26 Offences

**PART IV - ARRIVAL AND DEPARTURE OF AIRCRAFTS, TRAINS, VEHICLES, PERSONS AND GOODS**

- 27 Arrival of goods by air
- 28 Advance arrival notices for an aircraft
- 29 Aircraft arrival reports
- 30 Advance departure notices for an aircraft
- 31 Permissions to depart
- 32 Aircraft departure reports
- 33 Outturn reports of cargo unloaded from or loaded on board aircraft at air cargo terminals
- 34 Outturn reports of cargo unpacked or packed at air cargo depots
- 35 Advance arrival notices for cross border trains
- 36 Cross border train arrival reports
- 37 Cross border train advance departure notices
- 38 Cross border train departure reports
- 39 Bus advance arrival notices
- 40 Bus arrival reports

- 41 Bus advance departure notices
- 42 Bus departure reports
- 43 Truck advance arrival notices
- 44 Arrival reports and manifests of incoming cargo
- 45 Truck advance departure notices
- 46 Truck departure reports and manifests
- 47 Outturn reports of cargo unpacked from or packed into containers at container depots
- 48 Outturn reports of cargo with no transport documents
- 49 Reporting of shortages or excess cargo
- 50 Reporting of cargo in other circumstances
- 51 Unpacking of cargo
- 52 Submission of notices, reports and manifests
- 53 Reporting obligations of carriers not residing in Lesotho
- 54 Exclusions and exemptions
- 55 Offences

## **PART V - CLEARANCE AND RELEASE OF GOODS**

- 56 Submission of clearance declarations for importation of goods
- 57 Types of clearance declarations
- 58 Persons entitled to submit clearance declarations for home use
- 59 Persons by whom goods are cleared
- 60 Contents of clearance declarations
- 61 How and where to submit clearance declarations
- 62 Time when clearance declarations may be submitted
- 63 Submission of clearance declarations before arrival of goods at place of entry

- 64 Acceptance of clearance declarations
- 65 Validity of Clearance declarations
- 66 Determination of time of clearance of goods
- 67 Amendment of clearance declarations
- 68 Withdrawal of clearance declarations
- 69 Exclusions from clearance requirements
- 70 Failure to submit clearance declaration within prescribed period
- 71 Clearance of goods imported through cross-border transmission lines, pipelines, cable-cars or conveyor belts
- 72 Clearance of goods destined for export
- 73 Submission of clearance declarations for goods exported
- 74 Exclusion from export clearance requirements
- 75 Failure to clear goods in free circulation for export
- 76 Substitutions before release of goods
- 77 Clearance of goods precondition for release of goods
- 78 When release of goods shall be refused
- 79 When release of goods may be refused
- 80 When release of goods may or shall be withheld
- 81 Release of goods pending technical analysis, expert advice or civil or criminal proceedings
- 82 When release of goods shall or may be withdrawn
- 83 Refusal to release or withdrawal of release of goods
- 84 Substitutions for clearance and release of goods for home use
- 85 Effect of release of goods for home use or customs procedures
- 86 Transfer of ownership of goods under customs procedures

87 Tax consequences for imported goods under customs procedures in event of non-compliance

88 Offences

## **PART VI - PROCESSING OF TRAVELLERS, CREW AND PERSONAL EFFECTS**

89 Incoming travellers and crew declarations

90 Clearance and release for personal effects

91 Outgoing traveller and crew declarations

92 Offences

## **PART VII - TRANSPORTATION, SEALING AND LOADING OF GOODS**

93 Goods not in free circulation to be transported only under customs procedures

94 Persons permitted to transport goods not in free circulation

95 Measures to ensure safety of transport of goods not in free circulation

96 Accidents and other unforeseen events

97 Seals and sealing of containers, vehicles and packages

98 Loading of goods destined for export on an aircraft, train, truck, bus or a vehicle

99 Off-loading of goods destined for export from a an aircraft, train, truck, bus or a vehicle before export

100 Transfer of goods between vehicles or containers

101 Offences

## **PART VIII HOME USE**

102 Submission of clearance declarations before arrival of goods

103 Determination of time of clearance of goods

104 Supporting documents

105 Invoices

- 106 Amendment of invoices
- 107 Keeping of information in respect of clearance declarations
- 108 Submission of clearance declarations
- 109 Release notifications
- 110 Withdrawal, substitution or amendment of release notifications

## **PART IX - NATIONAL AND INTERNATIONAL TRANSIT**

- 111 Starting and delivery points of transit operations
- 112 Commencement and completion periods for transit operations
- 113 Commencement and completion of national transit procedure
- 114 Commencement and completion of international transit procedure
- 115 Limiting places of entry for international transit
- 116 Clearance of goods for transit
- 117 Persons entitled to submit transit clearance declarations
- 118 Contents of transit clearance declarations
- 119 Use of other documents as transit clearance declarations for postal articles
- 120 Limitations on routes for transits
- 121 Redirection of goods from starting and to delivery points
- 122 Carriers permitted to carry out transit operations
- 123 Technical requirements of vehicles or containers used in transit of goods
- 124 Transfer of goods in transit to other vehicles or containers
- 125 Multi-modal transit of goods
- 126 Interruptions in transit operations
- 127 Transit goods transported by road carriers
- 128 Completion of transit operations

- 129 Completion procedures
- 130 Responsibility for ensuring compliance with transit requirements

**PART X - EXCISE WAREHOUSE TRANSIT PROCEDURE**

- 131 Excise warehouse transit procedure
- 132 Starting and delivery points of excise warehouse transit operations
- 133 Commencement and completion periods for excise warehouse transit operations
- 134 Commencement and completion of excise warehouse transit procedure
- 135 Clearance of goods for excise warehouse transit
- 136 Persons entitled to submit excise warehouse transit clearance declarations
- 137 Contents of excise warehouse transit clearance declarations
- 138 Redirection of goods from starting and to delivery points
- 139 Carriers permitted to carry out excise warehouse transit operations
- 140 Technical requirements of vehicles or containers used in excise warehouse transit operations
- 141 Transfer of goods in excise warehouse transit to other vehicles or containers
- 142 Multi-modal excise warehouse transit of goods
- 143 Completion procedures
- 144 Offences

**PART XII - TRANSHIPMENT PROCEDURE**

- 145 Commencement and completion of transshipment procedure
- 146 Limitation of places of entry for transshipment purposes
- 147 Clearance of goods for transshipment
- 148 Persons entitled to submit transshipment clearance declarations
- 149 Contents of transshipment clearance declarations
- 150 Transshipment operations

- 151 Commencement and completion of transshipment operations
- 152 Transshipment goods to be secured on licensed premises
- 153 Commencement and completion periods for transshipment operations
- 154 Non-compliance with completion periods
- 155 Delivery of goods under transshipment procedure for loading on board outgoing aircraft
- 156 Measures to ensure integrity of transshipment operations
- 157 Offences

## **PART XII - TEMPORARY ADMISSION PROCEDURE**

- 158 Temporary admission
- 159 Commencement and completion of temporary admission procedure
- 160 Persons entitled to submit temporary admission clearance declarations
- 161 Contents of temporary admission clearance declarations
- 162 Release notifications to state period of temporary admission
- 163 Persons entitled to submit export clearance declarations
- 164 Goods imported under temporary admission to be cleared for export
- 165 Contents of export clearance declarations
- 166 Proof of export of goods from Lesotho
- 167 Clearance and release of goods for temporary admission on authority of CPD and ATA carnets
- 168 Guaranteeing associations to be approved
- 169 Formats of CPD and ATA carnets
- 170 Validity period of CPD and ATA carnets
- 171 Amendment of CPD and ATA carnets
- 172 Replacement of CPD and ATA carnets



- 173 Export of goods under temporary admission in terms of this Part
- 174 Clearance for export of goods under temporary admission
- 175 Foreign-going aircraft, locomotives and railway carriages entering Lesotho
- 176 Reusable transport equipment entering Lesotho
- 177 Goods not re-exported within applicable period regarded for tax purposes to be cleared for home use
- 178 Offences

### **PART XIII - WAREHOUSING PROCEDURE**

- 179 Warehousing procedure
- 180 Commencement and completion of warehousing procedure
- 181 Warehousing of goods
- 182 Purposes for which goods may be cleared for warehousing in public storage warehouses
- 183 Purposes for which goods may be cleared for warehousing in private storage warehouses
- 184 Persons entitled to submit warehousing clearance declarations
- 185 Contents of warehousing clearance declarations
- 186 Redirection of goods
- 187 Maximum warehousing periods
- 188 Warehousing of dangerous or hazardous goods
- 189 Records to be kept of warehoused goods
- 190 Reports to be submitted in connection with warehoused goods
- 191 Sorted, separated, graded, packed, repacked, labelled or re-labelled of goods kept in storage warehouses
- 192 Removal of goods from storage warehouses

- 193 Removal of restricted goods stored in storage warehouses.
- 194 Notification of closure of public storage warehouse
- 195 Offences

#### **PART XIV - TAX FREE SHOP PROCEDURE**

- 196 Tax free shop procedure
- 197 Commencement and completion of tax free shop procedure
- 198 Persons entitled to submit tax free shop clearance declarations
- 199 Contents of tax free shop clearance declarations
- 200 Clearance and release of goods for tax free shop procedure
- 201 Redirection of goods
- 202 Goods that may be sold in tax free shops
- 203 Persons to whom goods may be sold in tax free shops
- 204 Issuing of sales invoices
- 205 Off-site outlets
- 206 Maximum period for which goods may remain in tax free shops
- 207 Removal of goods from tax free shops
- 208 Manipulation, alteration or combination of goods in tax free shops
- 209 Inventory control of goods in tax free shops
- 210 Regular reports
- 211 Offences

#### **PART XV - STORES PROCEDURE**

- 212 Stores procedure
- 213 Commencement and completion of stores procedure
- 214 Stores taken on board first to be cleared and released for stores procedure

- 215 Persons entitled to submit stores clearance declarations
- 216 Contents of stores clearance declarations
- 217 Determination and Release stores quantities
- 218 Acknowledgement of receipt of stores taken on board
- 219 Prohibited and restricted goods
- 220 Stores arrival reports
- 221 Sealing or securing of stores
- 222 Tax free items for sale on board to travellers and crew
- 223 Removal of stores
- 224 Securing of stores by removal from s or aircraft
- 225 Replacement of stores on s or aircraft
- 226 Unused stores no longer bound for foreign destinations
- 227 Stores departure reports
- 228 Submission of stores reports in terms of this Part
- 229 Aborted voyages
- 230 Additional grounds for regarding stores under stores procedure to be cleared for home use
- 231 Additional grounds for regarding stores under stores procedure to have reverted to free circulation
- 232 Offences

## **PART XVI - EXPORT PROCEDURE**

- 233 Export procedure
- 234 Commencement and completion of export procedure
- 235 Persons entitled to submit export clearance declarations
- 236 Contents of export clearance declarations

- 237 Delivery of goods to depots and export terminals
- 238 Time when goods may be released for export
- 239 Failure to export goods released for export
- 240 Clearance of goods exported through cross-border transmission lines, pipelines, cable-cars or conveyor belts
- 241 Offences

#### **PART XVIII - TEMPORARY EXPORT PROCEDURE**

- 242 Temporary export procedure
- 243 Commencement and completion of temporary export procedure
- 244 Clearance of goods for temporary export
- 245 Release of goods for temporary export
- 246 Simplified clearance and release for commercial trucks temporarily leaving Lesotho
- 247 Simplified clearance and release for buses or taxis temporarily leaving Lesotho
- 248 Simplified clearance and release requirements for private vehicles or light aircraft temporarily leaving Lesotho
- 249 Conditions for clearance of re-imported unaltered goods for home use
- 250 Persons entitled to submit re-importation clearance declarations
- 251 Contents of re-importation clearance declarations
- 252 Repayment of export benefits
- 253 Simplified home use clearance and release of commercial trucks re-entering Lesotho
- 254 Simplified home use clearance and release of buses and taxis re-entering Lesotho
- 255 Simplified home use clearance and release of private vehicles, or light aircraft re-entering Lesotho

- 256 Refusal to release goods as re-imported unaltered goods for home use
- 257 Temporary export of goods from the Lesotho on authority of CPD and ATA carnets
- 258 Issuing associations located in Lesotho to be approved
- 259 Guaranteeing associations to be approved
- 260 Formats of CPD and ATA carnets
- 261 Validity period of CPD and ATA carnets
- 262 Amendment of CPD and ATA carnets
- 263 Return of goods under temporary export procedure in terms of this Part
- 264 Clearance of goods when returned to Lesotho
- 265 Offences

#### **PART XIX - INWARD PROCESSING PROCEDURE**

- 266 Inward processing procedure
- 267 Commencement and completion of inward processing procedure
- 268 Conditions for clearance of imported goods for inward processing
- 269 Persons entitled to submit inward processing clearance declarations
- 270 Contents of inward processing clearance declarations
- 271 Release of imported goods for inward processing
- 272 Conditions for clearance of goods for export as inward processed compensating products
- 273 Time limits on clearance for export of inward processed compensating products
- 274 Export of inward processed compensating products
- 275 Persons entitled to submit export clearance declarations for inward processed compensating products

- 276 Contents of export clearance declarations for inward processed compensating products
- 277 By-products and commercially valuable waste
- 278 Identification measures
- 279 Records and stocktaking
- 280 Appointment of person to undertake inward processing operations
- 281 Use of equivalent goods
- 282 Offences

#### **PART XX - HOME USE PROCESSING PROCEDURE**

- 283 Home use processing procedure
- 284 Commencement and completion of home use processing procedure
- 285 Conditions for clearance of imported goods for home use processing
- 286 Persons entitled to submit home use processing clearance declarations
- 287 Contents of home use processing clearance declarations
- 288 Release of imported goods for home use processing
- 289 Goods under home use processing procedure only to be used for production of products and compensating products
- 290 Time limits on completion of home use processing of goods
- 291 Home use compensating products to be dealt with as goods in free circulation
- 292 By-products and commercially valuable waste
- 293 Conversion rates
- 294 Records and stocktaking
- 295 Appointment of person to undertake home use processing operations
- 296 Offences

#### **PART XXI - OUTWARD PROCESSING PROCEDURE**

- 297 Outward processing procedure
- 298 Commencement and completion of outward processing procedure
- 299 Conditions for clearance of goods for outward processing
- 300 Persons entitled to submit clearance declarations for export of goods for outward processing
- 301 Contents of clearance declarations for export of goods for outward processing
- 302 Release of goods for export under outward processing procedure
- 303 Conditions for clearance for home use of outward processed compensating products
- 304 Time limit on clearance for home use of outward processed compensating products
- 305 Importation of outward processed compensating products
- 306 Persons entitled to submit home use clearance declarations for outward processed compensating products
- 307 Contents of home use clearance declarations for outward processed compensating products
- 308 Conversion rates for goods to compensating products
- 309 Identification measures
- 310 Specific grounds for regarding goods exported under outward processing procedure to be cleared for outright export
- 311 Offences

## **PART XXII – CUSTOMS TARIFF**

- 312 Use of Tariff book
- 313 Amendment of Customs Tariff
- 314 Provisional anti-dumping, countervailing or safeguard duty
- 315 Duty in relation to SACU Agreement

## **PART XXIII - PAYMENT OF DUTY, PENALTY AND INTEREST**

- 316 Commencement of duty
- 317 Time when import duty becomes payable
- 318 Deferment of payment of duty
- 319 Grounds for suspension or withdrawal of deferment benefit
- 320 Payment of import duty on dutiable goods cleared for home use
- 321 Limitation on liability of customs broker
- 322 Duty collected from security
- 323 Under-payment of duty or administrative penalty
- 324 Establishing a lien over goods to secure payment of duty
- 325 Attachment of goods in which importer of dutiable goods has no ownership
- 326 Attachment of goods in which importer of dutiable goods is co-owner
- 327 Effects of a lien
- 328 Termination of lien
- 329 Sale of lien goods
- 330 Application of proceeds realized for lien goods
- 331 Payment of Fees
- 332 Method of payment of duties, taxes, administrative penalties and fees
- 333 Offences

## **PART XXIV - DRAWBACKS AND REFUNDS**

- 334 Application for Drawbacks
- 335 Application for refunds
- 336 Set-off of refund or drawback against amount owing
- 337 Offences



## **PART XXV - ASSESSMENT OF DUTY**

- 338 Assessment of Duty
- 339 Applicable rate of duty
- 340 Self-assessment of duty by importer
- 341 Duty re-assessment by Commissioner General
- 342 Limitation on goods in respect of which re-assessment may be made
- 343 Request for additional information and documents
- 344 Offences

## **PART XXVI - TARIFF CLASSIFICATION OF GOODS**

- 345 Tariff classification
- 346 Tariff self-determination of goods when goods are cleared
- 347 Re-determination of tariff determination
- 348 Correction of error in tariff determination or re-determination
- 349 Request for information and documents
- 350 Offences

## **PART XXVII - VALUATION OF GOODS**

- 351 Valuation of goods
- 352 Value self-determination of goods
- 353 Re-determination of previous value determination or re-determination
- 354 Correction of error in value determination or re-determination
- 355 Time limit on value determination and re-determination
- 356 Request for information and documents
- 357 Valuation methods
- 358 Transaction value Method

- 359 Circumstances under which transaction value method shall or may not be used
- 360 Relationship between buyer and seller
- 361 Determination of customs value according to identical goods method
- 362 Determination of customs value according to similar goods method
- 363 Determination of customs value according to deductive method
- 364 Determination of customs value according to computed method
- 365 Determination of customs value according to fall-back method
- 366 Valuation of re-imported unaltered goods under temporary export procedure
- 367 Valuation of used goods imported by individual for own use
- 368 Currency conversion
- 369 Offences

#### **PART XXVIII - ORIGIN**

- 370 Determination of origin of goods
- 371 Origin self-determination of goods when goods are cleared
- 372 Re-determination of previous origin determination
- 373 Correction of origin determination or re-determination
- 374 Request for information and documents
- 375 When documentary evidence of origin may be requested
- 376 Who may issue documentary evidence of origin for imported goods
- 377 Offences

#### **PART XXIX - PREFERENTIAL TARIFF TREATMENT**

- 378 Facilitation of preferential tariff treatment
- 379 Compliance with non-reciprocal generalised system of preferences
- 380 Offences

### **PART XXX - ADVANCE RULING**

- 381 Application for advance ruling
- 382 Consideration of application
- 383 Validity period of advance ruling
- 384 Binding effect of advance ruling
- 385 Clearance of goods under advance ruling
- 386 Amendment of advance ruling
- 387 Withdrawal of advance ruling
- 388 Offences

### **PART XXXI - CUSTOMS PROCESSING OF PERSONS ENTERING OR LEAVING LESOTHO**

- 389 Definitions
- 390 Personal effects to be declared when entering Lesotho
- 391 Clearance of personal effects
- 392 Personal effects to be declared when leaving Lesotho
- 393 Offences

### **PART XXXII - INTERNATIONAL POSTAL ARTICLES**

- 394 Clearance of imported international postal articles
- 395 Clearance of international postal articles destined for export
- 396 Payment of duty on international postal articles
- 397 Cancellation and repayments of duty
- 398 Condonation of underpayments
- 399 Opening of international postal articles
- 400 International postal articles containing personal or private communications
- 401 Notifications that international postal articles have been opened

402 Seizure and confiscation of international postal articles

403 Offences

**PART XXXIII - ACCESS TO AND SAMPLING OF GOODS**

404 Right of access to and taking samples from goods

405 Samples of imported goods

406 Samples of goods cleared for export

407 Offences

**PART XXXIV - EXPEDITED CLEARANCE AND RELEASE OF GOODS**

408 Application to clear and obtain release of goods on incomplete or clearance information

409 Contents of an incomplete clearance declaration

410 Release of goods cleared in terms of incomplete clearance declarations

411 Supplementary clearance declarations

412 Offences

**PART XXXV - DAMAGED, DESTROYED, LOST OR UNACCOUNTED FOR GOODS**

413 Notification of goods damaged, destroyed, lost or unaccounted for

414 Failure to notify

415 Damaged goods

416 Destroyed goods

417 Lost goods

418 Goods unaccounted for

419 Tax waivers and refunds for goods damaged, destroyed, lost or unaccounted for not applicable in certain circumstances

420 Wreck

421 Offences

**PART XXXVI - ABANDONMENT OF GOODS TO THE COMMISSIONER  
GENERAL**

422 Application to abandon goods to Commissioner General

423 Consequences of abandonment

424 Application to destroy goods

**PART XXXVII - STATE WAREHOUSES**

425 Removal of goods to state warehouse

426 Record keeping in a State warehouse

427 Risks in connection with goods removed to or stored in state warehouses

428 Direction or authorisation for goods to be retained at or removed to licensed premises other than state warehouse

429 Submission of removal notices

430 Failure to remove goods

431 Recovery of expenses for removal of goods

432 Redirection of goods

433 Charges for goods in a State warehouse

434 Accounting

435 Reporting by license of State warehouses

436 Charges for goods stored at premises specified in direction or authorisation

437 Responsibilities of licensee of premises where goods are kept

438 Publication of lists of goods

439 Reclaiming of goods in or accounted for in state warehouses

440 Removal of reclaimed goods

441 Sale of goods

- 442 Urgent sales
- 443 Manner of sale
- 444 Application of proceeds of sales
- 445 Disposal of goods otherwise than by sales
- 446 Non-compliance with sales conditions
- 447 Removal of goods following sale of goods
- 448 Tax consequences of goods sold or otherwise disposed of in terms of this Part
- 449 Offences

### **PART XXXIII - REGISTRATION**

- 450 Registration of importers and exporters
- 451 Registration of persons acquiring ownership of goods whilst under customs procedures
- 452 Registration of agents for persons not located in Lesotho
- 453 Contents of registration certificates
- 454 Renewal of registration certificates
- 455 Amendment of registration certificates
- 456 Suspension or withdrawal of registration
- 457 Provision of surety
- 458 Commissioner General's powers following expiry, suspension or withdrawal of registrations
- 459 Offences

### **PART XXXIX - LICENSING**

- 460 Licensing of premises for certain purposes
- 461 Application for a licensing
- 462 Consideration and decision of applications

- 463 Communication of decisions on applications
- 464 Issuing of licenses
- 465 Applications for renewal of licences
- 466 Amendment of licences
- 467 Purposes for amendment of licences
- 468 Grounds for suspension or withdrawal of licenses
- 469 Provision of surety
- 470 Commissioner General's powers following expiry, lapsing, suspension or withdrawal of licences
- 471 Offences

**PART XXXX - ACCREDITED CLIENTS**

- 472 Applications for accreditation status
- 473 Communication of decisions on applications
- 474 Renewal of accredited client status certificates
- 475 Amendment of accredited client status certificates
- 476 Suspension or withdrawal of accredited client status certificates
- 477 Benefits of accreditation
- 478 Offences

**PART XXXXI - SURETY FOR PAYMENT OF DUTY AND TAX**

- 479 When surety may be required
- 480 Time when security may be required
- 481 Determination of amount of surety
- 482 Types of surety
- 483 Recovery of duties or taxes from the surety or return of surety

**PART XXXXII - RECOVERY OF DEBT**

- 484 Recovery of debt owed to the Commissioner General
- 485 Interest on outstanding amounts
- 486 Payment of debt in instalments
- 487 Persons having accounts with Commissioner General
- 488 Liens over goods to secure payment of debts
- 489 Offences

### **PART XXXIII - GENERAL ENFORCEMENT FUNCTIONS**

- 490 Enforcement functions by customs officers
- 491 Access to areas, premises and facilities
- 492 Use of force to gain access to areas, premises or facilities aircraft, train, railway carriage or vehicle
- 493 Roadblocks for vehicles
- 494 Issuing of warrants
- 495 Searching of persons
- 496 Frisk searches
- 497 External bodily searches
- 498 Internal bodily searches
- 499 Production of goods for inspection
- 500 Inspection of goods
- 501 Sampling of goods
- 502 Designation of Laboratories for testing of samples
- 503 Powers of arrest
- 504 Manner and effect of an arrest
- 505 Arrest of persons without warrant
- 506 Arrest of persons under authority of warrant



- 507 Non-liability for wrongful arrest
- 508 Breaking open premises for purpose of arrest
- 509 Use of force in effecting arrest
- 510 Detention of arrested person
- 511 Authority to carry an official firearm
- 512 Use of official firearms by officers
- 513 Offences

#### **PART XXXIV - DETENTION, SEIZURE AND CONFISCATION OF GOODS**

- 514 Detention goods
- 515 Notice of detention
- 516 Place of detention
- 517 Period of detention
- 518 Termination of detentions
- 519 Power to seize goods
- 520 Notice of seizure
- 521 Termination of seizures
- 522 Termination of seizures on application by owner of goods
- 523 Offences

#### **PART XXXV - PROHIBITED AND RESTRICTED GOODS**

- 524 Prohibited goods
- 525 Clearance of prohibited goods
- 526 Seizure of prohibited goods
- 527 Disposal of detained prohibited goods
- 528 Import and Export permit to be produced for restricted goods
- 529 Clearance of restricted goods

- 530 Detention of restricted goods
- 531 Notice of detention
- 532 Disposal of detained restricted goods
- 533 Disposal of restricted goods by the Commissioner General

#### **PART XXXXVI - COUNTERFEIT GOODS**

- 534 Application for detention of suspected counterfeit goods
- 535 Consideration of applications
- 536 Notification of suspected counterfeit goods to the owner
- 537 Keeping and maintaining of records of detained and seized counterfeit goods
- 538 Furnishing of personal details of affected parties to right-holders
- 539 Furnishing of samples of detained goods to right-holders
- 540 Onus on right-holders to protect their rights
- 541 Court applications by the right-holders
- 542 Findings by court that detained goods are not counterfeit goods
- 543 Court applications by the person, who imported, exported or is in possession of the counterfeit goods
- 544 Seizure of detained counterfeit goods
- 545 Offences

#### **PART XXXXVII - DISPUTE RESOLUTION**

- 546 Appeals Review Committee
- 547 Objections and Appeals
- 548 Appeal to the Revenue Appeals Tribunal
- 549 Payment of amounts due pending an appeal

#### **PART XXXXVIII – VOLUNTARY DISCLOSURE RELIEF**

- 550 Definitions

- 551 Application for voluntary disclosure relief
- 552 Procedure following receipt of voluntary disclosure application
- 553 Granting of applications
- 554 Refusal to grant application
- 555 Withdrawal of voluntary disclosure relief

**PART XXXXIV - ADMINISTRATIVE PENALTIES**

- 556 Imposition of administrative penalties
- 557 Offences

**PART XXXXV - APPLICATION OF INFORMATION TECHNOLOGY ON CUSTOMS PROCESSES**

- 558 Definitions
- 559 Use of computer systems for Customs processing purposes
- 560 Registration, suspension and cancellation of computer system users
- 561 Validating and assessing Electronic Declarations
- 562 Fees and charges for an electronic declarations
- 563 Unlawful use of Access code
- 564 Admissibility of any electronic declarations
- 565 Unavailability of computer systems
- 566 Safe keeping of electronic declarations
- 567 Offences

**PART XXXXVI - MISCELLANEOUS MATTERS**

- 568 Regulations
- 569 Rules

## **CUSTOMS BILL 2017**

### **A Bill for**

An Act to repeal the Customs and Excise Act, 1982 to provide for customs control of all, goods, aircraft, trains, vehicles, and persons entering or leaving Lesotho and levying of customs duties; and to facilitate the implementation of certain laws levying taxes on goods and other legislation applicable to such goods and persons; and for connected matters.

### **ENACTED BY THE PARLIAMENT OF LESOTHO**

#### **Short title and Commencement**

1. This Act may be cited as the Customs Act 2017 and it shall come into operation on the date of its publication in the Gazette.

## **PART I- PRELIMINARY**

### **Interpretation**

2. In this Act, unless the context otherwise requires.

**“accompanied baggage”**, means all goods which a person has on or physically with him when processed through customs at the place of entry or exit through which the person enters or will leave Lesotho;

**“accredited”**, means the person who is a registered person or licensee and issued with an accredited client status certificate by the Commissioner General;

**“administrative penalty”** means a penalty that may be imposed by the Commissioner General in terms of Part XXXIV of this Act;

**“advance origin ruling”** means a ruling issued by the Commissioner General on the origin of goods of a specific type, kind or brand in order to settle in advance the origin of goods of the type, kind or brand when cleared by or on behalf of the recipient of the ruling for home use or any other customs procedure during the validity period of the ruling;

**“advance ruling”** means –

(a) an advance tariff ruling;

(b) an advance ruling on a valuation factor; or

(c) an advance origin ruling;

**“advance ruling on a valuation factor”** means a ruling issued by the Commissioner General on a valuation factor applicable to the valuation of goods of a specific type, kind or brand in order to settle in advance the application of the valuation factor in the valuation of goods of the type, kind or brand when cleared by or on behalf of the recipient of the ruling for home use or any other customs procedure during the validity period of the ruling;

**“advance tariff ruling”** means a ruling issued by the Commissioner General on the tariff classification of goods of a specific type, kind or brand in order to settle in advance the tariff classification of goods of that type, kind or brand when cleared by or on behalf

of the recipient of the ruling for home use or any other customs procedure during the validity period of the ruling;

**“agent”**, in relation to –

(a) an importer, means a person located in Lesotho

(b) an exporter, means a person located in Lesotho who represents in Lesotho an exporter not located in Lesotho; who represents in Lesotho an importer not located in Lesotho;

(c) a carrier, means a person located in Lesotho who represents in Lesotho a carrier not located in Lesotho; or

(d) an owner of goods, means a person located in Lesotho who represents in Lesotho an owner of goods not located in Lesotho;

but does not include a licensed customs broker providing a service as customs broker on behalf of an importer, exporter, carrier or owner;

**“aircraft”** means a craft of any kind whatsoever which is capable of flying, whether self-propelled or not, and including its fittings and furnishings and any apparatus or equipment fitted on or to it;

**“air cargo depot”** means premises whether within a customs airport or elsewhere—

(a) where air cargo is received, packed or unpacked, or consolidated for export, or deconsolidated for delivery, and temporarily stored; and

(b) from where air cargo is released for home use or any other customs procedure or removed to an air cargo terminal.;;

**“air cargo terminal”** means premises within a customs airport where air cargo is –

(a) off-loaded from, or loaded on board, foreign-going aircraft; and

(b) temporarily stored after being off-loaded or before being loaded;

**“air travellers terminal”** means premises within a customs airport where travellers and crew –

(a) board, or disembark from, foreign-going aircraft; and

(b) are processed for purposes of passenger control before boarding, or after disembarking from, foreign-going aircraft,

and includes –

(i) all transit areas through which travellers and crew shall proceed to or from foreign-going aircraft; and

(ii) all facilities used for or in connection with the operation of the terminal;

**“air waybill”** means a document issued by an air carrier or other person duly authorised by an air carrier for the transportation of cargo to a particular destination on board an aircraft, and which serves as proof that the carrier or other person –

(a) has received the cargo; and

(b) has undertaken to transport the cargo on the terms and conditions stated in the document;

**“anti-dumping duty”** means an additional import duty –

(a) imposed on goods imported into Lesotho at an export price, that is less than the normal value of the goods in the country of importation; and

(b) listed in the Customs Tariff as an anti-dumping duty;

**“assessment”**, in relation to-

(a) tax, means a calculation by the Commissioner General in terms of a Value Added Tax Act of the amount of tax payable on taxable goods in terms of that Act;

(b) a duty, means a determination made by the Commissioner General on the amount of duty payable on any dutiable goods;

**“ATA carnet”** means an internationally accepted customs clearance document which –

(a) may in terms of an international clearance arrangement be used in Lesotho as a clearance declaration for clearing goods, excluding means of transport, identified in the document for –

(i) the temporary admission procedure; or

(ii) the temporary export procedure; and

(b) is covered by a guarantee for any tax that may be, or may become, payable on such goods;

**“bill of lading”** means a document issued by a sea carrier or other person duly authorised by a sea carrier for the transportation of cargo to a particular destination on board and which serves as proof that the carrier or other person –

(a) has received the cargo; and

(b) has undertaken to transport the cargo on the terms and conditions stated in the document;

**“breach”**, in relation to this Act or a Value Added Tax Act, means any of the following acts or omissions whether or not that act or omission is an offence in terms of this Act or a Value Added Tax Act:

(a) A contravention of or failure to comply with a provision of this Act or a Value Added Tax Act;

(b) a contravention of or failure to comply with a term or condition of any registration, license, accreditation, release, authorisation, permission, approval, exemption, instruction, direction or recognition issued or given in terms of this Act or a Value Added Tax Act;

(c) a failure to comply with a direction or instruction of the Commissioner General, the Commissioner General or a customs officer in terms of this Act or a Value Added Tax Act; or

(d) an evasion of, or any act or omission aimed at evading, a provision of this Act or a Value Added Tax Act or a term or condition of any registration, license, accreditation, release, authorisation, permission, approval, exemption, instruction, direction or recognition issued or given in terms of this Act or a Value Added Tax Act;

**“break bulk cargo”** means general cargo transported on board , railway carriage or vehicle in separate packages or as loose items that are not packed, but excludes cargo transported in containers;



**"bulk cargo"** means a large quantity of unpacked dry or liquid homogeneous cargo transported loose in the hold or cargo space of , railway carriage or truck;

**"bus"** means a vehicle with a seating capacity to carry more than fifteen passengers;

**"buying commission"** means any commission paid or payable to an agent in terms of an agreement between the agent and a buyer in Lesotho to purchase for the buyer goods abroad provided that –

(a) the existence of the agreement between the agent and the buyer is substantiated by documentary evidence; and

(b) the agent –

(i) acted solely on the instructions of principal relating to the purchase of the goods;

(ii) disclosed in the transaction with the seller of the goods that the goods are purchased or that the purchase of the goods is facilitated on behalf of a principal for export to Lesotho; and

(iii) had no proprietary, financial or other interest in the goods, other than as an agent;

**"calendar day"** means any one of the seven days of a week;

**"calendar year"** means a year from the first day of January in a year to the last day of December in that year;

**"cargo"**, in relation to , aircraft, railway carriage or vehicle, means any goods on board, or to be loaded on board, or off-loaded from, , aircraft, railway carriage or vehicle, but excludes –

(a) stores; and

(b) the accompanied and unaccompanied baggage of travellers and crew members;

**"cargo reporter"**, in relation to cargo on board, or to be loaded on board, or off-loaded from, or aircraft, means a person who in terms of a contract of carriage concluded by that person with the consignor of the cargo or any other interested person is responsible for the delivery of the cargo, whether that person is the carrier who

actually transports the cargo or a customs broker who arranged the transport of the cargo;

**“cargo status”**, in relation to cargo imported into or to be exported from Lesotho by sea, means any of the following symbols used for indicating the form in which the cargo is imported or to be exported;

**“carrier”** means –

(a) a shipping line, airline or other person carrying on business by transporting goods or travellers by air for reward;

(b) a person carrying on business by transporting goods or travellers by rail for reward;

(c) a person carrying on business by transporting goods by truck or travellers by bus for reward; or

(d) a person who –

(i) conducts a business involving the selling or leasing of goods or the dealing in goods in any other manner, or the packing, repairing, reconditioning, processing or producing of goods; and

(ii) in the course of conducting that business transports the goods;

**“certificate certifying a declaration of origin”** means a certificate issued by an authority or other official body certifying the correctness of a declaration of origin;

**“certificate of origin”** means a certificate issued by an authority or other official body certifying that the goods to which it relates were produced in a specific country;

**“certified declaration of origin”** means a declaration of origin on which an authority or other official body has certified the correctness of the declaration of origin;

**“clear”** –

(a) means submitting to the Commissioner General in accordance with this Act a clearance declaration complying with this Act in order to obtain the release of goods for home use or any other customs procedure;

(b) includes amending a submitted clearance declaration to the extent necessary to validate the declaration if the declaration does not fully comply with this Act;

**“clearance declaration”** means any of the documents which may in terms of this Act be submitted to the Commissioner General for the purpose declaration of goods;

**“container”** means a receptacle, holder, tank or similar movable article –

(a) specially designed and equipped for containing goods for transport by more than one mode of transport without intermediate unloading and reloading of the contents;

(b) of a durable nature intended for repeated use;

(c) capable of being sealed; and

(d) which has an internal volume of not less than one cubic metre;

and includes a demountable body;

**“container depot”** means premises, whether situated within a customs airport or elsewhere –

(a) where containers are –

(i) received;

(ii) packed or unpacked; or

(iii) temporarily stored;

(b) from where containers or the unpacked contents are delivered –

(i) to consignees upon clearing and release of the contents for home use; or

(ii) for the carrying out of a customs procedure upon clearing and release of the contents for that customs procedure; and

(c) where goods are received for packing into containers;

**“container terminal”** means premises, whether situated within a customs airport or elsewhere –

(a) where packed and empty containers are received;

(b) from where packed containers are delivered –

(i) to container depots;

(ii) directly to consignees upon clearing and release of the contents for home use; or

(iii) for a customs procedure upon clearing and release of the contents for that customs procedure; and

(c) where packed and empty containers are temporarily stored after being received or before being delivered;

**“Convention on Temporary Admission”** means the Convention on Temporary Admission (Istanbul, 26 June 1990);

**“correction”**, in relation to –

(a) a tariff determination or re-determination of goods, means a correction by the Commissioner General of an error in the tariff determination or re-determination of the goods without changing the tariff classification ascribed to the goods in the determination or re-determination;

(b) a value determination or re-determination of goods, means a correction made by the Commissioner General to a value determination or re-determination of goods without changing the valuation ascribed to the goods in the determination or re-determination of the goods; or

(c) an origin determination or re-determination of goods, means a correction by the Commissioner General of an error in the origin determination or re-determination of the goods without changing the origin ascribed to the goods in the determination or re-determination;

**“countervailing duty”** means an import duty imposed to off-set a benefit conferred by a subsidy bestowed directly or indirectly on any goods exported to Lesotho;

**“crew” or “crew member”**, in relation to , aircraft, train, railway carriage or vehicle, means –

(a) the on-board operator of the , aircraft, train, railway carriage or vehicle; or

(b) any other person travelling on board the , aircraft, train, railway carriage or vehicle for the purpose of performing work on board the , aircraft, train, railway carriage or vehicle in the course of its journey, but excludes a person referred to in paragraph (a) or (b) on board a small , light aircraft or vehicle used as a private means of transport;

**“cross-border cable car”** means a cable car by way of which goods are imported into or exported from Lesotho;

**“cross-border conveyor belt”** means a conveyor belt by way of which goods are imported into or exported from Lesotho;

**“cross-border pipeline”** means a pipeline through which liquid or gas commodities are imported into or exported from Lesotho;

**“cross-border railway carriage”** means a coach or wagon which –

(a) forms part of a cross-border train that will transport goods or travellers out of Lesotho, and includes a coach or wagon scheduled to form part of a cross-border train that will transport goods or travellers out of Lesotho; or

(b) forms part of a cross-border train that transported goods or travellers into Lesotho, and includes a coach or wagon which did form part of a cross-border train that transported goods or travellers into Lesotho and from which the goods have not yet been unloaded or the travellers have not yet disembarked;

**“cross-border train”** means a train on, or scheduled for, a voyage –

(a) from a place outside Lesotho to a destination inside Lesotho; or

(b) from a place inside Lesotho to a destination outside Lesotho;

**“cross-border transmission line”**, in relation to electricity, means a transmission line through which electricity is imported into or exported from Lesotho;

**“customs airport”** means an airport designated as a place of entry or exit for aircraft and for persons and goods on board aircraft;

**“Customs and Excise Act, 1982”** means the Customs and Excise Act, 1982 (Act No. 10 of 1982);

**“customs broker”** means a person carrying on business in Lesotho by –

(a) submitting on behalf of other persons clearance declarations for reward to clear goods for home use or any other customs procedure, excluding –

(i) a person who as the registered agent in Lesotho of an importer, exporter, owner or carrier of goods not located in Lesotho submits a clearance declaration on behalf of that importer, exporter, owner or carrier; or

(ii) a licensed carrier located in Lesotho who submits a clearance declaration on behalf of a person whose goods that carrier is transporting; or

(b) arranging on behalf of other persons for reward the receipt, delivery or transport of goods imported into or to be exported from Lesotho;

(c) arranging on behalf of other persons for reward the consolidation or deconsolidation of goods imported into or to be exported from Lesotho or consolidating or deconsolidating such goods on behalf of other persons for reward; or

(d) handling on behalf of other persons for reward the formalities relating to the import into or the export from Lesotho of goods;

**“customs code”** means an identification symbol consisting of figures, letters or other characters allocated by the Commissioner General;

**“customs control”** means control in terms of this Act;

**“customs controlled area”** means –

(a) an area, premises or facility listed in section 23(1) as a customs controlled area; or

(b) an area designated in terms of section 23(2) as a customs controlled area;

**“customs office”** means an office established or designated as a customs office by the Commissioner General;

**“customs officer”** means a person designated by the Commissioner General in terms of section 9(1) as a customs officer;

**“customs procedure”** means any conduct listed below involving goods imported into or to be exported from Lesotho which may commence and be carried out only in accordance with this Act:

- (a) The national transit procedure;
- (b) the international transit procedure;
- (c) the excise warehouse transit procedure;
- (d) the transshipment procedure;
- (e) the temporary admission procedure;
- (f) the warehousing procedure;
- (g) the tax free shop procedure;
- (h) the stores procedure;
- (i) the export procedure;
- (j) the temporary export procedure;
- (k) the inward processing procedure;
- (l) the home use processing procedure; or
- (m) the outward processing procedure;

**“Customs Tariff”** means customs tariffs set out in the Schedule to this Act specifying-

- (a) the duties;
- (b) the classes and kinds of goods; and
- (c) the rates of, the requirements, conditions and relief applicable to, and other matters relating to, the duties.;

**“customs value”**, in relation to goods, means the value of goods for customs purposes as calculated in accordance with Part... of the Customs Act;

**“damage”**, in relation to goods, includes any deterioration or spoiling of goods due to any act or without rendering the goods commercially valueless, but excludes stealing or pilfering of goods;

**“declare”**

(a) to disclose goods to the Commissioner General; and , in relation to goods, means –

(b) to provide the Commissioner General with all information relating to the goods required by the Commissioner General for purposes of this Act, including any information necessary to determine whether –

(i) the goods are taxable, and, if so, to assess any tax payable on the goods;

(ii) the goods are goods that shall be cleared for home use or any other customs procedure;

(iii) the goods are not prohibited, restricted, or counterfeit goods; and

(iv) the goods may be released for home use or the customs procedure for which the goods were cleared;

**“declaration of origin”** means a declaration issued by the producer or supplier of goods declaring that the goods were produced in a specific country;

**“delegation”**, in relation to a duty that shall be performed, includes an instruction or request to perform or to assist in performing the duty;

**“depot”** means –

(b) a container depot;

(b) an air cargo depot; or

(c) an international postal clearance depot;

**“destroy”**, in relation to goods, includes an act or occurrence that renders goods commercially valueless;

**“detain”**, in relation to goods, means restrict the movement or handling of goods pending a decision concerning the goods in terms of this Act, a Value Added Tax Act or other legislation applicable to the goods;

**“divert for home use”**, in relation to any of the following goods, means acquiring,



purchasing, handling, transporting, storing, keeping, selling, trading in, utilising, processing, disposing of or in any other way dealing with the goods as if the goods are in free circulation:

(a) Goods imported into Lesotho –

(i) that are required to be cleared but that have not been cleared for home use or any other customs procedure; or

(ii) that have been cleared for home use but not released for home use; or

(b) goods under a customs procedure,

(i) the inward or outward processing procedure; and including compensating products under –

(ii) the home use processing procedure that are not in free circulation;

**“document”** includes –

(a) any instrument, whether paper-based or from any other material, on or in which there –

(i) is writing;

(ii) are images; or

(iii) are perforations which have meaning;

(b) any instrument from which writing, sounds or images can be reproduced or retrieved with or without the aid of any device; or

(c) any computer, computer hardware or other device containing electronically stored information or from which electronically stored information is retrievable;

**“documentary evidence of origin”** means any one or more of the following documents:

(i) a certificate of origin;

(ii) a declaration of origin;

(iii) a certified declaration of origin; or

(iv) a certificate certifying a declaration of origin;

**“drawback”**, in relation to an import duty paid to the Commissioner in terms of this Act, means the repayment of the import duty, or part of the import duty ;

**“due date”** in relation to –

(a) an administrative penalty,

the date on or before which the penalty shall be paid;

(b) any other amount owed to the Commissioner General in terms of this Act, means the date specified for payment in a notice demanding payment of the amount;

**“dutiable”** in relation to goods, indicates that a duty has been imposed on the goods in the Customs Tariff;

**“duty”** means an import duty or export duty;

**“enforcement function”** in relation to the Commissioner General, means a power or duty assigned to the Commissioner General in terms of this Act or a Value Added Tax Act or assigned or delegated to a Commissioner General in terms of this Act or a Value Added Tax Act –

(a) to implement and enforce this Act or a Value Added Tax Act; or

(b) to assist in the implementation or enforcement of other legislation;

**“enter”** in relation to Lesotho, means –

(a) in the case of an aircraft or goods or persons on board an aircraft, when the aircraft crosses into the airspace above Lesotho;

(b) in the case of a cross-border train or goods or persons on board a cross-border train, when the train crosses the border into Lesotho;

(c) in the case of a vehicle or goods or persons on board a vehicle, when the vehicle crosses the border into Lesotho;

(d) in the case of electricity, when the electricity is transmitted through a transmission line into Lesotho;

(e) in the case of goods in a cross-border pipeline, when the goods cross the border through the pipeline into Lesotho;

(f) in the case of goods on a cross-border cable car or conveyor belt, when the goods cross the border on the cable car or conveyor belt into Lesotho; or

(g) in the case of a person on foot or goods that such a person has with him or her, when that person crosses the border into Lesotho and have entered Lesotho;

**“excise warehouse transit” or “excise warehouse transit procedure”** means the customs procedure prescribed in regulations to this Act;

**“exporter”**

(a) in relation to goods exported or to be exported from Lesotho, means the person who exported, is in the process of exporting or intends to export the goods from Lesotho; or

–

(b) in relation to goods exported or to be exported to Lesotho, means the person who exported, is in the process of exporting or intends to export the goods to Lesotho,

and includes –

(i) a person who at the time when the goods are exported or in the process of being exported from or to Lesotho –

(aa) is the owner of the goods;

(bb) carries the risk in respect of the goods; or

(cc) is beneficially interested in the goods in any way whatsoever;

(ii) a person who actually transports or attempts to transport the goods out of or into Lesotho, except when that person is –

(aa) a licensed carrier; or

(bb) a carrier not located in Lesotho and represented in Lesotho by a registered agent;  
or

(iii) a person who represents, or pretends to be or to represent, a person referred to in paragraph (a) or (b) or paragraph (i) or (ii), except when that person is a licensed customs broker who as a customs broker represents a person referred to in any of the paragraphs;

**“export from Lesotho”** in relation to goods, means transporting, taking, sending or removing goods out of Lesotho;

**“export procedure”** means the customs procedure prescribed by regulations to this Act;

**“export to Lesotho”** in relation to goods, means taking, sending or transporting goods from outside Lesotho to a destination inside Lesotho;

**“identical goods”** in relation to goods to be valued, means goods –

(a) produced in the same country as the country in which the goods to be valued were produced, whether by the same or a different producer; and

(b) which, apart from minor differences in appearance, are the same in all respects to the goods to be valued, including physical characteristics, quality and reputation;

**“import”** in relation to goods, means transporting, sending or bringing goods into the Lesotho;

**“importer”** in relation to goods, means a person who imports goods into the Lesotho, and includes a person who—

(a) at the time of importation—

(i) is the owner of the goods that are imported;

(b) actually transports or attempts to transport the goods in Lesotho, except when that person is—

(i) a licensed carrier; or

(ii) a carrier not located in Lesotho and represented in the Lesotho by a registered agent; or

(c) represents, or pretends to be or to represent, a person importing goods or referred to in paragraph (a) or (b), except when that person is a licensed customs broker who as a customs broker represents a person—

- (i) importing goods; or
- (ii) referred to in any of those paragraphs

**“import duty”** means a duty imposed in the Customs Tariff on imported goods, and includes –

- (a) an ordinary import duty referred to in section 314(1);
- (b) an anti-dumping duty referred to in section 314(1);
- (c) a countervailing duty referred to in section 134(1); or
- (d) a safeguard duty referred to in section 134(1);

**“international clearance arrangement”** means an arrangement between Lesotho and another country to regulate clearance of goods under temporary admission procedure and the temporary export of goods from Lesotho to another country;

**“international trade agreement”** means a bilateral or multilateral agreement to which Lesotho is a party and in terms of which –

- (a) goods of Lesotho origin may be exported from Lesotho to a country which is a party to the agreement under preferential tariff treatment, subject to compliance with the agreement; or
- (b) goods originating in a country which is a party to the agreement may be imported into Lesotho under preferential tariff treatment, subject to compliance with the agreement;

**“final judgement”** means –

- (a) a judgement given or confirmed by a court of final instance; or
- (b) a judgement given by another court if the time for noting an appeal against the judgement to a higher court has expired and no appeal has been lodged;

**“foreign-going aircraft”** means –

- (a) an aircraft at an airport, landing strip or other place in Lesotho if that aircraft –

(i) has arrived at that place in the course of a voyage from outside Lesotho to a destination or destinations inside Lesotho, whether that place is that destination or one of the destinations or a stopover on its way to that or any of the destinations; or

(ii) is scheduled to depart from that place in the course of a voyage to a destination outside Lesotho, whether that place is its place of departure to that destination or a stopover or one of several stopovers in Lesotho from where it departs in the course of that voyage;

(b) an aircraft in the airspace above Lesotho on a voyage referred to in paragraph (a)(i) or (ii); or

(c) an aircraft on a voyage from a place outside Lesotho to a destination outside Lesotho –

(i) passing through the airspace above Lesotho; or

(ii) making a stopover at any airport, landing strip or other place in Lesotho;

**“foreign-going ”** means –

(a) at other place in Lesotho if that –

(i) has arrived at that place in the course of a voyage from outside Lesotho to a destination or destinations inside Lesotho, whether that place is that destination or one of the destinations or a stopover on its way to that or any of the destinations; or

(ii) is scheduled to depart from that place in the course of a voyage to a destination outside Lesotho, whether that place is its place of departure to that destination or a stopover or one of several stopovers in Lesotho from where it departs in the course of that voyage;or

(b) on a voyage from a place outside Lesotho to a destination outside Lesotho making a stopover at any place in Lesotho;

**“free circulation”** –

(a) in relation to goods imported into Lesotho, means –

(i) that the goods have been released for home use and that the release for home use was unconditional or, if conditional, has due to compliance with the condition become unconditional; or

(ii) that the goods fall within a category of goods referred to in section 69 and are allowed into Lesotho free from customs control subject only to customs verification that the goods fall within that category;

(b) in relation to products obtained from the processing of imported goods conditionally released for home use processing,

(i) that the products have been produced in compliance with the conditions subject to which the imported goods were released for home use processing and that the release of the imported goods for home use processing has due to such compliance become unconditional; and means –

(ii) that no Value Added Tax Act prevents the products from being dealt with in accordance with section 291;

(c) in relation to goods manufactured in an excise warehouse, means that the goods have been entered for home consumption in accordance with this Act; or

(d) in relation to goods produced in Lesotho otherwise than as contemplated in paragraph (b) or (c), means that the goods have been produced in circumstances to which this Act and the Excise Act do not apply:

Provided that goods in free circulation by virtue of paragraph (a), (b), (c) or (d) lose their free circulation status if the goods are subsequently cleared for a customs procedure that allows goods in free circulation to be cleared for that procedure;<sup>18</sup>

**“general cargo”** means cargo of a diverse nature whether in packages or containers;

**“goods”** means any wares, supplies, merchandise, articles, products, commodities, substances, documents or any other things capable of being transported, whether loose, packed, in a package or holder, containerized or in bulk, and includes –

(a) any animals, whether dead or alive, or parts of animals;

(b) any plants, whether dead or alive, or parts of plants;

- (c) any postal items;
- (d) any baggage of persons entering or leaving Lesotho, whether accompanied or unaccompanied;
- (e) any s, aircraft, locomotives, railway carriages, vehicles or other means of transport, whether or not used for the transport of goods or travellers;
- (f) any transport equipment whether or not used in the transport of goods, including reusable transport equipment;
- (g) currency;
- (h) any commodity capable of being pumped through pipelines or conveyed by means of cable-car or conveyor belt; and
- (i) electricity;

**“guaranteeing association”** in relation to –

(a) the temporary admission procedure, means an association guaranteeing in accordance with the Convention on Temporary Admission or any agreement on the payment of any import tax that may become payable on goods admitted into Lesotho on authority of a CPD or ATA carnet; or

(b) the temporary export procedure, means an association guaranteeing in accordance with the Convention on Temporary Admission or any agreement referred to in Part XVII the payment of any export tax that may become payable on goods exported from Lesotho on authority of a CPD or ATA carnet;

**“home use”** in relation to imported goods, means that the goods may be consumed, utilised, processed or otherwise disposed of in Lesotho as goods that are no longer subject to customs control;

**“home use compensating products”** means compensating products obtained from imported goods under the home use processing procedure;

**“home use processing”** or **“home use processing procedure”** means the customs procedure described in section 283;



**“home use processing premises”** means premises referred to in section 460 but excludes an excise warehouse;

**“IDZ enterprise”** means an enterprise within an industrial development zone or part of an industrial development zone designated in terms of section 23 as a customs controlled area;

**“import”** in relation to goods, means transporting, sending or bringing goods into Lesotho;

**“importer”** in relation to goods, means a person who imports goods into Lesotho, and includes –

(a) a person who, at the time of importation –

(i) is the owner of the goods that are imported;

(ii) carries the risk in respect of the goods that are imported; or

(iii) is beneficially interested in any way whatsoever in the goods that are imported;

(b) a person who actually transports or attempts to transport the goods into Lesotho, except when that person is –

(i) a licensed carrier; or

(ii) a carrier not located in Lesotho and represented in Lesotho by a registered agent; or

(c) a person who represents, or pretends to be or to represent, a person importing goods or referred to in paragraph (a) or (b), except when that person is a licensed customs broker who as a customs broker represents a person –

(i) importing goods; or

(ii) referred to in any of the paragraphs;

**“import tax”** means –

(a) an ordinary import duty, anti-dumping duty, countervailing duty or safeguard duty imposed in terms of the Customs Act on goods imported into Lesotho, and includes a provisional anti-dumping duty, countervailing duty and safeguard duty on such goods;

(b) value-added tax imposed in terms of the Value-added Tax Act on goods imported into Lesotho;

(c) an excise duty, fuel levy, Road Accident Fund levy or environmental levy imposed in terms of this Act on goods imported into Lesotho; or

(d) any other tax, levy or duty on goods imported into Lesotho;

**“incomplete clearance declaration”** means a clearance declaration that may be used to clear goods for home use or any other customs procedure in the circumstances set out in Part XXXIV and that does not contain all the information required to be included in a regular clearance declaration due to the unavailability of all the information;

**“industrial development zone”** means an area designated as an industrial development zone

**“inspect”** as an action performed by a customs officer in relation to goods, includes to perform any or all of the actions referred to in section 500;

**“international postal article”** means a postal article –

(a) posted outside Lesotho for –

(i) delivery inside Lesotho; or

(ii) transit through Lesotho to another country; or

(b) posted inside Lesotho for delivery outside Lesotho;

**“international postal clearance depot”** means premises operated by the Lesotho Post Office for the sorting and processing of international postal items for –

(a) delivery inside Lesotho, in the case of postal items posted outside Lesotho for delivery in Lesotho; or

(b) loading on board foreign-going aircraft, cross-border railway carriages or vehicles departing from Lesotho, in the case of postal items posted inside Lesotho for delivery outside Lesotho;

**“international transit” or “international transit procedure”** means the customs procedure described in Part IX;

**“inward processed compensating products”** means compensating products –

(a) obtained from the processing of imported goods under the inward processing procedure; and

(b) destined for export or exported from Lesotho;

**“inward processing” or “inward processing procedure”** means the customs procedure described in section 266;

**“inward processing premises”** means premises referred to in section 460;

**“juristic entity”** includes –

(a) a company, close corporation or co-operative incorporated or registered in terms of legislation whether in Lesotho or elsewhere;

(b) an association, partnership or club or other body of persons of whatever description, corporate or unincorporated;

(c) a trust or trust fund;

(d) any entity referred to in paragraph (a), (b) or (c) in liquidation or under judicial management; and

(e) the estate of a deceased or insolvent person;

**“land border-post”** in relation to –

(a) vehicles, means a road border crossing designated in terms of section 11(1)(d) as a place of entry or exit for vehicles, and persons and goods on board vehicles; or

(b) persons on foot, means a road or other border crossing designated in terms of section 11(1)(d) as a place of entry or exit for persons on foot, and goods that such persons have with them;

**“leave”** in relation to Lesotho, means –

(a) in the case of or goods or persons on board , when the moves out of the territorial waters of Lesotho;

(b) in the case of an aircraft or goods or persons on board an aircraft, when the aircraft moves out of the airspace above Lesotho;

(c) in the case of a cross-border train or goods or persons on board a cross-border train, when the train crosses the border out of Lesotho;

(d) in the case of a vehicle or goods or persons on board a vehicle, when the vehicle crosses the border out of Lesotho;

(e) in the case of electricity, when the electricity is transmitted through a transmission line out of Lesotho;

(f) in the case of goods in a cross-border pipeline, when the goods cross the border through the pipeline out of Lesotho;

(g) in the case of goods on a cross-border cable car or conveyor belt, when the goods cross the border by way of the cable car or conveyor belt out of Lesotho; or

(h) in the case of a person on foot or goods that such a person has with him or her, when that person crosses the border out of Lesotho;

**“licence”** means a licence issued by the Commissioner General in terms of Part XXXIX;

**“licensee”** means the holder of a licence;

**“LRA”** means the **Lesotho Revenue Authority** a body corporate established by section 2 of the Lesotho Revenue Authority Act, 2001 (Act No.... of 2001);

**“manifest”** or **“cargo manifest”** means a summary of cargo on board or to be off-loaded from , aircraft, railway carriage or vehicle at a specific place as reflected in the transport documents issued in respect of that cargo;

**“means of transport”** means , aircraft, locomotive, railway carriage or vehicle engaged in the transport of goods or persons;

**“Minister”** means the Cabinet member responsible for finance;

**“mode of transport”** means transport by sea, air, rail or road;

**“national transit”** or **“national transit procedure”** means the customs procedure described in Part IX

**“non-reciprocal generalised system of preferences”** means a system implemented by another country which allows goods of Lesotho origin to be exported from Lesotho to that country duty free or at preferential rates of duty subject to compliance with the requirements of that system;;

**“official”** in relation to Lesotho Revenue Authority, means –

(a) the Commissioner General;

(b) any other employee of Lesotho Revenue Authority;

(c) a person employed by another government or non-government bodies, including any institution which is not an government or non-government bodies, and seconded to LRA to work as a member of the staff; or

(d) a person contracted by LRA to work as a member of the staff otherwise than as an employee;

**“on-board operator”** – in relation to -

(a), aircraft or train, means a person on board the , aircraft or train who is in on-board command

(b) a railway carriage, means a person on board the train of which that railway carriage forms part or is scheduled to form part and who is in on-board command of the train; or of the , aircraft or train;

(c) a vehicle, means the driver of the vehicle or, if the driver drives the vehicle on the instructions of another person in the vehicle, that other person;

**“ordinary import duty”** means a duty imposed on goods imported into Lesotho and specified in the Customs Tariff as an ordinary import duty;

**“origin”** in relation to goods, means the country in which the goods were produced or regarded to have been produced according to the Rules of origin applicable to the goods in terms of this Act;

**“origin determination”** in relation to goods, means a determination of the origin of goods by the Commissioner General;

**“origin re-determination”** in relation to goods, means a re-determination of the origin of goods by the Commissioner General;

**“origin self-determination”** in relation to goods, means the origin ascribed to goods in terms of section 371(1) on the clearance declaration of the goods;

**“outright export”** in relation to goods, means the export of goods from Lesotho otherwise than under –

(a) any of the following customs procedures:

(i) The international transit procedure;

(ii) the transshipment procedure;

(iii) the temporary admission procedure;

(iv) the temporary export procedure;

(v) the tax free shop procedure;

(vi) the stores procedure;

(vii) the inward processing procedure; or

(viii) the outward processing procedure; or

(b) an exemption or exclusion from export clearance formalities;

**“outturn report”** means a report giving the information as may be prescribed by Regulations concerning –

(a) goods –

(i) packed into containers, or consolidated, whether on pallets or in another way, for transportation;

(ii) loaded on board , aircraft, railway carriage or vehicle for transportation;

(iii) unloaded from , aircraft, railway carriage or vehicle; or

(iv) unpacked from containers or de-grouped from consolidated packages; or

(b) empty containers unloaded from s or railway carriages;

**“outward processed compensating products”** means compensating products

(a) obtained from the processing of goods exported from Lesotho under the outward processing procedure; and

(b) imported under that procedure for home use;

**“outward processing” or “outward processing procedure”** means the customs procedure described in section 297;

**“owner”** in relation to goods, includes a person holding a share in the ownership of goods;

**“ownership”** in relation to goods, includes a share in the ownership of goods;

**“package”** means –

(a) any wrapping or outer cover and its contents;

(b) any bundle tied together; or

(c) any single piece in the case of unpacked goods;

**“permissible”** –

(a) in relation to a clearance of goods for a customs procedure, means that clearance of the goods for that customs procedure –

(i) is not inconsistent with this Act or a Value Added Tax Act; and

(ii) would not in the ordinary course of applying this Act result in a refusal by the Commissioner General to release the goods for that customs procedure; or

(b) in relation to a clearance of goods for home use, means that clearance of the goods for home use –

(i) is not inconsistent with this Act or a Value Added Tax Act; and

(ii) would not in the ordinary course of applying this Act result in a refusal by the Commissioner General to release the goods for home use;

**“person”** means a natural person or a juristic entity, and includes an government or non-government bodies or an official of an government or non-government bodies;

**“police officer”** means a member of the Lesotho Police Service established in terms of the Police Service Act, 1998;

**“premises”** means any site, property, building, structure or any part of a site, property, building or structure;

**“price actually paid or payable”**, in relation to the purchase of goods, means the total amount paid or to be paid, either directly or indirectly, to or for the benefit of the seller in connection with the purchase of the goods, but does not include a payment passing to the seller in connection with the goods that does not directly relate to the purchase of the goods;

**“private storage warehouse”** means licensed premises used exclusively by the licensee of the premises for the storage of goods owned by the licensee or in which the licensee has a material interest, but excludes an excise warehouse;

**“processing”** in relation to –

(a) goods under the inward processing procedure, means –

(i) to repair, clean, recondition, alter, adapt, pack or re-pack imported goods;

(ii) to subject imported goods to an industrial process; or

(iii) to use imported goods in a manufacturing process or for the production of manufactured products;

(b) goods under the home use processing procedure, means –

(i) to repack imported goods in retail quantities;

(ii) to repair, alter, adapt or recondition imported goods;

(iii) to subject imported goods to an industrial process; or

(iv) to use imported goods in a manufacturing process or for the production of manufactured products; or

(c) goods under the outward processing procedure, means –

(i) to repair, alter, adapt or recondition goods exported from Lesotho abroad;

(ii) to subject goods exported from Lesotho to an industrial process abroad; or



(iii) to use goods exported from Lesotho in a manufacturing process or for the production of manufactured products abroad;

to any extent or subject to any limitations or qualifications as may be determined in terms of a Value Added Tax Act;

“**prohibited goods**” means goods described in section 524;

“**re-assessment**” in relation to a duty on dutiable goods, means a re-calculation by the Commissioner General of the amount of duty payable on the goods;

“**refund**” in relation to a duty, administrative penalty or interest paid to the Commissioner General means the repayment of the duty, penalty or interest, or any part of the duty, penalty or interest, but excludes a drawback.

“**regulation**” means a regulation made by the Minister in terms of section 568;

“**re-imported unaltered goods**” means goods imported into Lesotho that –

(a) were previously exported from Lesotho, whether temporarily or outright; and

(b) whilst abroad, have not undergone any manufacturing, processing or repairs except maintenance in connection with their use abroad;

“**release**” in relation to goods, means a decision by the Commissioner General to allow the goods –

(a) into free circulation, in the case of imported goods that are cleared for home use; or

(b) to be dealt with in accordance with a specific customs procedure, in the case of goods that are cleared for that customs procedure;

“**release notification**” means a notification stating that goods have been released for home use or any other customs procedure;

“**restricted goods**” means goods described in section 529;

“**reusable transport equipment**” means containers, pallets, packing material or other transport equipment designed for continuous reuse in the transport of goods in the ordinary course of trade;

“**reward**” in relation to the transport of goods or travellers, includes any form of consideration received or to be received wholly or partly in connection with the transport of the goods or travellers, irrespective of the person by whom or to whom the consideration has been or is to be paid or given;

“**road waybill**” means a document issued by a road carrier for the transportation of goods to a particular destination on board a vehicle, and which serves as proof that the carrier –

(a) has received the goods; and

(b) has undertaken to transport the goods on the terms and conditions stated in the document;

“**Rules of origin**” means Regulations setting out norms and standards for determining in which country any specific goods –

(a) were produced; or

(b) shall be regarded as having been produced;

“**SACU**” means the Southern African Customs Union;

“**SACU Agreement**” means the Southern African Customs Union Agreement;

“**SACU member state**” means a state which is a member of SACU;

“**safeguard measure**” means an action to protect a specific domestic industry from an increase in imports of any product which is causing or threatening to cause, serious injury to the industry;

“**surety**” means surety provided in terms of Part XXXXI;

“**seize**” in relation to goods, means to take physical possession of the goods without divesting a person of ownership of the goods;

“**self-assessment**” in relation to –

(a) taxable goods, means a calculation in terms of a Value Added Tax Act by a person submitting a clearance declaration in respect of the goods of the amount of import or export tax payable on the goods in terms of that Act;

(b) a duty, means a calculation by a person submitting a clearance declaration in respect of dutiable goods of the amount of duty payable on the goods;

**“similar goods”** in relation to goods to be valued, means goods –

(a) produced in the same country as the country in which the goods to be valued were produced, whether by the same or a different producer; and

(b) which although not alike in all respects to the goods to be valued have, with due regard to their quality and reputation and the existence of a trade mark, like characteristics and like component materials which enable them to be employed for the same purposes and to be commercially interchangeable but does not include goods incorporating or reflecting engineering, development work, art work, design work, plans or sketches undertaken in Lesotho;

**“simplified clearance declaration”** means a clearance declaration that may be used to clear goods for home use or any other customs procedure in accordance with simplified clearance requirements.

**“state warehouse”** means a facility referred to in Part XXXVII to which goods shall be removed when required in terms of this Act, a Value Added Tax Act or other legislation;

**“storage warehouse”** means a public or private storage warehouse;

**“stores”** means goods taken on board a foreign-going , foreign-going aircraft or cross-border train, whether in Lesotho or elsewhere, exclusively for the purpose of meeting the reasonable needs of the next voyage of the , aircraft or train, including stopovers, and includes goods intended to be used –

(a) as provisions for travellers and crew on board the , aircraft or train during that voyage;

(b) for the operation of the , aircraft or train on that voyage;

(c) for the maintenance of the , aircraft or train during that voyage; or

(d) as tax free items for sale on board the , aircraft or train to travellers and crew, in the case of , aircraft or train entitled in terms of section 222 to sell tax free items to travellers and crew, but excludes any goods prescribed by regulations;

**“stores procedure”** means the customs procedure described in section 212;

**“stores supplier”** means a person conducting business by supplying stores to foreign-going s, foreign-going aircraft or cross-border trains;

**“supplementary clearance declaration”** means a clearance declaration that supplements –

(a) a provisional clearance declaration by confirming or correcting clearance information provided provisionally; or

(b) an incomplete clearance declaration by providing all outstanding clearance information required for a regular clearance.

**“supporting document”** includes a document referred to in section 104;

**“tariff classification”** in relation to goods that are cleared for home use or any other customs procedure, means the classification of the goods under a heading, subheading, tariff item or other item as specified under the Act;

**“tariff determination”** in relation to goods, means a tariff classification determined for goods by the Commissioner General;

**“tariff self-determination”**, in relation to goods, means a tariff classification of goods made and stated on the clearance declaration of the goods by the person clearing the goods;

**“tariff re-determination”** in relation to goods, means a tariff classification re-determined for goods by the Commissioner General;

**“tax”**, in relation to goods, means an import tax, export tax or domestic tax on goods;

**“taxable”** in relation to goods, indicates that an import or export tax has been imposed on the goods in terms of a Value Added Tax Act;

**“tax free shop”** means premises from where goods are sold in accordance with the tax free shop procedure, and includes any storage facilities on the premises;

**“tax free shop procedure”** means the customs procedure described in section 196;

**“temporary admission” or “temporary admission procedure”** means the customs procedure described in section 158 ;

**“temporary export”** in relation to goods, means the export of goods under the temporary export procedure;

**“temporary export procedure”** means the customs procedure described in section 242;

**“temporary storage”** in relation to goods, means the storage of goods at –

(a) a terminal until the goods are –

(i) loaded on board , aircraft, railway carriage or vehicle at the terminal; or

(iii) removed from the terminal; or

(b) a depot until the goods are removed from the depot, but excludes the storage of goods when the goods are retained at the terminal or depot under a direction of the Commissioner General;

**“terminal”** means –

(a) an air cargo terminal;

(b) an air travellers terminal; or

(c) a railway terminal;

**“this Act”** includes –

(a) the regulations and the Regulations;

(b) any notices of general application published by the Minister in terms of a provision of this Act in the Gazette; and

(c) any international agreement, including an international trade agreement, that –

(i) has been enacted into law; and

(ii) is binding for the purposes of this Act;

**“train”** means a locomotive with or without any passenger, goods or other railway carriages attached to it, including the fittings and furnishings of such locomotive or

railway carriage and any apparatus or equipment fitted on or to such locomotive or railway carriage;

**“transhipment” or “transhipment procedure”** means the customs procedure described in Part XII;

**“transit”** in relation to goods, means, as may be appropriate in the context, national transit, international transit or excise warehouse transit of goods;

**“transit operation”** –

(a) in relation to goods under the national or international transit procedure, includes –

(i) the receipt of goods for carrying out that procedure;

(ii) the transport of the goods under that procedure; and

(iii) the delivery of the goods under that procedure at the destined customs controlled area; and

(b) in relation to goods under the excise warehouse transit procedure, includes –

(i) the receipt of goods for carrying out that procedure;

(ii) the transport of the goods under that procedure; and

(iii) the delivery of the goods under that procedure to the destined excise warehouse;

**“transport document”** in relation to cargo transported on board –

(a) , means a bill of lading or other similar document issued in respect of the transport of that cargo;

(b) an aircraft, means an air waybill or other similar document issued in respect of the transport of that cargo;

(c) a railway carriage, means a rail consignment note or other similar document issued in respect of the transport of that cargo; or

(d) a vehicle, means a road waybill, road manifest or other similar document issued in respect of the transport of that cargo;

“**traveller**” means a person travelling on board , aircraft, train or vehicle or on foot, but excludes a crew member of the , aircraft, train or vehicle;

“**truck**” means a vehicle –

(a) with a gross vehicle mass exceeding 3500 kilograms;<sup>23</sup>

(b) that is designed or adapted for the transport of goods; and

“**unaccompanied baggage**” in relation to a person entering or leaving Lesotho, means any items in the baggage of a person entering or leaving Lesotho that because of a delay in the travelling process, separate travelling arrangements or for any other reason were not or could not physically be with that person when that person is processed through customs at the place of entry through which that person enters or at the place of exit through which that person leaves Lesotho;

“**unaccounted**” in relation to goods, means a shortfall in goods according to any documents or records relating to the goods, where the reason for the shortfall cannot be ascribed to the destruction, damage or loss of the goods;

“**Value Added Tax Act**” means any legislation, other than this Act, imposing or imposing and regulating the administration of a specific tax on goods;

“**value determination**” in relation to goods, means a determination of the customs value of goods by the Commissioner General;

“**value re-determination**” in relation to goods, means a re-determination of the customs value of goods by the Commissioner General;

“**value self-determination**” in relation to goods, means an appraisal of the customs value of goods made and stated on the clearance declaration of the goods by the person clearing the goods;

“**vehicle**” means –

(a) a motor car, bus, mini-bus, van, truck, trailer, semi-trailer, motor cycle, wagon, cart, cycle, wheelbarrow or other means of conveyance of any kind whatsoever capable of moving on land, whether self-propelled or not, and including its fittings and furnishings and any apparatus or equipment fitted on or to it;

(b) any combination of coupled vehicles referred to in paragraph (a) travelling or capable of travelling as a unit; or

(c) any pack animal when used as a means of conveyance, including its harness and tackle and any cart, apparatus or article pulled by the animal,

but excludes an aircraft, , train, locomotive or railway carriage;

**“warehousing” or “warehousing procedure”** means the customs procedure described in section 179;

**“working day”** means any day other than a Saturday, Sunday or public holiday;

**“wreck”** includes –

(a) any flotsam, jetsam, lagan or derelict;

(b) any portion of or aircraft lost, abandoned or stranded;

(c) any of the cargo, stores, apparatus or equipment of any such or aircraft; and

(d) any of the personal property on board such or aircraft when it was lost or abandoned or when it stranded.



### **Application of this Act**

3. This Act applies to all goods and persons that are subject to customs control.

### **Agreements for assistance in administration of this Act**

4. The Commissioner General may make an agreement with another government or non-governmental bodies or other institution, including a railway, port, airline or postal authority, to obtain the assistance of the government or non-governmental bodies or institution to perform such support services in the administration of this Act as may be agreed between the Commissioner General and the government or non-government bodies or institution.

### **Customs co-operation with other countries**

5. (1) The Commissioner General may, enter into an agreement with the customs administration of another country in order –

(a) to provide for customs co-operation, including the exchange of customs information between the Lesotho Revenue Authority and another customs administration;

(b) to facilitate the customs processing of goods –

(i) imported into Lesotho; and

(ii) exported from Lesotho; and

(c) to allow –

(i) customs officers of the customs administration of another country which Lesotho has agreement with, to perform functions in Lesotho necessary for the enforcement of the customs legislation of that country in respect of goods to be exported from Lesotho to that country; and

(ii) customs officers of Lesotho Revenue Authority to perform functions in the country which Lesotho has agreement necessary for the enforcement of this Act, a Value Added Tax Act or any legislation in respect of goods to be exported to Lesotho from that country.

(a) The Commissioner General may make Regulations to give effect to any agreement in terms of subsection (1), including Regulations providing for customs officers of the country which Lesotho has agreement with to perform the functions referred to in subsection (1)(c)(i) in Lesotho.

**Delegation of duties and powers of Commissioner General**

6. The Commissioner General may delegate his powers to the customs officers.

## **PART II – POWERS AND DUTIES OF COMMISSIONER GENERAL**

### **General Powers and Duties of Commissioner General**

7. (1) The Commissioner General has the power to –
- (a) to implement provisions of this Act;
  - (b) advise the Minister in the development and implementation of customs policies and matters connected thereof;

### **Commissioner General to hold consultations with Stakeholders**

8. The Commissioner General shall hold regular consultations with stakeholders on customs related matters.

### **Designation of customs officers**

9. (1) The Commissioner General-
- (a) shall designate any number of LRA officials as customs officers necessary for the proper implementation and enforcement of this Act and other revenue Acts;
  - (b) may with the concurrence of an organ of state or other institution with whom the Commissioner General has concluded an agreement in terms of section 4, designate persons in the service of that organ of state or institution as customs officers; and
  - (c) may in a special case designate any competent person to act as a customs officer for a specific purpose during a specific period.
- (2) No person may be designated in terms of subsection (1) as a customs officer—
- (a) unless the person—
    - (i) has filed a declaration of interest determined by the Commissioner General; and
    - (ii) complies with other requirements as may be prescribed by Commissioner General;or
  - (b) if that person has a direct material financial interest in, or stands to benefit materially from, any business activity relating to—
    - (i) the clearance of goods for home use or a customs procedure;

(ii) the import into or export from Lesotho of goods; or  
(iii) the production, processing, sale, handling or transport of, or the trade in, goods to which this Act or other revenue Acts applies.

(3) A customs officer shall inform the Commissioner General immediately if the officer acquires any interest referred to in subsection (2)(b).

(4) The Commissioner General may at any time withdraw or suspend the designation of a person as a customs officer.

### **Confidentiality**

10. (1) The Commissioner General or any officer or any other person assisting in the administration and enforcement of this Act shall not disclose any information relating to any person, firm or business acquired in the performance of his or her duties, except—

(a) for the purposes of this Act or other revenue laws administered by the Commissioner General;

(b) by order of a competent court of law;

(c) on good cause shown, and in such form and under such arrangements as the Commissioner General may prescribe-

(i) to the Principal Secretary for the Ministry that is responsible for Finance or his or her duly authorized representative to the extent necessary for purposes of tax policy design or revenue estimation; or

(ii) to the Principal Secretary for the Ministry that is responsible for Trade and Industry or his or her duly authorized representative to the extent necessary for purposes of the determination of trade or industrial policy; or

(iii) to the Director of the Bureau of Statistics, or any person duly authorized by him for purposes of the laws administered by him or her in connection with collection of statistics; or

(iv) to the Governor of the Central Bank of Lesotho or to his or her duly authorized representative for purposes of the laws administered by him or her in connection with the Bank's macro-economic and financial intelligence functions;

(d) to the Commissioner of Police, the Director General of the Directorate on Corruption and Economic Offences, the Director of Public Prosecutions and the Governor of the Central Bank, or their duly authorized representatives, pursuant to a court order obtained ex parte from a judge in chambers, where the disclosure of such information may reveal evidence or information-

(i) that an offence, other than an offence in terms of this Act or any other revenue law administered by the Commissioner General, has been or may be committed, or where such information may be relevant to the investigation or prosecution of such an offence, and such offence is a serious offence in respect of which a court may impose a sentence exceeding five years imprisonment; or

(ii) of an imminent and serious public safety or environmental risk, where the public interest in the public disclosure of such information outweighs any potential harm to the person concerned should such information be disclosed:

Provided that any information provided by any person in terms of this Act which is disclosed in terms of this subsection, shall not, unless a competent court otherwise directs, be admissible in any criminal proceedings against such person, to the extent that such information or document constitutes an admission by such person of the commission of an offence contemplated in paragraph (i);

(e) in accordance with any agreement to which Lesotho is a party in respect of customs cooperation, avoidance of double taxation or any mutual administrative assistance in connection with any revenue law administered by the Commissioner General.

(2) Notwithstanding the provisions of subsection (3), the Auditor General shall in the performance of his or her duties in terms of the Audit Act 1973 have access to any information acquired by the Commissioner General or any officer in his performance of his duties under this Act.

(3) Any person receiving information in terms of the provisions of subsections (1) and (2) shall be required to keep such information as secret under the provisions of this Act and shall not disclose any such information or permit any person to have access to such information, except to the minimum extent necessary in the exercise of his powers or

the carrying out of his duties under any Act from which such powers or duties are derived.

(4) The provisions of subsections (1) and (2) shall not apply in respect of any information relating to any person, where that person has consented, either expressly or by necessary implication, that such information may be published or made known to any other person.

(5) Any person appointed to audit the assessments and accounts of the Commissioner General or whose engagement with the Authority may necessitate access to confidential information, is, for the purposes of this section, deemed to be a person employed in carrying out the provisions of this Act.”;

## **PART III-APPOINTMENT OF PLACES OF ENTRY AND EXIT AND CUSTOMS CONTROLLED AREAS**

### **Designation of places of entry and exit**

11. (1) The Minister shall, by notice published in the Gazette, designate places of entry or exit as follows:

- (a) airports in Lesotho where a foreign-going aircraft may land or depart;
- (b) rail border crossings where cross-border trains may enter or leave Lesotho;
- (c) road border crossings where vehicles may enter or leave Lesotho; or
- (d) any road or other border crossings where persons may enter or leave Lesotho on foot.

(2) Where the Minister designates a place of entry or exit pursuant to subsection (1), the place shall only be used for the purposes for which it has been designated.

(3) The Minister may, by regulations to this Act, prescribe hours of the day during which any place designated under subsection (1) may be used.

(4) The Minister may, by notice published in the Gazette, revoke a place designated as a place of entry or exit under this Act.

### **Restrictions on use of places of entry or exit**

12. The Commissioner General may, by notice published in the Gazette-

- (a) select from designated places of entry or exit places that may be used for the importation and exportation of goods for commercial purposes; and
- (b) impose conditions from the selected places of entry or exit including the period and the hours of the day during which they may be used;
- (c) restrict the loading and off-loading of goods of a specific type or in a specific manner from ports of entry from which the goods were imported and exported; and
- (d) Customs offices where clearance declaration shall be submitted, processed and released.

### **Designation of Enquiry points**

13. The Commissioner General may, by notice published in the Gazette designate any place as an enquiry points where importer exporters may seek information related to customs issues.

**Places of entry or exit in terms of international agreements with other countries**

14. (1) The Minister may enter into an agreement with the Minister responsible for customs matters of another country to provide for –

(a) joint one-stop border as a place of entry or exit for Lesotho and the other country;

(b) a place of entry or exit for Lesotho at a location in another country; or

(c) a place of entry or exit for another country at a location in Lesotho.

(2) Where a place has been provided for as a joint one-stop border pursuant to subsection (1) the Minister shall by notice published in the Gazette-

(a) designate such place as joint one-stop border for Lesotho and another country;

(b) determine –

(i) the purposes for which the place referred to in paragraph (a) may be used and

(ii) the period and the hours of the day during, which it may be used; and

(c) prescribe procedures and conditions to be complied with, and the documents to be used, or

(d) any other matter necessary, for the implementation of the agreement.

**Places of entry for aircraft**

15. (1) Where the Minister has designated a place of entry or exit for a foreign-going aircraft pursuant to section 11(1),an aircraft shall only land and depart from the customs airport designated.

(2) Where a foreign –going aircraft departs from Lesotho –

(a) to another place within Lesotho, it shall not land at any place other than a designated customs airport; or



(b) to a destination outside Lesotho, it shall not land at any place in Lesotho

### **Calls or landings resulting from forced circumstances**

16. (1) An on-board operator of a foreign-going aircraft may call or land at any place other than a customs airport if he is forced by stress of weather, accident or any other circumstances beyond his control.

(2) Where a foreign-going aircraft makes a forced call or landing, the incident, and the circumstances of the incident shall immediately be reported to the Commissioner General –

(a) by the on-board operator or a carrier–

(i) to the nearest place where the aircraft landed; or

(ii) to the nearest customs airport at which aircraft landed.

(3) Where there is a forced call or landing pursuant to subsection (1), the on-board operator or carrier, shall take all reasonable precautions to prevent a breach of this Act or Value Added Tax Act in respect of any goods or persons –

(a) on board the aircraft-

(b) off-loaded or disembarking from an aircraft at the place; or

(c) loaded on board or boarding an aircraft at the place.

(4) The Commissioner General may prescribe by Regulations procedures that shall be followed after an aircraft has made a forced call or landing.

### **Places of entry or exit for cross-border trains**

17. Where the Minister has designated a place of entry or exit for a cross-border train pursuant to section 11(1)(b), cross-border train shall only enter or leave at that designated border crossing.

### **Places of entry or exit for vehicles**

18. (1) Where the Minister has designated a place of entry or exit for vehicles pursuant to section 11(1)(c), vehicles shall only enter or leave at the designated border post.

(2). Subsection (1) does not apply to vehicles imported into or exported from Lesotho on board a foreign-going aircraft or cross-border trains.

### **Places of entry or exit for persons**

19. (1) A person who enters or leaves Lesotho –

(a) on board a foreign-going aircraft may not disembark from or board the aircraft at any place other than at a designated as customs airport;

(b) on board a cross-border train other than at a rail border crossing designated as a place of entry or exit;

(c) on board a vehicle other than at a designated as border-post for vehicles; or

(d) on foot other than at a designated as border-post for persons on foot.

(2) Subsection (1) does not apply where an aircraft is forced by stress of weather, accident or any other circumstances beyond the control of the on-board operator.

### **Places of entry or exit for goods**

20. (1) A person who imports or exports goods from Lesotho on-board –

(a) a foreign-going aircraft may, off-load and load the goods at a place within a designated customs airport licensed as an air cargo terminal or air travelers terminal; or

(b) a cross-border railway carriage may, off-load or load the goods at a place within a designated rail border crossings licensed as a railway terminal.

(2) A person who is responsible for off-loading or loading of goods shall remove the goods to air travellers terminal except where the Commissioner General may determine otherwise.

(3) No person may import or export electricity other than through a licensed cross-border transmission line.

### **Exemptions**

21. (1) The Commissioner General may, by notice published in the Gazette exempt the following from the application of any of or all the provisions of this Part-

(a) any category of aircraft, trains, railway carriages or vehicles;

(b) any category of persons, travellers or crew;

(c) any category of goods;

(2) The exemption made pursuant to subsection (1) shall state terms and conditions as may be determined by the Commissioner General.

### **Information sharing agreements**

22. (1) The Commissioner General and other government or non-government bodies operating at a place of entry or exit may enter into an information sharing agreement for the proper and effective administration of the place as a place of entry or exit.

(2) The information sharing agreement made pursuant to subsection (1) shall provide for –

(a) the sharing of non-confidential information between the parties relevant to the administration of the place of entry or exit;

(b) the specific information that shall be shared between the parties;

(c) the manner in which and the time within which information shall be passed to the other party;

(d) the combination of reports, notifications, declarations, statements, returns or other documents that shall be submitted by third persons to the Commissioner General; and

(e) the exemption of third persons from submitting substantially the same information to not more than one party;

(f) the submission by third persons of such reports, notifications, declarations, statements, returns or other documents to only one of the parties;

(3) The Commissioner General may by Regulations—

(a) give effect to an information sharing agreement in terms of subsection (1); or

(b) exempt a person from a requirement in terms of this Act to submit a report, notification, declaration, statement, return or other document, provided that the exempted person submits substantially the same information that shall be contained in

that report, notification, declaration, statement, return or other document to the other party.

### **Customs controlled areas**

23. (1) For the purposes of this Act the following places, areas, premises or facilities are customs controlled areas:

- (a) container terminal;
- (b) multipurpose terminal;
- (c) air cargo terminal;
- (d) air travellers terminal;
- (e) air cargo depot;
- (f) rail cargo terminal;
- (g) rail travellers terminal;
- (h) container depot;
- (i) container terminal
- (j) international postal clearance depot;
- (k) customs warehouse;
- (l) state warehouse;
- (m) Licensed Industrial Development Zones (IDZ) ;
- (n) cross border transmission lines; and
- (o) cross border pipeline.

(2) Notwithstanding subsection (1), the Commissioner General may, by notice published in the Gazette designate some areas, premises or facilities as customs controlled areas.

(3) The Minister may, by regulations to this Act, prescribe hours of the day during which any place designated under subsection (1) may be used.

### **Customs control of goods**

24. (1) The following goods are, for purposes of this Act and Value Added Tax Act, subject to customs control:

(a) All goods imported, or suspected on reasonable grounds to have been imported, into Lesotho;

(b) all goods in the process of being exported or suspected on reasonable grounds to be in the process of being exported from Lesotho;

(c) all compensating products under a customs procedure or goods suspected on reasonable grounds to be compensating products under a customs procedure;

(d) all goods manufactured, or on reasonable grounds suspected to have been manufactured, in an excise warehouse;

(e) all foreign-going aircrafts, and all aircrafts suspected on reasonable grounds to be foreign-going aircraft;

(f) all cross-border trains and railway carriages, and all trains or railway carriages suspected on reasonable grounds to be cross-border trains or railway carriages;

(g) all vehicles entering or in the process of leaving Lesotho, or suspected on reasonable grounds of having entered or being in the process of leaving Lesotho;

(h) all goods on board any aircraft, train, railway carriage or vehicle referred to in paragraph (e), (f), (g) or (h);

(i) all aircrafts, trains, railway carriages and vehicles transporting goods, or suspected on reasonable grounds to be transporting, goods referred to in paragraph (a), (b), (c) or (d);

(j) all cross-border transmission lines including electricity being transmitted through a cross-border transmission line;

(k) all cross-border pipelines, cable-cars and conveyor belts, and all goods in the process of being conveyed by way of a cross-border pipeline, cable-car or conveyor belt; and

(l) all goods in the process of being conveyed by means of pipelines or conveyor belts used for loading goods onto or off from foreign-going aircraft or cross-border railway carriages;

(2) Goods destined for export remain subject to customs control until:

(a) the goods are cleared and released for outright export;

(b) the goods are exported under a customs procedure other than outright export and the goods or compensating products obtained from the goods are re-imported into Lesotho and cleared and released for home use under that procedure;

(c) the goods are in terms of a provision of this Act allowed to be exported otherwise than in terms of a clearance and release of the goods for export;

(d) the goods revert to free circulation in terms of a provision of this Act;

(e) the goods are destroyed; or

(f) the goods are disposed of by the Commissioner General in terms of this Act or by another government or non-governmental bodies in terms of any applicable legislation.

(3) Compensating products obtained from imported goods under a customs procedure remain subject to customs control contemplated in subsection (1) until the compensating products are allowed into free circulation or exported.

(4) Goods manufactured in an excise warehouse remain subject to customs control contemplated in subsection (1) until the goods are allowed into free circulation or exported.

### **Customs control of persons**

25. (1) The following persons are, for purposes of this Act, subject to customs control:

(a) persons who entered or are suspected on reasonable grounds of having entered Lesotho, whether on board an aircraft, train or vehicle or on foot;

(b) persons in the process of leaving or suspected on reasonable grounds of leaving Lesotho, whether on board an aircraft, train or vehicle or on foot;

(c) persons on board any aircraft, train, railway carriage;

(d) persons in any capacity connected with goods that are subject to customs control;  
and

(e) persons within a customs controlled area.

(2) Persons entering Lesotho remain subject to customs control contemplated in subsection (1) until the person is allowed to proceed into Lesotho; and.

(3) Persons in the process of leaving Lesotho remain subject to customs control until the person leaves Lesotho.

### **Offences**

26. (1) Any person who fails to comply with section 12(3) commits an offence and is liable upon conviction to a fine not exceeding one hundred thousand maloti or imprisonment of a period not exceeding five years.

(2) Any person who contravenes section 16(3) is guilty of an offence and liable upon conviction to a fine not exceeding one hundred thousand maloti or imprisonment of a period not exceeding two years or both fine and imprisonment.

(3) Any person operating a cross-border pipeline, cable-car, conveyor belt or transmission line is guilty of an offence if the person contravenes section 20 of the Act, and shall upon conviction be liable to fine not exceeding one hundred thousand maloti or imprisonment of a period not exceeding two years or both.

## **PART IV- ARRIVAL AND DEPARTURE OF AIRCRAFTS, TRAINS, VEHICLES, PERSONS AND GOODS**

### **Arrival of goods by air**

27. (1) For the purposes of this Act, goods consigned to Lesotho which are brought in an aircraft shall be considered to have been imported into Lesotho -

(a) at the time when the aircraft, lands at the designated customs airport; or

(b) where goods are offloaded before the arrival of the aircraft at the customs airport, at the time when the goods are offloaded.

(2) Where the goods are not consigned to a place in Lesotho but the aircraft lands in Lesotho, the goods shall be considered to have been imported at the time when goods are offloaded in Lesotho.

### **Advance arrival notices for an aircraft**

28. (1) The carrier or the pilot operating a foreign-going aircraft to Lesotho shall give advance notice to the Commissioner General –

(a) of the scheduled arrival of the aircraft and crew in Lesotho; and

(b) if the aircraft is transporting travellers, of the scheduled arrival of the incoming travellers in Lesotho.

(2) The advance arrival notice made pursuant to subsection (1) shall be submitted –

(a) within the timeframe prescribed by the Regulations to this Act and

(b) either separately, simultaneously or as a combined notice.

(2) (a) The cargo reporter responsible for cargo on board a foreign-going aircraft referred to in subsection (1) shall give advance notice to the Commissioner General of the scheduled arrival of the incoming cargo in Lesotho.

(b) An advance cargo arrival notice referred to in paragraph (a) shall be submitted within the timeframe by Regulations made under this Act .

### **Aircraft arrival reports**



29. (1) A person managing an airport shall report the arrival of a foreign-going aircraft at a customs airport to the Commissioner General if the aircraft –

(a) is an aircraft operated by a carrier, unless the Commissioner General permits otherwise; or

(b) is not an aircraft operated by a carrier or the on-board operator of the aircraft unless the Commissioner General permits otherwise.

(3) An aircraft arrival report referred to in subsection (1) shall be submitted within a timeframe the prescribed by Regulations to this Act.

### **Advance departure notices for an aircraft**

30. (1) (a) The carrier operating a foreign-going aircraft shall give advance departure notice to the Commissioner General of –

(i) the scheduled departure of the aircraft and crew from a customs airport; and

(ii) if the aircraft is to transport travellers out of Lesotho, of all the outgoing travellers who boarded or are scheduled to board the aircraft at the airport.

(2) The advance departure notices referred to in paragraph (1)(a) shall be submitted –

(i) within the timeframe prescribed by Regulations to this Act, whether to another customs airport in Lesotho or to a destination outside Lesotho; and

(ii) either separately, simultaneously or as a combined notice.

(3) (a) A cargo reporter responsible for cargo loaded or to be loaded on board a foreign-going aircraft at a customs airport for export from Lesotho shall give advance notice to the Commissioner General of the outgoing cargo.

(b) An advance cargo departure notice referred to in paragraph (2)(a) shall be submitted within the timeframe prescribed by regulations to this Act, whether to another customs airport in Lesotho or to a destination outside Lesotho.

(c) Paragraphs (a) and (b) do not apply in respect of goods transhipped onto the aircraft at the airport. In such a case the transshipment clearance declaration or document regarded to be a transshipment clearance declaration shall for purposes of

paragraphs (a) and (b) be regarded to be the advance cargo departure notice for the goods.

### **Permissions to depart**

31. (1) No foreign-going aircraft shall depart from a customs airport without the permission of the Commissioner.

(2) An application for a permission to depart shall be submitted to the Commissioner General –

(a) in the manner as may be determined by the Commissioner General ; and

(b) be accompanied or supported by such documents as may be determined by the Commissioner General or in terms of this Act or other legislation applicable to the departure of aircraft from a customs airport.

(3) The Commissioner General shall not permit an aircraft to depart –

(a) unless a carrier has given advance departure notice, where an aircraft is operated by the carrier; or

(b) if the aircraft is detained, seized or seized, or if the aircraft has on board goods that are detained, seized or seized, in terms of –

(i) this Act or a Value Added Tax Act; or

(ii) other legislation or a court order and the Commissioner General has been informed of the detention, seizure or confiscation.

(4) Where an aircraft does not depart within the timeframe specified by the Commissioner General, the permission to depart shall lapse and a new permission to depart shall be obtained before the aircraft depart.

### **Aircraft departure reports**

32. (1) A person managing an airport shall report departure of a foreign-going aircraft from a customs airport to another customs airport in Lesotho or a destination outside Lesotho to the Commissioner General –

(a) if the aircraft –

- (i) is an aircraft operated by a carrier, by the carrier; or
  - (ii) is not an aircraft operated by a carrier, by the on-board operator of the aircraft.
- (2) An aircraft departure report referred to in subsection (1) shall be submitted within the timeframe specified by the Commissioner General, after the departure of the aircraft from the airport.

**Outturn reports of cargo unloaded from or loaded on board aircraft at air cargo terminals**

33. A licensee of an air cargo terminal shall submit to the Commissioner General outturn reports in respect of –
- (a) all cargo unloaded from an aircraft at the terminal; and
  - (b) all cargo loaded on board an aircraft at the terminal.

**Outturn reports of cargo unpacked or packed at air cargo depots**

34. (1) A licensee of an air cargo depot shall submit to the Commissioner General outturn reports in respect of –
- (a) all imported cargo received and deconsolidated or unpacked at the depot; and
  - (b) all cargo destined for export packed or consolidated at the depot.
- (2) The outturn report referred to in subsection (1)(a) or (b) shall include details of any discrepancy found in the packages.
- (3) The licensee of an air cargo depot shall notify the Commissioner General of any cargo remaining at the depot for more than the prescribed period after their delivery to the depot for export.

**Advance arrival notices for cross border trains**

35. (1) A carrier of a cross-border train scheduled for Lesotho who will be operating the train on Lesotho's side of the border shall give advance notice to the Commissioner General –
- (a) of the scheduled arrival of the train and crew in Lesotho;

(b) if the train is transporting travellers, of the scheduled arrival of the incoming travellers in Lesotho; and

(c) if the train is transporting cargo, of the scheduled arrival of that incoming cargo in Lesotho.

(2) The advance arrival notice referred to in subsection (1)(a), (b) and (c) shall be submitted –

(a) within the timeframe specified by the Commissioner General; and

(b) either separately, simultaneously or as a combined notice.

### **Cross border train arrival reports**

36. (1) A carrier operating a cross-border train that has entered Lesotho shall report to the Commissioner General the arrival of the train at each railway station after it entered Lesotho where –

(a) travellers or crew are to disembark;

(b) cargo is to be offloaded; or

(c) a railway carriage is to be detached.

(2) A train arrival report referred to in subsection (1) shall be submitted within the timeframe specified by the Commissioner General after the arrival of the train at a railway station referred to in that subsection.

### **Cross border train advance departure notices**

37. (1) A carrier of a cross-border train scheduled for a destination outside Lesotho who will be operating the train on Lesotho's side of the border, shall give –

(a) advance notice to the Commissioner General –

(i) of the scheduled departure of the train and crew to a destination outside Lesotho;

(ii) if the train is to transport travellers to a destination outside Lesotho, of all travellers scheduled to be on board the train when the train crosses the border out of Lesotho; and

(iii) if the train is to transport cargo to a destination outside Lesotho, of all cargo scheduled to be on board the train when the train crosses the border out of Lesotho; and

(b) such updates as may be determined by the Commissioner General of the advance traveller departure notice referred to in paragraph (a)(ii) and of the advance cargo departure notice referred to in paragraph (a)(iii) as the train progresses on its voyage to the border.

(2) Advance departure notices referred to in subsection (1)(a)(i), (ii) and (iii), and any updates of such notices referred to in subsection (1)(b), shall be submitted –

(a) at such times as may be determined by the Commissioner General for such notices and updates; and

(b) either separately, simultaneously or as a combined notice or update.

### **Cross border train departure reports**

38. (1) A carrier operating a cross-border train in Lesotho to a destination outside Lesotho shall report to the Commissioner General the departure of the train from each railway station where –

(a) travellers or crew or cargo bound for a destination outside Lesotho are taken on board the train; or

(b) a cross-border railway carriage transporting such travellers or crew or cargo is attached to the train.

(2) A train departure report shall be submitted within the timeframe specified by the Commissioner General after the departure of the train from a railway station referred to in subsection (1).

### **Bus advance arrival notices**

39. (1) A carrier operating a bus to Lesotho shall give advance notice to the Commissioner General of the scheduled arrival in Lesotho of the bus and of all travellers and crew on board the bus.

(2) An advance arrival notice referred to in subsection (1) shall be submitted within the timeframe specified by the Commissioner General.

(3) This section applies only to buses operated by carriers.

### **Bus arrival reports**

40. (1) A on-board operator of a bus entering Lesotho shall, upon arrival at the border-post where the bus enters Lesotho, submit to the Commissioner General an arrival report in respect of the bus and of all travellers and crew on board the bus.

(2) This section applies to all buses whether or not operated by carriers.

### **Bus advance departure notices**

41. (1) A carrier operating a bus to a destination outside Lesotho shall give advance notice to the Commissioner General of the scheduled departure from Lesotho of the bus and of all travellers and crew on board the bus.

(2) An advance departure notice referred to in subsection (1) shall be submitted within the timeframe specified by the Commissioner General before the bus reaches the border-post where it will leave Lesotho.

(3) This section applies only to buses operated by carriers.

### **Bus departure reports**

42. (1) A on-board operator of a bus leaving Lesotho shall upon arrival at the border-post where the bus will leave Lesotho submit to the Commissioner General at the border-post a departure report in respect of the bus and of all travellers and crew on board the bus.

(2) This section applies to all buses whether or not operated by carriers.

### **Truck advance arrival notices**

43. (1) A carrier operating a truck to Lesotho shall give advance notice to the Commissioner General of the scheduled arrival in Lesotho of the truck and of all cargo and crew on board the truck.

(2) The advance arrival notice referred to in subsection (1) shall be submitted within the timeframe specified by the Commissioner General.

(3) This section applies only to trucks operated by carriers.

### **Arrival reports and manifests of incoming cargo**

44. (1) An on-board operator of a truck entering Lesotho shall, upon arrival at the border-post, where the truck enters Lesotho submit to the Commissioner General at border-post –

(a) an arrival report in respect of the truck and crew; and

(b) a manifest of all cargo on board the truck.

(2) This section applies to all trucks whether or not operated by carriers.

### **Truck advance departure notices**

45. (1) A carrier operating a truck to a destination outside Lesotho shall give advance notice to the Commissioner General of the scheduled departure from Lesotho of the truck and of all cargo and crew on board the truck within the timeframe specified by the Commissioner General before the truck reaches the border-post where it will leave Lesotho.

(2) This section applies to only to trucks operated by carriers.

### **Truck departure reports and manifests**

46. (1) An on-board operator of a truck due to leave Lesotho with cargo on board shall, upon arrival at the border-post where the truck leaves Lesotho, submit to the Commissioner General –

(a) a departure report in respect of the truck and crew; and

(b) a manifest of all cargo on board the truck.

(2) This section applies to all trucks whether or not operated by carriers.

### **Outturn reports of cargo unpacked from or packed into containers at container depots**

47. (1) A licensee of a container depot shall submit to the Commissioner General outturn reports in respect of –

(a) all imported cargo unpacked from a container; and

(b) all cargo destined for export packed into a container .

(2) An outturn report referred to in subsection (1)(a) or (b) shall include details of any discrepancies found –

(a) when unpacking the container; or

(b) when packing the container.

(3) A licensee of a container depot shall notify the Commissioner General of any cargo remaining at the depot for more than a prescribed period after delivery to the depot for export.

### **Outturn reports of cargo with no transport documents**

48. A licensee of air cargo terminal, container depot or air cargo depot shall submit to the Commissioner General a separate outturn reports in respect of any cargo for which the licensee has not received a transport document.

### **Reporting of shortages or excess cargo**

49. A licensee of a container depot, air cargo terminal or air cargo depot that off-loads, unpacks or deconsolidates any imported goods shall submit to the Commissioner General outturn reports in respect of any shortages in goods to be or in excess of the quantities specified in the relevant transport document against which the goods were examined, unpacked or deconsolidated.

### **Reporting of cargo in other circumstances**

50. (1) The Commissioner General may by regulations made under this Act prescribe any additional outturn reports as may be necessary for the effective customs control of cargo imported into or destined for export from Lesotho, including outturn reports in respect of –

(a) cargo imported or destined for export –

(i) on board cross-border railway carriages;

(ii) on board trucks; or

(iii) by means of cross-border pipelines, cable cars or conveyor belts;

(b) electricity imported or exported through cross-border transmission lines; and



(c) the packing, unpacking, consolidation or deconsolidation of goods in customs controlled areas.

### **Unpacking of cargo**

51. A licensee of air cargo terminal, container depot or air cargo depot where cargo is deconsolidated and unpacked, shall ensure that—

(a) cargo is unpacked against –

(i) a transport document issued in respect of the cargo; or

(ii) the information in the advance cargo arrival notice relating to the cargo;

(b) consolidated cargo is unpacked to different importers;

(c) any outturn report submitted in respect of the cargo reflects all the cargo referred to in the transport documents issued; and

(d) the transport document number on the release notification received by the licensee in respect of the cargo –

(i) reconciles with the transport document against which the cargo was unpacked; and

(ii) is the same as the transport document number reflected on any outturn report submitted in respect of the cargo.

### **Submission of notices, reports and manifests**

52. (1) The carrier of an aircraft, truck, vehicle, bus or train shall submit to the Commissioner General an advance arrival or departure notice, an arrival or departure report or a manifest.

(2) The advance arrival or departure notice, an arrival or departure report or a manifest submitted pursuant to subsection (1) shall be;

(a) in a form prescribed in Schedule ---- of regulations to this Act ;

(b) accompanied by any documents as may be required in terms of this Act, Value Added Tax Act or other legislation, or as the Commissioner General may determine; and

(c) submitted electronically unless the Commissioner General determines otherwise

### **Reporting obligations of carriers not residing in Lesotho**

53. Where a carrier is not located in Lesotho and has an obligation to submit to the Commissioner General an advance arrival or departure notice, arrival or departure report, manifest or update of an advance notice, or any other information, the Commissioner General shall request the carrier's registered agent in Lesotho to submit notices relating to arrival or departure of trucks, vehicles, buses and persons.

### **Exclusions and exemptions**

54. Notwithstanding the provisions of this Part, the Commissioner General may, where he considers it necessary exempt-

- (a) any category of aircraft, trains, railway carriages, buses or trucks;
- (b) any category of persons, travellers or crew; or
- (c) any category of goods or cargo from complying with this Part.

### **Offences**

55. (1) Any person who fails to submit arrival notices and report and departure notices and report in terms of this Part, commits an offence and is liable upon conviction to a fine not exceeding twenty thousand maloti or imprisonment of five years.

(2) Any person who fails to submit arrival and departure notices and reports within the prescribed period commits an offence, and is liable upon conviction to a fine of five thousand maloti or imprisonment of a period not exceeding of five months.

## **PART VI**

### **CLEARANCE AND RELEASE OF GOODS**

#### **Submission of clearance declarations for importation of goods**

56. (1) The importer of goods shall, for the purpose of clearing imported goods for home use, submit a clearance declaration to the Commissioner General within a period prescribed by Regulations to this Act.

#### **Types of clearance declarations**

57. (1) The following are types of clearance declarations shall be used —

(a) a regular clearance declaration;

(b) an incomplete clearance declaration;

(c) a provisional clearance declaration;

(d) a supplementary clearance declaration;

(e) a simplified clearance declaration; or

(f) any other document as may be determined by the Commissioner General.

(2) A regular clearance declaration shall be submitted except in circumstances where another type of clearance declaration is specifically allowed in terms of this Act.

(3) A document referred to in subsection (1)(f) shall, as may be appropriate, for the purposes of this Act, be regarded to be a clearance declaration

#### **Persons entitled to submit clearance declarations for home use**

58. The following persons may submit clearance declarations to clear imported goods for home use:

(a) the importer of the goods, if the importer is located in Lesotho;

(b) the customs clearing agent in Lesotho of the importer, if the importer is not located in Lesotho;

(c) the owner of the goods, if ownership in the goods is transferred after the goods are imported and the owner is located in Lesotho;

(d) the customs clearing agent in Lesotho of the owner referred to in paragraph (c), if the owner is not located in Lesotho; or

(e) a customs broker.

### **Persons by whom goods are cleared**

59. (1) A person who submits a clearance declaration to clear goods for a customs procedure shall for purposes of this Act and a Value Added Tax Act be regarded as the person liable for importation and exportation of goods.

(2) Where a clearance declaration is submitted by a customs clearing agent or broker on behalf of a person referred to in subsection (1), the person and not the customs clearing agent or broker shall for purposes of this Act and a Value Added Tax Act be regarded as the person liable for importation and exportation of goods.

### **Contents of clearance declarations**

60. (1) A regular clearance declaration of goods imported into or destined for export from Lesotho shall state—

(a) the nature, quantity and, the cargo status of the goods ;

(b) the number of the transport document issued in respect of the goods;

(c) the container number, in the case of containerized goods;

(d) the date and time of actual or expected arrival of the goods, at a place referred to in—

(i) section 90, in the case of imported goods; or

(ii) section 94, in the case of goods to be exported from Lesotho;

(e) the tariff classification ascribed to the goods by the person clearing the goods and the reference number of—

(i) any tariff determination or re-determination; or

(ii) any advance tariff ruling that may be applicable to the goods;

(f) the customs value ascribed to the goods in terms of section 116(1) of this

Act, and the reference number of—

- (i) any customs ruling on a valuation criterion that may be applicable to the goods in terms of section 123(2) of that Act; or
  - (ii) any advance ruling on a valuation criterion;
  - (g) the origin ascribed to the goods in terms of section 152(1) of the Customs this Act, and the reference number of—
    - (i) any origin determination or re-determination; or
    - (ii) any advance origin ruling;
  - (h) whether any import or export tax is payable on the goods, and if so—
    - (i) the kind of tax payable; and
    - (ii) the amount of the tax determined in accordance with a self-assessment in terms of this Act;
  - (i) the tax identification number and name of the person submitting the declaration, and, if submitted by a customs broker, carrier or registered agent acting on behalf of another, the tax identification number and name of the principal on whose behalf the declaration is submitted;
  - (j) the reference number of the clearance declaration submitted for clearing the goods for a customs procedure, in the case of goods under a customs procedure which are to be cleared for another customs procedure or for home use,; and
  - (k) such additional information as may be prescribed by this Act.
- (2) Any other type of clearance declaration shall contain the information—
- (a) required for a regular clearance declaration in terms of subsection (1) except—
    - (i) as provided otherwise in this Act; or
    - (ii) as may be determined by the Commissioner General; or
  - (b) required for that type of clearance declaration in terms of this Act or as may be prescribed by Regulations.

(3) Different types of clearance declarations shall be in a form and format as may be prescribed by Regulations, except where determined otherwise in terms of this Act for the specific type of clearance declaration.

### **How and where to submit clearance declarations**

61. (1) A clearance declaration shall be submitted to the Commissioner General electronically unless the person submitting the declaration is authorised in terms of that section, or falls within a category of persons authorised by regulations, to submit a document manually.

(2) A clearance declaration submitted manually shall—

(a) be completed, signed and certified by the person who submits the clearance declaration;

(b) consist of the signed original and a number of copies as may be prescribed by regulations to this Act; and

(c) be submitted to the Commissioner General—

(i) at the Customs Office serving the customs controlled area where the goods are to be released for home use or a customs procedure; or

(ii) at any other Customs Office designated in terms of section 12 to receive clearance declarations.

### **Time when clearance declarations may be submitted**

62. A clearance declaration—

(a) transmitted electronically in accordance with section 561, may be transmitted at any time; or

(b) submitted in paper format to the Commissioner General at the Customs Office referred to in section 12 only during that Office's hours of business.

### **Submission of clearance declarations before arrival of goods at place of entry**

63. (1) A clearance declaration in relation to goods imported or to be imported into Lesotho may be submitted to the Commissioner General before the arrival of the goods at the place of entry, provided that the goods have already been loaded on board the , aircraft, railway carriage or vehicle transporting the goods to Lesotho.

#### **Acceptance of clearance declarations**

64. (1) The Commissioner General shall accept a clearance declaration submitted to him and issue a confirmation to the person who submitted the declaration if –

(a) the clearance declaration is in a format prescribed for the specific type of clearance declaration;

(b) all the information required on the official form prescribed for the specific type of clearance declaration is furnished;

(c) the clearance declaration is signed by or on behalf of the person submitting the declaration, if required for the specific type of clearance declaration; and

(d) the clearance declaration is submitted by a person entitled to submit the declaration.

(2) The Commissioner General shall refuse to accept a clearance declaration if the declaration does not comply with subsection (1).

(3) Acceptance of a clearance declaration in terms of subsection (1) may not be regarded as release of the goods for the required customs procedure.

#### **Validity of Clearance declarations**

65. A clearance declaration accepted in terms of section 54(1) is despite such acceptance invalid if any of the information required on the form or otherwise prescribed for the specific type of clearance declaration is incorrect but the declaration may be validated by an amendment in terms of section 57.

(2) An amendment of a clearance declaration validates the declaration from the date of submission of the original declaration, but such validation of the declaration does not affect any criminal proceedings that may be instituted, any administrative penalty that may be imposed or any other steps that may be taken as a result of the submission of an incorrect declaration.

### **Determination of time of clearance of goods**

66. (1) For the purposes of this Act, the time of clearance of goods for home use or a customs procedure shall be taken as the time when a clearance declaration in respect of the goods which complies with the requirements set out in section 54(1) is accepted by the Commissioner General in terms of that section.

(2) The time of clearance in terms of subsection (1) is not affected if the clearance declaration is amended in terms of section 67.

(3) If the clearance of goods is substituted in terms of section 84 the time of clearance of the goods shall be taken as the time applicable to the goods in terms of section 62.

### **Amendment of clearance declarations**

67. (1) Where a clearance declaration is submitted and accepted by the Commissioner General, when the person submitting clearance declaration becomes aware, he may before or after clearance and release of goods, submit an amendment of a clearance declaration to the Commissioner General.

(2) Where the Commissioner General has requested the person to submit amended clearance declaration, the request shall not affect any criminal proceedings that may be instituted against the person, any administrative penalty that may be imposed or any other steps that may be taken as a result of the submission of an incorrect or incomplete clearance declaration.

(3) Where a person who submitted clearance declaration for home use or any other customs procedure becomes aware of an error, he shall submit to the Commissioner General an amended clearance declaration.

### **Withdrawal of clearance declarations**

68. (1) A person submitting clearance declaration for a customs procedure may withdraw a clearance declaration submitted in respect of the goods if –

(a) the goods are cleared before arrival and do not arrive at the place of entry or exit;

(b) clearance declaration is a duplicate clearance declaration that was erroneously submitted in respect of the same goods;



(c) the goods are intended to remain under the customs procedure for which the goods are currently cleared;

(d) the Commissioner General on any other justifiable grounds gives permission to the person to withdraw the clearance declaration.

### **Exclusions from clearance requirements**

69. (1) The following categories of imported goods are excluded from goods falling within the categories that are not required to be cleared in accordance with clearance requirements, :

(a) goods which are on board a foreign-going aircraft or a cross-border railway carriage when an aircraft or railway carriage enters Lesotho and which –

(i) are not off-loaded or taken off an aircraft or railway carriage whilst aircraft or railway carriage is in Lesotho;

(ii) are not used on board an aircraft or railway carriage whilst an aircraft or railway carriage is in Lesotho; and

(iii) remain on board an aircraft or railway carriage until the an aircraft or railway carriage leaves Lesotho;

(b) aircraft, locomotives and railway carriages which –

(i) upon entering Lesotho automatically come under the temporary admission procedure; or

(ii) left Lesotho under the temporary export procedure and re-enter Lesotho on the inbound leg of the procedure;

(c) reusable transport equipment which –

(i) upon entering Lesotho automatically come under the temporary admission procedure; or

(ii) left Lesotho under the temporary export procedure and re-enters Lesotho on the inbound leg of that procedure;

(d) goods entering Lesotho on board –

- (i) as stores for foreign-going aircraft or cross border trains; or
- (ii) as stores for foreign-going military aircraft;
- (e) accompanied or unaccompanied baggage items of persons entering Lesotho, except items to be cleared for home use or any other customs procedure;
- (f) accompanied or unaccompanied goods of persons entering Lesotho, provided the baggage –
  - (i) remains on board the aircraft until aircraft leaves Lesotho; or
  - (ii) is transferred under customs supervision to another foreign-going aircraft leaving Lesotho;
- (g) goods in a single consignment with a customs value not exceeding an amount prescribed by the Minister by Regulations to this Act;
- (h) The exemption contained in subsection (1)(g) does not apply to accompanied and unaccompanied baggage of persons entering Lesotho;
  - (i) goods, including trade samples, which have no commercial value;
  - (j) international postal articles of the following kind imported for delivery in Lesotho by the Lesotho Post Office:
    - (i) letters, postcards, greeting cards, telegrams and other similar communications containing personal messages only;
    - (ii) printed papers not subject to any import taxes; and
    - (iii) literature for the blind;
  - (k) human remains; or
  - (l) any other category of goods determined by the Commissioner General.
- (2) The Commissioner General may –
  - (a) inspect or detain goods which fall within the category of goods exempt under subsection (1); and

(b) require proof that the goods do fall within the category of goods exempt under subsection (1).

(3) Subsection (1) does not apply to prohibited, restricted and counterfeit goods, and such other goods as may be determined by the Commissioner General by notice published in the Gazette.

### **Failure to submit clearance declaration within prescribed period**

70. (1) Where the importer of goods fails to submit clearance declaration within the period prescribed in the Regulations ,or at the time applicable to the goods, or if such goods are diverted for home before the period for submitting the clearance declaration has elapsed, the Commissioner General shall;

(a) for tax purposes regard the goods to have been cleared for home use if the goods were –

(i) diverted for home use; or

(ii) damaged, destroyed, lost or unaccounted for-

(aa) due to a recognised cause; and

(bb) in the case of goods lost due to a recognised cause, that the goods, are cleared or smuggled into Lesotho.

(2) The onus to prove that a clearance declaration to clear goods for home use or any other customs procedure was submitted to the Commissioner General within the period as prescribed by Regulations to this Act, rests on the person who alleges that the goods were cleared for home use.

(3) Notwithstanding provisions of subsection (1), the Commissioner General may proceed with;

(a) any criminal proceedings against the person;

(b) administrative penalty that may be imposed;

(c) or other steps that may be taken in terms of this which may include–

(i) seizing the goods;

(ii) allowing the person of the goods to abandon the goods to the Commissioner General;

(iii) allowing or directing the person –

(aa) to remove the goods from Lesotho; or

(bb) to destroy the goods under supervision of the Commissioner General.

### **Clearance of goods imported through cross-border transmission lines, pipelines, cable-cars or conveyor belts**

71. The Commissioner General may by Regulations –

(a) prescribe special processes and requirements for the clearance and release for home use of electricity imported through licensed cross-border transmission lines and other goods imported through licensed cross-border pipelines or by means of licensed cross-border cable cars or conveyor belts; and

(b) exempt such electricity or other goods from any provision of this Act relating to the clearance or release of goods

### **Clearance of goods destined for export**

72. The Commissioner General shall clear all goods destined for-

(a) outright export from Lesotho in accordance with the export procedure;

(b) export under a customs procedure in accordance with any customs procedure that allows goods to be exported;

(c) export under a customs procedure in accordance with the international clearance arrangement.

### **Submission of clearance declarations for goods exported**

73. An exporter of goods shall, for the purpose of clearing goods for export, submit the clearance declaration made within a period and in a form and manner prescribed by regulation.

### **Exclusion from export clearance requirements**

74. (1) The following categories of goods destined for export from Lesotho are excluded from clearance requirements, and such goods may, be exported without submission of an export clearance declaration-

(a) goods which were on board a foreign-going aircraft or a cross-border railway carriage when the aircraft or railway carriage entered Lesotho and which –

(i) are not off-loaded or taken off an aircraft or railway carriage whilst an aircraft or railway carriage is in Lesotho; and

(ii) remain on board an aircraft or railway carriage until an aircraft or railway carriage leaves Lesotho;

(b) aircraft, locomotive and railway carriage which –

(i) upon leaving Lesotho automatically comes under the temporary export procedure; or

(ii) enters Lesotho under the temporary admission procedure and leaves Lesotho on the outbound leg of the procedure;

(c) reusable transport equipment which –

(i) upon leaving Lesotho automatically comes under the temporary export procedure; or

(ii) enters Lesotho under the temporary admission procedure and leaves Lesotho on the outbound leg of the procedure;

(d) goods under any of the following customs procedures:

(i) the international transit procedure;

(ii) the transshipment procedure;

(iii) the tax free shop procedure; or

(iv) the stores procedure.;

(e) stores reasonably needed for foreign-going military aircraft on a voyage;

(f) accompanied and unaccompanied baggage items of persons leaving Lesotho other than items that shall be cleared for outright export or for export under a customs procedure applicable to the items;;

(g) accompanied or unaccompanied goods of persons leaving Lesotho, provided the goods –

(i) are leaving Lesotho on board the same aircraft which brought them into Lesotho; or

(ii) were transferred under customs supervision from the aircraft in which the goods entered Lesotho to another foreign-going aircraft in which the goods leave Lesotho;

(h) goods in a single consignment with a customs value not exceeding an amount prescribed by the Minister by regulations to this Act;

(i) The exemption contained in subsection (1)(h) does not apply to accompanied and unaccompanied baggage of persons leaving Lesotho."

(j) goods, including trade samples, which have no commercial value;

(k) international postal articles of the following kind imported for delivery in Lesotho by the Lesotho Post Office:

(i) letters, postcards, greeting cards, telegrams and other similar communications containing personal messages only;

(ii) printed papers not subject to any import taxes; and

(iii) literature for the blind;

(iv) human remains; or

(l) any other category of goods as may be determined by the Commissioner General.

(2) The Commissioner General may –

(a) inspect or detain goods which fall within the category of goods exempted under subsection (1); and

(b) require proof that the goods do fall within the category of goods exempted under subsection (1).

(3) Subsection (1) does not apply to prohibited, restricted and counterfeit goods, and such other goods as may be determined by the Commissioner General by notice published in the Gazette.

### **Failure to clear goods in free circulation for export**

75. (1) Where goods in free circulation are-

(a) delivered to a cargo terminal without any clearance declaration for export, the goods shall be dealt with in accordance with time periods as prescribed in the Regulations; or

(b) exported from Lesotho without any clearance declaration the goods shall, for tax purposes, be regarded as being cleared for outright export.

(2) Subsection (1) applies regardless of whether any criminal proceedings are instituted, administrative penalty are imposed or any other measure is taken by the Commissioner General in terms of this Act.

### **Substitutions before release of goods**

76. (1) The person who import or export goods for home use may at any time before the release of the goods for home use, submit clearance declaration for a permissible customs procedure.

(2) The Commissioner General may consider an application made pursuant to subsection (1) and approve or refuse the application.

(3) Where the Commissioner General approves an application made pursuant to subsection (1), he shall replace the previous clearance declaration with the substitute.

(4) Where a clearance declaration for home use is replaced in terms of subsection (3), the person who paid any import tax on the goods cleared for home use is entitled to a refund

(5) Where any criminal proceedings are instituted, administrative penalty imposed or any other step that are taken by the Commissioner General, the Commissioner General shall release goods under another customs procedure which may include-

(a) removal of goods to state warehouse;

(b) seizing the goods ;

(c) allowing the person who cleared the goods to abandon the goods to the Commissioner General;

(d) allowing or directing the person who cleared the goods—

- (i) to remove the goods from Lesotho, in the case of imported goods; or
- (ii) to destroy the goods under supervision of the Commissioner General or an organ of state.

### **Clearance of goods precondition for release of goods**

77. The Commissioner General shall not release goods for home use or any other customs procedure unless the goods have been cleared for home use or customs procedure except where provided otherwise in this Act.

### **When release of goods shall be refused**

78. (1) The Commissioner General shall refuse the release of goods cleared for home use or any other customs procedure –

(a) if the clearance of the goods for home use or the customs procedure was not permissible in terms of this Act or a Value Added Tax Act;

(b) if the release of the goods for home use or customs procedure –

(i) is not permissible in terms of this Act;

(ii) results in a breach of this Act; or

(iii) would defeat the objects of any other legislation applicable to the goods;

(c) if the goods are removed to a state warehouse and not claimed within the prescribed period following clearance; or

(d) if the goods were seized or seized in terms of –

(i) this Act; or

(ii) any other legislation or an order of court and the Commissioner General has been informed of the seizure or confiscation.

(2) Notwithstanding the provisions of subsection(1) and section 70, the Commissioner General may, release goods on an assumption that the facts and circumstances presented by the person clearing the goods are correct.

(3) Goods may not be released in terms of subsection (2) if the Commissioner General is aware of the fact that the presentation of facts and circumstances is incorrect.



(4) Where the Commissioner General refuses to release goods in terms of subsection (1) he may detain the goods if the goods are not already detained on any other ground.

**When release of goods may be refused**

79. (1) The Commissioner General shall refuse the release of goods cleared for home use or another customs procedure –

(a) if the clearance of the goods for home use or another customs procedure is not permissible in terms of this Act or a Value Added Tax Act;

(b) if the release of the goods for home use or another customs procedure –

(i) is not permissible in terms of this Act;

(ii) would result in a breach of this Act; or

(iii) would defeat the objects of any other legislation applicable to the goods;

(c) ) if the goods are in terms of section 425, removed to a state warehouse or bonded storage warehouse; or

(d) if the goods were seized or seized in terms of –

(i) this Act; or

(ii) any other legislation or an order of court and the Commissioner General has been informed of the seizure or confiscation.

(2) The Commissioner General may refuse the release of goods for home use or any other customs procedure if the refusal is necessary for –

(a) effective implementation of this Act;

(b) preventing abuse of any systems and procedures of this Act; or

(c) giving effect to national legislation or policy on –

(i) international trade;

(ii) the protection of public health;

(iii) the protection of the environment; or

(iv) public safety.

(3) (a) Notwithstanding the provisions of subsection (1), the Commissioner General may release goods on an assumption that facts and circumstances presented by the person clearing the goods are correct.

(b) Goods may not be released in terms of paragraph (a) if the Commissioner General is aware of the fact that the presentation of facts and circumstances is incorrect.

(4) Where the Commissioner General refuses to release goods in terms of subsection (1) he may detain the goods if the goods are not already detained on any other ground.

### **When release of goods may or shall be withheld**

80. (1) The Commissioner General may withhold the release of goods for home use or another customs procedure until –

(a) a requirement of this Act, or any other legislation applicable to the goods or the clearance of the goods is complied with;

(b) any pre-condition imposed for the release of the goods is met;

(c) any tax or any charges to the Commissioner General in respect of the goods is not paid; or

(d) any surety required for the payment of tax or other charges in respect of the goods is not provided.

(2) The Commissioner General shall withhold the release of goods for home use or any other customs procedure whilst the goods are detained in terms of –

(a) this Act; or

(b) any other legislation or an order of court

### **Release of goods pending technical analysis, expert advice or civil or criminal proceedings**

81. (1) The Commissioner General may not delay the release of goods cleared for home use or any other customs procedure by reason only that –

(a) an inspection of the goods require a technical analysis of, or expert advice on, the goods or any matter relating to the goods;

- (b) civil proceedings relating to the goods between the Commissioner General and any other person are pending;
- (c) an offence involving the goods is committed and criminal investigations or proceedings relating to the goods are pending; or
- (d) the goods are the subject of the proceedings of the court

**When release of goods shall or may be withdrawn**

82. (1) The Commissioner General shall withdraw the release of goods for home use or any other customs procedure –

- (a) if the release is not allowed in terms of this Act;
- (b) in the case of a release for a customs procedure, the goods are diverted for home use;
- (c) if the goods are seized or seized in terms of –
  - (i) this Act; or
  - (ii) any other legislation or an order of court and the Commissioner General is informed of the seizure or confiscation; or
  - (d) in any other circumstances as provided for in this Act.

(2) The Commissioner General may withdraw the release of goods for home use or any other customs procedure if –

- (a) any condition subject to which the goods are released is not complied with;
- (b) in the case of a release for a customs procedure, a provision of this Act applicable to that procedure is breached;
- (c) withdrawal of the release is necessary for –
  - (i) effective implementation this Act;
  - (ii) stopping any abuse of a system or procedure of this Act; or
  - (iii) giving effect to national legislation or policy on –
    - (aa) international trade;
    - (bb) the protection of public health;

(cc) the protection of the environment; or

(dd) public safety;

(d) the goods are detained in terms of this Act, any other legislation or an order of the court; or

(e) in any other circumstances as provided for under this Act.

(3) The release of goods may not be withdrawn in terms of subsection (2) on account of a clearance declaration that is invalid if the clearance declaration can be and is validated by an amendment in terms of section 67.

(4) A withdrawal of a release of goods is a ground for the detention of the goods if the goods are not already detained on any other ground.

### **Refusal to release or withdrawal of release of goods**

83. (1) Where the Commissioner General refuses to release goods for home use or a customs procedure or withdraws the release of goods for home use or a customs procedure, he may, depending on the circumstances, allow the person clearing the goods to –

(a) clear the goods for home use or a specific customs procedure that will not render release of the goods subject to a refusal; or

(b) amend the clearance declaration if release of the goods was refused or withdrawn because of a rectifiable error on the clearance declaration.

(2) When allowing a person to clear goods or to amend a clearance declaration in terms of subsection (1), the Commissioner General may require the goods to be cleared or a clearance declaration to be amended within a period determined by him.

(3) Any import or export tax paid on the goods as a consequence of a clearance that is replaced in terms of subsection (1)(a) may, in accordance with the Value Added Tax Act, be refunded to the person who paid tax if the Commissioner General allows the goods to be cleared for a customs procedure that has a tax free status in relation to such import or export tax.

(4) Subsection (3) does not apply if the Value Added Tax Act provides otherwise.

(5) Where criminal proceedings are instituted or administrative penalty imposed by the Commissioner General, refusal to release or withdrawal of release of goods shall not apply.

### **Substitutions for clearance and release of goods for home use**

84. (1) The importer of goods released for home use may, submit an application to the Commissioner General to substitute release of goods for home use to another customs procedure.

(2) The Commissioner General may consider an application made pursuant to subsection (1) and approve or refuse the application.

(3) Where the Commissioner General approves an application made pursuant to subsection (1), he shall replace the release of goods for home with the substitute for another customs procedure.

(4) Where a clearance declaration for home use is replaced in terms of subsection (3), the person who paid any import tax on the goods cleared for home use is entitled to a refund

(5) Where a clearance declaration for outright export is replaced in terms of subsection (3), the person who received any refund of domestic tax on the goods cleared for outright export shall repay the refund to the Commissioner General.

### **Effect of release of goods for home use or customs procedures**

85. (1) Where the Commissioner General has released goods for home use with no conditions, such goods may upon release by the Commissioner General, become goods in free circulation.

(2) Where the Commissioner General has released goods for home use with conditions such goods shall , become goods in free circulation upon compliance with the conditions.

(3) Goods released for a customs procedure remain subject to this Act despite the release and may not be dealt with otherwise than in accordance with applicable customs procedure;

(4) The Commissioner General may not allow imported goods to remain under customs procedure for longer than a period prescribed in the regulations from the date of importation without being cleared for home use or any customs procedure.

### **Transfer of ownership of goods under customs procedures**

86. (1) Ownership of goods under a customs procedure may not, without the approval of the Commissioner General, be transferred to another person while the goods are under that procedure.

(2) The person who transfers ownership of goods under a customs procedure shall make an application to the Commissioner General.

(3) The application made pursuant to subsection (1) shall be submitted to the Commissioner General –

(a) before the goods are transferred; and

(b) on a form prescribed in Schedule ...of regulations to this Act.

(4) Where the ownership of goods under a customs procedure is transferred with the approval of the Commissioner General in accordance with subsection (1) –

(a) the transfer does not –

(i) interrupt the continuation of the procedure; or

(ii) affect the tax status conferred on the goods by virtue of the procedure; and

(b) the new owner of the goods or, if only a share in the ownership of the goods is transferred, the person to whom the share is transferred to –

(i) shall be regarded to have cleared the goods or the share;

(ii) assumes the obligations of the previous owner;

(iii) shall comply with any requirements and conditions applicable to the goods in terms of that procedure; and

(iv) shall comply with any conditions imposed by the Commissioner General in respect of the transfer.

(5) Subsection (4) does not affect the liability of the previous owner or holder of the transferred share of the goods for any import or export tax, penalties or other money owed to the Commissioner General on the goods up to the time of transfer of ownership or of the share in ownership.

### **Tax consequences for imported goods under customs procedures in event of non-compliance**

87. The Commissioner General shall, where goods-

(a) are diverted for home use;

(b) while under the customs procedure, are damaged, destroyed, lost or unaccounted for and it is not proved –

(i) that the goods were damaged, destroyed, lost or unaccounted for due to natural causes; and

(ii) in the case of lost goods due to natural causes, that the goods, after having been lost, have not gone into home use;

(c) a provision of this Act or a Value Added Tax Act is breached; or

(d) a condition of the license of any premises used for the purpose of carrying out the customs procedure is breached for tax purposes direct that imported goods be cleared for home use;

regard for tax purposes such goods as goods in free circulation

### **Offences**

88. (1) Any person who fails to submit clearance declaration within the prescribed period commits an offence and is liable upon conviction to a fine not exceeding five thousand maloti or imprisonment for a period not exceeding five months.

(2) An importer of goods or, if the importer is not located in Lesotho, the importer's agent in Lesotho, who fails to submit-

(a) to the Commissioner General a clearance declaration to clear good for home use or other customs procedure pursuant to the provisions of this Act; or

(b) a clearance declaration within the timeframes or at the time required by section 62, commits an offence and is liable upon conviction to a fine not exceeding five thousand maloti or imprisonment of a period not exceeding five months.

(3) An exporter of goods or, if the exporter is not located in Lesotho, the exporter's agent in Lesotho, fails to submit—

(a) to the Commissioner General a clearance declaration to clear goods for export pursuant to the provisions of this Act; or;

(b) a clearance declaration within the timeframes or at the time required by section 90 (4), commits an offence and is liable upon conviction to a fine not exceeding two thousand maloti or imprisonment for a period not exceeding five months.



## **PART VI**

### **PROCESSING OF TRAVELLERS, CREW AND PERSONAL EFFECTS**

#### **Incoming travellers and crew declarations**

89. (1) A person entering Lesotho shall –

(a) complete, and submit to the Commissioner General, a declaration containing such personal and travel information, including information concerning person's accompanied and unaccompanied baggage ; and

(b) declare all items in that person's accompanied or unaccompanied baggage that shall be declared.

(2) When declaring accompanied or unaccompanied baggage items in terms of subsection (1), the person making declaration shall –

(a) furnish the Commissioner General with full particulars concerning the personal effects, including any available invoices and other commercial documents; and

(b) pay any duty payable on any of the personal effects.

#### **Clearance and release for personal effects**

90. (1) Where personal effects are declared, the Commissioner General shall clear and release personal effects and such personal effects shall –

(a) upon declaration be regarded as having been cleared for home use; and

(b) be released for home use by the Commissioner General without following relevant customs declaration, provided that any duty payable on the personal effects have been paid.

(2) Where goods are cleared in terms of subsection (1),the Commissioner General may, direct that personal effects to which subsection (1) applies be cleared for a permissible customs procedure.

#### **Outgoing travellers and crew declarations**

91. (1) A person who is about to leave Lesotho shall –

(a) complete and submit to the Commissioner General a declaration containing such personal and travel information, including information concerning person's accompanied or unaccompanied baggage,; and

(b) declare all items in that person's accompanied or unaccompanied baggage that shall be declared.

(2) When declaring accompanied or unaccompanied baggage items, the person shall furnish the Commissioner General, when requested to do so, with full particulars concerning the items, including any available invoices and other commercial documents relating to the items.; and

(b) pay any duty payable on any of the personal effects.

(3) This section does not apply to personal effects prescribed by Commissioner General as exempt from declaration and clearance requirements made by Regulations under this Act.

### **Offences**

92. Any person who fails to comply with sections 16 and 20, commits an offence and is liable upon conviction to a fine not exceeding two thousand maloti or imprisonment of a period not exceeding six months or to both fine and imprisonment.

## **PART VII**

### **TRANSPORTATION, SEALING AND LOADING OF GOODS**

#### **Goods not in free circulation to be transported only under customs procedures**

93. The Commissioner General may allow transportation of goods not in free circulation in or through Lesotho only under a customs procedure that provides for or allows the transport of goods under that procedure.

#### **Persons permitted to transport goods not in free circulation**

94. Goods not in free circulation may be transported only by –

(a) a licensed carrier;

(b) a carrier represented in Lesotho by a registered agent, if the carrier is not located in Lesotho; or

(c) any other person permitted in terms of the customs procedure under which the goods are transported, to transport goods under that procedure.

#### **Measures to ensure safety of transport of goods not in free circulation**

95. (1) The Commissioner General may, in addition to his enforcement functions, take any steps or issue any directions necessary to guard against any unauthorized interference when goods not in free circulation are transported, including by –

(a) pre-approving the vehicle or container in which the goods are to be transported;

(b) marking or sealing the holding compartment of the vehicle or the container;

(c) stipulating the mode of transport;

(d) stipulating the route to be followed;

(e) stipulating the specific place to which the goods are to be delivered;

(f) requiring the provision of surety in terms of Part XXXXI or any surety additional to surety already lodged in terms of that Part;

(g) shortening any applicable time limits within which the transport of the goods is to commence and be completed; and

(h) requiring that the goods be transported under the supervision of a customs officers.

(2) Any steps taken or directions issued by the Commissioner General in terms of subsection (1) are subject to such conditions or specifications as the Commissioner General may determine.

### **Accidents and other unforeseen events**

96. (1) A carrier transporting goods not in free circulation shall promptly report to the nearest customs office or police station any breakdown, accident or other unforeseen event occurring in the course of transporting the goods which compromises the safety of the goods or the transport of the goods.

(2) If the safety of the goods or the transport of the goods is compromised by any event referred to in subsection (1), the carrier transporting the goods shall comply with any directions issued by the Commissioner General.

### **Seals and sealing of containers, vehicles and packages**

97. (1) An importer responsible for a container, the holding compartment of a vehicle capable of being closed, a road tanker and any package , which contains goods goods not in free circulation, shall have surety seals affixed to it or be secured by seals or fastenings as the Commissioner General may determine;

(2) The seals or fastenings referred to in subsection (1) shall be supplied and affixed by and at the risk and expense of a carrier or person.

### **Loading of goods destined for export on an aircraft, train, truck, bus or a vehicle**

98. (1) No goods destined for export from Lesotho may be loaded on board a foreign-going , foreign-going aircraft or cross-border railway carriage in which the goods are to be exported unless the goods are

(a) cleared and released for export in terms of the export procedure; or

(b) to be exported under a customs procedure that allows the export of goods under that procedure without any separate export clearance

(2) Subsection (1) does not apply to goods falling within a category of goods excluded from export clearance requirements

### **Off-loading of goods destined for export from a an aircraft, train, truck, bus or a vehicle before export**

99. (1) The Commissioner General shall allow goods cleared and released for export in terms of the export procedure once loaded on board an aircraft, train, truck, bus or a vehicle, not be off-loaded or transferred to another mode of transport in Lesotho except

–

(a) in accordance with the provisions regulating the relevant customs procedure; or

(b) with the permission of the Commissioner General.

(2) The Commissioner General may, where he considers it necessary exempt an importer from off-loading goods destined for export from an aircraft, train, truck, bus or a vehicle before export.

### **Transfer of goods between vehicles or containers**

100. (1) The Commissioner General may permit transfer of goods not in free circulation from the vehicle or container in which the goods are transported to another vehicle or container on terms and conditions to be determine.

(2) The permit issued in terms of subsection (1) may be given only in the case of a breakdown, accident or other circumstances to be determined by the Commissioner General.

### **Offences**

101. (1) Any person who fails to transport goods not in free circulation in accordance with directions issued by the Commissioner General, commits an offence and is liable upon conviction to a fine not exceeding twenty five thousand maloti or imprisonment of a period not exceeding ten years or both fine and imprisonment.

(2) Any person who tampers with seals affixed by the Commissioner General, commits an offence and is liable upon conviction to a fine not exceeding ten thousand maloti or imprisonment for a period not exceeding ten months.

(3) Any person who contravenes section 53 of this Act, commits an offence and is liable on conviction to a fine not exceeding fifty thousand maloti or imprisonment for a period not exceeding five years or both fine and imprisonment.

## **PART VIII HOME USE**

### **Submission of clearance declarations before arrival of goods**

102. (1) A clearance declaration in relation to goods imported or to be imported into Lesotho may be submitted to the Commissioner General before the arrival of the goods at the place of entry or exit provided that the goods have already been loaded on board the , aircraft, railway carriage or vehicle transporting those goods to Lesotho..

(2) If a clearance declaration is received before the goods arrive at the place of entry or exit, the Commissioner General may proceed with processing and validating the declaration despite the fact that the goods have not yet arrived at the place but may not release the goods before their arrival at that place.

### **Determination of time of clearance of goods**

103. (1) The Commissioner General shall for purposes of this Act, clear goods within the period as may be prescribed by Regulations t this Act from the time of submission of clearance declaration and amendment clearance declaration.

### **Supporting documents**

104. (1) No person may clear goods for home use or a customs procedure unless the clearance is supported by—

(a) an invoice issued in respect of the goods by the person who-

(i) exports the goods to or from Lesotho; or

(ii) supplied the goods that are exported to or from the Lesotho;

(b) a transport document that has been issued in respect of the goods;

(c) in the case of a clearance through a customs broker, the clearance instruction of the principal; and

(d) any other documents as may be required in terms of this Act for the clearance of goods generally or for the specific purpose for which the goods are cleared.

(2) No document referred to in subsection (1) may be used as a document to support the clearance of goods for home use or a customs procedure as required by that subsection unless it contains the information required by this Act .

(3) Subsection (1) applies subject to any exemption applicable in terms of a provision of this Act in respect of goods cleared for home use or a customs procedure in circumstances referred to in such provision.

## **Invoices**

105. (1) An invoice shall—

(a) be a true reflection of the transaction which is the cause for the goods to be exported to or from Lesotho, as the case may be, including of—

(i) the nature of the transaction;

(ii) the goods to which the transaction relates; and

(iii) the amount paid or payable in terms of the transaction;

(b) describe the goods to which it relates, which shall include a distinctive and permanent identification number, code, description, character or other mark allocated in respect of the goods by the person who issued the invoice;

(c) be the last invoice issued in respect of the goods, if more than one invoice was issued in respect of the goods as at the time of clearance or, in the case of a clearance as at the time of arrival of the goods at the place of entry referred to in that section; and

(d) show—

(i) the date of issue;

(ii) the name and physical address of the issuer;

(iii) the name of the person to whom the invoice is issued, and the name of the consignee if the person to whom the invoice is issued is not the consignee;

(iv) the price paid or payable;



(v) any commission, discount, cost, charge, expense, royalty, freight, tax, drawback, refund, rebate, remission or other information whatsoever that affects the price paid or payable; and

(vi) any other information as may be prescribed by regulation.

(2) The particulars on an invoice shall describe the goods as they are or will be at the time when imported into Lesotho or exported from Lesotho, as the case may be.

(3) For the purposes of this Act, no change in the condition of the goods may be regarded as having occurred between the time when imported into Lesotho and the time of any examination or analysis of the goods by the Commissioner General unless the person who submitted the clearance declaration provides proof of a change in the condition of the goods and the extent thereof.

(4) A person clearing goods shall in a manner and within a timeframe as may be prescribed by regulations to this Act notify the Commissioner General of—

(a) any change in—

(i) the particulars reflected on an invoice; or

(ii) circumstances affecting any of the matters referred to in subsection (1); or

(b) any refund or additional amount or any deferred or secret discount, commission or any other credit or debit of whatever nature paid or received in connection with the goods and which is not disclosed on the invoice, whether paid or received directly or indirectly, in money or in kind or in any other way.

### **Amendment of invoices**

106. (1) An invoice supporting the clearance of goods for home use or any other customs procedure shall be amended –

(a) if the amount paid or payable in terms of the transaction as reflected by the invoice is affected by any changed circumstance, including –

(i) an amount credited or debited on the transaction by the issuer of the invoice;

(ii) a refund on the transaction made by or to the issuer of the invoice; and

- (iii) a payment made by or to the issuer of the invoice;
- (b) if the amendment is necessary to correct any incorrect information on the invoice; or
- (c) if the Commissioner General requests that the invoice for purposes of compliance with this Act or a Value Added Tax Act be amended in a manner set out in the request.
- (d) if the invoice needs to be split for any reason, including for purposes of facilitating tax administration.

(2) An invoice may be amended by the issuing of –

- (a) an amended invoice replacing the previous one; or
- (b) a debit or credit note, if an amount reflected on the invoice is amended.

(3) Any such amended invoice or debit or credit note shall be supported by a statement setting out the reasons for the amendment and any documentary proof substantiating the reasons.

### **Keeping of information in respect of clearance declarations**

107. A person clearing goods shall—

- (a) keep, in a manner and for a period as may be prescribed by Regulations to this Act—
  - (i) the documents referred to in **section** 104 supporting the clearance of the goods, including any amended documents; and
  - (ii) any other documents and records relating to information given in respect of that clearance or on the clearance declaration; and
- (b) produce or submit those documents or records to the Commissioner General when requested to do so

### **Submission of clearance declarations**

108. (1) A person who imports goods that are required to be cleared for home use shall submit to the Commissioner General a clearance declaration –

- (a) in the case of goods imported by air, within three working days of arrival of the goods at the customs airport;

(b) in the case of goods imported by a cross-border railway carriage, within three working days of arrival of the goods at the licensed rail cargo terminal;

(c) in the case of goods imported by a vehicle, when the vehicle arrives at the land border-post where the goods will enter Lesotho;

(d) in the case of goods imported by a cross-border pipeline or by means of a cross-border cable car or conveyor belt, within such period as the Commissioner General may determine;

(e) in the case of electricity imported through a cross-border transmission line, within such period as the Commissioner General may determine; or

### **Release notifications**

109. (1) (a) A release agent may not deliver goods to any person—

(i) unless the goods are under the physical control of the release agent; and

(ii) otherwise than on authority of a release notification.

(b) No person may take delivery of any goods from a release agent otherwise than on authority of a release notification.

(2) If a release agent delivers goods otherwise than on authority of a release notification—

(a) the goods shall, at the expense of the release agent, be returned to the release agent or be delivered to such other place as the Commissioner General may determine; and

(b) the Commissioner General may hold the release agent liable for any tax payable on those goods.

(3) Goods released in terms of section 77 for a customs procedure shall be removed from the place where the goods were released within the period applicable to the goods in terms of the provisions of this Act.

### **Withdrawal, substitution or amendment of release notifications**

110. (1) The Commissioner General—

(a) shall withdraw a release notification if—

- (i) the release notification was issued erroneously; or
  - (ii) the release of the goods to which the notification relates has been withdrawn in terms of section 82;
- (b) shall replace a release notification releasing goods for home use if that release is in terms of section 84 replaced by a release for a customs procedure; and
- (c) may amend a release notification to correct any error on the notification.

## **PART IX**

### **NATIONAL AND INTERNATIONAL TRANSIT**

#### **Starting and delivery points of transit operations**

111. (1) The starting point of a transit operation shall be, as may be appropriate—

(a) the customs airport where the goods were off-loaded from the foreign-going aircraft on board of which the goods were imported into Lesotho;

(b) the rail cargo terminal where the goods were off-loaded from the cross-border railway carriage in which the goods were imported into Lesotho;

(c) the land border-post where the vehicle on board of which the goods were imported entered Lesotho; or

(d) another customs controlled area where the goods are in temporary storage.(2) In the case of a national transit, the delivery point of a transit operation shall be any licensed premises to which the goods are consigned or from where the goods are to be delivered.

#### **Commencement and completion periods for transit operations**

112. (1) A transit operation shall, commence at the starting point of the operation indicated in the transit clearance declaration within such period from release of the goods for transit, as may be prescribed by regulations.

(2) Goods under national transit shall reach the delivery point within such period from commencement of the transit operation as may be prescribed by regulations made under this Act.

(3) Goods under international transit shall, subject to section 95(1)(g), reach the delivery point indicated in the transit clearance declaration within a period from commencement of the transit operation as may be prescribed by regulations

(4) The licensee of a customs controlled area where a transit operation commences or ends, shall immediately notify the Commissioner General of any failure in relation to the transit goods to comply with subsection (1), (2) or (3).If subsection (2) or (3) is not complied with in relation to the transit goods, the goods shall for tax purposes be regarded to be cleared for home use

### **Commencement and completion of national transit procedure**

113. (1) (a) Goods come under the national transit procedure when the goods are cleared for national transit.

(b) The national transit procedure is, subject to subsection (2), completed when the goods are cleared and released for another permissible customs procedure or for home use.

(2) The national transit procedure, in relation to any goods, ends before its completion if completion of the procedure is interrupted by an occurrence referred to in this Part

### **Commencement and completion of international transit procedure**

114. (1) (a) Goods come under the international transit procedure when the goods are cleared for international transit.

(b) The international transit procedure is, subject to subsection (2), completed when the goods are exported from Lesotho.

(2) The international transit procedure, in relation to any goods, ends before its completion if—

(a) the goods before completion of the procedure are cleared and released for another customs procedure or for home use, as may be permissible in the circumstances; or

(b) completion of the procedure is interrupted by an occurrence referred to in section 109(2).

### **Limiting places of entry for international transit**

115. (1) The Minister may, with the advice of Commissioner General by notice published in the Gazette, limit the number of places of entry through which goods may be –

(a) off-loaded from foreign-going aircraft for international transit; or

(b) loaded on board foreign-going aircraft for export from Lesotho under the international transit procedure.

(2) The Minister shall, when limiting the places of entry pursuant to subsection (1) act in accordance with the advice of the Minister responsible for transport, trade and industry and home affairs.

(3) no person may, where places of entry for international transits have been limited pursuant to subsection (1) –

(a) off-load goods from foreign-going aircraft for international transit other than at a place of entry; or

(b) load goods on board foreign-going aircraft for export from Lesotho under the international transit procedure other than at a place of entry limited pursuant to subsection (1)(b).

### **Clearance of goods for transit**

116. A person who intends to clear goods for national or international transit shall clear the goods in accordance with the transit procedure

### **Persons entitled to submit transit clearance declarations**

117. (1) Only the following persons may submit clearance declarations to clear goods for national or international transit:

(a) the importer of the goods, if the importer is located in Lesotho;

(b) the agent in Lesotho of the importer, if the importer is not located in Lesotho;

(c) the owner of the goods, if ownership in the goods has been transferred after the goods have been imported and that owner is located in Lesotho

(d) the agent in Lesotho of the owner referred to in paragraph (c), if that owner is not located in Lesotho;

(e) the carrier who is to carry out the transit operation, if that carrier is located in Lesotho

(f) the agent in Lesotho of the carrier who is to carry out the transit operation, if that carrier is not located in Lesotho; or

(g) a customs broker

(2) If a clearance declaration is submitted by a carrier or a carrier's agent on behalf of a person referred to in subsection (1)(a), (b), (c) or (d) the person and not the carrier or a carrier's agent shall for purposes of this Act be regarded to be the person clearing the goods

### **Contents of transit clearance declarations**

118. A transit clearance declaration shall, in addition to the information required in terms of section 60, state—

- (a) that the goods are cleared for national or international transit;
- (b) the starting point of the transit operation contemplated in section 113 and 114 and the delivery point of the transit operation contemplated in section 113 and 114;
- (c) tax identification number of the carrier who will carry out the transit operation, if the transit operation is to be carried out by a licensed carrier;
- (d) tax identification number of the agent of the carrier who is to carry out the transit operation, if the transit operation is to be carried out by a carrier not located in Lesotho; and
- (e) the mode of transport, and if multi-modal transport, particulars of such transport.

### **Use of other documents as transit clearance declarations for postal articles**

119. Any document issued in respect of postal articles by a Post Office may be considered as transit clearance declaration to clear postal articles for national or international transit by or on behalf of the Post Office, provided that such transport document or other document reflects the minimum information concerning those postal articles.

### **Limitations on routes for transits**

120. (1) The routes over which goods may for transit operations be transported by road or railway line may be limited to routes as may be prescribed by regulation or as the Commissioner General may determine in a specific case. (2) If the route for a transit operation by road or railway line between any specific places has been limited in terms of subsection (1) no carrier may carry out a transit operation between those places over a



road or railway route other than the route prescribed or determined in terms of subsection (1).

### **Redirection of goods from starting and to delivery points**

121. No person may redirect goods from the starting point or to the delivery point of a transit operation as indicated in the transit clearance declaration without the prior written permission of the Commissioner General.

### **Carriers permitted to carry out transit operations**

122. (1) A transit operation may be carried out only by –

(a) a licensed carrier; or

(b) a carrier represented in Lesotho by a registered agent, if the carrier is not located in Lesotho.

(2) The carrier carrying out a transit operation shall be –

(a) the person mentioned in the transit clearance declaration as the carrier of the goods;  
or

(b) a carrier subcontracted by the carrier referred to in paragraph (a).

(3) A licensed carrier shall transport goods in transit in accordance with the provisions of this Act.

### **Technical requirements of vehicles or containers used in transit of goods**

123. (1) A vehicle or container used in the transit of goods shall comply with such requirements as may be prescribed by Regulations made under this Act to secure the goods during the transit operation.

(2) Commissioner General may withhold release of the goods for transit in the vehicle or container if a vehicle or container does not comply with the requirements, as prescribed by Regulations made under this Act.

### **Transfer of goods in transit to other vehicles or containers**

124. The carrier shall where goods are transferred to another vehicle or container

(a) give notice to the Commissioner General who shall endorse the carrier's transport

document or road manifest with –

- (i) details of the previous vehicle or container in which the goods were transported, as may be prescribed by Regulations made under this Act;
- (ii) the container number, if applicable, in which the goods were transported;
- (iii) the name of the previous carrier; and
- (iv) the number of the previous carrier's transport document or road manifest, as may be applicable.

### **Multi-modal transit of goods**

125. A carrier shall, where a transit is carried out by means of multi-modal transport of the transit goods, the goods may only be transferred from one means of transport to another –

- (a) within a customs controlled area; and
- (b) in accordance with any other requirements as may be prescribed by Regulations made under this Act.

### **Interruptions in transit operations**

126. (1) The Commissioner General may permit or direct that a transit operation of goods be interrupted for a specific purpose, including for –

- (a) re-packing of the goods;
- (b) tallying the goods;
- (c) sorting the goods;
- (d) cleaning the goods;
- (e) carrying out activities aimed at preserving the condition of, or maintaining, the goods;
- (f) inspecting the goods; and
- (g) sealing the goods or the holding compartment of the vehicle or the container.

- (2) The conditions subject to which a permission or direction referred to in subsection (1) may include conditions specifying –
- (a) the place where the activities referred to in subsection (1) shall be carried out; and
  - (b) the time when those activities shall be carried out and within which those activities shall be completed.

### **Transit goods transported by road carriers**

127. (1) A road carrier transporting goods in transit shall keep a road manifest of all the cargo transported on board the vehicle.

(2) A road manifest referred to in subsection (1) shall –

- (a) be in the format as may be prescribed by Regulations made under this Act;
- (b) identify the goods in transit; and
- (c) distinguish the transit goods from any other goods on board the vehicle.

(3) The carrier transporting the goods shall keep in the vehicle the following; –,

- (a) the road manifest; and
- (b) a copy of the release notification issued in respect of the transit goods.

until the transit of the goods is completed.

### **Completion of transit operations**

128. A transit operation is completed when the transit goods are delivered at the delivery point indicated in the transit clearance declaration.

### **Completion procedures**

129. (1) Upon completion of a transit operation, the carrier who has carried out the transit operation or the person clearing the goods for transit shall—

- (a) submit to the Commissioner General proof that the transit operation has been completed, if the Commissioner General requests such proof from the carrier or person clearing the goods; and

(b) comply with such other requirements as may be prescribed by regulation for such carrier or person..

(2) Proof requested in terms of subsection (1) shall be –

(a) in a format and contain the information as may be prescribed by Regulations made under this Act;

(b) submitted within such period as may be prescribed by Regulations under this Act; and

(c) be submitted electronically but may in the case of a person clearing the goods for transit be submitted in paper format.

(3) A carrier is relieved from complying with subsection (1) if the person clearing the goods for transit complies with that subsection.

### **Responsibility for ensuring compliance with transit requirements**

130. (1) (a) The responsibility for ensuring that a national or international transit operation is carried out and completed in accordance with this Act and any steps taken or directions issued by the Commissioner General rests with the carrier who carries out the transit operation.

(b) If the carrier who carries out the transit operation is not the person who submitted the clearance declaration or has subcontracted the transport of the goods to another carrier, the responsibility referred to in paragraph (a) rests jointly and severally with the carrier and the person clearing the goods or that other carrier, as the case may be.

(2) The responsibility for ensuring that goods under international transit are exported rests with the person clearing the goods for international transit. If the goods are not exported within a timeframe from commencement of the transit operation as may be prescribed by regulation –

(a) the person clearing the goods shall immediately notify the Commissioner General of—

(i) the failure to export the goods; and

(ii) the reasons for the failure; and

(b) the Commissioner General may, whether a notification in terms of paragraph (a) has been given or not—

(i) secure the goods or require the goods to be secured in such manner as the Commissioner General may determine pending the export of the goods in terms of the release;

(ii) withdraw in terms of section 82 the release given in respect of the goods; or

(iii) issue a direction whether or not the release has been withdrawn.

(3) (a) A person who cleared goods for international transit shall on request by the Commissioner General provide proof to the Commissioner General that the goods are exported, as may be prescribed by regulation.

(b) the burden to prove that goods released for international transit have been exported rests on the person clearing the goods.

(4) the responsibilities conferred in terms of subsections (1), (2) and (3) do not absolve any other person from complying with this Act or any steps or directions referred to in that subsection in connection with the transit of the goods.

## **PART X**

### **EXCISE WAREHOUSE TRANSIT PROCEDURE**

#### **Excise warehouse transit procedure**

131. Excise warehouse transit is a customs procedure that allows goods to be transported, without first clearing the goods for home use from a place in Lesotho to a licensed excise warehouse for storage and manufacturing purposes

#### **Starting and delivery points of excise warehouse transit operations**

132. (1) The starting point of an excise warehouse transit operation shall be –

(a) the customs airport where the goods were off-loaded from foreign- going aircraft on board of which the goods were imported into Lesotho;

(b) the rail cargo terminal where the goods were off-loaded from the cross-border railway carriage in which the goods were imported into Lesotho;

(c) the border-post where the vehicle on board of which the goods were imported entered Lesotho; or

(d) customs controlled area where the goods are in storage, including temporary storage.

(2) The delivery point of an excise warehouse transit operation shall be the licensed excise warehouse to which the goods are to be delivered.

(3) Notwithstanding subsection (1), the Commissioner General may in a specific case allow or direct that any other place be the starting point of an excise warehouse transit operation.

#### **Commencement and completion periods for excise warehouse transit operations**

133. (1) An excise warehouse transit operation shall commence within such period from release of the goods for transit as may be prescribed by Regulations made under this Act

(2) Goods under excise warehouse transit shall reach the delivery point indicated in the excise warehouse transit clearance declaration within such period from commencement of the transit operation as may be prescribed by Regulations made under this Act.

(3) The licensee of a customs controlled area shall immediately notify the Commissioner General of any failure to comply with subsection (1) or (2) of this section.

(4) If subsection (2) is not complied with in relation to the transit goods, the goods shall for tax purposes be regarded to be cleared for home use.

### **Commencement and completion of excise warehouse transit procedure**

134. (1) excise warehouse transit procedure commences when goods are cleared for transit to a licensed excise warehouse . and it is completed when the goods are delivered to the licensed excise warehouse.

(2) Notwithstanding subsection (1), excise warehouse transit procedure may end before its completion if –

(a) the release of the goods for that customs procedure is refused or withdrawn;

(b) the goods are for tax purposes regarded to be cleared for home use for outright export;

(c) the goods revert or are for tax purposes regarded to have reverted to free circulation;

(d) the goods are –

(i) abandoned to the Commissioner General;

(ii) destroyed under supervision of the Commissioner General or relevant state organ

(e) the goods are seized or seized in terms of this Act any other legislation or an order of court; or

(f) the goods are damaged, destroyed, lost or unaccounted for and the clearance declaration for the goods is withdrawn

(3) Upon completion of the excise warehouse transit procedure as contemplated in subsection (1), this Act applies to any manufacturing and other processes in which the

goods are used, including the storage, handling and transport of the goods and other actions taken in respect of the goods for purposes of those processes.

### **Clearance of goods for excise warehouse transit**

135. A person who intends to clear goods for excise warehouse transit shall clear the goods in accordance with the clearance and release procedures

### **Persons entitled to submit excise warehouse transit clearance declarations**

136. (1) The following persons may submit clearance declarations to clear goods for transit:

(a) the licensee of the licensed excise warehouse to which the goods are to be delivered; or

(b) a customs broker .

### **Contents of excise warehouse transit clearance declarations**

137. An excise warehouse transit clearance declaration shall, in addition to the information required shall state –

(a) that the goods are cleared for excise warehouse transit;

(b) the starting and delivery points of the excise warehouse transit operation

(c) the customs code and address of the licensed excise warehouse where the goods are to be delivered;

(d) the customs code of the carrier who will carry out the excise warehouse transit operation, if the transit operation is to be carried out by a licensed carrier; and

(e) the mode of transport, and if multi-modal transport, particulars of such transport.

### **Redirection of goods from starting and to delivery points**

138. No person may redirect goods from the starting point or to the delivery point of an excise warehouse transit operation as indicated in the excise warehouse transit clearance declaration without the prior written permission of the Commissioner General.

### **Carriers permitted to carry out excise warehouse transit operations**



139. (1) No person shall carry out an excise warehouse transit operation unless such person is licensed as a carrier..

(2) The particulars of the licensed carrier shall appear on the transit clearance declaration documents during excise warehouse transit operations.

(3) A licensed carrier shall transport goods in transit in accordance with the provisions of this Act,.

### **Technical requirements of vehicles or containers used in excise warehouse transit operations**

140. (1) The operator of a vehicle or container used in an excise warehouse transit operation shall comply with such requirements as may be prescribed by Regulations made under this Act to secure the goods during the operation.

(2) The Commissioner General may withhold release of the goods for excise warehouse transit operation if the operator of a vehicle or container does not comply with requirements, as prescribed by Regulations made under this Act

### **Transfer of goods in excise warehouse transit to other vehicles or containers**

141. (1) The carrier shall, where goods in an excise warehouse transit operation are transferred to another vehicle or container operated by another licensed carrier –

(a) give notice, in writing, to the Commissioner General that the goods were transferred to another vehicle or container; and

(b) transfer transport documents to another licensed carrier who shall endorse such documents

(2) the transport documents transferred pursuant to subsection (1)(b) shall contain the following information:

(a) details of the previous vehicle or container in which the goods were transported, as may be prescribed by Regulations;

(b) the container number, if applicable, in which the goods were transported;

(c) the name of the previous carrier; and

(d) the number of the previous carrier's transport document or road manifest, as may be applicable.

(3) This section does not apply to the multi-modal transport of goods in transit.

### **Multi-modal excise warehouse transit of goods**

142. A carrier shall, where an excise warehouse transit operation is carried out by means of multi-modal transport of the goods, the goods may only be transferred from one means of transport to another –

(a) within a customs controlled area; and

(b) in accordance with any other requirements as may be prescribed by Regulations made under this Act.

### **Completion procedures**

143. (1) The carrier who has carried out excise warehouse transit operation or the person clearing the goods for transit shall, upon completion of a transit operation –

(a) submit to the Commissioner General proof that the excise warehouse transit operation has been completed; and

(b) comply with such other requirements as may be prescribed by Regulations made under this Act for such carrier or person.

(2) Proof requested in terms of subsection (1) shall be in a form and manner that may be prescribed by the Commissioner General.

(3) subsection (1) shall not apply where the person clearing the goods is not a person registered and licensed under the provisions of this Act..

### **Offences**

144. (1) Any person who is not permitted to carry out excise warehouse transit operations pursuant to section 126, commits an offence and is liable upon conviction to a fine not exceeding one hundred thousand maloti or imprisonment for a period not exceeding five years or both fine and imprisonment.

(2) The carrier carrying out a transit operation in contravention of the provisions of this Act, commits an offence and is liable on conviction to a fine not exceeding fifty thousand maloti or imprisonment for a period not exceeding twelve months or both fine and imprisonment.

(3) The licensee of the customs controlled area where a transit operation commences or of the excise warehouse where a transit operation ends, commits an offence if the operation conducted outside a period prescribed by this Act, and is liable on conviction to a fine not exceeding fifty thousand maloti or imprisonment for a period not exceeding twelve months.

## **PART XI**

### **TRANSHIPMENT PROCEDURE**

#### **Commencement and completion of transshipment procedure**

145. A transshipment operation—

(a) commences when the transshipment goods are off-loaded from the or aircraft on board of which the goods are imported into Lesotho; and

(b) is completed when the transshipment goods are loaded on board the or aircraft that will transport the goods out of Lesotho.

#### **Limitation of places of entry for transshipment purposes**

146. (1) The Minister may, with the advice of Commissioner General by notice published in the Gazette, limit the number of places of entry where goods may be transshipped.

(2) The Minister shall, when limiting the places of entry pursuant to subsection (1) act in accordance with the advice of the Minister responsible for transport, trade and industry and home affairs.

(3) No person shall, where places of entry for transshipment have been limited pursuant to subsection (1) transship goods under the transshipment procedure other than the limited places of entry.

#### **Clearance of goods for transshipment**

147. No goods may, subject to this Part be transferred at a customs airport from one foreign-going aircraft to another unless the goods are cleared and released for transshipment.

#### **Persons entitled to submit transshipment clearance declarations**

148. (1) Only the following persons may, subject to section 58, submit a clearance declaration to clear goods for transshipment:

(a) the cargo reporter referred to in section 28(1) who is responsible for the transshipment of goods, if the cargo reporter is located in Lesotho;

(b) the registered agent in Lesotho of the cargo reporter, if the cargo reporter is not located in Lesotho; or

(c) a customs broker referred to in section 58(b).

(2) A transshipment clearance declaration shall be submitted—

(a) before the goods arrive in Lesotho; and

(b) within a timeframe as may be prescribed by regulation.

### **Contents of transshipment clearance declarations**

149. (1) A transshipment clearance declaration shall, in addition to the information required shall state –

(a) that the goods are cleared for transshipment;

(b) that the goods will be off-loaded in Lesotho for purposes of transshipment;

(c) the date and time when the goods are due to arrive in Lesotho;

(d) the place of entry where the transshipment operation will be carried out;

(e) particulars of the mode of transport of which the goods are to be transported out of Lesotho; and

(f) any other information as the Commissioner General may determine.

(2) If the particulars referred to in subsection (1)(e) are not available to the person clearing the goods at the time when the transshipment clearance declaration is submitted, the particulars may be submitted separately at any later stage but before the goods are loaded on board the aircraft that will transport the goods out of Lesotho

### **Transshipment operations**

150. A transshipment operation shall not commence unless the goods are cleared and released for transshipment.

### **Commencement and completion of transshipment operations**

151. A transshipment operation commences when the transshipment goods are off-loaded from the an aircraft and is completed when the transshipment goods are loaded on board an aircraft that will transport the goods out of Lesotho.

### **Transshipment goods to be secured on licensed premises**

152. (1) Transshipment goods off-loaded from aircraft referred to in section 145(a) at a customs airport where the transshipment operation is carried out shall—

(a) be secured at the terminal where the goods are off-loaded or on premises licensed for the receipt, storage and handling of transshipment goods; and

(b) if secured on premises referred to in paragraph (a), be kept on the premises until the goods are moved to a terminal at the airport where the goods are to be loaded on board the aircraft referred to in section 145(b).

(2) No transshipment goods may be moved from one customs controlled area to another customs controlled area at the customs airport where the transshipment operation is carried out without giving notice to the Commissioner General as may be prescribed by Regulation.

(3) The licensee of premises where transshipment goods are secured in terms of subsection (1) shall keep such records of the receipt, handling, storage and delivery of the goods as may be prescribed by Regulations or as the Commissioner General may require in a specific case.

### **Commencement and completion periods for transshipment operations**

153. (1) A transshipment operation shall, subject to section 156(1), commence within such period from release of the goods for transshipment as may be prescribed by Regulation.

(2) A transshipment operation shall, subject to section 156(1), be completed within such period from commencement of the transshipment operation as may be prescribed by Regulation.

(3) If subsection (2) is not complied with in respect of transshipment goods, the goods shall in terms of section 87 for tax purposes be regarded to be cleared for home use under Part VIII.

### **Non-compliance with completion periods**

154. (1) Where a transshipment operation is unlikely to commence within the period applicable to the goods in terms of section 153(1), the person clearing the goods for transshipment shall—

(a) immediately notify the Commissioner General of the delay, and the reasons for the delay; and

(b) thereafter, if the period within which the transshipment operation shall commence has been extended, notify the Commissioner General regularly as may be prescribed by Regulation, of the situation with regard to the commencement of the transshipment operation.

(2) Where a transshipment operation is not completed within the period applicable to the goods in terms of section 153(2), the licensee of the customs controlled area where the transshipment goods are temporarily stored or handled shall immediately notify the Commissioner General of the delay, and the reasons for the delay.

### **Delivery of goods under transshipment procedure for loading on board outgoing aircraft**

155. (1) The person clearing the goods transshipment procedure shall ensure that the goods are delivered to the terminal at the customs airport where the goods are to be loaded on board the aircraft that will transport the goods out of Lesotho.

(2) Where transshipment goods are to be transported by public road from the customs controlled area where the goods are secured in terms of section 152 to the terminal where the goods are to be loaded on board the aircraft that will transport the goods out of Lesotho—

(a) the goods may not be transported by a person other than a carrier licensed for that purpose;

(b) the licensee of the premises where the goods are secured may not give delivery of the goods to anyone other than such a licensed carrier; and

(c) the carrier transporting the goods may not give delivery of the goods to anyone other than the licensee of the terminal from where the goods are to be loaded on board the aircraft that will transport the goods out of Lesotho.

### **Measures to ensure integrity of transshipment operations**

156. (1) The Commissioner General may, in addition to his functions, take any steps or issue any directions necessary to identify transshipment of goods and to guard against any unauthorised interference with the goods whilst in Lesotho or during the transportation of goods out of Lesotho, including –

(a) stipulating the specific customs controlled area to which the goods shall be delivered;

(b) requiring payment of additional surety in terms of this Act;

(c) shortening the time limit within which the transshipment operation is to commence or be completed; and

(d) requiring that the goods be transshipped and exported from Lesotho under customs supervision.

### **Offences**

157. (1) Any person who may transship goods under the transshipment procedure at any place of entry other than places of entry limited in terms of section 11, commits an offence and is liable upon conviction to a fine not exceeding one thousand maloti or to imprisonment for a period not exceeding not exceeding two months.

(2) Any person who transfers goods from foreign-going aircraft to another unless the goods are cleared and released for transshipment, commits an offence and is liable upon conviction to a fine to a fine not exceeding ten thousand maloti or imprisonment for a period not exceeding five years.

(3) Any person who fails to notify the Commissioner General about transfer of transshipped goods from one customs controlled area to another, commits an offence



and is liable upon conviction to a fine not exceeding ten thousand maloti or imprisonment for a period not exceeding five years

## **PART XII**

### **TEMPORARY ADMISSION PROCEDURE**

#### **Temporary admission**

158. (1) Temporary admission is a customs procedure that allows imported goods not in free circulation –

(a) to be used in Lesotho temporarily for a specific purpose and for a specific period on condition that the goods are re-exported within that period without having undergone any change except for maintenance and normal wear and tear due to the use made of the goods whilst in Lesotho;

(b) to be moved freely in Lesotho under that procedure; and

(c) to be cleared for re-export and re-exported under that procedure.

#### **Commencement and completion of temporary admission procedure**

159. (1) Goods come under the temporary admission procedure—

(a) when cleared for temporary admission in terms of Part XII;

(b) when cleared for temporary admission in terms of international clearance arrangements; or

(c) upon entering Lesotho, in the case of goods that automatically come under the temporary admission procedure .

(2) the temporary admission procedure is, subject to subsection (3), completed when the goods are re-exported from Lesotho.

(3) the temporary admission procedure, in relation to any goods, ends before its completion—

(a) if the goods before completion of the temporary admission procedure are cleared and released for another customs procedure or for home use, as may be permissible in the circumstances; or

(b) if completion of the temporary admission procedure is interrupted by an occurrence referred to in section 126.

### **Persons entitled to submit temporary admission clearance declarations**

160. (1) The following persons shall submit clearance declarations to clear goods for temporary admission:

- (a) an importer of the goods, if the importer is located in Lesotho;
- (b) an agent in Lesotho of the importer, if the importer is not located in Lesotho; or
- (c) a customs broker.

### **Contents of temporary admission clearance declarations**

161. A temporary admission clearance declaration shall, in addition to the information required in terms of section 60, state—

- (a) that the goods are cleared for temporary admission under this Part XII;
- (b) the purpose for which the goods are cleared for temporary admission; and
- (c) the period for which the goods are expected to remain in Lesotho.

### **Release notifications to state period of temporary admission**

162. (1) Where goods are released for temporary admission, the release notification shall state the period for which the goods may remain in Lesotho under temporary admission.

(2) the period stated in the release notification pursuant to subsection (1) may not exceed the maximum period stipulated in the contract.

(3) The Commissioner General may where necessary extend the period mentioned in a release notification but the extension shall only be done once.

### **Persons entitled to submit export clearance declarations**

163. The following persons may, submit clearance declarations to clear, for export, goods imported under temporary admission procedure

- (a) the person who originally cleared the goods temporary admission procedure
- (b) the owner of the goods, if ownership in the goods has been transferred whilst under temporary admission and the new owner is located in Lesotho;

(c) a clearing agent in Lesotho of the owner referred to in paragraph (b), if that owner is not located in Lesotho; or

(d) a customs broker.

### **Goods imported under temporary admission to be cleared for export**

164. (1) Goods cleared and released for temporary admission in terms of Part XII shall before the expiry of the period applicable to the goods in terms of section 162—

(a) be cleared for export in accordance with Part XVI; and

(b) upon release for export be re-exported from Lesotho.

(2) Subsection (1) does not apply if the goods are cleared and released for another customs procedure or for home use, as may be permissible in the circumstances

### **Contents of export clearance declarations**

165. A clearance declaration submitted in terms of section 174 for the export of goods cleared for temporary admission shall, in addition to the information required in terms of sections 60 and 236, state—

(a) that the goods are cleared for export under the temporary admission procedure;

(b) the number and date of the clearance declaration in terms of which the goods were cleared for temporary admission; and

(c) the period for which the goods remained in Lesotho..

### **Proof of export of goods from Lesotho**

166. the person who cleared the goods for temporary admission shall, proof to the Commissioner General that goods cleared and released for temporary admission were loaded for export, or exported from Lesotho, in accordance with the export procedure, or were exported from Lesotho within the period stipulated in the release notification.

### **Clearance and release of goods for temporary admission on authority of CPD and ATA carnets**

167. (1) Goods may be cleared for temporary admission on authority of a CPD or ATA carnet only if the CPD or ATA carnet –

- (a) was issued by an issuing authority;
- (b) is guaranteed by a guaranteeing association approved; and
- (c) has been approved by the Commissioner General

(2) A CPD or ATA carnet shall be produced to the Commissioner General at the Customs Office serving the customs controlled area where the goods are to be released for temporary admission.

### **Guaranteeing associations to be approved**

168. (1) No CPD or ATA carnet may be accepted by the Commissioner General unless the guaranteeing association guaranteeing the carnet –

- (a) has submitted an application to the Commissioner General for its approval, on a form as may be prescribed by Regulations; and
- (b) has been approved by the Commissioner General for the purposes of this Part.

(2) No guaranteeing association may be approved unless the association –

- (a) is located in Lesotho; and
- (b) has given surety for the payment of any tax that may become payable on any goods imported into Lesotho and that are cleared for temporary admission on authority of a CPD or ATA carnet guaranteed by that guaranteeing association.

(3) The conditions subject to which an approval in terms of subsection (1) may be granted may include conditions requiring the association to assist the Commissioner General in combating fraud and contravention or abuse of this Part.

### **Formats of CPD and ATA carnets**

169. CPD or ATA carnets shall conform to the models set out in the Convention on Temporary Admission or relevant international agreement entered into by Lesotho with other countries.

### **Validity period of CPD and ATA carnets**

170. (1) A CPD or ATA carnet remains valid for the period for which it was issued in terms of the Convention or agreement entered into by Lesotho with other countries.

(2) The validity period of a CPD or ATA carnet may be extended only in accordance with Regulations as may be prescribed for the category in which the goods fall.

#### **Amendment of CPD and ATA carnets**

171. (1) A CPD or ATA carnet may, subject to subsection (2), be amended only by or with the approval of the guaranteeing association which guaranteed the carnet

(2) Once a CPD or ATA carnet has been accepted by the Commissioner General no amendment may be made to the carnet without the approval of the Commissioner General.

#### **Replacement of CPD and ATA carnets**

172. (1) If a CPD or ATA carnet has been destroyed, lost or stolen whilst the goods to which the carnet relates are still in Lesotho, the issuing association which issued the carnet may, with the approval of the Commissioner General, issue a replacement carnet.

(2) A replacement CPD or ATA carnet expires on the same date as the date on which the original CPD or ATA carnet would have expired.

#### **Export of goods under temporary admission in terms of this Part**

173. (1) The person to whom a CPD or ATA carnet was issued shall ensure that the goods to which the carnet relates are exported from Lesotho before the expiry of the validity period applicable to the carnet.

(2) If a replacement CPD or ATA carnet was issued, the person to whom the new carnet was issued shall ensure that the goods to which the new carnet relates are exported from Lesotho before the expiry of the validity period applicable to that carnet.

#### **Clearance for export of goods under temporary admission**

174. (1) Goods under the temporary admission procedure in terms of this Part shall be cleared for export.

(2) Goods under the temporary admission procedure in terms of this Part may be cleared and released for export on authority of the CPD or ATA carnet issued in respect of the goods, provided the validity period applicable to the carnet has not expired.

(3) A CPD or ATA carnet shall be produced to the Commissioner General at the Customs Office serving the place of exit where the goods are to be exported from Lesotho.

(4) The onus to prove that goods under temporary admission in terms of this Part, were exported from Lesotho, or were exported from Lesotho within the validity period applicable to the relevant CPD or ATA carnet, rests on the person to whom the carnet on authority of which the goods were imported into Lesotho was issued.

### **Foreign-going aircraft, locomotives and railway carriages entering Lesotho**

175. (1) An aircraft, locomotive or railway carriage entering Lesotho as a means of transport currently in use for the transport of goods in the ordinary course of international trade or for the transport of travellers for reward between countries, comes under the temporary admission procedure without any formal clearance or release for that procedure if the, aircraft, locomotive or railway carriage—

(a) is not re-entering Lesotho on the inbound leg of the temporary export procedure; and

(b) is destined to leave Lesotho without any interruption in its current use as a means of transport for goods in the ordinary course of international trade or for the transport of travellers for reward between countries.

(2) Where the current use of a aircraft, locomotive or railway carriage that automatically came under the temporary admission procedure in terms of subsection (1) as a means of transport for goods in the ordinary course of international trade or for the transport of travellers for reward between countries, is for any reason interrupted or discontinued whilst the aircraft, locomotive or railway carriage is under that procedure, the carrier operating that aircraft, locomotive or railway carriage or, if the carrier is not located in Lesotho, the carrier's registered agent, shall immediately report the interruption or discontinuation to the Commissioner General, as may be prescribed by regulations to this Act.

### **Reusable transport equipment entering Lesotho**

176. (1) Transport equipment entering Lesotho as reusable transport equipment currently in use as transport equipment for goods in the ordinary course of international

trade, comes under the temporary admission procedure without any formal clearance or release for that procedure if—

(a) transport equipment is not re-entering Lesotho on the inbound leg of the temporary export procedure;

(b) transport equipment is destined to leave Lesotho without any interruption in its current use as reusable transport equipment for goods in the ordinary course of international trade; and

(c) the carrier who brought the transport equipment into Lesotho or, if the carrier is not located in Lesotho, that carrier's registered agent, keeps record of the transport equipment, as may be prescribed by Regulations.

(2) Where the current use of transport equipment that automatically came under the temporary admission procedure in terms of subsection (1) as reusable transport equipment currently in use as transport equipment for goods in the ordinary course of international trade, is for any reason interrupted or discontinued whilst the transport equipment is under that procedure, the carrier or, if that carrier is not located in Lesotho, that carrier's registered agent, shall immediately report the interruption or discontinuation to the Commissioner General, as may be prescribed by Regulations.

(3) This Part does not apply to reusable transport equipment referred to in subsection (1).

### **Goods not re-exported within applicable period regarded for tax purposes to be cleared for home use**

177. The Commissioner General shall if goods imported under temporary admission and not exported within period stipulated in the release notification clear such goods for home use and impose all taxes applicable.

### **Offences**

178. (1) Any person who is not entitled in terms of section 160 and 163 to submit temporary admission clearance declarations and export clearance declaration, commits an offence and is liable upon conviction to a fine not exceeding fifty thousand maloti or imprisonment for a period not exceeding twelve months or both fine and imprisonment.



(2) Any person who brings reusable transport equipment into Lesotho, contrary to the provisions of this Part commits an offence, and is liable upon conviction to a fine not exceeding two thousand maloti or imprisonment for a period not exceeding two years or both fine and imprisonment.

## **PART XIII**

### **WAREHOUSING PROCEDURE**

#### **Warehousing procedure**

179. The warehousing procedure is a customs procedure that allows goods to which this Part applies—

- (a) to be stored in a specific storage warehouse; and
- (b) for the purpose of such storage to be transported to the warehouse without clearing the goods for national transit.

#### **Commencement and completion of warehousing procedure**

180. (1) Warehousing procedure commences when the goods are cleared for Warehousing procedure and it is completed when the goods are cleared and released for another permissible customs procedure or for home use.

(2) Notwithstanding subsection (1), the warehousing procedure may end before its completion if goods are:

- (a) abandoned;
- (b) destroyed under supervision of the Commissioner General or relevant Ministry or Department
- (c) the goods are seized or seized in terms of this Act or any other legislation or an order of court; or
- (d) the goods are damaged, destroyed, lost or unaccounted for.

#### **Warehousing of goods**

181. (1) Goods not in free circulation to which this Part applies may be stored in a storage warehouse only if the goods are cleared and released for warehousing in the warehouse.

(2) Goods in free circulation may without clearance for warehousing be stored in a storage warehouse subject to any limitations and in accordance with any Regulations as may be prescribed for such goods;

(3) No goods referred to in subsection (1) may be cleared or released for warehousing—

(a) in a facility other than a storage warehouse;

(b) for a purpose other than a purpose referred to in section 182 or 183, as may be applicable;

(c) in a storage warehouse which is not licensed for the purpose for which the goods are to be warehoused; and

(d) unless the licensee of the storage warehouse, in the case of a public storage warehouse—

(i) has granted permission for the warehousing of the goods in the warehouse; and

(ii) has advised the Commissioner General of such permission.

(4) Goods to be cleared for warehousing shall be cleared in accordance with Part V of this Act.

**Purposes for which goods may be cleared for warehousing in public storage warehouses**

182. (1) The Commissioner General shall in a public storage warehouse clear goods for warehousing for the following purposes :

(a) to secure and store imported goods on behalf of clients pending clearance and release of the goods for –

(i) home use;

(ii) warehousing in another storage warehouse; or

(iii) another permissible customs procedure;

(b) to store, consolidate and de-consolidate on behalf of clients goods destined for export from Lesotho pending their clearance and release for export;

(c) to store goods for any reason on behalf of clients to ensure that the goods remain under customs control for a specific period; or

(d) in the case of restricted goods imported without prior compliance with legislation restricting the import or possession of the goods, to secure the goods on behalf of a client pending –

(i) compliance by the client with such legislation; or

(ii) export of the goods, subject to the legislation restricting the import or possession of the goods.

(2) Goods may be secured in terms of subsection (1)(a) in a public storage warehouse to delay the clearance and release of the goods as contemplated in that subsection –

(a) in order to utilize the tax free status in relation to import tax conferred on warehoused goods; or

(b) for any other purpose determined by the Commissioner General as consistent with the warehousing procedure.

### **Purposes for which goods may be cleared for warehousing in private storage warehouses**

183. (1) Goods may be cleared by the Commissioner General for warehousing in a private warehouse for the following purposes only:-

(a) to secure imported goods owned by the licensee of the warehouse or in which the licensee has a material interest, pending clearance and release of the goods for –

(i) home use;

(ii) warehousing in another storage warehouse; or

(iii) a permissible customs procedure; or

(b) in the case of restricted goods imported by the licensee of a storage warehouse without prior compliance with legislation restricting the import or possession of such goods, to secure the goods pending –

(i) compliance by the licensee with such legislation; or

(ii) export of the goods, subject to the legislation restricting the import or possession of the goods.

(2) Goods may be secured in terms of subsection (1)(a) in a private storage warehouse to delay the clearance and release of the goods as contemplated in that subsection –

(a) in order to utilize the tax free status in relation to import tax conferred on warehoused goods; or

(b) for any other purpose determined by the Commissioner General as consistent with the warehouse procedure.

### **Persons entitled to submit warehousing clearance declarations**

184. (1) The following persons shall, submit clearance declarations to clear goods for warehousing in a public storage warehouse:

(a) The importer or exporter of the goods, if that importer or exporter is located in Lesotho;

(b) a clearing agent of the importer or exporter of the goods, if the importer or exporter is not located in Lesotho;

(c) the owner of the goods, if ownership in the case of imported goods has been transferred after the goods were imported and that owner is located in Lesotho;

(d) a clearing agent in Lesotho of the owner referred to in paragraph (c), if that owner is not located in Lesotho; or

(e) a customs broker

(2) The following persons shall, submit clearance declarations to clear goods for warehousing in a private storage warehouse:

(a) The importer or exporter of the goods, provided that the importer or exporter is the licensee of the private storage warehouse; or

(b) a customs broker

### **Contents of warehousing clearance declarations**

185. A warehousing clearance declaration shall, in addition to the information required in terms of section 60, state—

(a) that the goods are cleared for warehousing;

(b) the purpose for which the goods are warehoused, taking into account section 182 or 183;

(c) the tax identification number and address of the storage warehouse where the goods will be warehoused; and

(d) that the storage warehouse where the goods will be warehoused is licensed for the purpose for which the goods are to be warehoused.

### **Redirection of goods**

186. (1). The Commissioner General shall, clear and release goods for warehousing and the declarant shall cause the goods to be delivered to the storage warehouse indicated in the clearance declaration,

(2) No person shall, without the permission of the Commissioner General, redirect goods that are cleared for warehousing to any place other than that warehouse.

(3) The carrier shall notify the Commissioner General of the delivery; of goods indicated in the clearance declaration.

(4) The licensee shall notify the Commissioner General of the receipt of the goods indicated on the clearance declaration.

### **Maximum warehousing periods**

187. (1) Goods other than goods referred to in subsection (4) may not be warehoused in a storage warehouse for longer than two years from the date the goods are for the first time cleared for warehousing in any storage warehouse, whether public or private.

(2) The period referred to in subsection (1) may not be extended longer than—

(a) 180 calendar days; or

(b) in the case of a specific class or kind or other category of goods, such period as may be prescribed by regulations to this Act.

(3) Where subsection (1) is contravened in respect of warehoused goods, the goods shall in terms of section 87(1) for tax purposes be regarded to be cleared for home use under Part VIII.

(4) Restricted goods imported into Lesotho and warehoused in a public or private storage warehouse in terms of section 530 pending compliance with the legislation restricting the import or possession of such goods, may not be warehoused for longer than a period as may be prescribed by regulations to this Act.

### **Warehousing of dangerous or hazardous goods**

188. (1) The Commissioner General shall keep, detained dangerous or hazardous goods in a storage warehouse only in accordance with any relevant legislation and requirements; and

(2) The Commissioner General shall, in the public interest cause to be removed immediately dangerous or hazardous goods from a warehouse to another place.

### **Records to be kept of warehoused goods**

189. (1) The licensee of a storage warehouse shall keep record of all warehoused and removed goods in a form and manner determined by the Commissioner General

(2) The record kept pursuant to subsection (1) shall contain the following information;

(a) all goods received in the warehouse, and the date of receipt;

(b) the purpose for which, and, in the case of a public storage warehouse, the person on whose behalf, the goods are warehoused;

(c) any warehoused goods that are damaged, destroyed, lost or unaccounted for.

(d) all goods removed from the warehouse, and the date of removal;

(e) the person by whom the goods were removed; and

(f) whether the goods were removed –

(i) in terms of a clearance for home use or any other customs procedure, and if for a customs procedure the specific customs procedure under which the goods were removed; or

(ii) for any other purpose described in this Act.

### **Reports to be submitted in connection with warehoused goods**

190. (1) The licensee of a storage warehouse shall submit to the Commissioner General regular reports for such periods as may be determined by the Commissioner General

(2) A report submitted pursuant to subsection (1) shall contain such information as may be determined by the Commissioner General including information concerning –

(a) the goods received in the warehouse during the reporting period;

(b) all goods removed from the warehouse during the reporting period.

(c) any surpluses or shortfalls on goods in the warehouse for the reporting period; and

(d) any goods in the warehouse damaged, destroyed, lost or unaccounted for, during the reporting period.

**Sorted, separated, graded, packed, repacked, labelled or re-labelled of goods kept in storage warehouses**

191. The licensee of a warehouse may, with the permission of the Commissioner General,

(a) sort,

(b) separate

(c) grade,

(d) pack,

(e) repack,

(f) label or

(g) relabel

Goods kept in a storage warehouse.

**Removal of goods from storage warehouses**

192. Warehoused goods may be removed from a storage warehouse in the following circumstances only:-

(a) where the goods are cleared and released for home use,

(b) where the goods are kept in another storage warehouse, or



- (c) for another customs procedure that is permissible in the circumstances;
- (d) where the licensee has to carry out repair or preservation operations , provided that the goods are returned to the warehouse within such period as may be determined by the Commissioner General.
- (e) if the goods are detained, seized or seized and the Commissioner General directs that the goods be removed to another place.
- (f) If the court directs that goods be dealt with in terms of the paragraph (a),(b),(c),(d) and (e)
- (g) for any other purpose that the Commissioner General may determine;

### **Removal of restricted goods stored in storage warehouses.**

193. (1) The Commissioner General shall pending compliance with relevant legislation restricting the import or possession of such goods not remove restricted goods imported and kept in a storage warehouse unless, proof of compliance with that legislation is submitted.

(2) If proof of compliance is not submitted to the Commissioner General within the period of two years, such goods shall be disposed of in a form and manner that the Commissioner General may determine.

### **Notification of closure of public storage warehouse**

194. The Commissioner General shall when closing a public storage warehouse, give written notice of the closure of the warehouse to every person who has cleared goods kept in that warehouse.

### **Offences**

195. (1) Any person who redirects goods to any place other than a warehouse indicated by the Commissioner General in the clearance declaration commits an offence and is liable upon conviction to a fine not exceeding ten thousand maloti or to imprisonment for a period not exceeding ten years.

(2) Any person who removes goods from a storage warehouse without the permission of the Commissioner General, commits an offence and is liable upon conviction to a fine

not exceeding ten thousand maloti or to imprisonment for a period not exceeding ten years.

(3) any person who removes-

(a) restricted goods; or

(b) hazardous or dangerous goods

from a storage warehouse without the permission of the Commissioner General, commits an offence and is liable upon conviction to a fine not exceeding ten thousand maloti or to imprisonment for a period not exceeding ten years.

(4) Any person who keeps goods in a storage warehouse for a period longer than the prescribed period commits an offence and is liable upon conviction to a fine not exceeding ten thousand maloti or to imprisonment for a period not exceeding ten years.

(5) A licensee who fails to submit regular report to the Commissioner General, commits an offence and is liable upon conviction to a fine not exceeding ten thousand maloti or to imprisonment for a period not exceeding ten years.

(6) Any person who is not licensed in terms of the provisions of this Act, commits an offence and is liable upon conviction to a fine not exceeding ten thousand maloti or to imprisonment for a period not exceeding ten years.

## **PART XIV**

### **TAX FREE SHOP PROCEDURE**

#### **Tax free shop procedure**

196. The tax free shop procedure is a customs procedure that allows –

- (a) goods whether in free circulation or not in free circulation to be sold, to persons entering or leaving Lesotho, tax free in retail quantities on premises situated within an airport railway travellers terminal or land border-post and licensed as a tax free shop;
- (b) goods not in free circulation supplied to a tax free shop for the purpose of such sale to be transported to the shop without clearing the goods for national transit; and
- (c) the goods so sold to be treated as accompanied or unaccompanied baggage of such persons.

#### **Commencement and completion of tax free shop procedure**

197. (1) The tax free shop procedure commences when goods -

- (a) not in free circulation are cleared for supply to a tax free shop; and
- (b) in free circulation are received in a tax free shop,

(2) tax free shop procedure is completed when the goods are sold from the tax free shop and –

- (a) if sold to a person in the process of leaving Lesotho, the goods are exported from Lesotho; or
- (b) if sold to a person having entered Lesotho, the goods are declared in terms of this Act.

(3) Notwithstanding subsection (2) the tax free shop procedure, may end before its completion if the goods are–

- (a) cleared and released for another customs procedure or for home use.; or
- (b) abandoned;

(c) destroyed under supervision of the Commissioner General or relevant Ministry or Department

(d) seized or seized in terms of this Act or any other legislation or an order of court; or

(e) damaged, destroyed, lost or unaccounted for).

### **Persons entitled to submit tax free shop clearance declarations**

198. the following persons shall submit clearance declarations to clear goods for supply to a tax free shop:

(a) the licensee of the tax free shop;

(b) a customs broker; or

(c) a clearing agent

### **Contents of tax free shop clearance declarations**

199. A tax free shop clearance declaration submitted in addition to the information required shall state –

(a) that the goods are cleared under the tax free shop procedure for supply to a tax free shop;

(b) the customs code of that tax free shop; and

(c) the name of the licensee of the shop.

### **Clearance and release of goods for tax free shop procedure**

200. (1) the owner of a tax free shop shall not receive, in a tax free shop, goods not in free circulation unless the goods are cleared and released for supply to that tax free shop.

(2) the Commissioner General shall, cleared goods not in free circulation, for supply to a tax free shop in accordance with this Act

### **Redirection of goods**

201. No person may, without the permission of the Commissioner General, redirect goods that are cleared and released for supply to a tax free shop to any place other than the tax free shop indicated in the clearance declaration.

### **Goods that may be sold in tax free shops**

202. (1) A licensee of a tax-free shop shall keep and sell in a tax-free shop goods in free circulation or goods not in free circulation pursuant to this Act.

(2) Notwithstanding subsection (1), a licensee of a tax free shop shall sell restricted goods in free circulation or not in free circulation only in accordance with the legislation regulating the import or export of the goods.

### **Persons to whom goods may be sold in tax free shops**

203. A licensee of a tax free shop shall sell goods from a tax free shop only to the following persons–

(a) travellers or crew –

(i) about to depart, to a destination outside Lesotho from the airport or rail travellers terminal or border-post where the tax free shop is situated; and

(ii) holding valid boarding passes or other documents indicating that they are about to board an aircraft, train or vehicle to a destination outside Lesotho, or

(b) travellers or crew –

(i) having arrived from a place outside Lesotho at the airport or rail travellers terminal or border-post where the tax free shop is situated; and

(ii) holding valid boarding passes or other documents indicating that they arrived at that terminal or border-post from a place outside Lesotho.

### **Issuing of sales invoices**

204. A licensee of a tax free shop shall, not sell goods from a tax free shop unless he has issued a sales invoice containing such information as may be determined by the Commissioner General.

### **Off-site outlets**

205. (1) A licensee of a tax free shop may, with the approval of the Commissioner General , for the purpose of promoting sales establish retail outlets for the tax free shop in other locations outside the airport or rail travellers terminal or border-post and transfer goods from the tax free shop to such outlets for display purposes, provided that

–

(a) the Commissioner General may limit the number of off-site outlets that a tax free shop licensee may establish;

(b) the outlet is only used for the purpose of taking orders;

(c) the delivery or pick-up of goods ordered from an off-site outlet takes place at the tax free shop;

(d) the outlet is located within the area served by the same Customs Office as the tax free shop;

(e) the outlet is secure and meets the requirements prescribed by Regulations made under this Act;

(f) the transfer of goods between the tax free shop and the outlet takes place in accordance with the requirements prescribed by Regulations made under this Act; and

(g) the liability for the payment of any tax on goods in the tax free shop and in the outlet remain with the licensee of the tax free shop.

(2) Goods transferred in terms of subsection (1)(f) shall be regarded as part of the goods in the tax free shop.

### **Maximum period for which goods may remain in tax free shops**

206. A licensee of a tax free shop shall not keep in the tax free shop goods supplied to a tax frère shop for a period exceeding two years from the time of receipt of the goods in the tax free shop, or in the case of goods cleared for tax free procedure, from the time of clearance of the goods unless he has obtained permission for extension from the Commissioner General.

### **Removal of goods from tax free shops**

207. (1) For purposes of this Part, goods shall be considered to be removed from a tax free shop -

(a) where the goods are sold to a travellers or crew member

(b) where goods which are not sold as contemplated in paragraph (a) are cleared and released for home use or another customs procedure,

(c) where goods are transferred –

(i) to another tax free shop covered by the same tax free shop license; or

(ii) to an off-site outlet for that tax free shop;

(d) where goods are detained, seized or seized under the Commissioner General directions

(e) where goods are removed to another place under the direction of the Commissioner general; or

(f) under any other circumstance as the Commissioner General may determine

(2) Goods removed from a tax free shop used or sold as samples, perfume testers or other items used for promoting sales in the shop shall for tax purposes–

(a) be regarded as cleared for home use

(b) be regarded to have reverted to free circulation

### **Manipulation, alteration or combination of goods in tax free shops**

208. No licensee shall, manipulate, alter or combine with another article to form a new or different product goods in a tax free shop except as provided by Regulations made under this Act.

### **Inventory control of goods in tax free shops**

209. (1) A licensee of a tax free shop shall establish and maintain an inventory control system approved by the Commissioner General.

(2) An inventory control system established and maintained pursuant to subsection (1) shall reflect the following –

- (a) the weekly, monthly and annual quantities of goods received in the tax free shop, distinguishing between –
  - (i) goods that are cleared and released for supply to the shop
  - (ii) goods that were in free circulation for which no clearance and release were necessary;
  - (iii) sold from the tax free shop; and
  - (iv) removed from the tax free shop for each of the purposes;
- (b) the date of receipt of the goods in the tax free shop, the date of sale (if any) and the date of removal;
- (c) monthly and year-end balances of all unsold goods in the tax free shop;
- (d) any goods which are, for tax purposes, cleared for home use;
- (e) any other matter that may be determined by Commissioner General.

### **Regular reports**

210. (1) A licensee of a tax free shop shall submit to the Commissioner General regular reports for such periods as the Commissioner General may require.

(2) The report submitted in terms of subsection (1) shall contain such information as may be determined by the Commissioner General including information concerning –

(a) all goods received in the tax free shop during the reporting period, distinguishing between –

(i) goods that are cleared and released for supply to the shop; and

(ii) goods that were in free circulation (b) any non-sellable goods received in or that have become non-sellable whilst in the tax free shop during the reporting period;

(c) all goods sold from the tax free shop during the reporting period;

(d) all goods removed from the tax free shop during the reporting period;

(e) any goods damaged, destroyed, lost or unaccounted for during the reporting period; and

(f) any surpluses or shortfalls on goods in the tax free shop, as at the end of the reporting period.



## **Offences**

211. (1) Any person who redirects goods to any place other than a tax free shop indicated by the Commissioner General in the clearance declaration commits an offence and is liable upon conviction to a fine not exceeding two thousand maloti or to imprisonment for a period not exceeding five years.

(2) Any person who removes goods from a tax free shop without the permission of the Commissioner General, commits an offence and is liable upon conviction to a fine not exceeding two thousand maloti or to imprisonment for a period not exceeding five years.

(3) A licensee of a tax free shop who keeps goods in a tax free shop for a period longer than the prescribed period commits an offence and is liable upon conviction to a fine not exceeding ten thousand maloti or imprisonment for a period not exceeding ten years.

(4) A licensee of a tax free shop who fails to submit regular report to the Commissioner General, commits an offence and is liable upon conviction to a fine not exceeding ten thousand maloti or to imprisonment for a period not exceeding ten years.

(5) A licensee of a tax free shop who operates a retail outlet not authorised by the Commissioner General, commits an offence and is liable upon conviction to a fine not exceeding ten thousand maloti or to imprisonment for a period not exceeding ten years.

## **PART XV**

### **STORES PROCEDURE**

#### **Stores procedure**

212. The stores procedure is a customs procedure that allows stores for a , foreign-going aircraft or cross-border train –

(a) in the case of stores on an, aircraft or train when it enters Lesotho –

(i) to be used as stores on that aircraft or train in Lesotho without clearing those stores for home use; or

(ii) to be re-exported from Lesotho on board that aircraft or train as stores for that aircraft or train without clearing those stores for export;

(b) in the case of stores taken on board, aircraft or train in Lesotho –

(i) to be transported to that , aircraft or train under this procedure without clearing those stores for national transit, if those stores consist of goods not in free circulation;

(ii) to be used as stores on that , aircraft or train in Lesotho without clearing those stores for home use, if those stores consist of imported goods; or

(iii) to be exported from Lesotho on board that aircraft or train as stores for that, aircraft or train without clearing those stores for export.

#### **Commencement and completion of stores procedure**

213. (1) (a) Stores for a foreign-going aircraft or cross-border train that are on board an, aircraft or train when it enters Lesotho, come under the stores procedure automatically and without any formal clearance for the stores procedure when an aircraft or train enters Lesotho.

(b) Stores taken on board such , aircraft or train in Lesotho, come under the stores procedure when the stores are cleared as stores for that , aircraft or train.

(c) The stores procedure in relation to any goods is, subject to subsection (2), completed when the goods leave Lesotho on board that , aircraft or train as stores for the , aircraft or train.

- (2) The stores procedure, in relation to any goods, ends before its completion if –
- (a) the goods are used in accordance with this Part as stores on that , aircraft or train whilst in Lesotho;
  - (b) the goods before completion of the procedure are cleared and released for another customs procedure or for home use, as may be permissible in the circumstances; or
  - (c) completion of the procedure is interrupted by an occurrence referred to in section 213.(2)

### **Stores taken on board first to be cleared and released for stores procedure**

214. (1) No goods may be taken on board a foreign-going aircraft or cross-border train as stores for that , aircraft or train unless those goods are cleared and released under the stores procedure as stores for that , aircraft or train.

(2) Goods to be cleared under the stores procedure as stores for a foreign-going aircraft or a cross-border train shall be cleared in accordance with Part XV.

### **Persons entitled to submit stores clearance declarations**

215. The following persons shall submit clearance declarations to clear goods under the stores procedure; as stores for foreign-going s or aircraft or cross-border trains:

- (a) The carrier operating the , aircraft or train, if the carrier is located in Lesotho;
- (b) the agent in Lesotho of the carrier, if the carrier is not located in Lesotho;
- (c) a stores supplier; or
- (d) a customs broker.

### **Contents of stores clearance declarations**

216. A stores clearance declaration shall, in addition to the information required state –

- (a) that the goods are stores cleared for the stores procedure; and
- (b) particulars of –
  - (i) the , aircraft or train for which the stores are needed;

(ii) the voyage schedule of the , aircraft or train and expected duration of the voyage, if this information has not already been submitted to the Commissioner General; and

(iii) the quantity of unused stores of the kind in question on board the , aircraft or train at the time of submission of the stores clearance declaration, if this information has not already been submitted to customs authorities.

### **Determination and Release stores quantities**

217. (1) The Commissioner General may, after consulting the carrier operating a foreign-going or aircraft or cross-border train or the on-board operator of the , aircraft or train, determine the quantity of goods reasonably needed to be taken on board the , aircraft or train as stores for any intended voyage, taking into account all relevant factors including –

(a) the quantities needed for the provision of on board services;

(b) the functional needs of the , aircraft or train;

(c) the operational needs of the , aircraft or train;

(d) the length and duration of the voyage;

(e) the number of travellers and crew on board;

(f) the needs of travellers and crew; and

(g) the amount of unused stores on board the , aircraft or train at the time of submission of the stores clearance declaration.

(2) Release of stores may be given only for quantities as determined by the Commissioner General in terms of subsection (1).

### **Acknowledgement of receipt of stores taken on board**

218. The on-board operator of a foreign-going or aircraft or a cross-border train shall acknowledge receipt of all stores taken on board the , aircraft or train in Lesotho in a manner as may be prescribed by Regulations.

### **Prohibited and restricted goods**

219. (1) No person shall take on board a foreign-going aircraft or a cross-border train prohibited goods as stores.

(2) (a) Restricted goods may be taken on board a foreign-going aircraft or a cross-border train as stores for that aircraft or train only in accordance with Part XXXXV and the legislation restricting the possession or export of those goods.

### **Stores arrival reports**

220. (1) All stores that are under the stores procedure on board –

(a) a foreign-going aircraft when the aircraft arrives at a customs airport or airport, including stores in the personal possession of a crew member, shall be reported to the Commissioner General ; or

(b) a cross-border train when the train arrives at a railway station as may be prescribed by Regulations, including stores in the personal possession of a crew member, shall be reported to the Commissioner General.

(2) A stores arrival report referred to in subsection (1) shall be submitted to the Commissioner General together with or as part of the arrival report that shall be submitted in respect of –

(b) the aircraft in terms of section 29 when the aircraft arrives at a customs airport; or

(c) the train in terms of section 36 when the train after entering Lesotho arrives at a railway station as may be prescribed by Regulations.

### **Sealing or securing of stores**

221. (1) A customs officer may where a foreign-going aircraft or a cross-border train arrives at an airport or railway station where a stores arrival report shall be submitted in terms of section 288, may seal or otherwise secure on board the aircraft or train any stores that are under the stores procedure, including any stores in the personal possession of a crew member on board the aircraft or train.

(2) No person may, without the permission of the Commissioner General break any seal placed in terms of subsection (1) on stores or interfere with stores otherwise secured in terms of that subsection before the aircraft or aircraft has departed from the seaport, airport or

railway station where the goods were sealed or secured and all physical contact with that seaport, airport or railway station has ceased.

(3) The on-board operator of, aircraft or train is responsible for ensuring that –

(a) no seal is broken or any stores otherwise secured are interfered with in contravention of subsection (2); or

(b) stores sealed or otherwise secured are not used or dealt with in any unauthorised way.

### **Tax free items for sale on board to travellers and crew**

222. Stores under the stores procedure on board a foreign-going aircraft or a cross-border train as items for sale on the aircraft or train to travellers and crew have a tax free status in relation to import tax, domestic tax and export tax when sold to travellers and crew, but only if the aircraft or train falls within a category of aircraft or trains permitted by regulation to carry tax-free items for sale to travellers and crew.

### **Removal of stores**

223. (1) Stores under the stores procedure may not be removed from a foreign-going or aircraft or a cross-border train –

(a) unless the goods –

(i) are cleared and released for another permissible customs procedure or, subject to subsection (2), for supply as stores to another foreign-going aircraft or a cross-border train;

(ii) are cleared and released for home use, in the case of goods that were on board the, aircraft or train when an aircraft or train entered Lesotho or that were not in free circulation when cleared as stores for the , aircraft or train; or

(iii) revert to free circulation in in the case of goods that were in free circulation when cleared as stores for the , aircraft or train; or

(b) except for –

(i) securing the goods;

(ii) repairing any damaged goods;

(iii) disposal as waste under supervision of the Commissioner General ; or

(iv) another purpose approved by the Commissioner General.

(2) Stores under the stores procedure on board a foreign-going aircraft may be cleared for transshipment or international transit in terms of subsection (1)(a)(i) only –

(a) to a foreign-going or aircraft operated by a carrier and engaged in the transport of goods or travellers to Lesotho from a place outside Lesotho or from Lesotho to a place outside Lesotho, as stores for that or aircraft; and

(b) in quantities determined by the Commissioner General.

(3) No clearance or release is needed when stores are returned to the , aircraft or train from which those goods were removed in terms of subsection (1)(b)(i), (ii) or (iv).

(4) Stores removed as contemplated in subsection (1)(b)(i), (ii) or (iv) shall be returned to the , aircraft or train within a timeframe as may be prescribed by Regulations.

### **Securing of stores by removal from s or aircraft**

224. The Commissioner General may direct or allow that any stores under the stores procedure on board a foreign-going aircraft be removed from the or aircraft for storage elsewhere until the or aircraft is ready to depart if –

(a) the or aircraft for any reason is to remain at a specific location for a period longer than scheduled; and

(b) such storage is necessary to ensure that those stores are not dealt with in any unauthorised way.

### **Replacement of stores on s or aircraft**

225. The Commissioner General may direct or allow that stores under the stores procedure on board a foreign-going or aircraft be removed from the or aircraft and replaced by equivalent goods in free circulation, as may be prescribed by Regulations.

### **Unused stores no longer bound for foreign destinations**

226. If a foreign-going aircraft or a cross-border train is no longer bound for a destination outside Lesotho, any unused stores on board an aircraft or train under the stores procedure –

(a) shall be cleared for another customs procedure or for home use if permissible in the circumstances, in the case of stores –

(i) that were on board an aircraft or train when an, aircraft or train entered Lesotho; or

(ii) that were not in free circulation when cleared as stores for the , aircraft or train; or

(b) revert to free circulation, in the case of stores that were in free circulation when cleared as stores for an, aircraft or train.

### **Stores departure reports**

227. (1) All stores that are under the stores procedure on board –

(a) a foreign-going aircraft when t or aircraft departs from a customs airport or airport, including stores in the personal possession of a crew member, shall be reported to the Commissioner General ; or

(b) a cross-border train when the train departs from a railway station referred to in section 38, including stores in the personal possession of a crew member, shall be reported to the Commissioner General.

(2) A stores departure report referred to in subsection (1) shall be submitted to the Commissioner General together with or as part of the departure report that shall be submitted in respect of –

(a) the aircraft when the departs from a customs airport;

(b) the aircraft in terms of section 32 when the aircraft departs from a customs airport;  
or

(c) the train in terms of section 38 when the train departs from a railway station as may be prescribed by regulations.

### **Submission of stores reports in terms of this Part**

228. (1) A stores arrival or departure report shall –



(a) be on a form as may be prescribed by Regulations and contain the information required on the prescribed form;

(b) be accompanied or supported by any documents as may be prescribed by Regulations; and

(c) be submitted electronically by the carrier operating the , aircraft or train.

(2) Subsection (1) shall, in the case of a carrier who is not located in Lesotho be complied with either by the carrier or that carrier's registered agent in Lesotho.

### **Aborted voyages**

229. (1) If after having left Lesotho for a destination outside Lesotho, a foreign-going or aircraft returns to Lesotho, stores that were on board the or aircraft under the stores procedure shall be dealt with as follows:

(a) Stores that were on board the or aircraft when the or aircraft entered Lesotho or that were not in free circulation when cleared as stores for that or aircraft, shall for tax purposes be regarded to be cleared for home use under this Part to the extent that those stores –

(i) if the or aircraft returned to Lesotho due to unavoidable circumstances –

(aa) were used or purportedly used during the aborted voyage in excess of a quantity which could reasonably have been used on the or aircraft taking into account the duration and circumstances of the aborted voyage; or

(bb) are lost or unaccounted for; or

(ii) if the or aircraft returned to Lesotho due to avoidable circumstances –

(aa) were used or purportedly used during the aborted voyage; or

(bb) are lost or unaccounted for.

(b) Stores that were in free circulation when cleared as stores for that or aircraft, shall for tax purposes be regarded as having reverted to free circulation to the extent that those stores –

(i) if the or aircraft returned to Lesotho due to unavoidable circumstances –

(aa) were used or purportedly used during the aborted voyage in excess of a quantity which could reasonably have been used on the or aircraft taking into account the duration and circumstances of the aborted voyage; or

(bb) are lost or unaccounted for; or

(ii) if the or aircraft returned to Lesotho due to avoidable circumstances –

(aa) were used or purportedly used during the aborted voyage; or

(bb) are lost or unaccounted for.

(2) The carrier operating a foreign-going or aircraft shall notify the Commissioner General of any aborted voyage referred to in subsection (1).

**Additional grounds for regarding stores under stores procedure to be cleared for home use**

230. Goods that came under the stores procedure when a foreign-going or aircraft or a cross-border entered Lesotho and goods that were not in free circulation when cleared for supply as stores to such , aircraft or train, shall for tax purposes be regarded to be cleared for home use under this Part –

(a) insofar as those goods are used by –

(i) travellers and crew members travelling on board such , aircraft or train only between places within Lesotho;

(ii) persons performing duties on board such , aircraft or train only whilst the , aircraft or train is in a customs airport or airport or a railway terminal; or

(iii) guests on board such whilst in a customs airport;

(b) insofar as those goods are not used as stores for the , aircraft or train; or

(c) if a seal placed on the goods in terms of section 230 is broken or if the goods otherwise secured in terms of that section are interfered with in any unauthorised way.

**Additional grounds for regarding stores under stores procedure to have reverted to free circulation**

231. (1) Goods that were in free circulation when cleared for supply as stores to a foreign-going aircraft or cross-border train referred to in section 231, shall for tax purposes be regarded to have reverted to free circulation

(2) travellers and crew members travelling on board aircraft or train only insofar as the goods are used by –

(a) persons performing duties on board such , aircraft or train only whilst the , aircraft or train is in a customs airport or a railway terminal; or

(b) guests on board such whilst in a customs airport.

### **Offences**

232. (1) Any person who fails to seal or secure stores, commits an offence and is liable upon conviction to a fine not exceeding five thousand maloti or to an imprisonment for a period not exceeding two years.

(2) Any person who removes stores from aircraft or train commits an offence and is liable upon conviction to a fine not exceeding ten thousand maloti or to an imprisonment for a period not exceeding ten years.

(3) Any person who takes prohibited and restricted goods on board a foreign-going aircraft or cross-border train without complying with provision of this Act, commits an offence and is liable upon conviction to a fine not exceeding ten thousand maloti or to an imprisonment for a period not exceeding ten years.

(4) Any person who takes goods not cleared under stores procedure on board a foreign-going aircraft or cross-border train, commits an offence and is liable upon conviction to a fine not exceeding ten thousand maloti or to an imprisonment for a period not exceeding ten years.

(5) Any person who removes goods on board a foreign-going aircraft or cross-border train without cleared and released for home use, commits an offence and is liable upon conviction to a fine not exceeding ten thousand maloti or to an imprisonment for a period not exceeding ten years.

## **PART XVII**

### **EXPORT PROCEDURE**

#### **Export procedure**

233. The export procedure is a customs procedure that allows -

- (a) the export of goods from Lesotho; and
- (b) the transport of goods under the export procedure to the place of exit where the goods are to be exported without clearing the goods for transit.

#### **Commencement and completion of export procedure**

234. (1) The export procedure commences when goods are cleared for export and completed when the goods are exported from Lesotho.

(2) Notwithstanding subsection (1) the export procedure, may end before its completion, if the goods—

(a) are cleared and released for another customs procedure or for home use, as may be permissible in the circumstances; or

(b) completion of the procedure is interrupted by.

(i) the release of the goods for that customs procedure is refused or withdrawn;

(ii) the goods are for tax purposes regarded to be cleared for home use or for outright export;

(iii) the goods revert or are for tax purposes regarded to have reverted to free circulation;

(iv) the goods are –

(aa) abandoned to the Commissioner General; or

(bb) destroyed under supervision of the Commissioner General or relevant Ministry or Department

(cc) seized or seized in terms of this Act or any other legislation or an order of court; or

(dd) damaged, destroyed, lost or unaccounted for

### **Persons entitled to submit export clearance declarations**

235. The following persons shall, submit clearance declarations to clear, goods for the export procedure

- (a) The exporter of the goods, if that exporter is located in Lesotho;
- (b) the agent in Lesotho of the exporter, if the exporter is not located in Lesotho; or
- (c) a customs broker

### **Contents of export clearance declarations**

236. A clearance declaration submitted in terms section 72 for export of goods cleared for temporary admission in terms of Part XII shall, in addition to the information required in terms of sections 60 and 236, state—

- (a) that the goods are cleared for export under the temporary admission procedure;
- (b) the number and date of the clearance declaration in terms of which the goods are cleared for temporary admission; and
- (c) the period for which the goods remained in Lesotho.

### **Delivery of goods to depots and export terminals**

237. (1) To enable the Commissioner General to carry out any necessary inspections of goods cleared for export in terms of the export procedure the goods shall, within such timeframes as may be prescribed by regulations to this Act, be delivered to—

- (a) an air cargo depot, in the case of goods to be packed for export by air at an air cargo depot; or
- (b) the terminal where the goods will be loaded on board a foreign-going aircraft or cross-border railway carriage in which the goods are to be exported, including goods packed for export by air elsewhere than at an air cargo depot.

(2) Subsection (1) does not apply to—

- (a) accompanied or unaccompanied baggage of persons leaving Lesotho;
- (b) postal articles handled by the Lesotho Post Office; or

(c) any other category of goods as may be determined by regulations to this Act.

### **Time when goods may be released for export**

238. (1) The Commissioner General shall not release under the export procedure goods for export –

(a) by air before the goods are delivered to –

(i) an air cargo depot, in the case of goods to be packed for export at that air cargo depot; or

(ii) the air cargo terminal where the goods are to be loaded on board a foreign-going aircraft in which the goods are to be exported,

(iii) in the case of all other goods including goods packed for export by air elsewhere than at an air cargo depot;

(b) by rail before the goods are delivered to the rail cargo terminal where the goods are to be loaded on board a cross-border railway carriage in which the goods are to be exported; or

(c) by road before the vehicle that will transport the goods out of Lesotho has reached the land border-post where the goods are to be exported.

(2) Subsection (1) does not apply to –

(a) goods under the warehousing procedure;

(b) any category or kind of goods as may be prescribed by Regulations. or

(3) Goods referred to in subsection (2) shall be released for export in terms of the export procedure at any time after clearance for export and any requirements and conditions are complied with.

### **Failure to export goods released for export**

239. (1) Where goods that are cleared and released for export under the export procedure, are not exported within a timeframe from release of the goods for export as may be prescribed by regulations to this Act –

(a) the person clearing the goods for export shall immediately notify the Commissioner General of—

(i) the failure to export the goods; and

(ii) the reasons for the failure; and

(b) the Commissioner General may, whether a notification in terms of paragraph (a) is issued or not—

(i) secure the goods or require the goods to be secured in such manner as the Commissioner General may determine pending the export of the goods in terms of the release;

(ii) withdraw the release given in respect of the goods; or

(iii) issue a direction as may be appropriate, whether or not the release has been withdrawn.

(2) A person who cleared goods for export under the export procedure shall on request by the Commissioner General provide proof to the Commissioner General, that the goods were exported.

(3) The burden to prove that goods released for export under the export procedure are exported rests on the person clearing the goods.

**Clearance of goods exported through cross-border transmission lines, pipelines, cable-cars or conveyor belts**

240. The Commissioner General shall by regulation –

(a) prescribe special processes and requirements for the clearance and release for outright export of –

(i) electricity to be exported through licensed cross-border transmission lines; and

(ii) other goods to be exported through licensed cross-border pipelines or by means of licensed cross-border cable cars or conveyor belts; and

(b) exempt such electricity or other goods from a provision of this Act relating to the clearance or release of goods.

## **Offences**

241. (1) Any person who fails to deliver goods to depots and export terminal for inspection within the prescribed period commits an offence and is liable on conviction to a fine not exceeding twenty thousand maloti or imprisonment for a period not exceeding ten years.

(2) Any person who fails to export goods released for export within the prescribed period, commits an offence and is liable on conviction to a fine not exceeding twenty thousand maloti or imprisonment for a period not exceeding twenty years or both fine and imprisonment.



## **PART XVIII**

### **TEMPORARY EXPORT PROCEDURE**

#### **Temporary export procedure**

242. The temporary export procedure is a customs procedure that allows—

(a) goods—

(i) to be temporarily exported from Lesotho with the intention to return the goods to Lesotho; and

(ii) to be returned to Lesotho as re-imported unaltered goods; or

(b) goods exported outright from Lesotho to be returned to Lesotho as re-imported unaltered goods.

#### **Commencement and completion of temporary export procedure**

243. (1) Goods come under—

(a) the temporary export procedure contemplated under this Part—

(i) when cleared for temporary export

(ii) when cleared for temporary export in terms of international clearance arrangements referred to in Part V; or

(iii) upon leaving Lesotho, in the case of goods that automatically come under the temporary export procedure in terms of this Part or

(b) the temporary export procedure contemplated in this Part retrospectively as from the time the goods are cleared and released in terms of Part XVI for outright export from Lesotho.

(2) The temporary export procedure is, subject to subsection (3), completed—

(a) in the case of goods referred to in subsection (1)(a)(i) or (b), when the goods are returned to Lesotho and cleared and released as re-imported unaltered goods for home use;

(b) in the case of goods referred to in subsection (1)(a)(ii), when the goods are returned to Lesotho in accordance with the international clearance arrangements; or

(c) in the case of goods referred to in subsection (1)(a)(iii), when the goods re-enter Lesotho.

(3) The temporary export procedure ends before its completion if completion of the procedure is interrupted by an occurrence referred to in section 243(3).

### **Clearance of goods for temporary export**

244. (1) A person who clears goods for temporary export shall state on the export clearance declaration—

(a) the intention to return the goods to Lesotho as re-imported unaltered goods; and

(b) the date before which the goods will be returned to Lesotho; and

(2) a person referred to in subsection (1) shall –

(i) either provide surety for the payment of any export tax or pay the amount of any export tax that may become payable on the goods should the goods lose their tax free status in relation to export tax; and

(ii) comply with such further requirements as the Commissioner General may determine.

(3) The Commissioner General may as he deems necessary exempt a person referred to in subsection (1) from payment of surety or any export tax pursuant to subsection (2)

### **Release of goods for temporary export**

245. (1) the Commissioner General shall issue a release notification which state the period within which the goods shall be returned to Lesotho

(2) A period determined in terms of subsection (1) may not exceed a maximum period as may be determined by regulations –

(3) The period mentioned in a release notification may be extended only once except if good cause is shown for an additional extension.

### **Simplified clearance and release for commercial trucks temporarily leaving Lesotho**

246. Trucks leaving Lesotho as a means of transport currently in use for the transport of goods in the ordinary course of international trade may, despite the other provisions of this Part, be cleared and released for the temporary export procedure in accordance with simplified clearance and release processes and requirements referred to in Part XXXIV if the truck—

- (a) is not leaving Lesotho on the return leg of the temporary admission procedure; and
- (b) is destined to return to Lesotho without any interruption in its current use as a means of transport for goods in the ordinary course of international trade

### **Simplified clearance and release for buses or taxis temporarily leaving Lesotho**

247. Buses or taxis leaving Lesotho as a means of transport for travellers visiting abroad or returning home may, despite the other provisions of this Part, be cleared and released for the temporary export procedure in accordance with simplified clearance and release processes and requirements referred to in Part XXXIV if—

- (a) the bus or taxi is not leaving Lesotho on the return leg of the temporary admission procedure;
- (b) no international clearance arrangements are available for the departure of the bus or taxi from Lesotho; and
- (c) the bus or taxi is destined to return to Lesotho without any interruption in its current use as a means of transport for travellers.

### **Simplified clearance and release requirements for private vehicles or light aircraft temporarily leaving Lesotho**

248. Vehicles, and light aircraft leaving Lesotho as a private means of transport for a traveller visiting abroad may, despite the other provisions of this Part, be cleared and released for the temporary export procedure in accordance with simplified clearance and release processes and requirements referred to in Part XXXIV if—

- (a) the vehicle, and light aircraft is not leaving Lesotho on the return leg of the temporary admission procedure;
- (b) no international clearance arrangements are available for the vehicle and light aircraft; and
- (c) the vehicle and light aircraft is destined to return to Lesotho without any interruption in its current use as a private means of transport for that traveller.

**Conditions for clearance of re-imported unaltered goods for home use**

249. (1) Goods may be cleared in terms of this Part as re-imported unaltered goods for home use only if—

- (a) the goods were previously exported from Lesotho under the temporary export procedure or for outright export;
- (b) the goods can be identified as the same goods originally exported from Lesotho or the importer furnishes proof that the goods are the same goods originally exported;
- (c) the importer provides sufficient information to the Commissioner General concerning—
  - (i) any export tax paid on the goods when exported from Lesotho;
  - (ii) any benefit given in terms of an export incentive scheme to any person on the export of the goods, whether in the form of a tax reduction or relief  
an export or other subsidy, a rebate or reward or other benefit;
  - (iii) any import or other tax paid, or rebate or remission granted, on the goods before clearance of the goods for temporary export or outright export or, if no tax was paid, the tax status of the goods immediately before clearance of the goods for temporary export or outright export; and
  - (iv) any refund or drawback of import or other tax reclaimed on the export of the goods;
- (d) the goods are returned to Lesotho

(i) in the case of temporarily exported goods referred to in section 242(1)(a), within the period stated in the release notification referred to in section 245(1) or as extended in accordance with section 245(3); or

(ii) in the case of outright exported goods referred to in section 242(b), within a period of 90 calendar days of the date of export or as extended in accordance with subsection (3);

(e) the goods, whilst abroad, have not undergone any manufacturing, processing or repairs other than maintenance in connection with their use abroad; and

(f) any conditions subject to which the goods were released for export in terms of section 72 have been complied with.

(2) Goods may in terms of subsection (1) be cleared as re-imported unaltered goods for home use despite the fact that—

(a) only a part of the originally exported goods is re-imported;

(b) the goods are re-imported in separate consignments;

(c) the goods are re-imported by a person other than the person who exported the goods, provided that that other person—

(i) is authorised by the original exporter to re-import the goods; and

(ii) is able to provide the information required in terms of subsection (1); or

(d) the goods, whilst abroad—

(i) have been used whether or not to their full capacity;

(ii) have been damaged; or

(iii) have deteriorated.

(3) The period mentioned in subsection (1)(d)(ii) may be extended only once except if good cause is shown for an additional extension.

### **Persons entitled to submit re-importation clearance declarations**

250. The following persons may submit clearance declarations to clear goods re-imported unaltered goods for home use:

- (a) The importer of the goods, if that importer is located in Lesotho;
- (b) the agent in Lesotho of the importer, if that importer is not located in Lesotho; or
- (c) a customs broker

### **Contents of re-importation clearance declarations**

251. (1) A clearance declaration submitted to clear goods in terms of this Part as re-imported unaltered goods for home use shall, in addition to the matters required in terms of section 60, state—

- (a) that the goods were previously exported from Lesotho;
- (b) the date on which the goods were exported; and
- (c) the amount of any export tax paid on the goods when the goods are exported, the kind of export tax paid and whether the tax is to be reclaimed.

(2) A re-importation clearance declaration shall be accompanied by a statement stating—

- (a) whether the goods, whilst abroad, undergone—
  - (i) any manufacturing, processing or repairs other than maintenance in connection with their use abroad; or
  - (ii) any change of ownership;
- (b) the information required in terms of section 249(1)(c);
- (c) the number and date of the export clearance declaration submitted in respect of the goods at the time of export of the goods and, if the goods at the time of export are imported goods or goods produced from imported goods; and
- (d) the number and date of the clearance declaration submitted to clear the imported goods for home use or a customs procedure; and
- (e) in the case of outright exported goods referred to in section 242(b)—

- (i) the reason why the goods are returned to Lesotho; and
- (ii) whether the exporter or any other person is granted any benefit by any organ of state in respect of the export of the goods.

### **Repayment of export benefits**

252. A person clearing outright exported goods as re-imported unaltered goods for home use forfeit any benefit and shall repay any benefit granted in respect of the export of the goods.

### **Simplified home use clearance and release of commercial trucks re-entering Lesotho**

253. Trucks which leave Lesotho as a means of transport under a clearance and release for temporary export may on their return to Lesotho despite the other provisions of this Part, be cleared and released for home use as re-imported unaltered goods in accordance with simplified clearance and release processes and requirements referred to Part XXXIV..

### **Simplified home use clearance and release of buses and taxis re-entering Lesotho**

254. Buses or taxis which leave Lesotho as a means of transport under a clearance and release for temporary export may on their return to Lesotho despite the other provisions of this Part, be cleared and released for home use as re-imported unaltered goods in accordance with simplified clearance and release processes and requirements referred to Part XXXIV.

### **Simplified home use clearance and release of private vehicles, or light aircraft re-entering Lesotho**

255. Vehicles, and light aircraft which leave Lesotho as a private means of transport for a traveller under a clearance and release for temporary export may on their return to Lesotho, despite the other provisions of this Part, be cleared and released for home use as re-imported unaltered goods in accordance with simplified clearance and release processes and requirements referred to Part XXXIV.

### **Refusal to release goods as re-imported unaltered goods for home use**

256. Where the Commissioner General refuses to release goods as re-imported unaltered goods for home use which are cleared in terms of this Part, whether on the ground that a condition referred to in section 264 was not met or on any other ground, the clearance in terms of this Part lapses and the goods shall within three working days of the date of refusal be cleared for—

- (a) home use in terms of Part VIII; or
- (b) a permissible customs procedure

### **Temporary export of goods from the Lesotho on authority of CPD and ATA carnets**

257. (1) Goods may be cleared and released for temporary export to a country referred to in that section on authority of a CPD or ATA carnet –

- (a) issued by an issuing association;
- (b) guaranteed by a guaranteeing association approved in terms of section 259; and
- (c) accepted by the Commissioner General.

(2) A CPD or ATA carnet shall be produced to the Commissioner General at the Customs Office serving the place of exit where the goods are to be temporarily exported.

### **Issuing associations located in Lesotho to be approved**

258. No CPD or ATA carnet issued by an issuing association located in Lesotho may be accepted by the Commissioner General unless the issuing association has been approved by the Commissioner General for the purposes of this Part.

### **Guaranteeing associations to be approved**

259. (1) No CPD or ATA carnet issued by an issuing association may be accepted by the Commissioner General unless the guaranteeing association guaranteeing the carnet has been approved by the Commissioner General for the purposes of this Part.

- (2) No guaranteeing association may be approved unless the association –
- (a) is located in Lesotho; and



(b) has given surety for the payment of any tax that may become payable on any goods that are cleared for temporary export on authority of a CPD or ATA carnet guaranteed by that guaranteeing association.

(3) The conditions subject to which an approval in terms of subsection (1) may be granted may include conditions requiring the association to assist the Commissioner in combating fraud and contravention or abuse of this Part.

### **Formats of CPD and ATA carnets**

260. CPD and ATA carnets shall conform to the models set out in the Convention on Temporary Admission or relevant international agreement.

### **Validity period of CPD and ATA carnets**

261. (1) A CPD or ATA carnet remains valid for the period for which it was issued in terms of the Convention or agreement.

(2) The validity period of a CPD or ATA carnet may be extended only in accordance with Regulations as may be prescribed for the category in which the goods fall.

### **Amendment of CPD and ATA carnets**

262. Once a CPD or ATA carnet has been accepted by the Commissioner General no amendment may be made to the carnet except with the approval of the Commissioner General.

### **Return of goods under temporary export procedure**

263. The person to whom a CPD or ATA carnet was issued shall ensure that the goods to which the carnet relates are returned to Lesotho before the expiry of –

(a) the validity period of the carnet; or

(b) any extended period granted.

### **Clearance of goods when returned to Lesotho**

264. (1) Goods under the temporary export procedure in terms of this Part shall be cleared as re-imported unaltered goods for home use subject to subsection (2).

(2) Goods under the temporary export procedure in terms of this Part may when returned to Lesotho be cleared and released for home use as re-imported unaltered goods on authority of a CPD or ATA carnet –

(a) issued by an issuing association;

(b) guaranteed by a guaranteeing association approved in terms of section 259; and

(c) accepted by the Commissioner General.

(3) A CPD or ATA carnet shall be produced to the Commissioner General at the Customs Office serving the place of entry where the goods are re-imported into Lesotho.

(4) The onus to prove that goods under the temporary export procedure in terms of this Part, were returned to Lesotho, or were returned to Lesotho within the required period, rests on the person to whom the CPD or ATA carnet on authority of which the goods were exported from Lesotho was issued.

### **Offences**

265. (1) Any person who clears goods as re-imported unaltered goods for home use in contravention of this Part, commits an offence and is liable upon conviction to a fine not exceeding five thousand maloti or to imprisonment for a period not exceeding five years.

(2) Any person exporting goods under a CPD or ATA carnet and fails to return the goods before the expiry of the validity period applicable to the carnet, commits an offence and is liable upon conviction to a fine not exceeding five thousand maloti or to an imprisonment for a period not exceeding five years.

(3) A carrier operating an aircraft, locomotive or railway carriage or that carrier's registered agent who fails to report any interruptions or discontinuation in terms of this Act, commits an offence and is liable upon conviction to a fine not exceeding five thousand maloti or to an imprisonment for a period not exceeding two years.

(4) A carrier or a carrier's registered agent who fails to keep record of transport equipment in terms of this Part, commits an offence and is liable upon conviction to a fine not exceeding ten thousand maloti or to an imprisonment for a period not exceeding ten years.

(5) ) A carrier or a carrier's registered agent who fails to report any interruptions or discontinuation, commits an offence and is liable upon conviction to a fine not exceeding twenty thousand maloti or to an imprisonment for a period not exceeding ten years.

## **PART XIX**

### **INWARD PROCESSING PROCEDURE**

#### **Inward processing procedure**

266. (1) The inward processing procedure is a customs procedure that allows imported goods to be processed into products without clearing the goods for home use.

(2) the inward processing procedure referred to in subsection (1) allows imported goods to be –

(a) transported without clearing the goods for national transit; and

(b) stored without clearing the goods for warehousing;

(3) Compensating products obtained from the processing of goods –

(a) to be exported under this procedure as inward processed compensating products; and

(b) for purposes of such export to be –

(i) stored without clearing the products for warehousing; and

(ii) transported without clearing the products for national transit.

#### **Commencement and completion of inward processing procedure**

267. (1) (a) Imported goods come under the inward processing procedure when the goods are cleared for inward processing.

(b) The inward processing procedure is, subject to subsection (2), completed when the products obtained from the processing of the goods are cleared and released for export as inward processed compensating products and exported from Lesotho.

(2) The inward processing procedure ends before its completion if—

(a) the imported goods before completion of the procedure are cleared and released for another customs procedure or for home use, as may be permissible in the circumstances; or

(b) completion of the procedure is interrupted by an occurrence referred to in this section .

### **Conditions for clearance of imported goods for inward processing**

268. The Commissioner General shall, clear goods imported under inwards processing procedure if

(a) the requirements applicable to the clearance for inward processing of goods of that kind or category have been complied with, including any requirements and conditions as may be prescribed by regulations

(b) the premises where the inward processing of the goods is carried out are licensed as premises for inward processing;

(c) the licensee of the premises carrying out the inward processing of the goods undertakes to comply with the requirements applicable to the inward processing of such goods, including any requirements and conditions–

(i) prescribed by regulation;

(ii) has been granted permission for the inward processing of the goods on those premises and has advised the Commissioner General electronically of such permission, if that licensee is not the person who cleared the goods for inward processing;

(d) any import tax payable on the goods is covered by surety; and

(f) measures have been taken to ensure that when goods are cleared for export from Lesotho as inward processed compensating products.

### **Persons entitled to submit inward processing clearance declarations**

269. The following persons shall submit clearance declarations to clear imported goods for inward processing:

(a) an importer of the goods, provided that the importer is licensed to import goods for inward processing;

(b) a licensee of the inward processing premises where the processing of the goods is to be carried out; or

(b) a customs broker

### **Contents of inward processing clearance declarations**

270. A clearance declaration for inward processing of imported goods shall in addition to the information required in terms of section 60 for clearance of goods, state –

- (a) that the goods are cleared for the inward processing procedure;
- (b) details of any permit and authorisation granted in respect of the goods.
- (c) the tax identification of the licensed premises.

### **Release of imported goods for inward processing**

271. (1) (a) When goods are released for the inward processing procedure, the goods shall be delivered to the licensed inward processing premises where the goods will be processed under that procedure unless the Commissioner General authorizes the goods to be taken to another location.

(b) When goods released for inward processing are delivered to the licensed premises where the goods will be processed or to that other location—

(i) the carrier that transported the goods shall notify the Commissioner General of the delivery; and

(ii) the licensee shall notify the Commissioner General of the receipt of the goods, if the goods were delivered to those licensed premises.

(c) No person may redirect goods that are cleared for inward processing to a place other than the licensed premises or that other location.

(2) The release of goods for the inward processing procedure is subject to compliance with any conditions or requirements—

(a) referred to in section 272;

(b) as may be prescribed by Regulations to this Act; and

(c) as may be determined by the Commissioner General in a specific case.

### **Conditions for clearance of goods for export as inward processed compensating products**

272. The Commissioner General shall, clear goods for export under inwards processing procedure if the requirements applicable to the clearance for inward processing of goods of that kind or category have been complied with, including any requirements and conditions prescribed by regulations

**Time limits on clearance for export of inward processed compensating products**

273. (1) The licensee shall clear inward processed compensating products for export within a timeframe determined by regulations to this Act. –

(2) A licensee who clears goods for inward processing shall clear and release the inward compensating products procedure shall, where he fails to clear inward processed compensating products within time frame prescribed in the regulations, immediately notify the Commissioner General of any failure to comply with subsection (1)

**Export of inward processed compensating products**

274. The Commissioner General shall clear and release inward processed compensating products for export regardless of whether

(a) all inward processed compensating products have been cleared and released for export

(b) the compensating products are exported in separate consignments, provided that a separate export clearance declaration is submitted in respect of each consignment; or

(c) the compensating products are exported at a place of exit other than the place of entry through which the goods from which the products were obtained were originally imported.

**Persons entitled to submit export clearance declarations for inward processed compensating products**

275. The following persons shall, submit clearance declarations to clear goods for export as inward processed compensating products:

- (a) the person who originally cleared imported goods for inward processing
- (b) the licensee of the inward processing premises
- (c) the exporter of the inward processed compensating products, provided that the exporter is licensed in terms of this Act; and
- (d) a customs broker

### **Contents of export clearance declarations for inward processed compensating products**

276. A clearance declaration submitted in terms of section 268 for the export of goods as inward processed compensating products shall, in addition to the information required in terms of sections 60 and 270, state—

- (a) that the goods are exported as inward processed compensating products; and
- (b) the reference number and date of the inward processing clearance declaration submitted in respect of the imported goods from which those compensating products were obtained.

### **By-products and commercially valuable waste**

277. (1) If by-products or commercially valuable waste are obtained from the processing of imported goods under the inward processing procedure, the by-products or commercially valuable waste shall, within the specified timeframe be cleared for export as if they are inward processed compensating products..

(2) Notwithstanding subsection (1) by-products or commercially valuable waste may, be allowed into free circulation provided –

(a) the clearance declaration submitted to clear the imported goods for inward processing is amended to exclude from that declaration a quantity of the imported goods which in accordance with a conversion rate determined equals the quantity of such by-products or commercially valuable waste; and

(b) the quantity of imported goods excluded from that clearance declaration is cleared for home use within specified timeframe

(3) A clearance in terms of subsection (2)(b) takes effect from the time the goods were cleared for inward processing



### **Identification measures**

278. The Commissioner General shall take such steps as are necessary for the identification of goods to be exported as inward processed compensating products, including–

- (a) recording any specific marks or numbers on the imported goods that are cleared for inward processing;
- (b) affixing any seals, stamps or individual marks to such goods;
- (c) taking any samples or making use of any illustrations or technical descriptions of such goods; and
- (d) requesting any documentary evidence concerning the processing of the goods.

### **Records and stocktaking**

279. (1) The licensee of inward processing premises shall

- (a) keep records and
  - (b) submit reports Commissioner General in respect of the imported goods, the compensating products, by-products and commercially valuable waste,
- (2) Commissioner General may in terms of the Act; during an inspection
- (a) examine records kept in terms of subsection (1); and
  - (b) take stock of imported goods that are cleared and released for inward processing and the remaining stock; in the licensed inward processing premises
- (3) If during any stocktaking imported goods under the inward processing procedure are found to be –
- (a) greater than the quantity, weight or volume of available stock on the inward processing premises, the excess shall be taken as stock available; or
  - (b) less than the quantity, weight or volume of available stock on the premises, the shortfall shall considered as goods unaccounted for.

### **Appointment of persons to undertake inward processing operations**

280. (1) The licensee of inward processing premises shall make an application to the Commissioner General to approve appointment a person to undertake any processing of goods imported under the inward processing procedure

(2) The application made pursuant to subsection (1) shall be made –

(a) before the goods are delivered to the person appointed to undertake inward processing process; and

(b) on a prescribed form.

### **Use of equivalent goods**

281. (1) The Commissioner General may grant permission to the licensee of the inward processing premises to replace imported goods that are cleared and released for inward processing with goods in free circulation identical in description, quality, technical characteristics and quantity for use in the production of inward processed compensating products.

(2) Where the Commissioner General has granted permission pursuant to subsection (1) the goods that have replaced imported goods cleared and released for inward processing shall be considered to be goods imported, cleared and released for inward processing.

### **Offences**

282. (1) Any person who redirects goods to any place other than a licensed inward processing premises commits an offence and is liable upon conviction to a fine not exceeding fifty thousand maloti or to an imprisonment to a period not exceeding ten years.

(2) Any person who fails to export inward processed compensating products within a prescribed period commits an offence and is liable upon conviction to a fine not exceeding fifty thousand maloti or to an imprisonment to a period not exceeding ten years.

(3) A person who uses imported inward processing goods for any other purpose other than for production of inward processed compensating products, commits an offence

and is liable upon conviction to a fine not exceeding fifty thousand maloti or to an imprisonment to a period not exceeding ten years.

(4) Any person who fails to export inward processed compensating products before expiry of the time frame applicable to inward compensating products, commits an offence and is liable upon conviction to a fine not exceeding fifty thousand maloti or to an imprisonment to a period not exceeding ten years.

(5) Any person who fails to export by products or commercially valuable waste within the time frame referred to section 273, commits an offence and is liable upon conviction to a fine not exceeding fifty thousand maloti or to an imprisonment to a period not exceeding ten years.

(6) A licensee of inward processing premises who fails to keep records or reports in terms of this section 279 ,commits an offence and is liable upon conviction to a fine not exceeding fifty thousand maloti or to an imprisonment to a period not exceeding ten years.

## **PART XX**

### **HOME USE PROCESSING PROCEDURE**

#### **Home use processing procedure**

283. (1) Home use processing is a customs procedure that allows imported goods –

(a) to be processed on home use processing premises without clearing the goods for home use;

(b) to be transported without clearing the goods for national transit; or

(c) to be stored without clearing the goods for warehousing;

(2) products obtained from home use processing shall –

(a) upon fulfilment of the conditions subject to which the imported goods were released for that procedure, become goods in free circulation; or

(b) before they become goods in free circulation,

(i) be stored without clearing them for warehousing, or

(ii) be transported without clearing them for national transit.

#### **Commencement and completion of home use processing procedure**

284. (1) The home use processing procedure commences when imported goods are cleared for home use processing and completed upon fulfilment of the conditions subject to which those goods were released for that procedure

(2) Notwithstanding subsection (1), home use processing procedure may end before its completion if –

(a) the goods before completion of the procedure are cleared and released for another customs procedure or for home use, as may be permissible in the circumstances;

(b) the goods are –

(i) abandoned;

(ii) destroyed under supervision of the Commissioner General or relevant Ministry or Department

- (iii) seized or seized in terms of this Act or any other legislation or an order of court; or
- (iv) damaged, destroyed, lost or unaccounted for

### **Conditions for clearance of imported goods for home use processing**

285. The Commissioner General shall, clear goods imported under home use processing procedure if

- (a) the requirements prescribed in the regulations in respect of clearance for home use processing procedure are complied with
- (b) the premises where home use processing of the goods is carried out are licensed as premises for home use processing;
- (c) the licensee of the premises carrying out home use processing of the goods
  - (i) undertakes to comply with the requirements applicable to home use processing such goods, including any requirements and conditions prescribed by regulations;
  - (ii) has been granted permission for home use processing of the goods on those premises and advised the Commissioner General of such permission, if that licensee is not the person who cleared the goods;
- (d) any import tax payable on the goods is covered by surety.

### **Persons entitled to submit home use processing clearance declarations**

286. The following persons shall submit clearance declarations to clear imported goods for home use processing:

- (a) The importer licensed to import goods for home use processing;
- (b) the licensee of the home use processing premises; and
- (c) a customs broker

### **Contents of home use processing clearance declarations**

287. A clearance declaration for home use processing of imported goods shall in addition to the information required for clearance of goods, state –

- (a) that the goods are cleared for the home use processing procedure;

(b) details of any permit and, authorisation granted in respect of the goods.

(c) the customs code of licensed premises

### **Release of imported goods for home use processing**

288. (1) Where goods are released for the home use processing procedure, the licensee shall deliver the goods to the licensed home use processing premises for processing unless the Commissioner General directs otherwise.

(2) Where goods released for inward processing are delivered to the licensed home use processing premises or to any other licensed premises determined by the Commissioner General for processing—

(a) the carrier that transported the goods shall notify the Commissioner General of the delivery; and

(b) the licensee shall notify the Commissioner General of receipt of the goods, if the goods were delivered to those licensed premises.

(3) Where Commissioner General directs goods for home use processing procedure to licensed premises, no person may redirect goods to a place other than the licensed premises

### **Goods under home use processing procedure only to be used for production of products and compensating products**

289. (1) The Commissioner General shall clear and release imported goods under home use processing procedure for the production of products of the kind or category stated in the clearance declaration of the goods,.

(2) Products obtained from processing of imported goods referred to in subsection (1) shall for purposes of this Act be regarded compensating products

(3) The person clearing the goods shall

(a) notify the Commissioner General if imported goods under the home use processing procedure are no longer intended to be used for the purpose referred to subsection (1)

(b) clear the goods for another customs procedure.

### **Time limits on completion of home use processing of goods**

290. (1) The licensee shall clear home use compensating products under home use procedure within a timeframe determined by regulations to this Act. –

(2) A licensee who clears home use compensating products under home use procedure shall, where he fails to clear within time frame prescribed in the regulations, immediately notify the Commissioner General of any failure to comply with subsection (1).

### **Home use compensating products to be dealt with as goods in free circulation**

291. (1) The Commissioner General shall clear and release compensating products obtained from the processing of imported goods under the home use processing procedure

(a) as goods in free circulation. without any clearance and release of the goods for home use;

(b) for export as goods in free circulation

### **By-products and commercially valuable waste**

292. (1) ) If by-products or commercially valuable waste are, , obtained from the processing of imported goods under the home use processing procedure, the by-products or commercially valuable waste may be allowed as goods in free circulation provided –

(a) the clearance declaration submitted to clear the imported goods for home use processing is amended to exclude a quantity of the imported goods which in accordance with a conversion rate determined in terms of section 293 equals the quantity of such by-products or commercially valuable waste; and

(b) the quantity of imported goods excluded from the clearance declaration is cleared for home use within the specified timeframe

### **Conversion rates**

293. (1) The licensee of the home use processing premises where imported goods are processed under the home use processing procedure shall determine a conversion rate, approved by the Commissioner General, that shall for purposes of this Part be used for determining –

(a) the quantity of compensating products, and of by-products or waste, that should in the ordinary course of processing the imported goods for the relevant purpose be obtained from a specific quantity of those goods; or

(b) the quantity of those imported goods that, in the ordinary course of processing the goods for the relevant purpose, would have been used in order to obtain a specific quantity of compensating products, by-products or waste.

(2) Quantities may for purposes of subsection (1) be determined by number, weight, volume or any other measuring unit, as may be appropriate.

(3) In determining a conversion rate, account shall be taken of any –

(a) evaporation;

(b) drying-out;

(c) any other losses that may result from the nature of the goods used; and

(d) any other relevant factors.

### **Records and stocktaking**

294. (1) A licensee of home use processing premises shall

(a) keep records and

(b) submit reports Commissioner General in respect of the imported goods, the compensating products, by-products and commercially valuable waste

(2) Commissioner General may in terms of the Act; during an inspection

(a) examine records kept in terms of subsection (1); and

(b) take stock of imported goods that are cleared and released for home use processing and the remaining stock; in the licensed home use processing premise



(3) If during any stocktaking imported goods under the home use processing procedure are found to be –

(a) greater than the quantity, weight or volume of available stock on the home use processing premises, the excess shall be taken as stock available on hand; or

(b) less than the quantity, weight or volume of available stock that should be on hand on the premises, the shortfall shall be considered as goods unaccounted for

### **Appointment of persons to undertake home use processing operations**

295. (1) A licensee of home use processing premises shall make an application to the Commissioner General to approve the appointment of a person to undertake any processing. Of goods imported under the home use processing procedure

(2) The application made pursuant to subsection (1) shall be made –

(a) before the goods are delivered to the person appointed to undertake home use processing process; and

(b) on a prescribed form.

### **Offences**

296. (1) A person who redirects goods to a place other than a licensed premises commits an offence and is liable upon conviction to a fine not exceeding fifty thousand maloti or to an imprisonment for a period not exceeding ten years.

(2) A person who does not comply with the requirements and conditions relating to imported goods cleared for home use processing procedure, as may be prescribed by regulations to this Act, commits an offence and is liable upon conviction to a fine not exceeding fifty thousand maloti or to an imprisonment for a period not exceeding ten years.

(3) A person who uses home use processing goods for any other purpose other than for production of home use compensating products, commits an offence and is liable upon conviction to a fine not exceeding fifty thousand maloti or to an imprisonment to a period not exceeding ten years.

(4) Any person who fails to export home use compensating products before expiry of the time frame applicable to home use compensating products, commits an offence and is liable upon conviction to a fine not exceeding fifty thousand maloti or to an imprisonment for a period not exceeding ten years.

(5) Any person who fails to export by products or commercially valuable waste within the time frame referred to section 290, commits an offence and is liable upon conviction to a fine not exceeding fifty thousand maloti or to an imprisonment to a period not exceeding ten years.

(6) A licensee of home use processing premises who fails to keep records or reports in terms of this section 294 ,commits an offence and is liable upon conviction to a fine not exceeding fifty thousand maloti or to an imprisonment for a period not exceeding ten years.

## **PART XXI**

### **OUTWARD PROCESSING PROCEDURE**

#### **Outward processing procedure**

297. Outward processing is a customs procedure that allows –

- (a) goods to be exported from Lesotho under this procedure for processing abroad; and
- (b) products obtained from the processing of those goods to be imported into Lesotho and cleared and released for home use under this procedure as outward processed compensating products.

#### **Commencement and completion of outward processing procedure**

298. (1) The outward processing procedure commences when imported goods are cleared for outward processing and completed when products obtained from the goods are imported into Lesotho and cleared and released for home use as outward processed compensating products.

(2) Notwithstanding subsection (1), outward processing procedure may end before its completion if –

- (a) the goods before completion of the procedure are cleared and released for another customs procedure,;
- (b) the goods are –
  - (i) abandoned;
  - (ii) destroyed under supervision of the Commissioner General or relevant Ministry or Department
  - (iii) seized or seized in terms of this Act or any other legislation or an order of court; or
  - (iv) damaged, destroyed, lost or unaccounted for

#### **Conditions for clearance of goods for outward processing**

299. The Commissioner General shall, clear and release goods under outward processing if -

(a) the requirements applicable to the clearance for outward processing of goods of that kind or category have been complied with, including any requirements and conditions as may be prescribed by regulations

(b) the person who clears the goods for outward processing –

(i) undertakes to comply with the requirements applicable to the outward processing of goods and the importation of outward processed compensating products obtained from those goods; and(ii) gives surety for the payment of any export tax payable;

(c) measures have been taken to ensure that goods are cleared for home use as outward processed compensating products ;

### **Persons entitled to submit clearance declarations for export of goods for outward processing**

300. The following persons shall submit clearance declarations to clear imported goods for outward processing:

(a) an exporter of the goods, if that exporter is located in Lesotho

(b) the agent in Lesotho of the exporter, if that exporter is not located in Lesotho; or

(c) a customs broker

### **Contents of clearance declarations for export of goods for outward processing**

301. A clearance declaration for outward processing of goods shall in addition to the information required for clearance of goods, state –

(a) that the goods are cleared for export for outward processing

(b) details of any permit and, authorization granted in respect of the goods.

(c) the name and street address of the person to whom any such permit, permission or authorization was granted; and

(d) the kind of compensating products that will be obtained from the outward processing of the goods.

### **Release of goods for export under outward processing procedure**

302. The release of the goods for export under the outward processing procedure is subject to compliance with any conditions or requirements determined by the Commissioner General or regulations made under this Act..

**Conditions for clearance for home use of outward processed compensating products**

303. The Commissioner General shall, clear goods for home use as outward processed compensating products if –

(a) those goods were obtained from goods exported from Lesotho under the outward processing procedure;

(b) the requirements applicable to the clearance for outward processing of goods have been complied with, including any requirements and conditions prescribed by regulations

(c) any conditions subject to which those goods were released for export under the outward processing procedure have been complied with.

**Time limit on clearance for home use of outward processed compensating products**

304. A person exporting goods under outward processing procedure shall clear the goods for home use as outward processed compensating products only if those compensating products were imported into Lesotho within a timeframe prescribed in the regulations to this Act

**Importation of outward processed compensating products**

305. The Commissioner General shall clear and release for home use as outward processed compensating products regardless of whether;

(a) a part of the compensating products obtained from the goods exported for outward processing

(b) the compensating products are imported in separate consignments and a separate clearance declaration is submitted in respect of each consignment; or

(c) the compensating products are imported at a place of entry other than the place of exit from where the goods from which the products were obtained were originally exported; or

(d) the compensating products are imported by a person other than the person who exported the goods from which the products were obtained.

### **Persons entitled to submit home use clearance declarations for outward processed compensating products**

306. The following persons shall submit clearance declarations to clear goods for home use as outward processed compensating products:

(a) The person who originally cleared the goods from which the compensating products were obtained for outward processing; or

(b) a customs broker

### **Contents of home use clearance declarations for outward processed compensating products**

307. A clearance declaration to clear goods for home use as outward processed compensating products shall state –

(a) that the goods are cleared for home use as outward processed compensating products;

(b) the reference number and date of the clearance declaration submitted in respect of the export for outward processing of the goods from which those compensating products were obtained;

(c) the street address of the person to whom the compensating products are consigned; and

(d) details of any permit and, authorisation granted in respect of the goods

### **Conversion rates for goods to compensating products**

308. (1) The Commissioner General may in respect of any goods exported under the outward processing procedure approve a conversion rate that shall for purposes of this Part be used for determining –

(a) the quantity of compensating products that should in the ordinary course of processing the exported goods for the relevant purpose be obtained from those goods; or

(b) the quantity of those exported goods that, in the ordinary course of processing the goods for the relevant purpose, would have been used in order to obtain a specific quantity of compensating products.

(2) Quantities may for purposes of subsection (1) be determined by number, weight, volume or any other measuring unit, as may be appropriate.

(3) In determining a conversion rate, account shall be taken of any –

(a) evaporation;

(b) drying-out;

(c) any other losses that may result from the nature of the goods used; or

(d) any other relevant factors.

### **Identification measures**

309. The Commissioner General shall take such steps as are necessary for the identification of goods to be exported as outward processing compensating products, including –

(a) recording any specific marks or numbers on the exported goods that are cleared for outward processing;

(b) affixing any seals, stamps or individual marks to such goods;

(c) taking any samples or making use of any illustrations or technical descriptions of such goods; and

(d) requesting any documentary evidence concerning the processing of the goods.

### **Specific grounds for regarding goods exported under outward processing procedure to be cleared for outright export**

310. The Commissioner General shall, for tax purposes, consider goods exported under the outward processing procedure to be cleared as outright exports.(2) the exported goods referred to in subsection (1) shall not be used for outward processing; if

(a) ownership of –

(i) the exported goods is transferred after the goods have been exported from Lesotho; or

(ii) compensating products obtained from the processing of those exported goods is transferred before import of the products into Lesotho;

(b) compensating products obtained from the processing of those exported goods –

(i) are not cleared for home use as outward processed compensating products within the applicable timeframe ; or

(ii) are cleared but after clearance are damaged, destroyed, lost or unaccounted for;

(c) imported goods are cleared for home use as outward processed compensating products obtained from those exported goods and the Commissioner General refuses release of the goods

(d) imported goods are cleared and released for home use as outward processed compensating products obtained from those exported goods and the Commissioner General withdraws the clearance

(e) the Commissioner General is notified that compensating products obtained from those exported goods will not be cleared for home use as outward processed compensating products.

### **Offences**

311. A person clearing goods for outward processing procedure and fails to comply with a condition or requirement referred to in section 303 commits an offence and is liable upon conviction to a fine not exceeding fifty thousand maloti or to an imprisonment for a period not exceeding ten years.



## **PART XXII – CUSTOMS TARIFF**

### **Use of Tariff book**

312. (1) A person who imports or exports shall use a Tariff book specified in Schedule .... Of the Act

(2) The Tariff book referred to in subsection (1) shall specify—

(a) the duties;

(b) the classes and kinds of goods in respect of the duties; and

(c) the rates of, the requirements, conditions and relief applicable to; and

(d) other matters relating to the duties.

### **Amendment of Customs Tariff**

313. (1) The Minister shall by notice in the Gazette, publish the Customs Tariff in relation to imported goods to give effect to any international obligations on tariffs and trade.

(2) Where the Minister of Finance implements national financial and fiscal policies, he shall notify the Minister responsible for trade who shall submit proposals of amendments to National Tariff Board.

### **Provisional anti-dumping, countervailing or safeguard duty**

314. (1) Where the National Tariff Board proposes anti-dumping, countervailing or safeguard investigation in respect of goods imported, the Minister shall publish, by notice in the Gazette an anti-dumping, countervailing or safeguard provisional duty on the goods from such date and for such period and for such amounts the Minister may prescribe.

(2) Where the National Tariff Board requests amendment of anti-dumping, countervailing or safeguard duties, the Minister shall-

(a) amend a notice published pursuant to subsection (1) to give effect to-

(i) an extension of the period for which the provisional duty was imposed;

(ii) a reduction or increase of the rate of the provisional duty; or

(iii) withdrawal of the notice.

(3) An importer of goods shall pay provisional anti-dumping, countervailing or safeguard duty imposed on the goods.

(4) Where a provisional anti-dumping, countervailing or safeguard duty is imposed pursuant to subsection (1), the Commissioner General shall-

(a) refund any excess amount paid to the importer if the amount paid exceeds the rate of duty paid; or

(b) not recover any duty if the amount paid is less than the rate of the duty paid.

### **Duty in relation to SACU Agreement**

315. (1) A person who imports goods from outside SACU into Lesotho shall pay customs duties to the Commissioner General in terms of this Act.

## **PART XXIII**

### **PAYMENT OF DUTY, PENALTY, INTEREST AND FEES**

#### **Commencement of duty**

316. An import duty on dutiable goods imported in Lesotho becomes payable when the goods are—

(a) cleared for home use;

(b) cleared for any other customs procedure; or

(c) liable for tax purposes of Value Added Tax Act 2001.

(2) An import duty payable in terms of—

(a) subsection (1)(a) and (b), shall be paid within seven calendar days of the time the goods are cleared for home use or for any other customs procedure; or

(b) subsection (1)(c), shall be paid on or before a date specified for payment in the Value Added Tax Act 2001.

(3) The liability for payment of import duty imposed pursuant to subsection(1) shall cease when-

(a) goods are cleared for home or a customs procedure that confers a tax due on the goods;

(b) duty on the goods as assessed or re-assessed is paid in full;

(c) the obligation of payment of duty no longer exists;

(d) goods are cleared and released for export under the export procedure;

(e) goods are destroyed under supervision of the Commissioner General; or

(f) goods are abandoned to the Commissioner General.

#### **Time when import duty becomes payable**

317. (1)An import duty on dutiable goods imported into Lesotho becomes payable if and when the goods are—

(a) cleared for home use under Part VIII;

(b) cleared for a customs procedure that confers a tax due or partial tax due status on the goods; or

(c) for tax purposes regarded to be cleared for home use under Part VIII.

(2) An import duty payable in terms of—

(a) subsection (1)(a) or (b), shall be paid within seven calendar days of the time the goods are cleared for home use under Part VIII of this Act or for the relevant customs procedure; or

(b) subsection (1)(c), shall be paid on or before a date specified for payment in a notice demanding payment of the duty.

(3) For purposes of subsection (2)(a) the time of clearance of goods shall be determined in accordance with section 66 of this Act: Provided that in the case of an expedited clearance or release of goods in terms of Part XXXIV of this Act, the time of clearance of the goods shall be regarded to be the time when a clearance declaration in respect of the goods as contemplated in section 411(1) of this Act which complies with the requirements set out in section 64(1) of this Act is accepted by the Commissioner General in terms of section 64(1).

(4) Subsection (2)(a) does not apply—

(a) to the extent that payment of an import duty on goods is deferred in terms of section 318, and in such a case the duty shall be paid on or before the deferred date determined in terms of that section;

(b) to dutiable items in the accompanied or unaccompanied baggage of a person, other than commercial goods, and in such a case any duty payable on such items shall be paid on demand; or

(c) to international postal articles cleared in accordance with the simplified clearance process contemplated in section 394 of this Act, and in such a case any import duty payable on such postal articles shall be paid before the postal article is delivered by the Lesotho Post office to the consignee.

### **Deferment of payment of duty**

318. (1) An importer of dutiable goods shall make an application to the Commissioner General for deferred payment of dutiable goods.

(2) The Commissioner General shall, where he considers that an importer has reliable record and secured a security, approve an application made pursuant to subsection (1).

(3) Where deferred payment is approved in terms of subsection (2), no interest shall be payable on deferred duties if payment is made on or before due date.

(4) Where an importer is granted a deferment payment, payment shall be made within a period of twenty one days of approval.

### **Grounds for suspension or withdrawal of deferment benefit**

319. (1) The Commissioner General may suspend a duty deferment benefit granted to an importer of dutiable goods, where an importer-

(a) has breached a condition applicable to the benefit;

(b) failed to pay within seven days;

(c) has breached a provision of this Act, Income Tax Act or the Value Added Tax;

(d) is convicted of an offence under this Act, Income Tax Act or the Value Added Tax Act; or

(e) has changed any circumstances material to the granting of the benefit, including the legal status, legal identity and financial soundness of the person to whom the benefit has been granted;

(2) The Commissioner General may withdraw a duty deferment benefit granted to an importer of dutiable goods, where an importer

(a) acquired the benefit under false pretense;

(b) is no longer engaged in the import or export of goods or related activities; or

(c) is sequestrated or liquidated;

(d) is convicted of an offence involving fraud or dishonesty;

(3) Notwithstanding subsections (1) and (2), an importer of dutiable goods shall pay to the Commissioner General any outstanding deferred amounts within three working days from the date of suspension or withdrawal.

(4) The Commissioner General shall, where he intends to suspend or withdraw a deferment benefit -

(a) notify and give reasons to the importer of dutiable goods;

(b) give the importer of dutiable goods an opportunity to submit representations on the proposed suspension or withdrawal within three days of receipt of notification;

(5) Notwithstanding subsection (4), the Commissioner General shall immediately suspend the deferment benefit without notifying or giving reasons, where he considers it necessary.

(6) An importer whose deferment benefit is suspended pursuant to subsection (5), may submit representations on the suspension to the Commissioner General within three days of the suspension.

(7) Where the Commissioner General is not satisfied with reasons advanced pursuant to subsection (4)(b), he shall issue suspension or withdrawal notification.

(8) Where the Commissioner General decides to suspend or withdraw a deferment benefit, he shall—

(a) notify the importer of dutiable goods of the decision including—

(i) the period for which the benefit is suspended; or

(ii) the date from which the benefit is withdrawn; and

(b) notify importer of dutiable goods of the right to appeal against the decision.

### **Payment of import duty on dutiable goods cleared for home use**

320. (1) The importer of dutiable goods cleared for home use or customs procedure shall pay import duty to the Commissioner General on or before the due date.

(2) Where the importer of dutiable goods fails to pay duties for goods cleared for home use or any other customs procedure, the Commissioner General shall recover duties from the importer of dutiable goods or his representative.

### **Limitation on liability of customs broker**

321. (1) The Commissioner General shall not demand payment of import duties from a customs broker who submitted a clearance declaration on behalf of the importer if the customs broker:

(a) was not a participant in the non-compliance;

(b) when becoming aware of the failure promptly notified the Commissioner General of non-compliance; and

(c) took all reasonable steps to prevent non-compliance.

(2) A customs broker who submitted a clearance declaration is liable in terms of subsection (1) for payment of a duty if—

(a) payment of the duty was deferred in terms of a duty deferment benefit granted to the customs broker;

(b) the customs code or the name and physical address of the person on whose behalf the declaration was submitted is not disclosed on the declaration; or

(c) the person on whose behalf the declaration was submitted is not located in Lesotho and has no registered agent located in Lesotho representing the person in Lesotho.

### **Duty collected from security**

322. Where an importer of dutiable goods has lodged a security in terms of this Act, and fails to pay the amount of duty due, the Commissioner General shall recover duties due to him in full from security covering the goods.

### **Under-payment of duty or administrative penalty**

323. (1) Where an importer of dutiable goods makes under payment of import duty or administrative penalty to the Commissioner General, the Commissioner General shall

recover duties due from the importer who partially paid the duty or the security lodged by the importer.

(2) Where an importer of dutiable goods makes under payment of import duty or administrative penalty pursuant to subsection (1) and the amount of an under-payment is less than M100, the Commissioner General may decide not to recover the under payment.

### **Establishing a lien over goods to secure payment of duty**

324. (1) Where the importer of dutiable goods owes the Commissioner General an import duty on dutiable goods or any taxes due to the Commissioner General, the Commissioner General may place a lien on the goods in order to secure payment of duties or other taxes.

(2) Where the Commissioner General places a lien on the goods pursuant to subsection (1), the Commissioner General shall issue a written notice of attachment to the importer of dutiable goods or the person in whose possession or custody the goods are.

(3) A notice of attachment made pursuant to subsection (2) shall—

(a) identify the goods to which it relates;

(b) state the period on which the goods are attached;

(c) state purposes of establishing a lien pending payment of a duty owed to the Commissioner General in terms of this Part;

(d) state particulars and the amount of the duty; and

(e) contain any other particulars as may be determined by the Commissioner General.

(4) Where the Commissioner General places a lien on the goods pursuant to subsection (1), he shall —

(a) seal, mark, lock, fasten at the place where the goods are attached; or

(b) remove to a State warehouse or any premises licensed in terms of this Act.

(5) Where goods are sealed, marked, locked and fastened pursuant to subsection (4), no person may without the permission of the Commissioner General—



- (a) open, break, destroy, alter or in any way tamper with the seal, mark or lock; or
- (b) remove the goods from the place where the goods are attached.

(6) Where goods are removed to a State warehouse or any premises licensed in terms of this Act, no person may without the permission of the Commissioner General remove the goods from the warehouse or premises.

(7) The person who contravenes subsection (6) commits an offence and is liable on conviction to a fine not exceeding M20,000 or imprisonment for a period not exceeding two years.

#### **Attachment of goods in which importer of dutiable goods has no ownership**

325. The Commissioner General shall release from a lien any goods attached in terms section 328 where it is proven by any person claiming to be the owner of or to have a right in the goods that the importer of dutiable goods is not the owner or co-owner of the goods or does not have any title, right or interest in the goods.

#### **Attachment of goods in which importer of dutiable goods is co-owner**

326. (1) The importer of dutiable goods shall, where dutiable goods are placed under lien pursuant to section 328, notify the Commissioner General, in writing, that he is the co-owner.

(2) The notification made pursuant to subsection (1) shall state the following:

- (a) The name and address of the other co-owner;
- (b) the importer of dutiable goods share in the goods, expressed as a percentage;
- (c) a copy of an agreement in terms of which such co-ownership was established; or
- (d) an affidavit signed by the importer of dutiable goods attesting to such co-ownership;
- (e) any other information as may be determined by the Commissioner General.

(3) The Commissioner General shall upon receipt of notification made pursuant to subsection (1) –

- (a) notify the other co-owner that the goods are placed under a lien; and

(b) request the other co-owner to corroborate the importer of dutiable goods` share in ownership of the goods.

### **Effects of a lien**

327. (1) Where goods are placed under a lien pursuant to section 328,the Commissioner General and the importer whose goods are placed under lien shall not sell, transfer, hypothecate, pledge or mortgage the goods until the goods are released to the importer of dutiable goods or co-owner.

(2) ) Where an importer whose goods are placed under lien enters into an agreement with any other person after goods have been placed under lien, the agreement shall be null and void.

(3)The importer of dutiable goods shall be liable for all costs and expenses incurred by the Commissioner General for removal to and storage of goods in a State warehouse or any licensed premises.

(4) The Commissioner General may allow the importer, to continue using goods referred to in subsection (1) for a purpose and on conditions as the Commissioner General may determine.

(5) Where an importer enters into an agreement or uses the goods contrary to this section or any conditions imposed by the Commissioner General, the Commissioner General may take custody of the goods and order the removal of the goods to a state warehouse or any licensed premises.

### **Termination of lien**

328. The Commissioner General shall terminate a lien placed over goods where duties applicable are paid, the goods are sold in terms of this Act or for any other reasons he may consider necessary.

### **Sale of lien goods**

329. (1) The Commissioner General shall sell goods placed under lien when the period stated in the notification made pursuant to section 328 expires —

(a) by public auction;

(b) by public tender; or

(c) out of hand.

### **Application of proceeds realized for lien goods**

330. (1) Where the goods placed under lien are sold pursuant to section 329, the Commissioner General shall use the proceeds of goods sold to pay for the following claims in the order of preference-

(a) duty for which the goods are attached;

(b) any outstanding tax or administrative penalties payable in respect of the goods

(c) any expenses incurred by the Commissioner General in connection with the goods, including—

(i) state warehouse rent, if the goods were removed to a state warehouse;

(ii) costs incurred by the Commissioner in selling the goods in terms of section 330;

(d) any charges owed to the licensee of the licensed premises where the goods were kept, or removed to licensed premises; and

(2) Where there is surplus remaining after all claims are met pursuant to subsection (1), the importer of dutiable goods shall make an application within three years of the date of sale of goods for surplus to the Commissioner General.

### **Payment of Fees**

331. The importer or exporter who submits a clearance declaration shall make a payment of a fee prescribed in the Regulations to this Act.

### **Method of payment of duties, taxes, administrative penalties and fees**

332. The following are payments methods be used in paying duties, taxes, administrative penalties and fees owed to the Commissioner General-

(a) cash payment or payment by bank guaranteed cheque with the limit prescribed by the Commissioner General;.

(b) electronic payments;

(c) payments in any other manner.

### **Offences**

333. (1) A person who breaks, opens destroys alters, remove or tamper with a seal mark or lock on the lien goods without permission of the Commissioner General, commits an offence and is liable upon conviction to a fine not exceeding fifty thousand maloti or to an imprisonment for a period not exceeding ten years.

(2) Any person who sells, transfers, hypothecates, pledges, mortgages, goods subject to lien without the approval of the Commissioner General commits an offence and is liable upon conviction to a fine not exceeding twenty thousand maloti or to an imprisonment for a period not exceeding ten years.

(3) A person to whom a deferment of duty benefit has been granted who fails to comply with a condition referred to in section 318 commits an offence and is liable upon conviction to a fine not exceeding ten thousand maloti or to an imprisonment for a period not exceeding five years.

(4) A debtor who is the co-owner of goods attached in terms of section 326 or who is a party to a credit agreement referred to in section 326 who fails to disclose to the Commissioner General co-ownership, (1) commits an offence and is liable upon conviction to a fine not exceeding ten thousand maloti or to an imprisonment for a period not exceeding five years.

## **PART XXIV**

### **DRAWBACKS AND REFUNDS**

#### **Application for Drawbacks**

334. (1) Where an importer of dutiable goods imports goods for manufacturing and exports, he may make an application to the Commissioner General for a drawback.

(2) The application made pursuant to subsection (1) shall be-

(a) made in a manner prescribed in the regulations to this Act;

(b) accompanied by import and export declaration documents; and

(c) made within a period of six months of the date of export.

(3) The Commissioner General shall where he is satisfied with the application made pursuant to subsection (1) approve the application and issue a drawback..

(4) The Commissioner General may, where he is not satisfied with the application made pursuant to subsection (1), refuse the application and notify the importer of dutiable goods in writing of his reasons for the refusal.

#### **Application for refunds**

335. (1) The Commissioner General may, where an importer of dutiable goods has made an application for a refund, consider the application for the refund of import duty to the importer of dutiable goods under the following circumstances:

(a) where an error in determining an assessment of duty is made;

(b) where an assessment on a value higher than the value for duty purpose is made;

(c) where an error in determining tariff classification is made;

(d) where all or part of imported dutiable goods are short landed or short packed; or

(e) where voucher of correction (voc) is made;

(f) where an incorrect valuation of the goods is made;

(g) an incorrect origin decision in respect of the goods is made;

(h) where a decision in respect of disputes resolution proceedings is made; and

- (i) where a judgement by a competent court is made.
- (2) The application made under this Act shall be-
  - (a) accompanied by import and export declaration documents; and
  - (c) made within a period of two years from the date on which duty was paid.
- (3) Notwithstanding subsection 3(c), the Commissioner General may consider the application for a refund after a period of two years.
- (4) The Commissioner General shall where he is satisfied with the application made pursuant to subsection (1) approve the application and issue a refund.
- (5) This section shall not apply where the amount of refund is less than M50.

**Set-off of refund or drawback against amount owing**

336. (1) Where a refund or drawback is payable under sections 334 and 335 to a person who has failed to pay an amount of tax, duty, levy, charge, interest or administrative penalty imposed under this Act, Income Tax Act and Value Added Tax Act within the period required for payment of the amount, the Commissioner General may set off the amount of the refund or drawback against the amount which that person has failed to pay.

**Offences**

337. A person who claims, or receives and keeps, any refund or drawback to which he is not entitled to, commits an offence and is liable upon conviction to a fine not exceeding ten thousand maloti or to an imprisonment for a period not exceeding two years.

## **PART XXV**

### **ASSESSMENT OF DUTY**

#### **Assessment of Duty**

338. (1) The Commissioner General shall, before releasing dutiable goods, for home use or any other customs procedure,

(a) determine dutiability of goods; and

(b) if dutiable, assess the amount of duty payable on the goods.

(2) In assessing the amount of duty payable on the goods, the Commissioner General shall —

(a) adopt any self-assessment of duty as stated on the clearance declaration of the goods as its own assessment of the duty on the goods; or

(b) make his own assessment of duty on the goods.

(3) Where the Commissioner General makes his own assessment in terms of subsection

(3)(b) the amount so assessed shall be paid to the Commissioner General.

(4) The Commissioner General shall in assessing dutiable goods, consider the following factors:

(a) the tariff classification of the goods;

(b) the customs value of the goods; the quantity, weight, volume, measurement or other specifics of the goods;

(c) the origin of the goods if the dutiability of, or the amount of duty on, the goods is affected by the origin of the goods;

(d) the rate of duty applicable to the goods; and

(e) any other specific factor regulating the duty or the calculation of the amount of duty that may be payable on the goods.

#### **Applicable rate of duty**

339. (1) The Commissioner General shall, when clearing goods for home use or any other customs procedure apply the rate of duty applicable at the time of clearance of the goods.

(2) An importer and exporter of dutiable goods shall when submitting clearance declaration, for home use or any other customs procedure apply the rate of duty applicable at the time of submission of clearance of the goods.

#### **Self-assessment of duty by importer**

340. (1) An importer of dutiable goods shall, at the time of importation, make a declaration and a self-assessment for purposes of determining duty applicable.

(2) Where an importer of dutiable goods identifies any error on a self-assessed declaration made in respect of the goods, he shall notify the Commissioner General of the error.

#### **Duty re-assessment by Commissioner General**

341. (1) Where assessment made pursuant to section 338 is incorrect, the Commissioner General may make a re-assessment of duty on goods imported irrespective of whether-

- (a) the goods have been released;
- (b) the goods are still subject to customs control; or
- (c) an amount of duty has been paid on the goods.

(2) When making a re-assessment in terms of subsection (1), the Commissioner General is not obliged to consider all factors stated in section 338(4).

(3) Where the Commissioner General makes re-assessment in terms of this section, he shall notify the importer of dutiable goods, in writing, of his decision to re-assess.

(4) The re-assessment made pursuant to subsection (1) may be made only within a period of five years from the date assessment of duty.



(5) Where the re-assessment is made and the amount of duty in respect of the re-assessment exceeds the amount of duty assessed, the Commissioner General shall recover the amount of duty under-paid.

(6) Where the re-assessment is made and the amount of duty in respect of the re-assessment is less than the amount of duty assessed, the Commissioner General shall make a refund to the importer for the overpaid amount.

(7) The amount of duty under paid or overpaid shall be paid or refunded on or before a date specified on the payment notice demanding payment of the amount.

### **Limitation on goods in respect of which re-assessment may be made**

342. (1) Where there is a pending case in court in respect of reassessment of duty, the Commissioner General may suspend reassessment of duty

(2) where the Commissioner General suspends reassessment of duty pursuant to subsection (1), and a court judgement is given the Commissioner General shall make a reassessment only in respect of goods which the decision or final judgement was given.

### **Request for additional information and documents**

343. The Commissioner General may request the importer of dutiable goods to furnish him with additional information or documents for considering or making a duty assessment or re-assessment in respect of goods.

### **Offences**

344. (1) A person clearing goods for home use or outright export or for another customs procedure that confers a tax due or partial tax due status on the goods in relation to import or export duty and fails to determine the dutiability of the goods in terms of section 340(1), commits an offence and is liable upon conviction to a fine not exceeding twenty thousand maloti or to imprisonment for period not exceeding three years or both fine and imprisonment.

(2) Any person who makes a self-assessment-

(a) which he knows is not true or could not reasonably have believed to be true; or;

(b) with the intention to mislead uses false or misleading information; or

(c) with the intention to mislead omits to use accurate information.

commits an offence and is liable upon conviction to a fine not exceeding twenty thousand maloti or to imprisonment for period not exceeding three years or both fine and imprisonment.

(3) Any person who fails to comply with the direction issued by Commissioner General in terms of section 340 (2) commits an offence and is liable upon conviction to a fine not exceeding twenty thousand maloti or to imprisonment for period not exceeding three years or both fine and imprisonment.

(4) Any person who fails to furnish information and documents requested by the Commissioner General in terms of section 343 commits an offence and is liable upon conviction to a fine not exceeding one hundred thousand maloti or to imprisonment for period not exceeding ten years or both fine and imprisonment.

## **PART XXVI**

### **TARIFF CLASSIFICATION OF GOODS**

#### **Tariff classification**

345. (1) The Commissioner General and the importer or exporter shall, make tariff classification of goods in accordance with the Customs Tariff Book.

(2) The Commissioner General shall make tariff determination of goods as and when necessary

(3) A tariff determination of goods in terms of subsection (2) shall be consistent with any advance tariff ruling that may be applicable to the goods.

(4) A tariff determination in terms of subsection (2) may be made in respect of goods irrespective of whether or not—

(a) the goods—

(i) are cleared;

(ii) are released;

(iii) are dutiable; or

(iv) are still subject to customs control;

(b) a tariff self-determination is made in respect of the goods; or

(c) an amount of duty are paid on the goods.

(5) The Commissioner General shall give notice of any tariff determination in terms of subsection (2) to the importer or exporter of goods.

(6) A tariff determination of goods in terms of subsection (2) replaces any tariff self-determination applicable to the goods .

#### **Tariff self-determination of goods when goods are cleared**

346. (1) The importer of goods shall, when declaring goods for home use or any other customs procedure -

(a) make a self-determination of the tariff classification of the goods irrespective of whether duty is payable on the goods; and

(b) state the tariff classification of the goods made in terms of paragraph (a) on the clearance declaration.

(2) In making a self-determination of the tariff classification of any goods, the importer of goods shall notify the Commissioner General of any error identified.

(3) Subsection (1) does not apply to—

(a) accompanied or unaccompanied baggage except if goods are commercial;

(b) international postal articles cleared in accordance with the simplified clearance process; or

(c) any other category of goods excluded by regulations from tariff self-determination.

#### **Re-determination of tariff determination**

347. (1) Where tariff determination made pursuant to section 345(2) is incorrect, the Commissioner General may make re-determination irrespective of whether or not the goods—

(a) are cleared;

(b) are released;

(c) are dutiable;

(d) are still subject to customs control;

(e) a tariff self-determination has been made in respect of the goods; or

(f) an amount of duty has been paid on the goods.

(2) The Commissioner General shall, in determining tariff classification of goods, take into consideration the advance tariff ruling.

(3) Where the Commissioner General makes re-determination in terms of this section, he shall notify the importer goods, in writing, of his decision to re-determine.

(4) Where the re-determination is in relation to dutiable goods, the Commissioner General may make a re-determination after a period of three years from the date of determination if the re-determination is to give effect to the following-

(a) a decision in any administrative appeal or dispute resolution proceedings;

(b) a dispute settlement;

(c) a retrospective amendment to the Customs Tariff; or

(d) a court order given or confirmed in a final judgement; or

(e) to rectify an underpayment or non-payment of duty that occurred as a result of fraud, misrepresentation, a false declaration or non-disclosure of material facts; and

(5) Where the Commissioner general makes tariff re-determination in terms of subsection (1) the tariff re-determination replaces the previous tariff determination or tariff re-determination .

### **Correction of error in tariff determination or re-determination**

348. Where the Commissioner General or an importer of goods identifies any error on determination or re-determination of goods in respect of the goods which does not affect the tariff classification given to the goods in the determination or re-determination, the Commissioner General shall make corrections and notify the importer of the correction.

### **Request for information and documents**

349. The Commissioner General may request the importer of goods to furnish him with additional information or documents for considering or making a re-determination in respect of goods.

### **Offences**

350. (1) A person clearing goods who fails to makes a tariff self-determination of the tariff classification in terms of section 346 commits an offence and is liable upon conviction to a fine not exceeding twenty thousand maloti or to imprisonment for a period not exceeding three years or both fine and imprisonment.

(2) Any person who fails to report to the Commissioner General the discovery of any inaccuracy in a tariff self-determination in respect of the goods commits an offence and is liable upon conviction to a fine not exceeding twenty thousand maloti or to an imprisonment period not exceeding three years or both fine and imprisonment

(3) Any person who makes a tariff self-determination which he knows is not true or could not reasonably have believed to be true commits an offence and is liable upon conviction to a fine not exceeding twenty thousand maloti or to an imprisonment period not exceeding three years or both fine and imprisonment

(4) Any person with the intention to mislead and -

(a) uses false or misleading information; or

(b) omits to use accurate information

commits an offence and is liable upon conviction to a fine not exceeding twenty thousand maloti or to an imprisonment period not exceeding three years or both fine and imprisonment

(5) A person who fails to furnish information and documents to the Commissioner General in terms of Section 349. commits an offence and is liable upon conviction to a fine not exceeding twenty thousand maloti or to an imprisonment period not exceeding three years or both fine and imprisonment.

## **PART XXVII**

### **VALUATION OF GOODS**

#### **Valuation of Goods**

351. (1) The Commissioner General shall, in determining the value of goods in terms of this Act consider and use methods prescribed in Schedule ... of this Act.

(2) The Commissioner General shall determine the value of goods as and when necessary.

#### **Value-self-determination of goods**

352. (1) The importer or exporter of goods shall when declaring goods for any customs procedure -

(a) make a self-determination of value of the goods irrespective of whether duty is payable on the goods;

(b) state the value determination of the goods made in terms of paragraph (a) on the clearance declaration.

(c) state the valuation method used to determine the customs value of the goods; and

(d) whether there is a relationship between the buyer and seller.

(2) The Commissioner General shall, when determining the value of the goods, take into consideration the advance valuation ruling.

(3) In making a value-determination of any goods, the importer or exporter of goods shall notify the Commissioner General of any error identified.

#### **Re-determination of previous value determination or re-determination**

353. (1) Where value determination made pursuant to section 351 is incorrect, the Commissioner General may make re-determination irrespective of whether or not the goods—

(a) are cleared;

(b) are released;

- (c) are dutiable;
- (d) are still subject to customs control;
- (e) a value self-determination has been made in respect of the goods; or
- (f) an amount of duty has been paid on the goods.

(2) Where the Commissioner General makes re-determination in terms of this section, he shall notify the importer of goods, in writing of-

- (a) his decision to re-determine the value of goods, and
- (b) the results of the re-determination of the value of goods.

### **Correction of error in value determination or re-determination**

354. Where the Commissioner General or an importer of goods identifies any error on determination or re-determination of goods in respect of the goods which does not affect the value given to the goods in the determination or re-determination, the Commissioner General shall make corrections and notify the importer of the correction

### **Time limit on value determination and re-determination**

355. Where the re-determination is in relation to goods, the Commissioner General may make a re-determination after a period of five years from the date of determination if re-determination is to give effect to the following-

- (a) a decision in any administrative appeal or dispute resolution proceedings;
- (b) a dispute settlement;
- (c) a retrospective amendment to the Customs Tariff; or
- (d) a court order given or confirmed in a final judgement; or
- (e) to rectify an underpayment or non-payment of duty that occurred as a result of fraud, misrepresentation, a false declaration or non-disclosure of material facts;

### **Request for information and documents**



356. The Commissioner General may request the importer of goods to furnish him with additional information or documents for considering or making a re-determination in respect of goods

### **Valuation methods**

357. (1) The following methods shall be used in determining the value of goods under this Act:

- (a) transaction value method;
- (b) the identical goods method;
- (c) the similar goods method;
- (d) the deductive method;
- (e) the computed method; and
- (f) the fallback method.

### **Transaction value Method**

358. (1) The Commissioner General shall, when determining the value of imported or exported goods, use the transaction value method.

(2) The transaction value method used pursuant to subsection (1) shall take into consideration the price actually paid or payable for the goods by the importer and additional prices of the following:

- (a) any commission other than the buying commission;
- (b) brokerage;
- (c) the cost of—
- (d) packing, including the cost of labour and materials; and
- (e) the cost of containers;
- (f) the value, appropriately apportioned to the goods in accordance with any Regulations that may be prescribed, of any of the following items which were supplied directly or

indirectly by the buyer free of charge or at reduced cost for use in the production, manufacture or sale for export to the Lesotho of the goods, namely—

(i) materials, components, parts and articles forming part of the goods;

(ii) tools, dies, moulds and articles used in the production or manufacture of the goods;

(iii) materials consumed in the production or manufacture of the goods; and

(iv) engineering work, development work, art work, design work, plans and sketches undertaken elsewhere than in the Lesotho and necessary for the production or manufacture of the goods;

(v) royalties and licence fees in respect of the goods, including payments for patents, trademarks and copyright and for the right to distribute or resell the goods, payable directly or indirectly by the buyer as a condition of the sale of the goods for export to Lesotho, but excluding charges for the right or licence to reproduce the goods in Lesotho;

(vi) the value of any part of the proceeds of any subsequent resale, disposal or use of the goods that accrues directly or indirectly to the seller; and

(vii) the cost of transport, loading, unloading, handling, insurance and associated costs incidental to delivery of the goods at the port or place of importation or exportation.

(3) The Commissioner General shall deduct the following amounts from the price actually paid or payable for the goods by the buyer, but only to the extent that the amounts are actual amounts that form part of the price actually paid or payable by the buyer and are distinguishable components of the price actually paid or payable-

(a) the cost of transport of the imported goods from the port or place of export in the country of exportation to the place of entry in Lesotho;

(b) the cost of insurance of the goods from the port or place of export in the country of exportation to the place of entry Lesotho;

(c) the loading, unloading and handling charges associated with the delivery of the goods at the place of entry Lesotho;

(d) any expenditure incurred in the construction, erection, assembly or maintenance of, or technical assistance provided in respect of, the goods after importation in Lesotho;

(e) the cost of transport and insurance of the goods in Lesotho;

(f) any duties and taxes paid or payable in Lesotho on the importation into or the sale of the goods Lesotho;

(g) any duties and taxes on the goods in the country of exportation from which the goods have been or will be relieved by way of refund, drawback or rebate;

(h) interest charged in respect of the price actually paid or payable for the goods, but the deduction is permitted only if—

(i) the financing arrangement in terms of which the interest is paid is in writing;

(ii) the buyer can prove, if requested by the Commissioner General, that the goods were actually sold at the price declared as the price actually paid or payable, and that the claimed rate of interest does not exceed the level for transactions of that nature prevailing in the country where, and at the time when, the financing was provided; and

(iii) interest payments made by the buyer to the seller are not included in the price actually paid or payable where the payments are part of a separate, overall financing arrangement between the parties that bears no relationship to a particular sale; and

(i) any charges for the right or licence to reproduce the goods in Lesotho.

(4) Where interest is charged pursuant to subsection (3)(h), the Commissioner General shall further deduct from the price actually paid or payable for the goods—

(a) interest paid by the buyer to the seller for default on payments; and

(b) payments for interest made by the buyer to the seller arranged as part of the total payment made to the seller.

(5) Where the amount paid in terms of subsection (3) is deducted from the price actually paid or payable for the goods, is not indicated in the invoice or other supporting document as a component of the price actually paid or payable for the goods, the Commissioner General may accept any other documentary evidence at the time when

the value self-determination is made, as proof that the amount is in fact a separate component of the price actually paid or payable for the goods.

(6) The Commissioner General may request that any additional prices made pursuant to subsection (2) or any deductions made pursuant to subsection (3) or any matter determining whether such additional prices or deductions were made, be substantiated by documentary evidence.

**Circumstances under which transaction value method shall or may not be used**

359. (1) In determining the value of goods, the Commissioner General, importer or exporter shall consider the following circumstances under which the transaction value method may not be used:

- (a) where there is no contract of purchase or sale;
- (b) the transaction in terms of which the goods were sold for export to Lesotho is a contract of purchase and sale but was concluded otherwise than in the ordinary course of trade under fully competitive conditions;
- (c) there is for any reason no price actually paid or payable for the goods to be used as basis for determining a transaction value for the goods;
- (d) the price actually paid or payable for the goods is not substantiated by supporting documents;
- (e) the transaction in terms of which the goods were sold for export to Lesotho is subject to a term or condition which materially affected the price actually paid or payable for the goods;
- (f) there is a restriction as to the resale, disposal or use of the goods which materially affected the price actually paid or payable for the goods;
- (g) a special, arbitrary or abnormal discount, rebate or other reduction from the ordinary competitive price of the goods was or is to be given in connection with the transaction in terms of which the goods were sold for export to Lesotho;

(h) a part of the proceeds of any resale, disposal or use of the goods accrued or will accrue to the seller;

(i) the seller and the buyer have a family, personal, employment or business relationship;

(j) there is insufficient information to use the transaction value method for determining the transaction value of the imported goods; or

(k) there is reason to suspect that the information available for determining the transaction value of the imported goods is incorrect or defective in any respect.

(2) Notwithstanding the provisions of this section the Commissioner General may accept the transaction value for determining the customs value of the goods.

### **Relationship between buyer and seller**

360. (1) In determining the customs value of the transaction made between the buyer and the seller, the Commissioner General shall consider the following circumstances-

(a) a family or personal relationship including a relationship between a seller and a buyer as members of the same family, whether the relationship was established by—

(i) birth;

(ii) adoption;

(iii) marriage or other union;

(iv) engagement; or

(v) cohabitation;

(b) an employment relationship including a relationship between a seller and a buyer as—

(i) employer and employee;

(ii) employees in the same firm;

(iii) director in the other's firm;

(iv) directors in the same firm; or

- (v) employee and director in the same firm; and
- (c) a business relationship including a relationship between a seller and a buyer as—
  - (i) partners in the same firm;
  - (ii) a person and a firm in which the person is a partner;
  - (iii) members of the same close corporation;
  - (iv) a person and a close corporation of which the person is a member;
  - (v) a company and its controlling shareholder;
  - (vi) a controlling company and its subsidiary;
  - (vii) companies in the same group of companies;
  - (viii) companies which are directly or indirectly controlled by the same person; or
  - (ix) companies in which a third person holds or controls more than a five per cent stake in each of them.

(2) A business relationship between a seller and a buyer whereby the one acts as the sole agent, distributor or concessionary of the other is not a business relationship for purposes of section 359(1)(i),

(3) (a) Where a person clearing the goods proves, to the satisfaction of the Commissioner General, that the relationship between the seller and the buyer did not influence the price paid or payable for the goods, the Commissioner General may notwithstanding section 359(1)(i), accept or use the transaction value of any imported goods as the customs value of the goods.

(b) Where the Commissioner General has accepted the transaction value of any imported goods pursuant to paragraph (a) as sufficient proof that the relationship between the seller and the buyer did not influence the price paid or payable for the goods if the transaction value of the goods, he shall use any one of the following test values-

(i) The transaction value of identical or similar goods purchased at comparable trade and quantity levels by buyers not related in Lesotho at or about the same time as the goods being valued;

(ii) the value, determined in terms of section 361, of identical or similar goods imported into Lesotho at or about the same time as the goods being valued; or

(iii) the value, determined in terms of section 362, of identical or similar goods imported into Lesotho at or about the same time as the goods being valued.

### **Determination of customs value according to identical goods method**

361. (1) Where the Commissioner General determines customs value of goods according to identical goods method, he shall consider—

(a) the transaction value per unit of identical goods, as previously determined by the Commissioner General in terms of section 353 or 354(1)(a) or (b), which were sold for import into Lesotho at the same commercial level and in substantially the same quantity or about the same time as the goods being value; or

(b) if no determination was made under paragraph (a), the transaction value of identical goods shall be transaction value per unit of identical goods, as previously determined by the Commissioner General which were sold for import to Lesotho at either a different commercial level or quantity level, or at a different commercial level and quantity level, and exported to Lesotho at or about the same time as the goods being valued, and subject to adjustments that shall be made in terms of subsection (3).

(2) Where the Commissioner General considers the transaction value of identical goods, he shall adjust the customs value of goods to compensate for any differences in the costs and charges stipulated in section 358(3) and (4) resulting from differences in distances and modes of transport to the port or place of export, between the identical goods and the goods being valued.

(3) Where the Commissioner General considers transaction value of the identical goods, he shall adjust the customs value of goods to compensate for any differences in—

(a) the sale for export to Lesotho of the identical goods and of the goods being valued, at the different commercial levels or quantity levels; and

(b) the costs and charges for different distances and modes of transport to the port or place of export, between the identical goods and the goods being valued.

(4) Where the Commissioner General considers more than one identical goods in determining the value of the goods, he shall accept the transaction yielding the lowest value as the customs value of the goods.

### **Determination of customs value according to similar goods method**

362. (1) Where the Commissioner General determines the customs value of goods according to similar goods method, he shall consider —

(a) the transaction value per unit of similar goods, as previously determined by the Commissioner General in terms of section 353 or 354(1)(a) or (b), which were sold for export to Lesotho at the same commercial level and in substantially the same quantity and exported to Lesotho at or about the same time as the goods being valued, and subject to any adjustments that are made in terms of subsection (2); or

(b) if no determination stipulated in paragraph (a) was made that can be used for purposes of that paragraph, the transaction value per unit of similar goods, as previously determined by the Commissioner General in terms of section 353 or 354(1)(a) or (b), which were sold for export to Lesotho at either a different commercial level or quantity level, or at a different commercial level and quantity level, and exported to Lesotho at or about the same time as the goods being valued, and subject to any adjustments that are made in terms of subsection(3).

(2) Where the Commissioner General considers the transaction value of the similar goods, he shall adjust the customs value of goods to compensate for any differences in the costs and charges contemplated in section 358(3) and (4) resulting from differences in distances and modes of transport to the port or place of export, between the similar goods and the goods being valued.

(3) Where the Commissioner General considers transaction value of the similar goods he shall adjust the customs value of goods to compensate for any differences in—

(a) the sale for export to Lesotho of the similar goods and of the goods being valued, at the different commercial levels or quantity levels; and



(b) the costs and charges for different distances and modes of transport to the port or place of export, between the similar goods and the goods being valued.

(4) Where the Commissioner General considers more than one similar goods in determining the value of the goods, he shall accept the transaction yielding the lowest value as the customs value of the goods..

### **Determination of customs value according to deductive method**

363. (1) Where the Commissioner General determines the customs value of goods by deductive method, the customs value shall be taken as equal to—

(a) the price per unit at which imported identical goods are sold in Lesotho in the greatest number of units—

(i) in the same condition as they were when imported;

(ii) by importers of such goods to persons not related to them

(iii) at or about the same time the goods valued were imported; or

(b) the price per unit at which imported similar goods are sold in Lesotho, in the greatest number of units—

(i) in the same condition as they were when imported;

(ii) by importers of such goods to persons not related to them and

(iii) at or about the same time the goods valued were imported.

(2) Where the Commissioner General determines the customs value of goods pursuant to subsection (1) he shall adjust the price per unit of imported identical or similar goods by deducting proportionally per unit of the goods—

(a) usual commissions or profit on the sale of goods falling within the same group or range of goods as the goods valued, irrespective of the country of exportation;

(b) general expenses usually incurred in connection with the sale of goods falling within the same group or range of goods as the goods valued, irrespective of the country of exportation, including the usual direct and indirect costs of marketing goods falling within the same group or range of goods as the goods being valued;

(c) the cost of transportation, loading, unloading, handling and insurance and associated costs incidental to the transportation of identical or similar goods from the port or place of export in the country of exportation to the importer's premises in Lesotho; and

(d) any duties and taxes paid or payable in Lesotho on the importation into or the sale of identical or similar goods in Lesotho.

(3) Where imported identical or similar goods are sold in Lesotho after further processing of the goods in Lesotho, the Commissioner General may not when determining the customs value of goods consider the price per unit at which imported identical or similar goods are sold in Lesotho, provided that such price is adjusted by deducting the value added by such processing.

(4) Where the deductive method is used for determining the customs value of imported goods pursuant to section 353 or 354, the Commissioner General may, instead of determining the price per unit at which imported identical or similar goods were sold in Lesotho—

(a) determine the price per unit at which the goods valued are sold; and

(b) use the price as the basis.

(5) Where imported goods are valued at the same time when imported identical or similar goods are sold the Commissioner General shall consider the earliest date after the goods valued were imported, but not later than ninety calendar days after importation.

#### **Determination of customs value according to computed method**

364. Where the Commissioner General determines the customs value of goods by the computed method the customs value of the goods shall be computed on information supplied by the producer of the goods and shall consist of the sum of—

(a) the cost of producing the goods being valued, which shall include—

(i) the cost or value of materials and of manufacture or other processing in producing the goods valued; and

(ii) the cost of—

(aa) packing, including the cost of labour, services and materials; and

(bb) containers, which shall be dealt with as being one with the goods being valued;

(b) the value, appropriately apportioned to any of the following goods and services if the goods and services are supplied, directly or indirectly, by the buyer free of charge or at reduced cost for use in connection with the production or sale for export to Lesotho of the goods valued, in so far as the value of the goods and services is not added in the price actually paid or payable for the goods valued, namely:

(i) Materials, components, parts and similar articles forming part of the goods valued;

(ii) tools, dies, moulds and similar articles used in the production of the goods valued;

(iii) materials consumed in the production of the goods valued; and

(iv) engineering, development work, artwork, design work, plans and sketches, undertaken elsewhere than in Lesotho that were used for the production of the goods being valued;

(c) the cost of transportation, loading, unloading, handling and insurance and associated costs incidental to the delivery of the goods valued at the port or place of export, and of placing the goods, aircraft, railway carriage or vehicle at the port or place, appropriately apportioned to the goods; and

(d) an amount for profit and general expenses equal to the generally applicable in respect of sales of goods of the same class or kind as the goods valued, which are made and incurred by producers in the country of exportation, appropriately apportioned to the goods valued

### **Determination of customs value according to fall-back method**

365. (1) Where the Commissioner General determines the customs value of goods by fall-back method, he shall—

(a) use a previous value determination of the same class or kind of goods; or

(b) any other method that may render a reasonable valuation of the goods if there is no previous value determination of the goods.

(2) The Commissioner General may when determining the customs value of imported goods in terms of subsection (1)(b), may base his determination on—

(a) the selling price of goods produced in Lesotho;

(b) a system which provides for the acceptance for customs purposes of the higher of two alternative values;

(c) the selling price of goods on the domestic market of the country of origin or exportation of the goods valued;

(d) the cost of production;

(e) the price of the goods for export to another country;

(f) a system of minimum customs values; or

(g) arbitrary or fictitious values.

(3) Where a person who submits declaration for clearance of goods for home use or customs procedure—

(a) fails to clear the goods or to provide sufficient information in the clearance declaration for valuation of goods; and

(b) fails to comply with a request to provide information or documents necessary for valuation of goods.

(c) Subsection (2)(a) to (f) shall not apply.

### **Valuation of re-imported unaltered goods under temporary export procedure**

366. The Commissioner General shall when determining, the customs value of re-imported and unaltered goods, under temporary export procedure, consider the customs value as the same customs value of the goods when they were temporarily exported from Lesotho .

### **Valuation of used goods imported by individual for own use**

367. (1) The Commissioner General shall use the fall back method when determining the customs value of used goods by an individual for own use.

(2) (a) The Commissioner General shall not use the fall back method when determining the customs value of used goods under the temporary admission procedure on authority of a CPD or ATA carnet, imported by an individual for own use.

(b) The Commissioner General shall consider the customs value indicated on the CPD or ATA carnet when determining the customs value of used goods, under the temporary admission procedure on authority of a CPD or ATA carnet, imported by an individual for own use.

### **Currency conversion**

368. (1) The Commissioner General shall use Maloti when determining the customs value of goods.

(2) Where payment is made in a foreign currency, the Commissioner General shall convert the amount to be paid in maloti.

### **Offences**

369. (1) A person clearing goods who fails to make a value self-determination of the customs value in terms of section 352(1) commits an offence and is liable upon conviction to a fine not exceeding twenty thousand maloti or to imprisonment for a period not exceeding three years or both fine and imprisonment

(2) Any person who fails to report to the Commissioner General the discovery of any inaccuracy in a value self-determination in respect of the goods commits an offence and is liable upon conviction to a fine not exceeding twenty thousand maloti or to imprisonment for a period not exceeding three years or both fine and imprisonment

(3) Any person who makes a value self-determination which he knows is not true or could not reasonably have believed to be true commits an offence and is liable upon conviction to a fine not exceeding twenty thousand maloti or to imprisonment for a period not exceeding three years or both fine and imprisonment

(4) Any person who with the intention to mislead -

(a) uses false or misleading information; or

(b) omits to use accurate information

commits an offence and is liable upon conviction to a fine not exceeding twenty thousand maloti or to imprisonment for a period not exceeding three years or both fine and imprisonment

(5) A person who fails to furnish information and documents to the Commissioner General in terms of Section 356. commits an offence and is liable upon conviction to a fine not exceeding twenty thousand maloti or to imprisonment for a period not exceeding six years or both fine and imprisonment

## **PART XXVIII**

### **ORIGIN OF GOODS**

#### **Determination of origin of goods**

370. The Commissioner General shall, in determining the origin goods under this Act he shall consider Rules of origin in respect of agreements that Lesotho is a party to.

(2) The Commissioner General shall, , determine as and when necessary the origin of goods irrespective of whether goods are-

- (a) dutiable or not dutiable;
- (b) cleared;
- (c) released; and
- (d) subject to customs control.

#### **Origin self-determination of goods when goods are cleared**

371. (1) The importer of goods shall when declaring goods for home use or any other customs procedure-

(a) make a self-determination;

(i) of the origin of the goods in according to the Rules of origin in respect of agreements that Lesotho is a party to, irrespective of whether duty is payable on the goods; and

(ii) if preferential tariff treatment under an international trade agreement or a non-reciprocal generalized system of preferences is claimed in respect of the goods, and indicate the origin of the goods in accordance with the Rules of origin; and

(b) state on the clearance declaration the origin of the goods.

(2) (a) Where an importer of goods made a self-determination pursuant to subsection (1)(a)(ii), he shall submit a clearance declaration accompanied by documentary evidence of origin of goods in accordance with any procedures or other requirements in terms of the applicable international trade agreement or non-reciprocal generalised system of preferences.

(b) Notwithstanding the provisions of paragraph (a), the Commissioner General may exempt the importer from submission of documentary evidence of origin of goods relevant to international trade agreement or non-reciprocal generalised system of preferences.

(3) (a) The Commissioner General shall, where he is satisfied that the clearance declaration complies with the requirements of Rules of origin of goods and other requirements provided for in this Act, accept clearance declaration and release the goods.

(b) The Commissioner General shall, where he is not satisfied with clearance declaration, reject or replace the origin self-determination in terms of subsection (1)(a)(ii).

(4) The importer of goods shall, when declaring the origin of goods, promptly notify the Commissioner General of the inaccuracy in an origin self-determination.

(5) The Commissioner General shall, notify the importer of goods of any origin determination made pursuant to this Part.

(6) Notwithstanding provisions of subsections (1) to (4), the importer who declares the following goods shall not be subjected to Rules of origin of goods—

(a) accompanied or unaccompanied baggage other than commercial goods;

(b) international postal articles cleared in accordance with the simplified clearance process; or

(c) any other goods—

(i) where the importer is excluded by Regulations made by Commissioner General from self-determination in respect of origin of goods ; or

(ii) exempted by the Commissioner General in a specific case from origin self-determination.

### **Re-determination of previous origin determination**



372. (1) Where the determination of the origin of goods made pursuant to section 371 is incorrect, the Commissioner General may make re-determination irrespective of whether or not the goods—

- (a) have been cleared;
- (b) have been released;
- (c) are dutiable;
- (d) are still subject to customs control;
- (e) origin self-determination has been made in respect of the goods; or
- (f) an amount of duty has been paid on the goods.

(2) The Commissioner General shall, in determining the origin of goods, take into consideration the advance origin rulings.

(3) Where the Commissioner General makes re-determination in terms of this section, he shall notify the importer goods, in writing, of his decision to re-determine.

(4) Where the re-determination is in relation to dutiable goods, the Commissioner General may make a re-determination after a period of three years from the date of determination if re-determination is to give effect to the following:

- (a) a decision in any administrative appeal or dispute resolution proceedings;
- (b) a dispute settlement;
- (c) a retrospective amendment to rules of origin; or
- (d) a court order given or confirmed in a final judgement; or
- (e) to rectify an underpayment or non-payment of duty that occurred as a result of fraud, misrepresentation, a false declaration or non-disclosure of material facts;

### **Correction of origin determination or re-determination**

373. Where an importer of goods identifies any error on a self-determination made in respect of the goods, he shall notify the Commissioner General of the error.

### **Request for information and documents**

374. The Commissioner General may request the importer of goods to furnish him with additional information or documents for considering or making a re-determination in respect of goods.

**When documentary evidence of origin may be requested**

375. (1) The Commissioner General may, request any of the following persons to furnish him within a specified period with documentary evidence of origin in respect of any goods imported into or exported from Lesotho:

- (a) The person clearing the goods or who submitted a clearance declaration;
- (b) any person who is an importer or exporter in relation to the goods;
- (c) in the case of goods produced in Lesotho, a person who—
  - (i) produced the goods or was in any other way involved in the production of the goods; or
  - (ii) was in any way involved in goods from which the goods were produced, directly or indirectly; or
- (d) a person who may issue documentary evidence of origin in respect of the goods.

(2) (a) Documentary evidence requested in pursuant to subsection (1) shall be for purposes of implementing—

- (i) any provision of this Act or any other applicable legislation;
  - (ii) an international trade agreement;
  - (iii) economic or trade measures adopted unilaterally or under an international trade agreement; or
  - (iv) health or public order measures;
- (b) ensuring compliance with the requirements of a non-reciprocal generalized system of preferences implemented by another country, in the case of goods exported from Lesotho;
- (c) combating fraud or duty evasion; or
- (d) statistical purposes.

## **Who may issue documentary evidence of origin for imported goods**

376. (1) The Commissioner General shall request from an importer of goods a certificate of origin, certified declaration of origin or certificate certifying a declaration of origin in respect of goods imported into Lesotho.

(2) The certificate of origin, certified declaration of origin or certificate certifying a declaration of origin requested pursuant to subsection (1) may be accepted by the Commissioner General if it issued;

(a) in the case of goods exported from a country which qualifies for preferential treatment in Lesotho under an international trade agreement, by an authority or body empowered either in terms of the agreement or legislation of that country to issue such certificates or to make such certifications; or

(b) in the case of goods exported from a country which do not qualify for preferential treatment in Lesotho under an international trade agreement, by an authority or body empowered in terms of legislation of that country to issue such certificates or to make.

## **Offences**

377. (1) A person clearing goods who fails to make a origin self-determination of the origin of goods in terms of section 371(1) commits an offence and is liable upon conviction to a fine not exceeding twenty thousand maloti or to imprisonment for period not exceeding six years or both fine and imprisonment

(2) Any person who fails to report to the Commissioner General the discovery of any inaccuracy in a origin self-determination in respect of the goods commits an offence and is liable upon conviction to a fine not exceeding twenty thousand maloti or to imprisonment for period not exceeding six years or both fine and imprisonment

(3) Any person who makes origin self-determination which he knows is not true or could not reasonably have believed to be true commits an offence and is liable upon conviction to a fine not exceeding twenty thousand maloti or to imprisonment for a period not exceeding six years or both fine and imprisonment

(4) Any person who with the intention to mislead when making origin self-determination-

(a) uses false or misleading information; or

(b) omits to use accurate information

commits an offence and is liable upon conviction to a fine not exceeding twenty thousand maloti or to imprisonment for period not exceeding six years or both fine and imprisonment

(5) A person who fails to furnish information and documents to the Commissioner General in terms of section 375(1). commits an offence and is liable upon conviction to a fine not exceeding twenty thousand maloti or to imprisonment for a period not exceeding six years or both fine and imprisonment

(6) A person who issued or who submits to the Commissioner General documentary evidence of origin in relation to any goods imported or to be exported or exported from Lesotho commits an offence and is liable upon conviction to a fine not exceeding twenty thousand maloti or to imprisonment for period not exceeding six years or both fine and imprisonment, if that document—

(a) contains a false statement or incorrect information which the person knows is not true;

(b) states, or omits to state, information which is stated or omitted with the intention to mislead;

(c) omits to state information or states incorrect information which the person knows or reasonably ought to have known would, if stated correctly—

(i) have caused the goods to which the document relates to be subject to a duty or to a higher amount of duty; or

(ii) have disqualified the goods from a rebate, refund, drawback or other entitlement in terms of this Act; or

(d) was issued to conceal the true origin of the goods.

## **PART XXIX**

### **PREFERENTIAL TARIFF TREATMENT**

#### **Facilitation of preferential tariff treatment**

378. (1) The Commissioner General shall take all reasonable steps, to facilitate the implementation of international trade agreement relating to preferential tariff treatment enacted into law in Lesotho or was in force prior to the date this Act took effect;

(2) Facilitation of the implementation of international trade agreement relating to preferential tariff treatment made pursuant to subsection (1) shall be between ;

(a) a country which is a party to the agreement and imports goods into Lesotho; or

(b) Lesotho when it exports to another country.

(3) The Minister shall prescribe by regulations the following steps for facilitation of the implementation of international trade agreement relating to preferential tariff treatment-

(a) functions of customs officers relating to facilitation of implementation of preferential tariff treatment including-;

(i) collection of information required by the customs administration of a country which is party to the agreement; and

(ii) furnish reports to the customs administration of the country which is party to the agreement;

(b) prevention of any circumvention of the agreement by—

(i) transshipment or re-routing of the goods;

(ii) false declarations concerning quantities, content, description, classification, value or origin of the goods; or

(iii) falsification of documents relating to the goods; and

(c) provide for—

(i) the conditional registration for purposes of the agreement of importers, exporters, producers and suppliers of goods to which the agreement applies;

- (ii) any requirements to be complied with in respect of such registration; and
- (iii) the refusal of applications for registration and the amendment, withdrawal or suspension of registrations;
- (d) exclude goods—
  - (i) imported into Lesotho from preferential tariff treatment under the agreement—
    - (aa) if imported by a person not registered as an importer for purposes of the agreement; or
    - (bb) if the country of origin of the goods as established in terms of the Rules of origin applicable to the agreement is not a party to the agreement; or
  - (ii) to be exported or exported from Lesotho from preferential tariff treatment under the agreement—
    - (aa) if exported by a person not registered as an exporter for purposes of the agreement or;
    - (bb) if the goods are not of Lesotho origin as established in terms of the Rules of origin applicable to the agreement;
- (e) to prescribe the keeping of books, accounts and other records by an exporter, importer, producer, supplier or other person concerning the origin of goods imported or exported under preferential tariff treatment in terms of the agreement; or
- (f) regarding any other requirements which may be necessary for the enforcement or implementation of the agreement.

### **Compliance with non-reciprocal generalised system of preferences**

379. (1) The Commissioner General shall take all reasonable steps, to ensure that the legislative and administrative measures regulating a non-reciprocal generalised system of preferences of a country implementing such a system for goods of Lesotho origin are complied with to the extent that the measures require the performance of any acts in Lesotho as a precondition for benefiting from the system.

(2) The Minister shall prescribe by regulations the following legislative and administrative measures regulating a non-reciprocal generalised system of preferences of a country implementing a system for goods of Lesotho origin:

(a) functions of customs officers relating to legislative and administrative measures regulating a non-reciprocal generalised system of preferences of a country implementing a system for goods of Lesotho origin including—

(i) collection of information required by the customs administration of a country which is party to the agreement; and

(ii) furnish reports to the customs administration of the country which is party to the agreement;

(iii) render assistance in respect of the implementation and enforcement of the legislative and administrative measures, including assistance with regard to any investigation by the customs administration of the country.

(b) prevention of any circumvention of the legislative and administrative measures by—

(i) transshipment or re-routing of the goods;

(ii) false declarations concerning quantities, content, description, classification, value or origin of the goods; or

(iii) falsification of documents relating to the goods; and

(c) provide for—

(i) the conditional registration for purposes of the system of preferences of exporters, producers and suppliers of goods to which the legislative and administrative measures applies;

(ii) any requirements to be complied with in respect of such registration; and

(iii) the refusal of applications for registration and the amendment, withdrawal or suspension of registrations;

(d) exclude goods—

(i) from preferential tariff treatment under the system of preferences—

- (aa) if the country of origin of the goods as established in terms of the Rules of origin applicable to the agreement is not a party to the agreement; or
- (ii) to be exported or exported from Lesotho from preferential tariff treatment under the agreement—
  - (aa) if exported by a person not registered as an exporter for purposes of the agreement or;
  - (bb) if the goods are not of Lesotho origin as established in terms of the Rules of origin applicable to the agreement;
- (e) to prescribe the keeping of books, accounts and other records by an exporter, importer, producer, supplier or other person concerning the origin of goods exported under preferential tariff treatment in terms the system of preferences; or
- (f) regarding any other requirements which may be necessary for the enforcement or implementation of the legislative and administrative measures to enable goods of Lesotho origin to benefit from that system of preferences

### **Offences**

380. (1) Any person exporting goods who fails to comply with all administrative and legislative requirements under non reciprocal generalized system of preferences pursuant section 379, commits an offence and is liable upon conviction to a fine not exceeding twenty thousand maloti or to imprisonment for period not exceeding six years or both fine and imprisonment.

(2) A person who issues a document which is used for the preferential tariff treatment of goods as contemplated in this Part, or who submits such a document to the Commissioner General which—

- (a) contains a false statement or incorrect information which that person knows is not true or could not reasonably have believed to be true;
- (b) states, or omits to state, information which is stated or omitted with the intention to mislead;



(c) omits to state information or states incorrect information which that person knows or reasonably ought to have known would, if stated or stated correctly, have excluded the goods to which the document relates from such preferential tariff treatment; or

(d) was issued to conceal the true origin of the goods.

commits an offence and is liable upon conviction to a fine not exceeding twenty thousand maloti or to imprisonment for period not exceeding six years or both fine and imprisonment

## **PART XXX**

### **ADVANCE RULING**

#### **Application for advance ruling**

381. (1) A person who intends to import or export goods, shall, apply to the Commissioner General for issuance of an advance ruling on tariff, valuation or origin of goods of a specific class or kind prior to an intended importation or exportation of goods.

(2) The application made pursuant to subsection (1) shall;

(a) relate to one class or kind of goods; and transactions between the same parties; and

(b) be in form and format as prescribed by schedule.....of regulation to this Act

(c) be signed by the applicant;

(d) be accompanied by any relevant supporting documents and additional information

(e) a fee as may be prescribed by regulation to this Act.

#### **Consideration of application**

382. (1) The Commissioner General shall consider an application made pursuant to section 381 and may—

(a) grant the application and issue the ruling; or

(b) refuse the application.

(2) Where the Commissioner General is satisfied after considering the application made pursuant to subsection (1), he shall approve the application only if—

(a) the advance ruling will promote or facilitate implementation of this Act; and

(b) there is sufficient certainty as to the application of the advance ruling to the goods to which the ruling will relate.

(3) Where Commissioner General approves an application pursuant to subsection (2), he shall issue to the applicant an advance ruling, stating—

(a) the title, number and date of the ruling;

- (b) the name of the recipient of the ruling;
- (c) whether it is an advance tariff ruling, an advance valuation ruling or an advance origin ruling, and, if an advance valuation ruling, particulars of the valuation criterion to which it relates;
- (d) the class or kind of goods to which the ruling relates;
- (e) particulars of the transactions to which the ruling relates, including the names of the parties to the transactions;
- (f) particulars of the ruling made;
- (g) any assumptions made or conditions imposed by the Commissioner General in connection with application of the ruling;
- (h) the period for which the ruling will remain valid; and
- (i) any other relevant information.

(4) The Commissioner General may refuse the application made pursuant to section 381 where—

- (a) any of the requirements of subsection (2) are not met;
- (b) the applicant—
  - (i) has not in respect of the application complied with a requirement of this Act;
  - (ii) has made a false or misleading statement in the application or has omitted to state a fact which is material to the consideration of the application;
  - (iii) raises a frivolous or vexatious issue in the application; or
  - (iv) refuses or fails to provide the Commissioner General with additional information in connection with the application, if requested to do so;
- (c) the tax matters of the applicant are not in order; or
- (d) the application raises an issue that is the same as or substantially similar to an issue—
  - (i) that is pending before a court or decided by a court; or

(ii) that is the subject of an administrative appeal

(4) The Commissioner General shall notify the applicant of his decision to refuse an application.

### **Validity period of advance ruling**

383. Where the Commissioner General issued advance ruling pursuant to section 382 an advance ruling shall be valid for a period of three years as from the date of issue unless—

(a) another period for the validity of the advance ruling is specified in the ruling;

(b) the advance ruling is withdrawn by the Commissioner General in terms of section 387;

(c) the advance ruling is set aside by a court;

(d) in the case of an advance tariff, valuation or origin ruling, amendment of Schedule...to this Act is made;

### **Binding effect of advance ruling**

384. (1) Where the Commissioner General issues an advance ruling pursuant to section 381, the advance ruling shall binds both the recipient of the ruling and the Commissioner General.

(2) An advance ruling issued pursuant to section 381 shall, apply to an importer who has made—

(a) any tariff self-determination, value self-determination or origin self-determination made in relation to goods of the class or kind specified in the ruling cleared for home use or any other customs procedure by or on behalf of the recipient of the ruling; and

(b) any tariff determination or re-determination, value determination or redetermination or origin determination or re-determination made in relation to goods of the class or kind specified in the ruling cleared for home use or any other customs procedure by or on behalf of the recipient of the ruling.

### **Clearance of goods under advance ruling**

385. Where Commissioner General has issued an advance ruling and clears goods for home use or any other customs procedure, he may request the recipient of the ruling to—

- (a) furnish information concerning the goods; and
- (b) provide proof that the ruling applies to the goods.

### **Amendment of advance ruling**

386. (1) The Commissioner General may amend an advance ruling either on application by the recipient of the ruling or on own initiative—

- (a) to correct an error in the ruling;
- (b) in the case of an advance tariff, valuation and origin ruling, to give effect to an amendment or addition to an international instrument

(2) Where the Commissioner General amends an advance ruling issued pursuant section 381 the initial ruling shall remain the same in respect of goods for which the recipient of the ruling is contractually bound by an existing contract concluded on the basis of the advance ruling before its amendment..

(3) The initial advance ruling issued pursuant section 381 shall remain effective \_

- (a) for a period of ninety days from the date of the amendment or for the remainder of the validity period of the advance ruling, whichever expires first; and
- (b) for determining whether any duty is payable on goods and assessing the amount of duty payable on the goods

only if the recipient of the ruling so chooses and the Commissioner general so authorizes.

(4) The holder of an advance ruling who chooses to rely in relation to any specific goods on the initial version of an advance ruling, shall—

- (a) notify the Commissioner General; and
- (b) submit to the Commissioner General any necessary supporting documents to prove the existence of a contract referred to in subsection (2).

(5) Subsections (2), (3) and (4) do not apply to an amendment to an advance ruling referred to give effect to Schedules..... to this Act..

### **Withdrawal of advance ruling**

387. (1) The Commissioner General shall withdraw an advance ruling issued pursuant to section 381 if—

(a) the advance ruling was issued as a result of fraud, misrepresentation or incorrect or incomplete information; or

(b) in the case of an advance origin ruling, the advance ruling is in conflict with an Rules of origin as provided for in **Schedule.....**

(2) The withdrawal of an advance ruling in terms of subsection (1)(a) without replacing the advance ruling with an amended version is effective retrospectively from the date of issue of the advance ruling

### **Offences**

388. A person who fails to comply with a request issued by the Commissioner General to furnish information relating to goods in terms of section 385(a) commits an offence and is liable upon conviction to a fine not exceeding fifty thousand maloti or to imprisonment for period not exceeding five years or both fine and imprisonment

## **PART XXXI**

### **CUSTOMS PROCESSING OF PERSONS ENTERING OR LEAVING LESOTHO**

#### **Definitions**

389. In this Part –

**“commercial goods”** means items in the accompanied or unaccompanied baggage of a person entering or leaving Lesotho that are imported into or exported from Lesotho for commercial or other business purposes, and includes –

(a) items intended –

(i) to be sold, leased or otherwise commercially transacted; or

(ii) for use in a business or profession; and

(b) items which by reason of their nature, quantity, volume or other attribute can reasonably be classified as goods intended for commercial or other business purposes;

**“personal effects”** means items (new or used) in the accompanied or unaccompanied baggage of a person entering or leaving Lesotho which that person has on or with him or her or takes along for, and reasonably required for, personal or own use, such as any wearing apparel, toilet articles, medicine, personal jewellery, watch, cellular phone, food and drinks and other items evidently on or with that person for personal or own use, but excludes –

(a) in relation to a person entering Lesotho, any of the above items to the extent that they fall within any of the categories of items that shall be declared; or

(b) in relation to a person leaving Lesotho, any of the above items to the extent that they fall within any of the categories of items that shall be declared;

**“tax free allowance”**

(a) in relation to a person entering Lesotho, an amount uniformly fixed in the Customs Duty Act, this Act and the Value-Added Tax Act indicating the combined customs value of items in the accompanied and unaccompanied baggage of a person entering Lesotho

which such a person may import into Lesotho free from any import tax imposed by the Acts; or

(b) in relation to a person leaving Lesotho, an amount fixed in the Customs Duty Act indicating the combined customs value of items.

### **Personal effects to be declared when entering Lesotho**

390. (1) A person entering Lesotho shall –

(a) declare all personal effects which that person has with him and that shall be declared at the place of entry where the person entered Lesotho.

(b) complete, and submit to the Commissioner General, a declaration containing such personal and travel information, including information concerning any personal effects which that person has with him, as may be prescribed by regulations;

(2) When declaring personal effects in terms of subsection (1), a person shall –

(a) furnish the Commissioner General with full particulars concerning the personal effects, including any available invoices and other commercial documents; and

(b) pay any duty payable on any of the personal effects.

(3) Commissioner General may exempt person from paying duties and taxes on goods specified in terms of Schedules 4 and 6

(4) Notwithstanding subsection (3), where personal effects purchased or otherwise acquired abroad exceed the value prescribed under Schedules 4 and 5 the Commissioner General shall not exempt such personal effects.

(5) Where goods arrive in Lesotho as unaccompanied goods an importer shall in terms of subsections (1) (b) ,(2) (3) and (4)of this section declare such goods

### **Clearance of personal effects**

391. The Commissioner General shall clear and release personal effects declared pursuant to section 390 for home use or permissible customs procedure.

### **Personal effects to be declared when leaving Lesotho**

392. (1) A person who is leaving Lesotho shall –



(a) declare all personal effects which that person intends to take along beyond the borders of Lesotho and which shall be declared at the place of exit where the person leaves Lesotho;. and

(b) complete and submit to the Commissioner General a declaration containing such personal and travel information, including information concerning any personal effects which that person has with him as may be prescribed by regulations;

(2) When declaring personal effects in terms of subsection (1), the person shall –

(a) furnish the Commissioner General with full particulars concerning the personal effects, including any available invoices and other commercial documents; and

(b) pay any duty payable on any of the personal effects.

(3) Personal effects which a person intends to take along beyond the borders of Lesotho and which are not required to be declared are exempted from –

(a) this Part; and

(b) any clearance and release requirements and procedures in terms of the other provisions of this Act.

### **Offences**

393. Any person who fails to declare personal effects when entering and leaving Lesotho, commits an offence and shall upon conviction be liable to a fine not exceeding three thousand maloti or imprisonment for period not exceeding six months or both fine and imprisonment.

## **PART XXXII**

### **INTERNATIONAL POSTAL ARTICLES**

#### **Clearance of imported international postal articles**

394. (1) A person who imports international postal articles that are not exempt from clearance requirements for imported goods shall declare the international postal articles in accordance with the home use or permissible customs procedure.

(2) Where an international postal article with a customs value not exceeding a limit prescribed by the Minister by notice in the Gazette is to be cleared for home use, the Commissioner General shall, for purposes of this section, consider a declaration accompanying the international postal article to be a clearance declaration for home use.

(3) The declaration accompanying international postal article referred to in subsection (2) shall be -

(a) on a form prescribed by a postal authority;

(b) signed and dated by the declarant; and

(c) supported by such supporting documents as may be prescribed by a postal authority.

(4) for the purposes of this section, “declarant” means a person sending the international postal article.

#### **Clearance of international postal articles destined for export**

395. A person who exports international postal articles shall clear the international postal articles in accordance with the export procedure.

#### **Payment of duty on international postal articles**

396. (1) A person who imports an international postal article for home use or any customs procedure shall, after the Commissioner General has assessed the duty on the international postal article, pay to the Commissioner General, customs duty in accordance with this Act or Value Added Tax Act.

#### **Cancellation and repayments of duty**

397. (1) The Commissioner General may, at the request of the Lesotho Post Office and subject to such conditions as the Commissioner General may determine, cancel any import duty due where in an international postal article is-

- (a) destroyed;
- (b) abandoned;
- (c) not collected;
- (d) refused by the addressee;
- (e) not delivered to the addressee;
- (f) returned to the sender; or
- (g) re-directed to a third country. .

(2) The Commissioner General may, where an import duty has already been collected on an international postal article which is destroyed, cancel, subject to such conditions as he may determine.

### **Condonation of underpayments**

398. The Commissioner General may condone any underpayment of import duty on an international postal article if the amount of the underpayment is less than M50.

### **Opening of international postal articles**

399. The Commissioner General may open an international postal article where it is necessary –

- (a) to retrieve any invoice or consignment related information contained inside the postal article;
- (b) to compare the contents of the postal article with the description, quantity, tariff heading, value and any other information reflected on the declaration made in respect of the international postal article;
- (c) to assess –
  - (i) whether the postal article is subject to the payment of any import duty; or

- (ii) the amount of any duty payable on the postal article;
- (d) to determine whether the postal article is prohibited, restricted controlled; or
- (e) to carry out any other function provided for in this Act.

**International postal articles containing personal or private communications**

400. (1) The Commissioner General shall not –

(a) open any international postal article which contains personal or private communication that weighs 30 grams or less, unless the Commissioner General suspects, on reasonable grounds, that the postal article contains prohibited or restricted goods;

(b) read, copy or make an extract from any personal or private communication found in any international postal article opened if reading, copying or making an extract from that communication is not necessary for the purposes of this Act or the Value Added Tax Act; or

(c) disclose any personal or private communication found in any international postal article except where he suspects, on reasonable grounds, that it is necessary for the purposes of this Act.

(2) For the purposes of this section, a personal or private communication does not include –

(a) an invoice;

(b) an order form;

(c) a cheque;

(d) a newspaper, magazine, book, catalogue or similar printed matter;

(e) a blank form; or

(f) any other communication that may be prescribed by the Commissioner General.

**Notifications that international postal articles have been opened**

401. The Commissioner General shall, where he opens an international postal article, notify the addressee that the postal article has been opened and inspected by him unless notifying the addressee may obstruct the investigation of a serious crime.

### **Seizure and confiscation of international postal articles**

402. The Commissioner General may seize and confiscate an international postal article if it does not comply with the provisions of this Act.

### **Offences**

403. (1) Any person who fails to export international postal articles in accordance with the export procedure commits an offence and is liable upon conviction to a fine not exceeding three thousand maloti or imprisonment for a period not exceeding five months or both fine and imprisonment.

(2) Any person who fails to pay duty on international postal articles, commits an offence and is liable upon conviction to a fine not exceeding three thousand maloti or imprisonment for a period not exceeding five months or both fine and imprisonment

## **PART XXXIII**

### **ACCESS TO AND SAMPLING OF GOODS**

#### **Right of access to and taking samples from goods**

404. (1) An importer or exporter may, while goods under customs control, with the approval of the Commissioner General have access to the goods, take samples of the goods, or perform any other action in relation to the goods for purposes of testing for verifying:

(a) the nature or characteristics of the goods;

(b) the quality or content of the goods;

(c) the tariff classification, customs value or origin of the goods; or

(d) evidence in a court of law.

(e) any other thing that may be determined by the commissioner General for the purposes of this Act.

(2) Where a person who submits a clearance declaration pursuant to this Act is not satisfied with the results of tests made by the Commissioner General, he may, with the approval of the Commissioner General, have access to the goods, take samples of the goods, and perform any other action in relation to the goods.

(3) The tests performed pursuant to subsections (1) and (2) shall be carried pursuant to the laboratories designated by the Minister;

(4) Samples taken pursuant to subsection (1) and (2) may be –

(a) examined, analysed or tested;

(b) subjected to a chemical, mechanical or technological process;

(c) used for obtaining advice, including expert or technical advice on the goods; or

(d) used for any other purpose that may be determined by the Commissioner General in terms of this Act,

(5) The Commissioner General shall not clear for home use or any other customs procedure, samples taken from goods in terms of subsection (1).

(6) The Commissioner General may, under his supervision allow access to, sampling of or any other action taken in relation to goods pursuant to subsection (1).

(7) For purposes of assessing duty, the Commissioner General shall, where samples of goods are taken pursuant to subsection (1), include the samples in the quantity of goods cleared for home use or any other customs procedure.

### **Samples of imported goods**

405. (1) Samples taken in terms of section 404 of imported goods before the goods are cleared for home use or a customs procedure shall if the goods are subsequently cleared for—

(a) home use Part VIII, be included in the quantity cleared for home use; or

(b) a customs procedure, for tax and all other purposes be regarded to be cleared for home use under Part VIII.

(2) (a) Samples taken in terms of section 404 of imported goods—

(i) already cleared for home use, do not affect the amount of any tax paid or payable on the goods; or

(ii) already under a customs procedure, shall for tax and all other purposes be regarded to be cleared for home use under Part VIII.

(b) The person who cleared the goods for a customs procedure referred to in paragraph (a)(ii) shall in terms of section 67 amend the clearance declaration to exclude the samples from the declaration.

(3) Subsections (1) and (2) do not apply to samples temporarily removed and such samples shall for all purposes be regarded to remain part of the goods from which they were taken.

### **Samples of goods cleared for export**

406. (1) ) Samples taken pursuant to Section 404 from goods cleared for export under the export procedure, shall for tax purposes be regarded to be free circulation if—

(a) the goods are in free circulation before they are cleared for export; and

- (b) the samples of the goods are taken before they are exported from Lesotho.
- (2) A exporter who submits clearance declaration of the goods for export shall amend the clearance declaration to exclude the samples from the declaration.
- (3) Subsection (1) does not apply to samples temporarily removed from the goods; and
- (4) Samples taken from the goods pursuant to subsection (1) shall remain part of the goods from which they were taken.

### **Offences**

407. Any person who takes samples of goods without the permission of the Commissioner General commits an offence and is liable upon conviction to a fine not exceeding twenty five thousand maloti or imprisonment for a period not exceeding five years or both fine and imprisonment



## **PART XXXIV**

### **EXPEDITED CLEARANCE AND RELEASE OF GOODS**

#### **Application to clear and obtain release of goods on incomplete or provisional clearance information**

408. (1) A person who wishes to submit a clearance declaration, but does not have all the necessary information or documents at hand, shall submit an application to the Commissioner General for the clearance and release of goods for home use or customs procedure.

(2) The application referred to in subsection (1) shall only be approved where the applicant has given sufficient reasons why expedited release of goods is required.

(3) The Commissioner General shall, where a person has made an application pursuant to subsection (1), approve an application with such terms and conditions as he may determine, and allow the person-

(a) to submit clearance declaration for home use or customs procedure without complete information or documents; and

(b) to have the goods released to him without complete information or documents.

(4) The terms and conditions referred to in subsection (3) may include the following:

(a) surety to cover any risks in relation to duty payable on the goods; and

(b) special requirements for securing the handling, movement, storage or use of the goods until full and final clearance of the goods is made.

(5) The Commissioner General may refuse an application made pursuant to subsection (1) –

(a) where payment of or collection of duty at risk;

(b) where compliance with an provision of this Act may be compromised; or

(c) on any other grounds as may be determined by the Commissioner General.

#### **Contents of an incomplete clearance declaration**

409. (1) An incomplete clearance declaration shall at least state the following except where the Commissioner General determines otherwise,

(a) whether the goods are cleared for home use or a customs procedure, and if for a customs procedure, the desired customs procedure;

(b) in the case of goods already under a customs procedure, the reference number of the clearance declaration for that customs procedure;

(c) in the case of imported goods (other than goods imported under a customs procedure, the date of actual or expected arrival of the goods, as may be applicable, at a place referred to in section 63;

(d) the tariff classification of the (e) the quantity of the goods;

(f) the value of the goods;

(g) the origin of the goods;

(h) the tax identification number and name of the person submitting the declaration, or, if submitted by a customs broker acting in terms of section 58(1)(b)—

(i) the tax identification number of the customs broker; and

(ii) the tax identification number and name of the principal on whose behalf the declaration is submitted;

(i) the number and date of the transport document issued in respect of the goods; and

(j) such additional information as may be prescribed by Regulation or as the Commissioner General may determine in a specific case, including information that may be needed to—

(i) calculate the amount of security that may be required in respect of the goods;

(ii) identify the goods and achieve effective customs control over the goods; and

(iii) release the goods.

(2) An incomplete clearance declaration shall be supported by at least the supporting documents as may be determined by Commissioner General.

### **Release of goods cleared in terms of incomplete clearance declarations**

410. (1) The Commissioner General shall release goods that are cleared in without all the necessary information and documents as if the goods were cleared with all necessary information and documents.

(2) Notwithstanding subsection (1), the Commissioner General may, refuse to release the goods if the clearance declaration submitted does not meet the requirements of section 214.

### **Supplementary clearance declarations**

411. (1) Where a person has submitted clearance declaration without all necessary information and documents pursuant to section 399, he shall, within the timeframe specified in the Regulations to this Act, submit to the Commissioner General a supplementary clearance declaration.

(2) the supplementary referred to in subsection (1) shall be submitted to the same Customs Office where a clearance declaration was submitted without all necessary information and documents.

(3) Commissioner General shall, for purposes of assessing duty consider the supplementary clearance declaration and the clearance declaration submitted without all necessary information and documents constitute a single clearance declaration.

(4) For the purposes of this section, “supplementary clearance declarations” is a clearance declaration with addition information supplementing the clearance declaration which was submitted without all the necessary information and documents and is accompanied by the following information:

(a) all outstanding supporting documents; and

(b) customs reference number of the incomplete clearance declaration to which it relates.

### **Offences**

412. (1) Any person who fails to submit a supplementary clearance declarations to the Commissioner General commits an offence and is liable upon conviction to a fine not

exceeding two thousand maloti or imprisonment for a period not exceeding three months.

(2) A person who obtains a release of goods in terms of section 408 but—

(a) contravenes or fails to comply with a condition imposed in terms of section 408(4)

(b) fails to comply with section 411.

commits an offence and is liable upon conviction to a not fine exceeding two thousand maloti or imprisonment for a period not exceeding three months

## **PART XXXV**

### **DAMAGED, DESTROYED, LOST OR UNACCOUNTED FOR GOODS**

#### **Notification of goods damaged, destroyed, lost or unaccounted for**

413. (1) A person who is in physical control of goods when goods were damaged, destroyed lost or unaccounted for shall notify the Commissioner General of the goods which are damaged, destroyed lost or unaccounted for, in writing and within a period stipulated in the notice.

(2) The notification referred to in subsection (1) shall –

(a) be in writing and

(b) indicate whether the goods have been cleared, and if so, whether for home use or any other customs procedure;

(c) indicate the number and date of the clearance declaration;

(d) give a detailed account of how, when and where the goods were damaged, destroyed, lost or unaccounted for; and

(e) contain any other particulars as may be determined by the Commissioner General.

#### **Failure to notify**

414. (1) Where a person who was in physical control of the goods when they were damaged, destroyed lost or unaccounted for fails to notify the Commissioner General within the stipulated period that the goods are damaged, destroyed, lost or unaccounted for –

(a) any duty payable on the goods before they were damaged, destroyed, lost or unaccounted for shall be payable as if the goods were not damaged, destroyed, lost or unaccounted for;

(b) where duty was already paid on the goods, the duty is not refundable;

(2) Subsection (1) applies even where to the person who imported goods which were damaged, destroyed, lost or unaccounted did not enter through a designated place of entry;

## **Damaged goods**

415. (1) Where a person notifies Commissioner General about damaged goods the notification shall be accompanied by the documentary proof to the effect that the goods were damaged due to –

- (a) a natural occurrence;
- (b) an accident;
- (c) a hostile act by a third party; or
- (d) the essential characteristics of the goods.

(2) Where the Commissioner General accepts documentary proof submitted pursuant to subsection (1) –

(a) any existing clearance declaration submitted in respect of the goods shall be –

- (i) withdrawn, if all the goods covered by the declaration were damaged; or
- (ii) amended to exclude the damaged goods, only if part of the goods covered by the declaration were damaged;

(b) any import duty payable but not yet paid on the goods by virtue of that clearance falls away in respect of the damaged goods;

(c) any import duty already paid on the damaged goods by virtue of that clearance may be refunded;

(d) the damaged goods shall, in the case of imported goods –

(i) be cleared for home use or any other customs procedure at the request of the importer;

(ii) be abandoned to the Commissioner General;

(iii) at the expense of the importer and under supervision of Commissioner General, be exported from Lesotho,

Within the timeframe determined by the Commissioner General.

(3) Where the Commissioner General clears damaged imported goods for home use or a permissible customs procedure, at the request of the importer of the damaged goods, any duty payable by the importer on the damaged goods may be set off against any duty that has to be refunded to the importer.

### **Destroyed goods**

416. (1) where a person notifies the Commissioner General about destroyed goods, the notification shall be accompanied by the documentary proof to the effect that the goods were destroyed due to –

- (a) a natural occurrence;
- (b) an accident;
- (c) a hostile act by a third party; or
- (d) the essential characteristics of the goods.

(2) Where the Commissioner General accepts documentary proof submitted pursuant to subsection (1) –

- (a) any existing clearance declaration submitted in respect of the goods shall be –
  - (i) withdrawn, if all the goods covered by the declaration were destroyed; or
  - (ii) amended to exclude the destroyed goods, only if part of the goods covered by the declaration was destroyed;
- (b) any import duty payable but not yet paid on the goods by virtue of that clearance falls away in respect of the destroyed goods;
- (c) any import duty already paid on the destroyed goods by virtue of that clearance may be refunded;
- (d) the destroyed goods shall, in the case of imported goods;
  - (i) be cleared for home use or any other customs procedure at the request of the importer;
  - (ii) be abandoned to the Commissioner General;

(iii) at the expense of the importer and under supervision of Commissioner General, be exported from Lesotho,

Within the timeframe determined by the Commissioner General.

(3) Where the Commissioner General clears destroyed imported goods for home use or any other customs procedure, at the request of the importer of the destroyed goods, any duty payable by the importer on the destroyed goods may be set off against any duty that has to be refunded to the importer.

### **Lost goods**

417. (1) where a person notifies the Commissioner General about the lost goods, the notification shall be accompanied by the documentary proof to the effect that the goods were lost due to –

(a) a natural occurrence;

(b) an accident;

(c) a hostile act by a third party; or

(d) the essential characteristics of the goods;

(2) The importer shall provide proof to the Commissioner General that the goods that are lost due to any occurrence referred to in subsection (1) were not cleared for home use.

(3) Where the Commissioner General accepts documentary proof submitted pursuant to subsection (1) –

(a) any existing clearance declaration submitted in respect of the goods shall be –

(i) withdrawn, if all the goods covered by the declaration were lost; or

(ii) amended to exclude the lost goods, only if part of the goods covered by the declaration was lost;

(b) any import duty payable but not yet paid on the goods by virtue of that clearance falls away in respect of the lost goods;



(c) any import duty already paid on the lost goods by virtue of that clearance may be refunded.

### **Goods unaccounted for**

418. (1) The Commissioner General shall notify any person who imported the good that are unaccounted goods.

(2) The notification referred to in subsection (1) shall be accompanied by the documentary proof to the effect that the goods were unaccounted for due to -

(a) a short shipment of the goods;

(b) an administrative error in any documents or records relating to the goods; or

(c) another justifiable cause as may be determined by the Commissioner General.

(3) If the Commissioner General accepts documentary proof submitted to it in terms of subsection (1) that the goods are unaccounted for due to a cause referred to in that subsection -

(a) any existing clearance declaration submitted in respect of the goods shall be -

(i) withdrawn, if all the goods covered by the declaration are unaccounted for; or

(ii) amended to exclude the goods unaccounted for, only if part of the goods covered by the declaration is unaccounted for;

(b) any import duty payable but not yet paid on the goods by virtue of that clearance falls away in respect of the goods unaccounted for, unless provided otherwise in the Value Added Tax Act regulating that tax; and

(c) any import or export tax already paid on the goods unaccounted for by virtue of that clearance may in accordance with the Value Added Tax Act regulating that tax be refunded to the person who paid the tax, unless provided otherwise in that Act.

(4) The consequences set out in this Act shall apply if -

(a) the Commissioner General refuses to accept documentary proof submitted to it in terms of subsection (1) that the goods are unaccounted for due to a cause referred to in that subsection; or

(b) no such documentary proof is submitted to the Commissioner General.

**Tax waivers and refunds for goods damaged, destroyed, lost or unaccounted for not applicable in certain circumstances**

419. The Commissioner General shall not make a refund for duty paid or waive a duty payable to a person who was to receive a waiver or refund for damaged destroyed, lost or unaccounted goods where the person is to receive insurance or other compensation in respect of damaged destroyed, lost or unaccounted for goods.

**Wreck**

420. (1) No person shall without the permission of the Commissioner General, remove any wreck from where it is found or alter the wreck unless necessary for its preservation or safe-keeping.

(2) A person in possession of any wreck shall without delay –

(a) give notice of the wreck to the nearest Customs Office; and

(b) if required to do so, deliver the wreck to the Commissioner.

(3) Wreck consisting of goods that are not in free circulation shall be dealt with in accordance with this Part to the extent as may be prescribed by Regulations. Wreck consisting of salvageable damaged or undamaged goods not in free circulation shall be dealt with in accordance with the provisions of this Act applicable to such goods.

**Offence**

421. Any person who was in physical control of the goods when they were damaged, destroyed lost or unaccounted for fails to notify the Commissioner General within the stipulated period that the goods are damaged, destroyed, lost or unaccounted for commits an offence and is liable upon conviction to a fine of Five thousand maloti or imprisonment of five months.

## **PART XXXVI**

### **ABANDONMENT OF GOODS TO THE COMMISSIONER GENERAL**

#### **Application to abandon goods to Commissioner General**

422. (1) An owner of goods that are not in free circulation, who wishes to abandon the goods, shall apply to the Commissioner General to abandon the goods,—

(a) if the goods were damaged and the owner chooses not to obtain release of the damaged goods for home use or any other customs procedure;

(b) if the goods consist of parts or materials salvaged from goods that were destroyed and the owner chooses not to obtain release of the parts or materials for home use or any other customs procedure;

(c) if the value of the goods does not justify the cost of obtaining release of the goods for home use or any other customs procedure; or

(d) for any other reason that may be agreed on by the owner and the Commissioner General.

(2) The application made pursuant to subsection (1) shall —

(a) identify the goods;

(b) state the reason for the abandonment;

(c) indemnify the Commissioner General against any claim in respect of the abandoned goods by another person;

(d) contain an undertaking to pay any cost relating to —

(i) the removal of the goods to a state warehouse or any other place of surety; and

(ii) the storage of the goods; and

(e) contain any other information that may be determined by the Commissioner General.

(f) be made before goods are —

(i) released for home

(ii) processed; or

(iii) exported from Lesotho..

(3).The Commissioner General may, after considering an application made pursuant to subsection (1) –

(a) approve the application to abandon the goods if it is in the best interest of the state with such terms and conditions as he may determine; or

(b) refuse the application.

(4) Where the Commissioner General approves an application pursuant to subsection (3) (a), he shall notify the owner of goods, in writing, within a seven days of receipt of the application.

(5) The notice made pursuant to subsection (4) shall -

(a) identify the abandoned goods ;

(b) state the date on which the goods are abandoned to the Commissioner General; and

(c) contain any other particulars as may be determined by the Commissioner General.

(6) Where the Commissioner General refuses to approve an application pursuant to subsection (3) (b),he shall notify the owner of goods ,in writing, within a seven days of receipt of the application, of his reasons for refusal..

(7) Where the Commissioner General refuses to approve an application pursuant to subsection (6) and goods are not cleared and released for home use, the goods shall be destroyed or exported from Lesotho at the expense of the owner and under the supervision of the Commissioner General.

### **Consequences of abandonment**

423. Where the Commissioner General approves an application for abandonment of goods,–

(a) any existing clearance declaration submitted in respect of the goods shall be –

(i) withdrawn, if all the goods covered by the declaration are abandoned; or

(ii) amended to exclude the abandoned goods, only if part of the goods covered by the declaration were abandoned;

(b) ownership of the goods shall be vested in the Commissioner General

(c) any import duty payable but not yet paid on the goods by virtue of that clearance falls away in respect of the abandoned goods;

(d) any import duty already paid on the abandoned goods by virtue of that clearance may be refunded

(e) the goods shall be removed to a state warehouse or other place of surety determined by the Commissioner General.

### **Application to destroy goods**

424. (1) The owner of goods that are not in free circulation may, instead of abandoning the goods to the Commissioner General, apply in writing to the Commissioner General to destroy the goods under the supervision of the Commissioner General.

(2) If the owner of goods destroyed pursuant to subsection (1) intends to utilize any waste or scrap remaining after the destruction of the goods, such waste or scrap shall be cleared for home use or any other customs procedure within a timeframe as may be determined by the Commissioner General.

## **PART XXXVII**

### **STATE WAREHOUSES**

#### **Removal of goods to state warehouse**

425. (1) A person who is in physical control of goods imported into Lesotho that are not cleared and released shall remove the goods to a state warehouse -

(a) for storage pending compliance;

(b) where duties have not been paid at the ports of entry during importation; and

(c) where the goods are imported under the warehouse procedure.

(2) The Commissioner General may direct a person in physical control of goods to remove the goods to a state warehouse where the goods are -

(a) detained or seized;

(b) subject to a lien in terms of this Act;

(c) abandoned to the Commissioner General; or

(d) for any other reason that the Commissioner General may determine.

(3) Notwithstanding subsection (2) the Commissioner General may direct a person in physical control of the goods -

(a) to retain the goods for a specific period on the premises where they are currently located, provided the premises are licensed premises; or

(b) to remove the goods to any licensed premises determined by the Commissioner General.

(4) A record of goods retained or removed to any licensed premises pursuant to section 422 shall for accounting purposes be recorded in the records of a state warehouse operated by the Commissioner General.

(5) The delivery, receipt, keeping, storage, handling and removal of goods in a warehouse shall be done as if goods are in a state warehouse.

(6) Where goods are delivered to a state warehouse in compliance with subsection (1) or a direction issued in terms of subsection (2) –

(a) the carrier that transported the goods to the state warehouse shall notify the Commissioner General of the delivery; and

(b) the licensee of the warehouse where goods are removed shall notify the Commissioner General of the delivery of the goods.

(7) Where the Commissioner General has issued a direction pursuant to subsection (2), the person who is in physical control of goods shall not remove the goods to any place other than the state warehouse.

(8) The notice referred to in subsection (3) shall be accompanied by all supporting documents relating to the goods

(9) Where a person fails to comply with the direction made pursuant to subsection (2) to remove goods to a State warehouse, the Commissioner General may remove the goods to a State warehouse at the risk and expense of the person in physical control of the goods

(10) Where goods are taken to and stored in a State warehouse, the Commissioner General shall –

(a) require rent to be paid on the goods for such period as the goods may remain in the State warehouse and at the rate prescribed by Regulations to this Act.

(b) require additional charges for goods which require special care or treatment

(c) release the goods to the person claiming the goods where -

(i) the person claiming the goods has paid the rent;

(ii) the person claiming the goods furnishes proof that he is lawfully entitled to such goods;

(iii) all relevant provisions of this Act or any other law relating to the importation or exportation or transit of goods have been complied with.

### **Record keeping in a State warehouse**

426. (1) The Commissioner General shall keep and maintain a record of all goods received in and removed from the State warehouse

**Risks in connection with goods removed to or stored in state warehouses**

427. (1) An importer or exporter, of goods removed to or kept in a state warehouse shall carry the risk for any damage, destruction or loss of goods that may -

(a) occur whilst the goods are removed to, within or from the warehouse, or stored in the warehouse; or

(b) be caused by the handling or opening of any package or container in which the goods are contained, or the inspection of the contents, by a Commissioner General at the state warehouse.

(2) Where an importer, exporter is not located in Lesotho, an agent of the importer or exporter, of goods removed to or kept in a state warehouse shall carry the risk for any damage, destruction or loss of the goods.

**Direction or authorisation for goods to be retained at or removed to licensed premises other than state warehouse**

428. (1) Where the Commissioner General considers it necessary to remove goods to a state warehouse in terms of section 168(1) or (2), he may direct or authorize the licensee or other person in physical control of the goods, instead of removing the goods to a state warehouse—

(a) to retain the goods for a specific period on the licensed premises where they are currently located; or

(b) to remove the goods to any licensed premises as may be determined by the Commissioner General.

(2) Where goods are retained or removed pursuant to subsection (1), the Commissioner General shall for purposes of this Act regard such premises as licensed State warehouse.

(3) Goods retained at or removed to any licensed premises in terms of subsection (1) shall for accounting purposes be recorded in the accounting records of a State warehouse operated by the Commissioner General.



(4) The Commissioner General shall give notice to the licensee of the licensed premises where the goods are retained or to which the goods are removed that —

(a) subsection (2) applies to the premises for as long as the goods remain on the premises;

(b) the goods shall be kept secured on the premises as if the goods are in a State warehouse; and

(c) the goods shall for accounting purposes be recorded in the accounting records of a state warehouse specified in the notice.

(5) A copy of the notice referred to in subsection (4) shall be submitted to the Commissioner General.

(6) When goods are delivered to licensed premises in compliance with a direction issued in terms of subsection (1)(b)—

(a) the carrier that transported the goods to the premises shall notify the Commissioner General of the delivery; and

(b) the licensee of the premises shall notify the Commissioner General of the receipt of the goods.

### **Submission of removal notices**

429. A person who removes goods to any licensed premises specified in the direction or authorisation issued in terms of section 171(1) shall submit—

(a) a notice of removal of the goods containing such information as the Commissioner General may determine; and

(b) a copy of the notice together with all supporting documents concerning the goods which are in the possession of the person who removes the goods.

### **Failure to remove goods**

430. Where a person who is issued with a direction or authorisation pursuant to Section 171(1) fails to remove the goods to the licensed premises specified in the

direction or authorisation, the Commissioner General may remove the goods at the risk and expense of the person who removes the goods.

### **Recovery of expenses for removal of goods**

431. A person issued with a direction or authorisation has in pursuant to Section 171(1) may recover any expenses incurred in removing the goods to the licensed premises specified in the direction or authorisation or to compensate the Commissioner General in terms of Section 249 from—

- (a) the importer or exporter, or the owner, of the goods;
- (b) the agent in Lesotho of the importer, exporter or owner, if the importer, exporter or owner is not located in Lesotho; or
- (c) the proceeds of the sale of goods in accordance with Section 444.

### **Redirection of goods**

432. No person may, without the permission of the Commissioner General—

- (a) redirect goods to which a direction or authorisation issued in terms of Section 171(1) applies, to a place other than the licensed premises specified in the direction or authorisation; or
- (b) remove goods from the premises where goods are retained or removed in terms of section 171(1)(1) or (2).

### **Charges for goods in a State warehouse**

433. (1) The Minister may by regulations to this Act, publish in a Gazette—

- (a) state warehouse rent at a rate fixed; and
  - (b) additional charges for goods which require special care or treatment.
- (2) State warehouse rent and additional charges determined in terms of subsection (1) are—
- (a) payable by importer or exporter of goods; and
  - (b) payable to—

(i) the Commissioner General, in the case of a state warehouse operated by the Commissioner General; or

(ii) the licensee of the state warehouse, in the case of a licensed state warehouse.

(3) Where goods are sold in terms of section 441 or 442 any amount outstanding at the date of sale may be recovered from the proceeds of the sale in accordance with section 444.

(4) The Commissioner General may where he considers necessary exclude any specific goods or category of goods from paying state warehouse rent or additional charges

### **Accounting**

434. (1) The Commissioner General or licensee in charge of a state warehouse shall—

(a) keep record of—

(i) all goods received in and removed from the state warehouse; and

(ii) all goods that are in terms of section 428(4)(c) required to be recorded in the accounting records of the state warehouse;

(b) perform monthly stock checks; and

(c) perform such other accounting tasks as may be prescribed by Regulations or stipulated in the licensee's licence agreement.

(2) A record in terms of subsection (1)(a) shall be kept in such a manner and format and shall contain such information as may be prescribe by Regulations.

### **Reporting by license of State warehouses**

435. (1) The licensee of a state warehouse shall within three working days after the end of each month or within any extension approved by the Commissioner General, submit to the Commissioner General a report for the month in connection with all goods in that warehouse.

(2) A report in terms of subsection (1) shall contain such information as may be prescribed by Regulations, including information concerning—

(a) all goods received in the state warehouse during the reporting period;

- (b) all goods removed from the state warehouse during the reporting period;
- (c) any goods damaged, destroyed or lost during the reporting period;
- (d) any goods unaccounted for as at the end of the reporting period; and
- (e) any surplus goods as at the end of the reporting period.

### **Charges for goods stored at premises specified in direction or authorisation**

436. (1) The Minister shall prescribe in Regulations to this Act, storage fees for goods stored at licensed premises where the goods are retained or removed in of this Part.

(2) Storage fees determined in terms of subsection (1) are—

- (a) payable by a person referred in Section 171 or his representative; and
  - (b) payable to the licensee of the premises where the goods are retained or removed.
- (3) Where goods are sold in terms of section 441 or 442 any amount outstanding at the date of sale may be recovered by the person referred to in section 171 from the proceeds of the sale.
- (4) The Commissioner General may exempt any specific goods or category of goods from storage fees.

### **Responsibilities of licensee of premises where goods are kept**

437. The licensee of premises where goods are retained or to which goods were removed in terms of a direction or authorisation issued in terms of Section 171(1), shall take all reasonable steps to safeguard the goods against damage, destruction or loss.

### **Publication of lists of goods**

438. (1) The Commissioner General shall—

- (a) compile a list as at a date determined by him of all goods to be sold—
  - (i) in each State warehouse; or
  - (ii) accounted for in each state warehouse in terms of section 171(3); and
- (b) publish the list, in such a manner as may be determined by him.

(2) A list compiled pursuant to subsection (1) shall contain —

- (a) a description of the goods;
  - (b) the quantity;
  - (c) any marks and identification numbers on the goods;
  - (d) the name of the carrier who transported the goods;
  - (e) the transport document number of the goods;
  - (f) the date of arrival, in the case of imported goods, or intended export, in the case of goods to be exported;
  - (g) the name of the customs broker or other person who submitted a clearance declaration in respect of the goods;
  - (h) the name of the state warehouse where the goods are kept, or in the case of goods retained at or removed to other premises in terms of section 171(1), the physical address of the premises; and
  - (i) any other information as may be determined by the Commissioner General.
- (3) The publication of a list compiled in terms of subsection (1)(b) serves as public notification that the goods on the list—
- (a) may be sold in terms of Section 266, if the goods are not reclaimed within the period referred to in this Part;
  - (b) may be sold or may already have been sold in terms of Section 267, if that section applies to the goods; or
  - (c) may otherwise be disposed of or may already have been disposed of in terms of section 445, if the section applies to the goods.

### **Reclaiming of goods in or accounted for in state warehouses**

439. (1) A person entitled to goods in or accounted for in a state warehouse may, within a timeframe as may be prescribed by regulation from the date of publication of the list reflecting the goods, reclaim the goods—

(a) in the case of imported goods not cleared for home use or a customs procedure, by submitting a clearance declaration to clear the goods for home use or a permissible customs procedure;

(b) in the case of imported goods under a customs procedure, by—

(i) amending the clearance declaration submitted in respect of the goods, to any extent necessary to secure release of the goods for that customs procedure;

(ii) replacing any clearance declaration submitted in respect of the goods with a new clearance declaration to clear the goods for another customs procedure or for home use, as may be permissible in the circumstances; or

(iii) complying with any other requirement of this Act or a tax levying Act necessary to obtain possession of the goods;

(c) in the case of goods in free circulation destined for export but cleared for export, by submitting a clearance declaration to clear the goods for export;

(d) in the case of goods cleared for export but in free circulation before, by—

(i) amending the clearance declaration submitted in respect of the goods, to any extent necessary to secure release of the goods for export;

(ii) withdrawing the clearance declaration for export; or

(iii) complying with any other requirement of this Act or a tax levying Act necessary to obtain possession of the goods;

(e) in the case of goods manufactured in the Lesotho to which this is charged, by complying with the requirements of the Act to obtain possession of the goods; or

(f) in the case of goods of a category not referred to in paragraph (a), (b), (c), (d) or (e), by complying with any requirements as may be prescribed by regulation to this Act

(2) Subsection (1) does not apply in respect of goods that are—

(a) for urgent sale;

(b) abandoned to the Commissioner General;

(c) seized or seized; or

(d) destroyed.

### **Removal of reclaimed goods**

440. (1) Where the Commissioner General releases goods reclaimed pursuant to section 439 for home use or a customs procedure or otherwise approves the reclaim, the goods shall be removed from the state warehouse or other premises where the goods are kept within a timeframe as may be prescribed by regulation to this Act from the date of release or approval.

(2) No goods may be removed in terms of subsection (1) unless all claims are paid.

### **Sale of goods**

441. (1) The Commissioner General may by regulations publish in the gazette a list of goods to be sold in terms of this section where

(a) the goods were not reclaimed in terms of section 439 (1) within the period applicable to the goods;

(b) the goods were reclaimed but release of the goods for home use or the required customs procedure was refused or the reclaim was not approved;

(c) Section 266 applies to the goods and the goods are not removed from the state warehouse or premises where the goods are kept within the period applicable to the goods; or

(d) the goods are seized or abandoned goods.

(2) Notwithstanding provisions of Clearance of goods under this Act, imported goods sold in terms of this section shall be excluded from clearance of goods and may be allowed into free circulation

(3) Where goods are sold in terms of subsection (1), the Commissioner General shall—

(a) allow goods to be sold in terms of Section 441; or

(b) dispose of goods otherwise than by sale in terms of 445(2)(b) or (c).

### **Urgent sales**

442. (1) The Commissioner General may sell immediately the following except goods referred to in section 413(2)(b) or (c)—

(a) goods of a perishable or dangerous nature; or

(b) if a delay in the sale of the goods would result in diminishing proceeds that would not be sufficient to cover claims referred to in section 412(1)(a) to (g), as may be applicable to the goods.

(2) Notwithstanding provisions of clearance of goods under this Act, imported goods sold in terms of this section shall be excluded from clearance of goods and may be allowed into free circulation.

### **Manner of sale**

443. (1) Goods may be sold in terms of section 409 or 410 in any manner determined by the Commissioner General which may include a sale—

(a) by public auction;

(b) by public or closed tender; or

(c) out of hand, when appropriate.

(2) Where dutiable imported goods are seized or seized in terms of section 433 and are sold in terms of subsection (1) the Commissioner General shall set a minimum price

(3) Seized or seized imported dutiable goods sold pursuant to subsection (1) shall be sold at the price above the minimum price but not at a price undermining the local production of goods of the same kind and class.

### **Application of proceeds of sales**

444. (1) The Commissioner General shall use proceeds of the sale of goods made pursuant to section 409 or 410 to pay the following claims in the order of preference :

(a) any tax, interest or administrative penalty payable on the goods ;

(b) any expenses incurred by him in connection with the goods and any amounts payable in terms of section 404(2) to the Commissioner General in connection with the goods;



(c) any amounts payable in terms of—

(i) section 404(2) to the licensee of a licensed state warehouse in connection with the goods, if the goods are kept in a licensed state warehouse; or

(ii) section 404(2) to the licensee of premises where the goods were kept, if the goods were retained at or removed to such premises;

(d) any charges payable to a airport or railway authority in connection with the goods;

(e) any charges payable in connection with the goods to a carrier or licensee of a customs controlled area;

(f) any expenses payable to a person; and

(g) any freight and salvage.

(2) Any surplus remaining after all claims in terms of subsection (1) have been met, shall on written application by the owner of the goods be paid to the owner: Provided that—

(a) the application is supported by proof of ownership of the goods; and

(b) is received by the Commissioner within three years of the date of sale of the goods.

(3) Subsection (2) does not apply to seized or abandoned goods, and any surplus remaining after all claims in terms of subsection (1) have been met accrues to the Consolidated Fund.

### **Disposal of goods otherwise than by sale**

445. (1) The Commissioner is not bound to sell goods referred to in section 441 and may, subject to subsection (3), instead of selling the goods dispose of the goods in any appropriate manner, including by—

(a) donating the goods for welfare purposes;

(b) appropriating the goods to an organ of state, including LRA, for use by that organ of state;

(c) making the goods available as humanitarian aid to communities in the Lesotho or to another country; and

(d) destroying the goods.

(2) Subsection (1) shall be applied, as may be appropriate in the circumstances, to—

(a) unsold goods if efforts to sell the goods have been fruitless;

(b) goods that cannot economically be sold having regard to the nature or condition of the goods; or

(c) goods that pose a risk to public safety, health or morals.

(3) Dutiable imported goods seized in terms of Part XXXXIV may be disposed of in terms of subsection (1) only in a way that would not undermine the local production of goods of that kind.

(4) Goods disposed of in terms of subsection (1) may be removed from the state warehouse or premises where the goods are kept as the Commissioner General may direct.

(5) Disposal of goods in terms of subsection (1) does not affect the liability of a person responsible in terms of this Act or a tax levying Act for paying any tax, expenses or charges in respect of the goods.

(6) Imported goods disposed of in terms of this section are excluded from section 89 and those goods may be allowed into free circulation without clearance for home use.

### **Non-compliance with sale conditions**

446. If the purchaser of goods sold in terms of section 441 fails to comply with any condition subject to which the goods were sold within a timeframe as may be prescribed by regulations from the date of sale—

(a) the sale becomes null and void;

(b) any amounts paid by the purchaser less expenses incurred with the sale, storage and handling of the goods may be refunded to the purchaser, but the Commissioner General is not bound to refund such amounts; and

(c) the goods may be resold or section 445 may be applied to the goods.

### **Removal of goods following sale of goods**

447. (1) Goods sold in terms of section 441 or 442 shall be removed from the state warehouse or premises where the goods are kept, provided that—

(a) the purchase price has been paid; and

(b) the conditions of sale have been complied with.

(2) If the goods are not removed within a timeframe as may be prescribed by regulations from the date of sale of the goods—

(a) the purchaser becomes liable from that date for any amounts payable in terms of section 433(1)(a) and (b) or 436(1) and may not remove the goods unless those amounts are paid; or

(b) the Commissioner General may direct that section 446 be applied to the goods.

### **Tax consequences of goods sold or otherwise disposed of in terms of this Part**

448. Goods sold in terms of section 441 or 442 shall for tax purposes—

(a) in the case of imported goods, regarded to be cleared for home use under Part VIII insofar as the goods are not already in terms of another provision of this Act regarded to be cleared for home use under this Part; or

(b) in the case of goods that were in free circulation before being removed to or accounted for in a state warehouse, regarded to have reverted to free circulation insofar as the goods are not already in terms of another provision of this Act regarded to have reverted to free circulation.

### **Offences**

449. (1) Any person who redirects goods to a place other than a State warehouse without the permission of the Commissioner General in terms of section 432, commits an offence and is liable upon conviction to a fine not exceeding fifty thousand maloti or to imprisonment for a period not exceeding six years or both fine and imprisonment.

(2) A licensee who removes goods in contravention with section 425(1)(a) commits an offence and is liable upon conviction to a fine not exceeding fifty thousand maloti or to imprisonment for a period not exceeding six years or both fine and imprisonment.

(3) Any person who fails to submit a removal notice to the Commissioner General pursuant to section 429(1) commits an offence and is liable upon conviction to a fine not exceeding fifty thousand maloti or to imprisonment for a period not exceeding six years or both fine and imprisonment

(4) A licensee of a state warehouse who fails to submit supporting documents to the Commissioner General in terms of section 425(2) commits an offence and is liable upon conviction to a fine not exceeding fifty thousand maloti or to imprisonment for a period not exceeding six years or both fine and imprisonment.

(5) A licensee of a State warehouse who fails to keep records in terms section 434(1) or (2), commits an offence and is liable upon conviction to a fine not exceeding fifty thousand maloti or to imprisonment for a period not exceeding six years or both fine and imprisonment

(6) A licensee of a State warehouse who fails to submit a report to the Commissioner General in terms of this Part, commits an offence and is liable upon conviction to a fine not exceeding fifty thousand maloti or to imprisonment for a period not exceeding six years or both fine and imprisonment

(7) A licensee of a State warehouse who fails to take all reasonable steps to safeguard the goods in the State warehouse pursuant to section 437. commits an offence and is liable upon conviction to a fine not exceeding fifty thousand maloti or to imprisonment for a period not exceeding six years or both fine and imprisonment

(8) Any person who fails to remove released reclaimed goods within the prescribed period in terms of section 440(1) commits an offence and is liable upon conviction to a fine not exceeding fifty thousand maloti or to imprisonment for a period not exceeding six years or both fine and imprisonment

## **PART XXXVIII**

### **REGISTRATION**

#### **Registration of importers and exporters**

450. (1) A person who imports or exports goods shall apply to the Commissioner General to be registered as an importer or exporter under this Act.

(2) Subsection (2) does not apply to—

(a) a person importing or exporting goods that are not required to be cleared in terms of this Act; or

(b) any other category of persons exempted from registration in terms of this Act.

(3) The application made pursuant to subsection (1) shall –

(a) be made on a form prescribed by Regulations to this Act;

(b) contain such information as may be required by the Commissioner General;

(c) be signed by the applicant; and

(d) be accompanied by such supporting documents.

(3) Where application made pursuant to subsection (1) is for export of goods, the application shall indicate whether the applicant intends to export as;

(i). exporter located in Lesotho;

(ii); or

(3) Continuous Transmission Commodity exporter;

(iv) exporter located in Lesotho for any trade regime in which Lesotho is a party to.

(4) The Commissioner General shall, after considering the application made pursuant to subsection (1), approve the application and register the person as an importer or exporter.

(5) The Commissioner General shall, where he approves and registers the person pursuant to subsection (1) issue the registration certificate to the person with such terms and conditions as the Minister may prescribe by Regulations.

(6) A registration certificate-

(a) be valid from the date of issue of the certificate;

(b) is valid until it –

(i) is withdrawn by the Commissioner General; or

(ii) expires in terms of subsection (2)

(7) For purposes of this Section ,a registration certificate expires if the registered person in whose name the certificate has been issued, is inactive in relation to the activity for which the person was registered for a continuous period of three years..

(8) A registration certificate issued pursuant to subsection (4) is not be transferrable.

(9) Where –

(a) the application made pursuant to subsection (1) -

(i) does not meet the requirements;

(ii) contains false or misleading information;

(iii) is accompanied by false or misleading supporting documents;

(iv) has omitted to state a fact, which is material to the consideration of the application;

(b) an applicant has not paid duties or taxes which are due;

(c) an applicant has been convicted of an offence under this Act; or

(d) an applicant has been convicted of an offence involving fraud or dishonesty,

the Commissioner General shall reject an application and notify the importer or exporter of reasons for rejecting the application.

(10) A person who does not reside in Lesotho shall not be registered by the Commissioner General as an importer or exporter under this Act.

### **Registration of persons acquiring ownership of goods whilst under customs procedures**

451. (1) No person may acquire ownership of goods whilst the goods are under a customs procedure unless the person is registered in terms of this Act;

(2) A person who acquires ownership of goods while the goods are under a customs procedure but is not resident in Lesotho shall be represented by a person registered importer or exporter.

### **Registration of agents for persons not located in Lesotho**

452. (1) A person who represents an importer, exporter, carrier, cargo reporter who does not reside in Lesotho shall make an application to be registered as an agent to the Commissioner General.

(2) The person who represents an importer, exporter, carrier, cargo reporter pursuant to subsection (1) shall be located in Lesotho

### **Contents of registration certificates**

453. The registration certificate issued pursuant to section 450 shall contain the following:

- (a) the name of the registered person;
- (b) the purpose for which the person is registered;
- (c) a customs code allocated to the registered person; and
- (d) the date from which the certificate takes effect.

### **Renewal of registration certificates**

454. (1) A person who has been registered may not later than thirty calendar days before a registration certificate lapses apply for the renewal of the certificate.

(2) The Commissioner General shall upon approval of an application made pursuant to subsection (1) renew the registration certificate.

### **Amendment of registration certificates**

455. (1) A registration certificate issued may be amended –

- (a) on application by the holder of the certificate; or
- (b) by the Commissioners General where he considers it necessary.
- (c) in order to extend or limit the purposes for which the certificate was issued;

(d) in order to update or change any detail on the certificate; or

(c) in order to correct a technical or editorial error.

(2) An amendment to a registration certificate issued pursuant to subsection (1) shall take effect on a date that shall be determined by the Commissioner General.

### **Suspension or withdrawal of registration**

456. (1) The Commissioner General shall withdraw the registration of a person if that person –

(a) acquired the registration under false and misleading information;

(b) is no longer entitled to registration in terms of this Act;

(c) is sequestered or liquidated.

(2) The Commissioner General may suspend the registration of a person if the person –

(a) is in breach of the terms and conditions of his registration certificate;

(b) has failed to pay to the Commissioner General on or before the date on which any duties or taxes were due.

(c) is in breach of a provision of this Act;

(d) has been convicted of an offence under this Act; or

(e) has been convicted of an offence involving fraud or dishonesty.

(3) The Commissioner General shall, before he suspends or withdraws the registration of a person under this section

(a) notify the person in writing about his decision and reasons for the suspension or withdrawal of his registration;

(b) request the person to submit representation within seven days of receipt of notice of suspension or withdrawal;

(c) inform the person that he may appeal against the Commissioner General decision.

### **Provision of surety**



457. The Commissioner General may require a registered person to provide surety to cover any duty or tax risks in relation to goods imported, exported, received, stored, processed, handled or in any way dealt with, managed or controlled by the registered person or by a person for whom the registered person acts as a representative.

### **Commissioner General's powers following expiry, suspension or withdrawal of registrations**

458. The Commissioner General may where the registration of a person has expired or is suspended or withdrawn –

(a) take control of all or any specific goods in the custody of the person –

(i) for the recovery of duties and taxes payable on the goods; or

(ii) to ensure that this Act or Value Added Tax is complied with in relation to the goods;

(b) require that person or the person in whose custody the goods are to remove the goods to a customs controlled area specified by him;

(c) require or allow the goods to be cleared for home use or a customs procedure; or

(d) require the person to pay any costs incurred by the Commissioner General in carrying out any action in terms of this sections.

### **Offences**

459. (1) Any person who fails to register as importers and exporters in terms of this Act commits an offence and is liable upon conviction to a fine not exceeding five thousand maloti or imprisonment for a period not exceeding five months.

(2) A person who acquire ownership of goods in terms of section 451 commits an offence and is liable upon conviction to a fine not exceeding five thousand maloti or imprisonment for a period not exceeding five months

(3) A person who acts in contravention with section 452(1) commits an offence and is liable upon conviction to a fine not exceeding five thousand maloti or imprisonment for a period not exceeding five months;

(4) A person who transfer registration certificate to any person contrary to section 450(8), commits an offence and is liable upon conviction to a fine not exceeding five thousand maloti or imprisonment for a period not exceeding five months;

(5) A registered person who fails to notify the Commissioner General on any change of circumstances on the application. commits an offence and is liable upon conviction to a fine not exceeding five thousand maloti or imprisonment for a period not exceeding five months

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## **PART XXXIX**

### **LICENSING**

#### **Licensing of premises for certain purposes**

460. (1) A person who wishes to manage, operate or use the following premises shall make an application for a license to the Commissioner General:

- (a) Container terminals;
- (b) air cargo terminals;
- (c) air cargo depots;
- (d) air travellers terminals;
- (e) rail cargo terminals;
- (f) rail travellers terminals;
- (g) international postal clearance depots;
- (h) container depots;
- (i) storage manufacturing and special warehouses
- (j) tax free shops;
- (k) Industrial Development Zone (IDZ) enterprise premises;
- (l) inward processing premises;
- (m) home use processing premises; or
- (n) state warehouses contemplated in this Act;

(2) A person who wishes to manage, operate or use the following shall make an application for a license to the Commissioner General:

- (a) cross-border transmission lines,
- (b) pipelines,
- (c) cable-cars; and
- (d) conveyer belts;

(3) A person who wishes to carry on the following business shall make an application for a license to the Commissioner General:

- (a) carrier of dutiable goods;
- (b) customs broker;
- (c) stores supplier;
- (d) importing goods for home use processing on home use processing premises;
- (e) importing goods for inward processing; or
- (f) exporting inward processed compensating products; or

(4) No person may conduct business as a customs broker unless licensed as a customs broker.

(5) No person may be licensed as a customs broker unless the person is located in Lesotho.

(6) No person other than the Commissioner General may operate any premises as a state warehouse.

### **Application for a licensing**

461. The application made shall –

- (a) be on an application form as may be prescribed by regulation to this Act;
- (b) contain any information that may be determined by the Commissioner General;
- (c) be signed by the applicant; and
- (d) be accompanied by supporting documents or information as may be determined by the Commissioner General.

### **Consideration and decision of applications**

462. (1) The Commissioner General shall, after considering the application made approve the application and issue a licence with such terms and conditions as he may determine.

(2) Where –

- (a) the application made pursuant to subsection (1) -
  - (i) does not meet the requirements;
  - (ii) contains false or misleading information;
  - (iii) is accompanied by false or misleading supporting documents;
  - (iv) has omitted to state a fact, which is material to the consideration of the application;
- (b) an applicant has not paid duties or taxes which are due;
- (c) an applicant has been convicted of an offence under this Act; or
- (d) an applicant has been convicted of an offence involving fraud or dishonesty

The Commissioner General may refuse to licence the person.

### **Communication of decisions on applications**

463. The Commissioner General shall, where he considers and make a decision on an application-

- (a) notify the person in writing about his decision and reasons for refusing the application;
- (b) request the person to submit representation within seven days of receipts of notice of decision;
- (c) inform the person that he may appeal against the Commissioner General decision.

### **Issuing of licenses**

464. (1) The Commissioner General shall, where he approves and license the person pursuant to subsection (1) issue the license to the person with such terms and conditions as the Commissioner General may determine.

(2) The license issued pursuant to subsection (1) shall

- (i) be valid for a period of one year from the date of issue.
- (ii) be as stipulated in schedule.....to this Act; and
- (iii) not be transferrable.

### **Applications for renewal of licences**

465. (1) A person who has been licenced pursuant to this Part may not later than thirty calendar days before a licence lapses apply for the renewal.

(2) The Commissioner General shall upon approval of an application made pursuant to subsection (1) renew the licence.

(3) The Commissioner General shall, where a person issued a licence pursuant to subsection (1) has not engaged in the activity for which the licence was issued for a period of at least one year preceding the date of the application for the renewal of a licence, refuse to renew the licence.

### **Amendment of licences**

466. (1) A licence issued pursuant to Section 464 shall be amended –

(a) on application by the holder of the licence; or

(b) by the Commissioners General where he considers it necessary.

(c) in order to extend or limit the purposes for which the licence was issued;

(d) in order to update or change any detail on the licence or

(e) in order to correct a technical or editorial error.

(2) The Commissioner General shall, before amending the licence pursuant to subsection (1)

(a) notify the licensee about the proposed amendment; and

(b) the reasons for the proposed amendment;

(c) give the licensee an opportunity to submit representations on the proposed amendment within thirty calendar days of receipt of a notice of the proposed amendment; and

(d) inform the licensee that he may appeal against the Commissioner General's decision.

(3) An amendment to a licence issued shall take effect on a date that shall be determined by the Commissioner General.

### **Purposes for amendment of licences**

467. A licence issued shall be amended –

(a) if it is necessary –

(i) to protect the State from any loss of duty and tax that may occur on goods received, stored, handled or transported by a licensee.

(ii) for the surety of the goods; or

(iii) to ensure that this Act and Value Added Tax Act of 2001 is complied with

(b) if any circumstances which were material to the initial granting of the licence have changed.

### **Grounds for suspension or withdrawal of licenses**

468. (1) The Commissioner General shall withdraw the licence if that person –

(a) acquired the licence under false and misleading information;

(b) is no longer entitled to a licence in terms of this Act;

(c) is sequestrated or liquidated;

(d) ) is no longer engaged in the activity for which the licence was issued.

(2) The Commissioner General may suspend the licence issued in terms of section 464 where the person –

(a) is in breach of the terms and conditions of his licence;

(b) has failed to pay to the Commissioner General on or before the date on which any duties or taxes were due.

(c) is in breached a provision of this Act;

(d) has been convicted of an offence under this Act; or

(e) has been convicted of an offence involving fraud or dishonesty.

(3) The Commissioner General shall, before he suspends or withdraws the licence issued in terms of section 464-

- (a) notify the person in writing about his decision and reasons for the suspension or withdrawal of his licence;
- (b) request the person to submit representation within seven days of receipt of notice of suspension or withdrawal;
- (c) inform the person that he may appeal against the Commissioner General`s decision
- (d) give the person an opportunity to submit representations on the proposed suspension or withdrawal within thirty calendar days of receipt of the a notice of the suspension or withdrawal.

### **Provision of surety**

469. The Commissioner General may require a licensee to provide surety to cover any duty or tax risks in relation to goods imported, exported, received, stored, processed, handled or in any way dealt with, managed or controlled by the licensee or by a person for whom the licensee acts as a representative

### **Commissioner General's powers following expiry, lapsing, suspension or withdrawal of licences**

470. The Commissioner General may where the licence has expired or is suspended or withdrawn –

- (a) take control of all or any specific goods in the custody of the person –
  - (i) for the recovery of duties and taxes payable on the goods; or
  - (ii) to ensure that this Act or Value Added Tax is complied with in relation to the goods;
- (b) require that person or the person in whose custody the goods are to remove the goods to a customs controlled area specified by him;
- (c) require or allow the goods to be cleared for home use or any other customs procedure; or
- (d) require the person to pay any costs incurred by the Commissioner General in carrying out any action in terms of this sections.

### **Offences**



471. (1) Any person who manages any premises not licensed in terms section 460 of this Part, commits an offence and is liable upon conviction to a fine not exceeding one hundred thousand maloti or to imprisonment for a period not exceeding ten years or both fine and imprisonment.

(2) Any person who uses expired lapsed, suspended and withdrawn license commits an offence and is liable upon conviction to a fine not exceeding one hundred thousand maloti or to imprisonment for a period not exceeding ten years or both fine and imprisonment.

(3) Any person who transfers a license to an unauthorized person, commits an offence and is liable upon conviction to a fine not exceeding one hundred thousand maloti or to imprisonment for a period not exceeding ten years or both fine and imprisonment.

## **PART XXXX**

### **ACCREDITED CLIENTS**

#### **Applications for accreditation status**

472. (1) A person who is registered and licensed as an importer or exporter may apply to the Commissioner General for the accreditation status.

(2) The application made pursuant to subsection (1) shall–

(a) be made on the application form as stipulated in Schedule...;

(b) contain such information as may be required by the Commissioner General;

(c) be signed by the applicant; and

(d) be accompanied by such supporting documents and information as may be determined by the Commissioner General.

(3) The Commissioner General may after considering the application made pursuant to subsection (1) approve the application, grant the accreditation status and issue the accreditation status certificate with such terms and conditions as may be prescribed in the Regulations to this Act.

(4) The accreditation status certificate issued in terms of subsection (1) shall–

(a) be valid for a period of three years from the date of issue.

(b) be stipulated in Schedule....; and

(c) not be transferrable.

(5) Where the accreditation status is granted in terms of subsection (1) the Commissioner General shall determine the level of accreditation status conferred on the applicant.

(6) The Commissioner General shall, in determining the level of accreditation status conferred consider the following–

(a) a record of compliance with this Act and the Value Added Tax Act during a period of between two to five years preceding the date of the application;

- (b) an effective accounting, recordkeeping and operational system consistent with the generally accepted accounting practice;
- (c) an effective accounting, recordkeeping and operational system capable of complying with accredited client requirements;
- (d) the skills or skilled staff to comply with accredited client requirements prescribed in the regulations to this Act;
- (e) sufficient financial resources to comply with accredited client requirements prescribed in the regulations to this Act; and
- (f) any other thing that he may consider necessary for the purpose of this section.

(7) Where the person who has made an application pursuant to subsection (1) –

- (a) does not comply with provisions of this Act or the Value Added Tax Act of 2001;
  - (b) does not meet the requirements for accredited client status;
  - (c) has made a false or misleading statement in the application or any supporting document;
  - (d) has omitted to state a fact, which is material to the consideration of the application;
- or
- (e) has not paid any duty or tax payable;

the Commissioner General shall refuse to approve an application

### **Communication of decisions on applications**

473. (1) The Commissioner General shall, where he refuses to approve an application made pursuant to section 472-

- (a) notify the person in writing about his decision and reasons for refusing the application
- (b) request the person to submit representation within seven days of receipt of notice of decision;
- (c) inform the person that he may appeal against the Commissioner General decision

(2) where the Commissioner General approves the application pursuant to section 472 he shall notify the applicant of his approval of the application and set out any special conditions in respect of which the accredited client status is approved.

### **Renewal of accredited client status certificates**

474. The holder of an accredited client status certificate shall, not later than thirty calendar days before the certificate expires, apply for the renewal of the certificate.

### **Amendment of accredited client status certificates**

475. (1) The accreditation status certificate issued pursuant to section 472(3) shall be amended –

- (a) on application by the holder of the certificate;
- (b) by the Commissioners General where he considers it necessary.
- (c) in order to extend or limit the purposes for which the certificate was issued;
- (d) in order to update or change any detail on the certificate or
- (e) in order to correct a technical or editorial error.
- (f) in order to change, remove or substitute any condition to the certificate.
- (g) in order to raise or lower the level of accreditation;
- (h) in order to update or change any detail on the certificate;

(2) The Commissioner General shall, before amending the accreditation client status certificate pursuant to subsection (1)

- (a) notify the holder of the certificate about the proposed amendment; and
- (b) the reasons for the proposed amendment;
- (c) give the holder of the certificate an opportunity to submit representations on the proposed amendment within thirty calendar days of receipt of a notice of the proposed amendment. And
- (d) inform the holder of the certificate that he may appeal against the Commissioner General`s decision.

(3) An amendment to the accreditation client status certificate issued shall take effect on a date that shall be determined by the Commissioner General.

### **Suspension or withdrawal of accredited client status certificates**

476. (1) The Commissioner General shall withdraw the accreditation client status certificate if that person –

(a) acquired the accreditation client status certificate under false and misleading information;

(b) is no longer entitled to a accreditation client status certificate in terms of this Act;

(c) is sequestered or liquidated;

(d) ) is no longer engaged in the activity for which the accreditation client status certificate was issued.

(2) The Commissioner General may suspend the accreditation client status certificate issued in terms of section 472 where the person –

(a) is in breach of the terms and conditions of his certificate;

(b) fails to pay to the Commissioner General duties and taxes five days after due date;

(c) is in breach of a provision of this Act;

(d) has been convicted of an offence under this Act; or

(e) has been convicted of an offence involving fraud or dishonesty.

(3) The Commissioner General shall, before he suspends or withdraws the accreditation client status certificate issued in terms of section 472

(a) notify the person in writing about his decision and reasons for the suspension or withdrawal of his certificate;

(b) notify the person of the period for which the certificate is suspended;

(c) notify the person of the date from which the certificate is withdrawn;

(d) request the person to submit representation within seven days of receipt of notice of suspension or withdrawal;

(e) inform the person that he may appeal against the Commissioner General`s decision;  
and

(f) give the person an opportunity to submit representations on the proposed suspension or withdrawal within thirty calendar days of receipt of the a notice of the suspension or withdrawal.

### **Benefits of accreditation**

477. (1) The Commissioner General may, by regulations to this Act prescribe benefits for persons on whom the accredited client status has been conferred,–

(2) Different benefits may be prescribed in terms of subsection (1) for different levels of accredited client status.

### **Offences**

478. (1) Any holder of accredited status who fails to notify the Commissioner General of the non-compliance with accredited status, commits an offence and is liable upon conviction to a fine not exceeding five thousand maloti or imprisonment for a period not exceeding twelve months or both fine and imprisonment.

(2) Any holder of accredited status who fails to return the withdrawn certificate to the Commissioner General within the prescribed period in terms section 476. commits an offence and is liable upon conviction to a fine not exceeding five thousand maloti or imprisonment for a period not exceeding twelve months or both fine and imprisonment.

## **PART XXXXI**

### **SURETY FOR PAYMENT OF DUTY AND TAXES**

#### **When surety may be required**

479. (1) The Commissioner General may require from a person who is registered as an importer security in respect of any goods on which tax is or may become payable or this Act if, for any reason, the payment or recovery of the tax on those goods is or will be at risk, including to cover any tax risk in relation to the following goods -

(a) goods imported into Lesotho;

(b) goods loaded, off-loaded, received, packed, unpacked, consolidated, deconsolidated, stored, processed, delivered, removed or in any other way handled;

(c) goods not in free circulation;

(d) goods stored in, registered premises;

(e) goods transported in or through Lesotho;

(f) goods released for a customs procedure;

(g) goods on which tax is deferred; or

(h) any other goods that are subject to customs control.

(2) The lodgement of surety required in terms of subsection (1) shall be-

(a) at the time of release of goods for home use or any other customs procedure;

(b) at the time of issue or renewal of a licence; and

(c) at the time of issue or renewal of a registration certificate;

(3) If the risk in relation to the payment or recovery of the tax or other money for which security was given for any reason changes, the Commissioner General may require the person who has given the security to alter the manner or amount of the security or to renew the security as the Commissioner General may determine.

#### **Time when security may be required**

480. (1) The Commissioner General may require security from importer of goods at any time during which the payment or recovery of the tax will be at risk, including as a pre-condition for—

(a) the release of the goods for home use or any other customs procedure;

(b) the issuing or renewal of a licence, or at any time after a licence has been issued or renewed;

(c) the issuing or renewal of a registration certificate, or at any time after a registration certificate has been issued or renewed; and

(d) the granting of any approval permission, authorization, recognition, exemption or other special dispensation issued in terms of this Act

(2) Where the risk in relation to the payment or recovery of the tax for

which security was given for any reason changes, the Commissioner General may require the person who has given the security to alter the manner or amount of the security or to renew the security as the Commissioner General may determine.

### **Determination of amount of security**

481. (1) When determining the amount of security required, the Commissioner General shall take into account the following factors—

(a) an assessment of the risk to the extent of the risk, is covered by the security;

(b) if the person who is to provide the security is a licensee or registered person—

(i) the annual turnover of the person's business as a licensee or registered person;

(ii) the type of licence or registration issued; and

(iii) whether the person has accredited client status, and if so, the level of accreditation; and

(d) any other factors as may be determined by the Commissioner General

(3) When determining the monetary extent of a tax risk, the Commissioner General shall



also take into account the following factors-

- (a) the relevant person's record of compliance with tax obligations;
- (b) the likelihood of any interest becoming payable in respect of the tax; and
- (c) the fact that such interest may be recoverable as if part of the tax.

### **Types of surety**

482. (1) Surety lodged in terms of section 479 may be as follows:

- (a) a security made by the person required to give surety issued by a financial institution registered or approved by the Central Bank of Lesotho;
- (b) any surety allowed in terms of an international clearance arrangement;
- (c) provisional payment; or
- (d) any other type of surety that may be determined by Commissioner General..

### **Recovery of duties or taxes from the surety or return of surety**

483. (1) The Commissioner General may recover duties and taxes from surety lodged in respect of the goods for which the surety was given.

(2) Where security is lodged pursuant to this Act, it shall be discharged as soon as possible after the Commissioner General is satisfied that the obligations under which the security was required is duly fulfilled. if –

- (a) the validity period of the surety has expired and the surety was not utilised.
- (b) the purpose for which the surety was given has lapsed.

## **PART XXXXII**

### **RECOVERY OF DEBT**

#### **Recovery of debt owed to the Commissioner General**

484. (1) The Commissioner General shall, recover any debt due, from any person liable, including the following:

- (a) any administrative fines imposed;
- (b) any costs or expenses incurred and recoverable by him;
- (c) the proceeds of the sale of goods made under this Act; or
- (d) any interest on amounts not paid on due date

(2) The Commissioner General shall, recover the debt pursuant to subsection (1) from surety lodged by the person liable for the debt.

(3) Where a person who is liable for the debt is not located in Lesotho, or fails to pay the debt when required to do so, and has not provided surety from which the Commissioner General may recover the debt, the Commissioner General may recover the debt from –

- (a) the registered agent of that person in Lesotho;
- (b) any person who, is in connection with the debt or any goods in respect of which the debt is due who–
  - (i) acted as, or gave out to be, the agent of the person liable for the debt; or
  - (ii) acted in a fiduciary capacity; or
- (c) any surety provided by a registered agent.

(4) The Commissioner General may, where a person who is liable for the debt is a juristic entity and fails to pay the debt when required to do so and has not provided surety from which the debt may be recovered, recover the debt from the juristic entity.

(5) Where a person who is liable pay debt has not paid a full amount of debt, the Commissioner General shall, recover the remaining amount from –

- (a) the person who partially paid debt;

(b) any other person from whom that debt could have been recovered; or

(c) any surety provided by the person.

(6) If the remaining amount to be collected is less than M100, the Commissioner General may recover the remaining amount.

### **Interest on outstanding amounts**

485. (1) A person who is liable to pay debt under this Act shall pay interest if he fails to pay the debt on the due date.

(2) Notwithstanding subsection (1) the Commissioner General may exempt, on reasonable grounds a person liable to pay interest from payment of interest.

(3) A debt not paid on the due date accrues interest that shall be prescribed by the Minister in by Regulations to this Act.

(4) The Commissioner General shall, calculate interest prescribed pursuant to subsection (1) on daily balances owing and compounded at the end of each month.

### **Payment of debt in instalments**

486. The Commissioner General may allow a person who is liable to pay debt to pay debt in instalments, subject to –

(a) the payment of interest on outstanding balances; and

(b) such conditions as he may determine

### **Persons having accounts with Commissioner General**

487. (1) Where a person has an account with the Commissioner General for the payment of duty or tax and other debt due to the Commissioner General in terms of this Act or Value Added Tax Act, any amount –

(a) paid by the person to the Commissioner General may be debited against that account; or

(b) refunded by the Commissioner General to the person may be credited to that account.

(2) The Commissioner General shall notify a person who has paid or been refunded pursuant to subsection (1).

### **Liens over goods to secure payment of debts**

488. The Commissioner General may allow a person who is liable for a debt to provide a lien in order to secure payment of a debt due to the Commissioner General.

### **Offences**

489. (1) Any person who fails to secure payment of a debt over goods under lien in terms of section 324 commits an offence and is liable upon conviction to a fine not exceeding one thousand maloti or to imprisonment for a period not exceeding ten years or both fine and imprisonment.

(2) Any person who fails to notify the Commissioner General of the co-ownership on the goods in terms of section 326, commits an offence and is liable upon conviction to a fine not exceeding one thousand maloti or to imprisonment for a period not exceeding ten years or both fine and imprisonment.

(3) Any person who fails to notify the Commissioner General of the existence of a credit agreement pursuant to section 326 commits an offence and is liable upon conviction to a fine not exceeding one thousand maloti or to imprisonment for a period not exceeding ten years or both fine and imprisonment.

(4) A person who breaks, opens, removes alters or in any way temper with seals, mark or a lock on the goods under lien commits an offence and is liable upon conviction to a fine not exceeding one thousand maloti or to imprisonment for a period not exceeding ten years or both fine and imprisonment.

(5) A person who removes goods which are subject to a lien without the approval of the Commissioner General commits an offence and is liable upon conviction to a fine not exceeding one thousand maloti or to imprisonment for a period not exceeding ten years or both fine and imprisonment.

(6) A person who sells, hypothecates, transfers or relinquish goods subject to a lien in contrary to section 329. commits an offence and is liable upon conviction to a fine not

exceeding one thousand maloti or to imprisonment for a period not exceeding ten years or both fine and imprisonment.

## **PART XXXXIII**

### **GENERAL ENFORCEMENT FUNCTIONS**

#### **Enforcement functions by customs officers**

490. For the purposes of enforcement functions Commissioner General shall delegate his power to customs officer.

#### **Access to areas, premises and facilities**

491. (1) The customs officer may, for purposes of enforcing this Act and , on production of the identity card and after giving reasons for the entry and search-

(a) enter at any time-

(i) any area premises or facility which is a customs controlled area and any other business area premises or facility for purpose of enforcing this Act;

(ii) aircraft, train, railway carriage or vehicle; and

(b) at any time search ;

(i) a business area, premises or facility

(ii) aircraft, train, railway carriage or vehicle;

(iii) imported and exported goods; and

(iv) persons in or outside customs controlled areas.

(c) stop and question any person in a customs control area including a traveller or crew member who is the process of leaving Lesotho about any area, premises, facility, aircraft, train, railway carriage or vehicle

(d) stop and question a person concerning any goods or documents inspected, or found during inspection.

(e) without a warrant stop and question a person outside a customs controlled area only if there are reasonable grounds to believe that a warrant authorising the powers would on application be issued, but that the delay may defeat the object of enforcing the provisions of this Act.

- (f) request production of documents and goods in his possession for inspection,
- (g) examine goods or any other documents;
- (h) detain goods and any other documents;
- (i) copy, or make extracts from any documents; and
- (i) remove the documents in order to make copies or extracts or to carry out any further examinations.
- (j) direct any person to do anything necessary for the purposes for enforcing this Act and Value Added Tax Act of 2001
- (k) take photographs or make audio or audio-visual recordings of anything or any person—
  - (i) for purposes of inspection or investigation in terms of this Act; or
  - (ii) for purposes of gathering evidence that may be used in proceedings in terms of this Act or Value Added Tax Act.
- (2) Where a person fails to stop when requested by a customs officer pursuant to subsection (1) may take any action, including the use of force, to stop the person.
- (3) For the purposes of entry and search under subsection (1) the Commissioner General may stop a vehicle.
- (4) No person shall obstruct or hinder the Commissioner General in the exercise of his duties and powers under this section
- (5) A custom officer may, in executing his duties and powers under this Act or Value Added Tax Act request the assistance of any police officer or any other relevant official

**Use of force to gain access to areas, premises or facilities aircraft, train, railway carriage or vehicle**

492. (1) No person shall deny the Commissioner General entry into and search of the area, premises or facility, aircraft, train, railway carriage or vehicle.
- (2) Where the Commissioner General is denied entry into and search, he shall use force to the extent necessary for the enforcement of the provisions of this Act.

### **Roadblocks for vehicles**

493. The Commissioner General may, apply, in writing, to the Commissioner of Police for authorisation of a roadblock or a checkpoint outside a customs controlled area for purposes of enforcing this Act.

### **Issuing of warrants**

494. (1) The Commissioner General may apply for a search warrant to the judicial officer for purposes of enforcing this Act to premises outside customs controlled areas.–

(2) Where the Commissioner General obtains a search warrant issued pursuant to subsection (1), he may –

(a) enter -

(i) any area premises or facility which is a customs controlled area and any other business area premises or facility for purpose of enforcing this Act;

(ii) aircraft, train, railway carriage or vehicle; and

(b) search;

(i) a business area, premises or facility

(ii) aircraft, train, railway carriage or vehicle.

### **Searching of persons**

495. (1) Where a person has been requested to stop a person pursuant to this Act, he may be searched in accordance with the following methods-

(a) a frisk search of the person;

(b) an external bodily search of the person; and

(c) an internal bodily search of the person.

(2) Where the customs officer conducts a search on a child, he may do so only in the presence of –

(a) the child's parent or guardian; or



(b) if the child is travelling without a parent or guardian, another person who is responsible for the child during travelling.

### **Frisk searches**

496. (1) Where the customs officer conducts a frisk search on a person, he may move his hands briskly over the person's body on top of the person's clothing, in order to detect any concealed –

(a) weapon or object capable of being used to inflict bodily injury; or

(b) goods that are subject to customs control

(c) goods in respect of which a breach of this Act or Value Added Tax Act is being or has been committed.

(2) Where a frisk search is conducted pursuant to subsection (1) it may only be conducted by a representative of the customs officer who is of the same gender as the person being searched.

### **External bodily searches**

497. (1) Where the customs officer conducts an external bodily search of a person he may request the person being searched to remove any outer garments that may hamper the search.

(2) When conducting an external bodily search of a person, the customs officer may, make use of –

(a) any mechanical, electrical, imaging or electronic equipment that can produce an indication that the person may be concealing any specific thing or substance on or in his body or in any goods that that person has in his possession;

(b) sniffer dogs or any other animal trained to use its senses for the detection of any specific thing or substance; or

(c) any other search aid as may be determined by the customs officer.

(3) A search aid referred to in subsection (2) may only be used by the customs officer trained to use such aid in the conduct of an external bodily search.

- (4) An external bodily search conducted pursuant to subsection (1) may only be made –
- (a) by the customs officer who is of the same gender as the person being searched; and
  - (b) in a place that affords adequate personal privacy to the person being searched.
- (5) A person being subjected to an external bodily search may request the presence of another person during the search.

### **Internal bodily searches**

498. (1) The customs officer shall, after conducting an external bodily search, where he, on reasonable grounds, suspects that a person is internally concealing goods in respect of which a breach of this Act or Value Added Tax Act is being or has been committed, detain the person and arrange for an internal bodily search to be conducted
- (2) A detention made under subsection (1) shall be made under the supervision of a registered medical practitioner.
- (3) An internal bodily search conducted pursuant to subsection (1) shall only be made-
- (a) by a registered medical practitioner at a place equipped for the carrying out of medical procedures required for an internal bodily search that is requires; and
  - (b) on authority of a search warrant issued to the Commissioner General by a judicial officer.
- (4) Notwithstanding the provisions of subsection (3) the registered medical practitioner may conduct an internal bodily search without a search warrant if-
- (a) the person to be subjected to the internal bodily search consents to the search in writing; and
  - (b) there is a medical emergency justifying internal bodily search to be conducted.
- (5) No person other than the medical practitioner performing the search may be present during an internal bodily search, except when the person being subjected to the search requests the presence of another person.

### **Production of goods for inspection**

499. The Commissioner General may, request any person who is in possession or has custody or control of goods to produce the goods or make the goods available for inspection, either immediately or at a time and place specified by him.

### **Inspection of goods**

500. (1) The customs officer may, without notice, inspect –

- (a) any goods within any area, premises, or facility, aircraft, train, railway carriage or vehicle within a customs controlled area or outside customs controlled area;
- (b) any goods which a person within a customs controlled area has in his possession;
- (c) any goods found during a search pursuant to this Act;
- (d) any goods on public display for sale;
- (e) any goods produced on request by the customs officer in terms of this Act;
- (f) any goods in respect of which a breach of this Act or Value Added Tax Act has been committed or on reasonable grounds is suspected to have been committed; or
- (g) any other goods that are subject to customs control.

(2) For the purposes of this section, inspection of goods includes-

- (a) checking the goods and the packages or containers in which the goods are packed;
- (b) examining the goods and the packages or containers in which the goods are packed,
- (c) opening of packages or containers in which the goods are packed;
- (d) carrying out tests on and analysing the goods;
- (e) determining the quantity, volume or weight of the goods;
- (f) removing the goods to another place in order to carry out any further inspection;
- (g) subjecting the goods to a chemical, mechanical or technological process;
- (h) obtaining advice, including expert or technical advice on the goods or a matter relating to the goods; and

whether-

- (i) manually;
- (ii) by means of scanning equipment or any mechanical, electrical, imaging or electronic appliances that can produce an indication of the nature or characteristics of the goods or the contents of the packages or containers; or
- (iii) using sniffer dogs or other animals trained to use their senses for the detection of specific substances.

(3) The customs officer shall, in conducting an inspection pursuant to subsection (1) give priority to perishable goods, live animals and other goods which because of their nature shall be processed expeditiously.

(4) The customs officer may remove goods to a customs controlled area for inspection.

(5) Where the customs officer removes goods pursuant to subsection (4), he shall-

(a) provide a receipt for the goods; and

(b) return the goods within a reasonable time unless the goods are detained in terms of this Act

### **Sampling of goods**

501. (1) The customs officer may where necessary take, or direct any person to take samples of goods, in necessary quantities, for –

(a) conducting an inspection of the goods in terms of section 400;

(b) establishing -

(i) the nature or characteristics of the goods;

(ii) the tariff classification, value or origin of the goods;

(iii) whether the goods are prohibited, restricted, sectorally controlled or counterfeit goods;

(iv) whether the goods are –

(aa) the same goods previously cleared or released for a customs procedure;

(bb) compensating products obtained from specific goods; or

- (cc) identical or similar to or of the same class or kind as other goods;
- (v) any other purpose that the Commissioner General may determine
- (c) use as evidence in a court or other proceedings.
- (2) Samples taken in terms of subsection (1) may be –
  - (a) examined, analysed or tested in any way;
  - (b) subjected to a chemical, mechanical or technological process;
  - (c) used for obtaining advice, including expert or technical advice, on the goods as reflected by the samples or a matter relating to the goods; or
  - (d) utilised in any other way necessary for achieving the purposes of subsection (1).
- (3) Samples of goods taken pursuant to subsection (1) may be done and taken-
  - (a) without permission of any person from whom good are taken;
  - (b) without payment to any person from whom good are taken; and.
- (4) when required for purposes of this Act

### **Designation of Laboratories for testing of samples**

502. The Minister may, by notice published in the Gazette, designate any laboratory as a place for testing samples for the purposes of this Act.

### **Powers of arrest**

503. Where a customs officer is designated to carry out an arrest pursuant to subsection (1),The Commissioner General shall issue an identification card to the customs officer, authorising such customs officer to carry out an arrest for the purpose of enforcing this Act or a Value Added Tax Act .

### **Manner and effect of an arrest**

504. (1) Where a person being arrested submits to custody, a customs officer may arrest the person with or without a warrant.

(2) Where a person being arrested resists arrest a customs officer may arrest the person by actually touching the body of that person, and where necessary forcibly confine the person's body.

(3) A Customs officer effecting the arrest pursuant to subsection (1) shall, at the time of effecting the arrest—

(a) inform the arrested person of the cause of the arrest; or

(b) in the case of an arrest effected by virtue of a warrant, hand the person a copy of the warrant where the person arrested so demands.

(3) The effect of an arrest is that the person arrested is in lawful custody and that person will be detained in custody until lawfully discharged or released from custody.

### **Arrest of persons without warrant**

505. An customs officer designated to carry out an arrest pursuant to subsection (1) may, without a warrant, arrest a person who-

(a) impersonate a customs officer; or

(b) obstructs an officer in the execution of his duties. under this Act

(c) refuses to comply with a lawful command of an customs officer in performing his functions under this Act

(d), on reasonable grounds, suspects that he has contravened the provisions of this Act or the Value Added Tax Act of 2001.

### **Arrest of persons under authority of warrant**

506. (1) The Commissioner General may apply to any magistrate for a warrant authorising the arrest of a person who has contravened provisions of this Act..

(2) A Magistrate may issue a warrant in terms of subsection (1) only on written application by the Commissioner General.

(3) The application made pursuant to subsection (1) shall set out the following-

(a) the offence allegedly committed by the person ;

(b) the grounds for suspicion of commission of an offence;

(c) the offence allegedly committed within the area of jurisdiction of the Magistrate.

(4) A warrant of arrest issued by a Magistrate pursuant to subsection (1) shall be executed by a customs officer in accordance with provisions of this Act.

### **Non-liability for wrongful arrest**

507. (1) A customs officer arresting a person under a warrant of arrest and who, reasonably believes that he is arresting the right person, but arrests the wrong person, is not liable for the wrongful arrest.

(2) A police officer, who assists a customs officer to detain and make an arrest pursuant subsection (1), and reasonably believes that the person he is detaining and arresting is the right person but arrests the wrong person, is not liable for the wrongful arrest.

### **Breaking open premises for purpose of arrest**

508. (1) A customs officer designated to carry an arrest under this Act may, where, he reasonably suspects, that a person he intends to arrests is on the premises, demand entry into the premises and notify the person of the purpose for which he seeks entry.

(2) The customs officer shall, where entry is denied after the demand is made pursuant to subsection (1), break open, enter and search the premises for the purpose of the arrest.

### **Use of force in effecting arrest**

509. (1) Where a customs officer is effecting an arrest pursuant to subsection (1) and the person resists the arrest and flees, and it is clear to the person that an attempt to arrest him is being made, and the suspect cannot be arrested without the use of force, the customs officer may, in order to effect the arrest, use such force as may reasonably be necessary and proportional to overcome the resistance or to prevent the suspect from fleeing,

(2) Where a customs officer uses force pursuant to subsection (1), he may use deadly force only if—

(a) the suspect poses a threat of serious violence to the arrestor or any other person; or

(b) the suspect is suspected on reasonable grounds of having committed a crime involving the infliction or threatened infliction of serious bodily harm and there are no other reasonable means of affecting the arrest, whether at that time or later.

### **Detention of arrested person**

510. A customs officer shall after effecting arrest as soon as possible bring the person to the police station or, in the case of an arrest by warrant, to any other place expressly mentioned in the warrant.

### **Authority to carry an official firearm**

511. (1) The Commissioner General may designate a customs officer who shall carry a firearms for the purpose of enforcing this Act or Value Added Tax Act.

(2) The possession and use of firearms by officers shall be subject to the provisions of laws relating to Firearms and Ammunition.

(3) A customs officer shall only carry a firearm after the customs officer has been trained in the use of firearms of the kind to be issued to the customs officer and a certificate of competency has been issued to the officer by the Commissioner of Police

### **Use of official firearms by officers**

512. A custom officer may use an official firearm only as a last resort and

(a) in self-defense from imminent death or grievous bodily harm; or

(b) in defense of any other person accompanying or assisting the customs officer in the execution of his duties whose life is at risk from imminent death or grievous bodily harm.

### **Offences**

513. (1) Any person who prevents a customs officer from gaining access to any area, premises facilities, aircraft, train, and railway carriage, vehicle in terms of section 492(1), commits an offence and is liable to upon conviction to a fine not exceeding five thousand maloti or to imprisonment for a period not exceeding six months or both fine and imprisonment.



(2) Any person who prevents a customs officer from searching any area, premises facilities, aircraft, train, and railway carriage, vehicle in terms of section 491 and commits an offence and is liable to upon conviction to a fine not exceeding five thousand maloti or to imprisonment for a period not exceeding six months or both fine and imprisonment.

(3) Any person who fails to provide assistance to a customs officer where requested in terms of section 491 commits an offence and is liable to upon conviction to a fine not exceeding five thousand maloti or to imprisonment for a period not exceeding six months or both fine and imprisonment.

(4) Any person who fails to answer questions or produce goods or documents when requested by a customs officer in terms of section 491(1); commits an offence and is liable to upon conviction to a fine not exceeding five thousand maloti or to imprisonment for a period not exceeding six months or both fine and imprisonment.

(5) Any person who fails to report before a designated customs officer when requested to do so in terms of section 491, commits an offence and is liable to upon conviction to a fine not exceeding five thousand maloti or to imprisonment for a period not exceeding six months or both fine and imprisonment.

(6) Any person who fails to stop when requested to do by the Customs officer and produce all goods and documents in his possession in terms of section 491 commits an offence and is liable to upon conviction to a fine not exceeding five thousand maloti or to imprisonment for a period not exceeding six months or both fine and imprisonment.

(7) Any person who refuses when searched by the customs officer to remove outer garments in terms of section 495(1) commits an offence and is liable to upon conviction to a fine not exceeding five thousand maloti or to imprisonment for a period not exceeding six months or both fine and imprisonment.

(8) Any person who refuses to affix a seal when requested to do so by the Customs officer in terms of this Act, commits an offence and is liable to upon conviction to a fine not exceeding five thousand maloti or to imprisonment for a period not exceeding six months or both fine and imprisonment.

(9) Any person who fails to notify the Commissioner General of any activity done in relation to the goods not in free circulation, commits an offence and is liable to upon conviction to a fine not exceeding five thousand maloti or to imprisonment for a period not exceeding six months or both fine and imprisonment.

(10) Any person who prevents a customs officer from scanning equipment or any mechanical, electrical, imaging or electronic appliance used by the Commissioner General to produce an indication of the nature or characteristics of goods in packages or containers or on or in a person's body, from producing an image or true image of the goods commits an offence and is liable to upon conviction to a fine not exceeding five thousand maloti or to imprisonment for a period not exceeding six months or both fine and imprisonment.

## **PART XXXXIV**

### **DETENTION AND SEIZURE OF GOODS**

#### **Detention goods**

514. The Commissioner General may detain any goods or documents for the purpose of investigating or determining whether -

(a) a person has contravened the provisions of this Act or the Value Added Tax Act of 2001;

(b) goods claimed to be excluded or exempted from a requirement of this Act, are excluded or exempted pursuant to this Act;

(c) goods are prohibited, or restricted; or

(d) goods have been or are being used in committing an offence under any other law; and

(e) goods are counterfeit or he reasonably suspects to be counterfeit goods.

#### **Notice of detention**

515. (1) When detaining goods, the Commissioner General shall issue a notice of detention

(a) the person who submitted the clearance declaration; or

(b) the person in whose possession the goods are at the time of detention.

(2) A notice of detention made pursuant to subsection (1) shall indicate —

(a) the goods to which it relates;

(b) the date of detention of the goods;

(c) the reason for the detention; and

(d) any other particulars as may be determined by the Commissioner General

#### **Place of detention**

516. (1) A Commissioner General who detains goods may-

- (a) keep or store the goods at a place where they were detained;
  - (b) remove detained goods to any licensed premises as the Commissioner General may determine; or
  - (c) be removed to a state warehouse
- (2) No person may remove detained goods from the place where they are kept or stored without the permission of the Commissioner General.
- (3) where detained goods are kept or stored at a place which is not a customs controlled area, the place shall for purposes of this Act be regarded as a customs controlled area.

### **Period of detention**

517. Goods may be detained by the Commissioner General for a period not exceeding thirty days.

### **Termination of detentions**

518. (1) The Commissioner General shall terminate the detention of goods where –

- (a) the grounds for the detention of the goods is no longer relevant;
- (b) the Commissioner General decides not to seize the goods;
- (c) no action is taken within thirty days from the date the goods are detained
- (d) the goods were detained in error;
- (e) a court so orders; or
- (f) before a period of thirty days expires.

(2) Where the detention of the goods is terminated in terms of subsection (1) the Commissioner General shall, in writing, notify the person to whom the notice of detention was issued.

(3) The Commissioner General may on application –

- (a) by the importer of goods or if the importer is not located in Lesotho, the importer's registered agent, terminate the detention of the goods and allow the importer or the importer's registered agent to clear the goods for outright export and immediately

export those goods from the Lesotho at own expense under supervision of the Commissioner General.

(b) by the person who intended to export goods that were in free circulation before their detention, terminate the detention of the goods and allow those goods to revert to free circulation.

### **Power to seize goods**

519. (1) The Commissioner General may seize goods where –

- (a) before a period of thirty days expires;
- (b) the goods are liable to seizure;
- (c) the goods are or may be needed as evidence in a court of law;
- (d) in any other circumstances as may be determined by the Commissioner General.

(2) Goods seized in terms of subsection (1) shall be –

- (a) destroyed;
- (b) sold by public auction;
- (c) donated to charity organisations;
- (d) disposed of by any other means as the Commissioner General may determine.

### **Notice of seizure**

520. The Commissioner General shall, when seizing goods in terms of this Act, issue a notice of seizure—

- (a) in the case of goods that are detained, to the person to whom the notice of detention was issued;
- (b) in the case of seized goods, to the person—
  - (i) who submitted the clearance declaration; or
  - (ii) in whose possession the goods are, at the time of seizure.
- (c) in the case where goods are detained at the licensed premises, to the licensee to whom the notice of detention was issued;

(2) Subsection (1) does not apply where a person to whom the notice was issued is unknown or cannot be found.,

(3) Notice of seizure issued in terms of subsection (1) shall be signed by the Commissioner General and the receipt of notice of seizure.;

### **Termination of seizures**

521. (1) The Commissioner General shall terminate the seizure of goods where –

(a) a person whose goods were seized has applied for termination of the seizure and the application is granted;

(b) the goods were seized in error; or

(c) a court so orders.

(2) Where the seizure of the goods is terminated in terms of subsection (1) the Commissioner General shall, in writing, notify the person to whom the notice of seizure was issued.

### **Termination of seizures on application by owner of goods**

522. (1) A person whose goods are seized in terms of section 520, may apply to the Commissioner General for termination of the seizure.

(2) The Commissioner General may, after considering the application made in terms of subsection (1) approve the application subject to such conditions as the Commissioner General may impose.

(3) Where the Commissioner General approves the application pursuant to subsection (2) the applicant shall pay-

(a) any outstanding tax, interest on tax and administrative penalty that may be payable on or in respect of the goods; and

(b) any expenses incurred by the Commissioner General in connection with the seizure, and any initial detention, of the goods.

(4) The Commissioner General may, after considering the application made in terms of subsection (1) refuse the application.

(5) Where an application is refused in terms of subsection (5), the Commissioner General shall notify the applicant in writing of his decision to refuse the application.

### **Offences**

523. (1) Any person who fails to be present when required to do so by the customs officer when detained goods are inspected in terms of section 500, commits an offence and is liable upon conviction to a fine not exceeding two thousand maloti or imprisonment for a period not exceeding six months or both fine and imprisonment.

(2) Any person who removes detained goods where they are stored or kept without the permission of the Commissioner General, commits an offence and is liable upon conviction to a fine not exceeding two thousand maloti or imprisonment for a period not exceeding six months or both fine and imprisonment.

## **PART XXXXV**

### **PROHIBITED AND RESTRICTED GOODS**

#### **Prohibited goods**

524. The Minister may by regulations prescribe goods which are prohibited in terms of this Act or any other law which relates to importation and exportation of goods.

#### **Clearance of prohibited goods**

525. The Commissioner General shall not clear prohibited goods-

- (a) except for international transit procedure; and
- (b) the handling or transportation of goods is not consistent with other legislation governing the goods in Lesotho..

#### **Seizure of prohibited goods**

526. (1) The Commissioner General shall seize prohibited goods imported or exported contrary to this Act and other legislations.

#### **Disposal of detained prohibited goods**

527. (1) Prohibited goods seized in terms of section 526 shall be disposed off in accordance with the legislation in terms of which the goods are prohibited goods.

#### **Import and Export permit to be produced for restricted goods**

528. Where a person is importing restricted goods under any other law, he shall produce an import permit to the Commissioner General.

#### **Clearance of restricted goods**

529. (1) The Commissioner General shall not clear restricted goods for home use procedure unless the person submits a permit authorizing him to import the goods.

(2) Notwithstanding subsection (1), the Commissioner General shall clear imported restricted goods without permit or other authorisation for-

- (a) warehousing;
- (b) transshipment; or international transit; or



(c) temporary admission

### **Detention of restricted goods**

530. Where a person referred to in section 528 fails to produce an import permit, the Commissioner General shall detain restricted goods pending compliance with this Act, Value Added Tax or any other law

### **Notice of detention**

531. (1) When detaining goods in terms of section 530, the Commissioner General shall issue a detention notice to the person or the licensee in whose possession the goods are, or are believed to be, at the time of detention.

### **Disposal of detained restricted goods**

532. (1) Goods detained in terms of section 530 shall be dealt with in accordance with—

(a) the legislation in terms of which the goods are restricted goods; or

(b) the legislation regulating the criminal justice system if and to the extent that the goods are needed as evidence in any criminal proceedings.

(2) Restricted goods referred to in subsection (1)(a) or (b) shall be handed over to, or kept under customs control for the purposes of—

(a) the relevant administering authority, if the goods are to be dealt with in accordance with subsection (1)(a); or

(b) the relevant administering authority or the Lesotho Mounted Police, if the goods are to be dealt with in terms of subsection (1)(b).

### **Disposal of restricted goods by the Commissioner General**

533. (1) The administering authority may, request the Commissioner General to dispose off detained restricted goods despite any legislation administered by it.

(2) Where the Commissioner General agrees to dispose off the detained restricted goods in terms of subsection (1),the Commissioner General-

(a) confiscate or seize the goods;

(b) notify the person to whom the notice of detention was issued , if such a notice was issued; and

(c) dispose of the goods in terms of this Act.

## **PART XXXXVI**

### **COUNTERFEIT GOODS**

#### **Application for detention of suspected counterfeit goods**

534. (1) A person who has an intellectual property rights in respect of protected goods which there is reasonable suspicion that they are counterfeit goods, shall apply in writing to the Commissioner General to-

(a) detain any goods suspected of infringing the intellectual property right upon importation;

(b) seize the goods the Commissioner General has verified that they are counterfeit goods; and

(c) subject such goods to the provisions of this Act dealing with disposal of seized goods.

(2) The application made pursuant to subsection (1) shall –

(a) be on a form stipulated in the Schedule.....to this Act;

(b) give sufficient information of the protected goods;

(c) describe the essential physical and other distinctive features, elements and characteristics of goods that may indicate that goods are counterfeit goods that infringe the intellectual property right in respect of the protected goods;

(d) be accompanied by evidence –

(i) that an intellectual property right subsists in respect of the goods;

(ii) that the goods are protected goods;

(iii) that the applicant is a right-holder in relation to the protected goods;

(iv) that counterfeit goods infringing the intellectual property right in respect of the protected goods are believed on reasonable grounds to be imported into or exported from Lesotho; and

(v) indicating the date on which that intellectual property right will expire; and

(e) be accompanied by –

(i) an indemnity notice where the applicant indemnifies the Commissioner General against any liability that may arise from any action, proceedings, claim or demand which may be made or taken against the Commissioner General in providing the required assistance;

(ii) an undertaking where the applicant undertakes to pay any costs or expenses incurred by, and any charges due to, the Commissioner General in providing the required assistance; and

(iii) an administration fee as may be prescribed by the Minister by regulations to this Act.

(3) The person who has made an application pursuant to subsection (1) shall provide training to the Commissioner General in order to identify the counterfeit goods.

### **Consideration of applications**

535. (1) The Commissioner General shall, after considering the application made pursuant to section 534,

(a) approve the application with such terms and conditions as he may determine;.

(b) detain counterfeit goods;

(c) remove detained counterfeit goods to State warehouse;.

(2) Where the Commissioner General removes counterfeit goods to any warehouse other than a State warehouse, a person in charge of the warehouse shall;

(a) be responsible for the safe storage of counterfeit goods;

(b) not release counterfeit goods to any person without the written permission of the Commissioner General; and

(c) be liable for any tax payable if he releases counterfeit goods without the permission of the Commissioner General.

(3) Where a person who made an application pursuant to section 534 has outstanding tax liability, the Commissioner General shall not approve the application.

### **Notification of suspected counterfeit goods to the owner**

536. (1) The Commissioner General shall, where he has reasonable grounds to suspect that any goods are counterfeit goods that infringe the intellectual property right in respect of any protected goods for which no application was made or approved, notify the following persons of the suspected counterfeit goods:

(a) a person who the Commissioner General suspects to be a right-holder in respect of the protected goods; and

(b) a person who in relation to the suspected counterfeit goods is to the knowledge of the Commissioner General the right-holder.

(2) The person who is notified pursuant to subsection (1) shall, within three days of receipt of notice make an application for detention of goods.

(3) The Commissioner General shall not release for home use or other customs procedure goods to which subsection (1) applies until he receives the application for the detention of the goods.

### **Keeping and maintaining of records of detained and seized counterfeit goods**

537. The Commissioner General shall keep and maintain a record of all counterfeit goods detained and seized in accordance with Part XXXXIV.

### **Furnishing of personal details of affected parties to right-holders**

538. (1) The Commissioner General shall, at the request of a right-holder, provide the right-holder with the name address, and contact details, of a person who imported, exported or is in possession of the counterfeit goods.

(2) The right-holder referred in subsection (1) shall not use the personal details of the person who imported, exported or is in possession of the counterfeit goods except for any purpose other than for the purposes of this Part.

### **Furnishing of samples of detained goods to right-holders**

539. (1) The Commissioner General shall, at the request of a right-holder, provide the right-holder with samples of counterfeit goods imported or exported.

(2) The right-holder who has been provided with samples of counterfeit goods shall pursuant to subsection (1)

(a) collect and acknowledge receipt of the samples;

(b) return samples to the Commissioner General before the detention of the goods expires;

(d) not use the samples for any purpose other than for the purposes of this Part(e) comply with such other requirements in relation to the samples as may be determined by the Commissioner General.

(2) Any handling of or dealing with samples by the right-holder is at the risk and expense of the right-holder.

### **Onus on right-holders to protect their rights**

540. (1) Where Commissioner General has approved an application for the detention of goods the right-holder shall submit a notice indicating that he intends to apply to a court for a finding that the detained goods are counterfeit goods and his intellectual property rights have been infringed .

(2) The notice made pursuant to subsection (1) shall simultaneously be submitted to the person who imported, exported or is in possession of the counterfeit goods and the Commissioner General.

(3) Where the right holder of the protected goods notifies the Commissioner General that he does not intend to apply to a court for a finding, the Commissioner General shall immediately terminate the detention of the goods.

### **Court applications by the right-holders**

541. (1) Where the right-holder submits a notice indicating that he intends to apply to a court for a finding, he shall apply to a court for a finding within ten days of a notice.to the court.

(2) The Commissioner General shall terminate the detention of the goods, where the right-holder fails to apply to a court for a finding in terms of subsection (1).

### **Findings by court that detained goods are not counterfeit goods**

542. Where a court has established that goods which were suspected to be counterfeit goods are not counterfeit goods;

(a) it may, in addition to any other order it may issue, order the right-holder who brought the application to pay damages in an amount determined by the court to the person who imported, exported or is in possession of the counterfeit goods; and

(b) the Commissioner General shall terminate the detention of the goods immediately.

### **Court applications by the person, who imported, exported or is in possession of the counterfeit goods**

543. A person who imported, exported or is in possession of the counterfeit goods may apply to a court for-

(a) an order that the detained goods are not counterfeit goods or that the detention of the goods be terminated; or

(b) any other appropriate relief.

### **Seizure of detained counterfeit goods**

544. The Commissioner General may;

(a) seize detained counterfeit goods where it has been established by court that goods are counterfeit;

(b) dispose-off the goods in any manner that he may determine.

### **Offences**

545. (1) The right-holder who uses personal information of the affected person without person`s approval, commits an offence and is liable upon conviction to a fine not exceeding fifty thousand maloti or to an imprisonment for a period not exceeding ten year or both fine and imprisonment.

(2) The right holder who uses samples from detained goods in contravention of Part XXXIII, commits an offence and is liable upon conviction to a fine not exceeding fifty thousand maloti or to an imprisonment for a period not exceeding ten year or both fine and imprisonment.

(3) Any person who fails to remove detained good to counterfeit depot in terms of section 535(2) commits an offence and is liable upon conviction to a fine not exceeding fifty thousand maloti or to an imprisonment for a period not exceeding ten year or both fine and imprisonment.

(4) Any person who removes detained goods to counterfeit depot without the permission of Commissioner General in terms of section 535 (2) commits an offence and is liable upon conviction to a fine not exceeding fifty thousand maloti or to an imprisonment for a period not exceeding ten year or both fine and imprisonment.

(5) Any person in charge of a counterfeit goods depot who fails to deliver goods without permission of the Commissioner General in terms of section 535(2) commits an offence and is liable upon conviction to a fine not exceeding fifty thousand maloti or to an imprisonment for a period not exceeding ten year or both fine and imprisonment.



## **PART XXXXVII**

### **DISPUTE RESOLUTION**

#### **Appeals Review Committee**

546. (1) There shall be the Appeals Review Committee which shall consist of the following;

- (a) the Commissioner General or his representative
- (b) the Commissioner Customs or his representative
- (c) the Chief Legal and Policy Officer or his representative; and
- (d) the Deputy Commissioner- Customs Operations or his representative.

(2) The functions of the Appeals Review Committee shall be to -

- (a) consider appeals from a person who is not satisfied with the decision of the customs officer;
- (b) investigate the subject matter of the dispute; and
- (c) make findings on the matter.

(3) The Appeals Review Committee shall after consideration of the dispute referred to by an aggrieved person, make a decision within thirty days of submission of the appeal to the courts of law.

(4) Where the decision of Review Appeals Committee requires the aggrieved person to make payment, the payment shall be made within fourteen days of the decision of the Review Appeals Committee.

(5) The Appeals Review Committee shall have its own Regulations of procedure.

#### **Objections and Appeals**

547. (1) A person who is aggrieved by a decision of a Customs officer may immediately lodge an appeal to the Deputy Commissioner Customs

(2) Where a person referred to in subsection (1) is not satisfied with a decision of Deputy Commissioner Customs , he shall within seven days lodge an appeal to Review Appeals Committee.

(3) An appeal lodged in terms of subsection (1) shall –

(a) be in a manner and on the form as may be stipulated in Schedule...;

(b) be submitted to the Commissioner General`s office;

(c) contain grounds for the appeal; and

(d) contain any other information as may be determined by the Commissioner General.

(4) Where the person who is referred to in subsection (1) is not satisfied with the decision of the Appeals Review Committee, he may notify the Commissioner General of his intention to appeal against the decision of the Appeals Review Committee within fourteen days of receipt of the decision of the Appeals Review Committee.

(5) Any appeal made pursuant to subsection (1) may be made by the person referred to in subsection (1) or his authorised representative.

(6) The Commissioner General shall make a decision within thirty days of receipt of notice of appeal by a person who is not satisfied with the decision of the Appeals Review Committee.

### **Appeal to the Revenue Appeals Tribunal**

548. (1) A person who is dissatisfied with a decision made under this Act by Customs officer with regard to valuation, classification or origin of goods may file an objection to such determination relating to valuation, classification or origin of goods with the Revenue Appeals Tribunals, within thirty days of the service of the notice

(2) The objection made pursuant to subsection (1) shall-

(a) be in writing; and

(b) specify in detail the grounds upon which the objection is made.

(3) After considering the objection, the Commissioner General may accept the objection in whole or in part and amend the valuation, classification or determination accordingly, or not accept the objection.

(4) The Commissioner General shall serve the person who has filed an objection with notice, in writing, of his decision.

Where a person who has filed an objection pursuant to section 547 is not satisfied with the decision of the Commissioner General, he shall lodge an appeal to the Revenue Appeals Tribunal.

(5) A person who has lodged an appeal pursuant to subsection (1) shall serve the Commissioner General with a copy of the notice of appeal to the Revenue Appeals Tribunal.

(6) The lodging of appeal and its proceedings shall be in accordance with the provisions of the Revenue Appeals Tribunal Act of 2005.

#### **Payment of amounts due pending an appeal**

549. A person who is not satisfied with a decision of the Commissioner General and intends to lodge an appeal against the decision of the Commissioner General is not absolved from payment of amounts due to the Commissioner General.

## **PART XXXXVIII**

### **VOLUNTARY DISCLOSURE RELIEF**

#### **Definitions**

550. “**faulty duty determination**” means an incorrect customs or excise duty assessment or re-assessment in respect of goods due to the submission of inaccurate or incomplete, or non-submission, of information to the customs authority which resulted in—

- (a) no duty or an incorrect amount of duty being paid or recovered on the goods;
- (b) no interest on duty or an incorrect amount of interest on duty being paid or recovered; or
- (c) an incorrect refund or drawback being made by the Commissioner.

#### **Application for voluntary disclosure relief**

551. (1) A person who has paid or is liable for the payment of duty or interest on duty, or who has received or is entitled to receive a refund or drawback on duty paid, may apply to the Commissioner General for voluntary disclosure relief if the person knows or suspects that such duty, interest, refund or drawback is incorrect because of a faulty duty determination.

(2) Voluntary disclosure relief applied for in terms of subsection (1) is not available to a person who is aware of—

- (a) a pending customs audit or investigation into the person’s affairs; or
- (b) a customs audit or investigation into the person’s affairs that has commenced, but has not yet been concluded.

(3) A person who made the application pursuant to subsection (1) shall be considered to be aware of a pending customs audit or investigation or the commencement of a customs audit or investigation if any of the following persons is aware of such pending audit or investigation or the commencement of such customs audit or investigation:

- (a) a representative of the applicant;
- (b) an officer, shareholder or member of the applicant, if the applicant is a company;
- (c) a partner in partnership with the applicant;
- (d) a trustee or beneficiary of the applicant, if the applicant is a trust; or
- (e) a person acting for or on behalf of or as an agent or fiduciary of the applicant.

(4) An application made pursuant to subsection (1) for voluntary disclosure relief shall be submitted to the Commissioner General within a period of three years from the date of the faulty duty determination.

### **Procedure following receipt of voluntary disclosure application**

552. (1) Where a person applies for voluntary disclosure relief, the Commissioner General shall-

- (a) investigate the matter;
- (b) make a duty assessment or re-assessment in relation to the relevant goods, including,—
  - (i) a tariff determination or re-determination;
  - (ii) a value determination or re-determination; or
  - (iii) an origin determination or re-determination;
- (c) determine the amount of—
  - (i) duty or interest outstanding as a result of the faulty duty determination; or
  - (ii) the refund or drawback paid by the Commissioner as a result of the faulty duty determination; and
- (d) grant or refuse the application.

### **Granting of applications**

553. Where the Commissioner General grants an application for voluntary disclosure relief, the Commissioner General and the applicant may, make an agreement in writing—

- (a) setting out details of the faulty duty determination on which the voluntary disclosure relief is based;
- (b) stating the amount owing to the Commissioner General and the applicant;
- (c) containing an undertaking by the applicant to pay to the Commissioner General the amount owing in accordance with any arrangements as may be agreed; and
- (d) containing an undertaking by the Commissioner General that should the applicant comply with the undertaking given in terms of paragraph (c)—
  - (i) the Commissioner General will not institute criminal proceedings against the applicant for any offence in terms of this Act, or the common law arising from the faulty duty determination; and
  - (ii) no administrative penalty will be imposed on the applicant for any breach of this Act, arising from the faulty duty determination.

### **Refusal to grant application**

554. Where the Commissioner General refuses to grant an application for voluntary disclosure relief, the applicant shall pay the amount owing and any other expenses incurred as a result of the application.

### **Withdrawal of voluntary disclosure relief**

555. (1) Where an applicant made a false or misleading statement in an application for voluntary disclosure relief or failed to disclose information that was material for the consideration of the application, the Commissioner General may—

- (a) withdraw any agreement concluded with the applicant;
- (b) recover the amount owing any other expenses incurred as a result of the application;
- (c) retain any amount paid to the Commissioner General in terms of the agreement as a payment on the amount owed to the Commissioner General;
- (d) impose on the applicant any administrative penalty in terms of this; and
- (e) institute criminal proceedings against the applicant Act.

## **PART XXXXIV**

### **ADMINISTRATIVE PENALTIES**

#### **Imposition of administrative penalties**

556. (1) Where a person has committed an act not described as an offence but amounts to a contravention of the provisions of this Act, the Commissioner General may impose administrative penalties.

(2) The Minister shall by Regulations prescribe acts not described as offences in terms of subsection (1) together with corresponding administrative penalties.

(3) Where the Commissioner General imposes administrative penalty pursuant to subsection (1), he shall issue a notice indicating an amount of administrative penalty imposed.

(4) The administrative penalty imposed pursuant to subsection (1) shall be paid within fourteen days of receipt of the notice.

(5) The person who is liable to administrative penalties imposed pursuant to subsection (1) is not absolved from payment of duty, tax and any other debt accrued from any liability from this Act or Value Added Tax Act.

#### **Offences**

557. Any person who fails to pay administrative penalties pursuant to section 556(4) within fourteen days of receipt of the notice or such other period as the Commissioner General may determine commits an offence and is liable upon conviction to a fine not exceeding two thousand maloti or to imprisonment for a period not exceeding six months or both fine and imprisonment.

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## **PART XXXXV**

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

#### **Definitions**

558. In this Part, unless the context otherwise indicates, the following words and phrases, shall have the following meanings:

“**access code**”, means user name and password issued to the registered user

“**computer system**”, means a device or collection of devices, including input and output devices and capable of being used with external files which contain computer programmes, electronic instructions, input and output data that performs logic, arithmetic, data storage and retrieval, communication control and other functions;

“**data**”, means a representation of information, knowledge, facts, concepts or instructions which are being or have been prepared in a formalised manner and is intended to be processed, is being or has been processed in a computer system or network and may be in any form (including computer printouts, magnetic optical storage media, punched cards and punched tapes) or stored internally in the memory of the computer;

“**registered user**” means a person registered in terms of section 560;

#### **Use of computer systems for Customs processing purposes**

559. (1) The Commissioner General shall, when clearing imported or exported goods, use the computer system for electronic processing of declarations at the ports of entry.

(2) The Commissioner General shall, when clearing imported or exported goods pursuant to subsection (1), designate commercial border posts where the computer system for electronic processing of declarations shall be processed.

#### **Registration, suspension and cancellation of computer system users**

560. (1) A person who intends to submit a declaration for imports and exports of goods using a computer system shall, submit in writing, an application for registration to the Commissioner General.



(2) The Commissioner General shall consider the application made pursuant to subsection (1) and approve or refuse the application.

(3) Where the Commissioner General approves the application made pursuant to subsection (1), he shall;

(a) notify the applicant in writing of the approval;

(b) register the applicant as registered user; and

(c) issue user access codes to the applicant.

(4) The user access code issued in terms of paragraph (3) shall be-

(i) unique to the registered user;

(ii) capable of verification;

(iii) under the sole control of the registered user; and

(iv) conforms in all respects to the requirements prescribed by the Commissioner General.

(5) Where the Commissioner General refuses the application made pursuant to subsection (1), he shall notify the applicant in writing of the refusal.

(6) The Commissioner General may suspend for a specified period any registration if the registered user or the employee of the registered user —

(a) is sequestered or liquidated;

(b) no longer carries on the business for which the access code was issued;

(c) is no longer qualified according to the qualifications prescribed in the Regulations to this Act;

(d) fails to meet, in respect of the computer system used, all the compliance requirements and the operational standards;

(e) has contravened or failed to comply with the provisions of this Act;

(f) has been convicted of an offence under this Act or an offence involving dishonesty or fraud under any other law ; or

(g) failed to comply with any condition or obligation imposed by the Commissioner General in respect of the registration.

(7) Where the registered user has failed to comply with the conditions specified under subsection (6), the Commissioner General shall, before suspension of registration-

(a) notify the registered user of the proposed suspension;

(b) give the registered user with reasons for suspension;

(c) provide the registered user with the opportunity to respond and make representations as to why the registration should not be suspended.

(8) The Commissioner General shall cancel the registration made pursuant to subsection (3) if the registered user or the employee of the registered user-

(a) has made a false or misleading statement or omits to state the requirement to be stated in the application for registration;

(b) has contravened or failed to comply with the provisions of this Act;

(c) has been convicted of an offence under this Act;

(d) has been convicted of an offence involving dishonesty; or

(e) has failed to comply with any condition or obligation imposed by the Commissioner General in respect of such registration:

(9) Where the Commissioner General registers a person, suspends a registration or cancels a registered user pursuant to this section, the registration, suspension or cancellation shall have effect from the day on which the applicant or registered user is notified the registration, suspension or cancellation.

### **Validating and assessing Electronic Declarations**

561. (1) Where the registered user submits electronic declarations made pursuant to this Part, the Commissioner General shall acknowledge receipt of electronic declarations by sending a customs reference number to the registered user.

(2) Where the electronic declarations made pursuant to this Part requires payment, the registered user shall make payment to the Commissioner General.

(3) Where the Commissioner General acknowledges receipt of electronic declarations and payment made, he shall process goods for clearance for home use or any other customs procedure.

(4) Where the Commissioner General accepts and approves the electronic declaration made pursuant to subsection (3), he shall clear goods for home use or any other customs procedure and issue a release note for export or exit note for import.

(5) Where the Commissioner General identifies errors during processing of goods, he shall notify the registered user of the error.

(6) Where an error is identified pursuant to subsection (5), the registered user shall request the Commissioner General to amend the electronic declaration.

(7) The time of receipt of an electronic declaration shall be when the electronic declaration enters the computer system established by the Commissioner General at any Customs office to which it was addressed, and such office shall be the place of receipt.

### **Fees and charges for an electronic declarations**

562. The Commissioner General shall impose fees and charges as may be prescribed in the Regulations for registered users who imports or exports goods using electronic declarations

### **Unlawful use of Access code**

563. No person shall use an access code assigned to the registered user unless he is authorized by the registered user.

### **Admissibility of any electronic declarations**

564. Where there are proceedings, prosecution or disputes in the courts of law and the Commissioner General is required to present evidence in relation to electronic declarations the admissibility of such electronic declaration, shall not be denied on the grounds that it is —

(a) an electronic data message; or

(b) not in original form.

### **Unavailability of computer systems**

565. (1) Where the computer system is not available,

(a) a registered user shall submit declaration manually; and

(b) the Commissioner General shall process declarations manually.

(2) The Commissioner General may at any time request, from the registered user who previously transmitted electronic declarations when the computer system is unavailable to submit original documents for the processing and clearance of goods.

### **Safe keeping of electronic declarations**

566. (1) The Commissioner General shall retain electronic declarations submitted pursuant to this Part in the computer system for a period of five years.

(2) The electronic declarations submitted pursuant to this Part shall be retained in the format in which it was originally generated, sent or received.

### **Offences**

567. (1) Any person who uses access code not authorised by Commissioner General commits an offence and is liable upon conviction of to a fine not exceeding twenty five thousand maloti or imprisonment for a period not exceeding five years or both fine and imprisonment.

(2) Any person who submits a declaration pursuant to the provisions of this this Part after suspension or cancellation by the Commissioner General commits an offence and is liable upon conviction to a fine not exceeding two hundred thousand maloti or imprisonment for a period not exceeding five years or both fine and imprisonment.

(3) Any person who authorises the use of access code to an unauthorised person without the permission of the Commissioner General commits an offence and is liable upon conviction of to a fine not exceeding twenty five thousand maloti or imprisonment for a period not exceeding five years or both fine and imprisonment.

## **PART XXXXVI**

### **MISCELLANEOUS MATTERS**

#### **Regulations and Rules**

568. (1) The Minister may make Regulations to facilitate the implementation of this Act or any Part or other provision of this Act, including Regulations prescribing—

(c) the contents of any report, notice, notification or other document that shall be submitted to the Commissioner General or a customs officer in terms of a provision of this Act;

(d) the manner in which and the persons by whom such reports, notices, notifications or other documents shall be submitted, and the persons who shall submit any such reports, notices, notifications or other documents electronically;

(e) the combination or simultaneous submission of such reports, notices, notifications or other documents;

(f) the circumstances in, and the conditions on, which any such reports, notices, notifications or other documents may be amended, and procedures for the amendment of any such reports, notices, notifications or other documents;

(g) the records that persons to whom this Act applies shall keep for the purposes of this Act and the manner in which, the period for which and the place at which the records shall be kept, subject to this section ;

(h) the returns persons to whom this Act applies shall submit to the Commissioner General and the manner in which and the periods for which the returns shall be submitted;

(i) the manner and time in which applications may be made for authorisations, permissions, approvals, exemptions or recognitions that may be granted by the Commissioner General in terms of a provision of this Act;

(j) the particulars such authorisations, permissions, approvals, exemptions or recognitions shall contain and any conditions subject to which such authorisations, permissions, approvals or exemptions are issued;

- (k) the contents of any registration certificate, licence or certificate of accreditation;
- (l) the sizes and types of containers in which specific goods, including cigarettes, may be imported into Lesotho, and the distinguishing marks or impressions that shall appear on the containers of such goods;
- (m) the application of the materiality principle in relation to this Act, including criteria for determining when –
  - (i) an interest in goods is to be regarded as a material or beneficial interest ;
  - (ii) a benefit received by a person is to be regarded as a material benefit;
  - (iii) a breach of this Act is to be regarded as a material breach;
  - (iv) information required for an application in terms of this Act is to be regarded as material for the consideration of the application; and
  - (v) the circumstances in which an application in terms of this Act was granted are to be regarded as material to the granting of the application;
- (n) the criteria for determining whether , aircraft or vehicle is a small , light aircraft or vehicle used as a private means of transport;
- (o) alternative methods for the submission of documents to the Commissioner General in the event of a breakdown in electronic communication;
- (p) safeguard measures and the circumstances and manner in which these measures shall be applied;
- (q) conditions on which registered electronic users may access the computer system of the Commissioner General for purposes of electronic communication with the Commissioner General, the Commissioner General or customs officers, including the conclusion with the Commissioner General of user agreements containing terms and conditions as prescribed by Regulations;
- (r) measures to prevent electronic transmissions to or from the electronic address of the Commissioner General from being compromised or interfered with, including measures requiring and regulating –

(i) the allocation of digital signatures to registered electronic users and, in the case of a user which is a corporate entity, each employee of the user nominated in the user agreement;

(ii) the use and protection of such signatures;

(iii) the storage and protection of electronic data and the period for which such data shall be kept; and

(iv) the reporting of any surety breaches;

(r) the instruments, meters, gauges, and other appliances and the tables, formulae and other methods of calculation to be used for the purposes of this Act or a Value Added Tax Act for determining the mass, quantity, strength, relative density, temperature, pressure or any other characteristic of any goods;

(s) tables to be used for purposes of this Act or a Value Added Tax Act for determining the quantity of goods regarded to have been –

(i) manufactured from any given quantity of goods; or

(ii) used in the manufacture of any given quantity of any goods manufactured therefrom; and

(t) criminal sanctions for a contravention of or non-compliance with a provision the Regulations.

(2) A regulations in terms of this section may –

(a) differentiate between different –

(i) categories of persons to which this Act applies;

(ii) categories of goods;

(iii) categories of s, aircraft, trains, railway carriages or vehicles;

(iv) modes of transport;

(v) places of entry or exit or categories of places of entry or exit;

(vi) customs controlled areas or categories of customs controlled areas;

- (vii) matters to which this Act applies; or
- (viii) categories of customs officers; or
- (b) be limited in its application to a particular—
  - (i) category of persons to which this Act applies;
  - (ii) category of goods;
  - (iii) category of s, aircraft, trains, railway carriages or vehicles;
  - (iv) mode of transport;
  - (v) place of entry and exit;
  - (vi) customs controlled areas or categories of customs controlled areas;
  - (vii) matter to which this Act applies; or
  - (viii) category of customs officers.

(3) (a) Regulations made in terms of this section take effect from a date specified in the Regulations, or if no date is specified, from the date of publication of the Regulations.

(b) The commencement date specified in any Regulations may be a date before, on or after the date of publication of the Regulations.

### **Rules**

The Commissioner General may make rules in respect of any matter with which it is expressly indicated that such matter is to be dealt with in accordance with rules made by him