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Part 2

Government of Nepal

Ministry of Law, Justice and Parliamentary Affairs

The following Act enacted by the Legislature-Parliament is hereby published for information of the general public.

Act number 16 of the year 2064 (2007)

An Act Made to Amend and Consolidate Customs Laws

Preamble:

Whereas, it is expedient to amend and consolidate the prevailing customs laws in order to make safe and facilitate international trade by making customs administration systematic, transparent and accountable;

Now, therefore, the Legislature-Parliament has enacted this Act.

Chapter-1

Preliminary

1. Short title and commencement:

- (1) This Act may be cited as the "Customs Act, 2064(2007)".
- (2) This Section shall commence at once, and the other Sections shall commence on such date as may be appointed by the Government of Nepal, by notification in the Nepal Gazette.

2. Definitions:

Unless the subject or the context otherwise requires in this Act,

- (a) "duty free shop" means a shop permitted by the Government of Nepal to sell any goods imported against the bank guarantee facility to any persons who are entitled to enjoy diplomatic privileges or customs facilities or to the concerned air companies for international flight catering or for sale at any duty free shop of such flight.
- (b) "transaction value" means the total amount to be set by adding freight, insurance and other related costs incurred or incurable in the transportation of goods imported by an importer up to the border of Nepal to the price actually paid or payable, directly or indirectly, by the importer to the seller of such imported goods.

- (c) "diplomatic facility" means such facility or privilege as to allow the exportation or importation of any goods **keeping only books of record**, without examining such goods and collecting duty.
- (d) "declaration" means the mentioning by the exporter or importer of the details of goods to be exported or imported in the declaration form or transmitting the same, as prescribed, through any electronic media.
- (e) "export smuggling" means the exportation from Nepal of any goods subject to customs duty without payment of such duty or clandestinely or through illicit routes or without making declaration pursuant to this Act despite the fact that such goods are not subject to customs duty.
- (f) "import smuggling" means the importation into Nepal of any goods subject to customs duty without payment of such duty or clandestinely or through illicit routes or without making declaration pursuant to this Act despite the fact that such goods are not subject to customs duty.
- (g) "examination" means the examination by the Customs Office of any goods to be exported or imported or documents related with such goods or of both in order to ascertain whether such goods are accordingly as declared, and this expression also includes the search or x-ray of the body or any passenger entering into Nepal from a foreign country or departing from Nepal to a foreign country.

- (h) "clearance" means the permission given by the Customs Officer to export or import or remove any goods from the Customs Office pursuant to this Act and the Rules framed under this Act.
- (i) "post clearance **audit**" means the **audit** referred to in Section 34.
- (j) "prescribed" or "as prescribed" means prescribed or as prescribed in the Rules framed under this Act.
- (k) "export" means the **act of** taking of goods out of Nepal to a foreign country.
- (l) "declaration form" means the form in which an exporter or importer declares the details of goods to be exported or imported.
- (m) "import" means the **act of** bringing of goods into Nepal from a foreign country.
- (n) "bonded warehouse" means a warehouse licensed by the Department to import and hold, against the bank guarantee facility, such raw materials or subsidiary manufacture goods to be exported to foreign countries or to be sold domestically at convertible foreign currencies or such goods as to be sold at a duty free shop.

- (o) "bank" means a commercial bank or financial institution licensed to carry on banking transactions pursuant to the prevailing law.
- (p) "bank guarantee" means the guarantee given by a bank to the Customs Office against payment by itself of duty payable by any exporter or importer in exporting or importing any goods in the event of failure of such exporter or importer to pay such duty.
- (q) "bank guarantee facility" means a facility accorded to any exporter or importer to export or import any goods on the basis of bank guarantee.
- (r) "Customs Officer" means the Chief Customs Administrator, Chief Customs Officer or Customs Officer, and this expression includes the Chief of Sub-customs Office and the Official designated by the Ministry of Finance pursuant to Section 84.
- (s) "customs agent" means the licensee as referred to in Section 51.
- (t) "Customs Office" means the Customs Office established by the Government of Nepal pursuant to Section 4, and this expression includes the premises of such Customs Office and such other area as may be prescribed by the Government of Nepal by notification in the Nepal Gazette.

- (u) "customs godown" means a house, building, shed or similar other structure built in a Customs Office or any place for holding goods to be exported or imported.
- (v) "customs duty" means customs duty chargeable on goods to be exported or imported in accordance with laws.
- (w) "customs value" means such value of goods to be exported or imported as may be determined in accordance with the provisions of Section 13 or 16 for the purpose of determining customs duty.
- (x) "customs area" means the customs area prescribed by the Government of Nepal pursuant to Section 3.
- (y) "duty" means each tax, charge and fee chargeable on goods to be exported or imported in accordance with law, and this expression includes customs duty.
- (z) "duty facility" means such facility as to allow the exportation or importation of any goods keeping only books of record, without collecting duty, whether or not examining such goods.
- (aa) "Director General" means the Director General of the Department of Customs.
- (bb) "goods" means any kind of movable goods or property including currency.

- (cc) "person" means a natural person, and this expression includes any company, corporate body and firm registered pursuant to law.
- (dd) "Department" means the Department of Customs.
- (ee) "demurrage" means the charge payable to the Government of Nepal by the exporter or importer of goods if such exporter or importer fails to take delivery of such goods stored at the customs godown run by the Customs Office within the prescribed time limit.
- (ff) "motor vehicle" means any conveyance to be used or used to make travel or transport goods.

Chapter-2

Provisions relating to Customs Area and Customs Office

3. Power to prescribe customs area and route:

- (1) The Government of Nepal may, by notification in the Nepal Gazette, prescribe any area of Nepal as the customs area for the purpose of administering the laws relating to customs and collecting customs duty in accordance with this Act.
- (2) The Government of Nepal may, by notification in the Nepal Gazette, prescribe routes through which export from or import into Nepal is to be made through the customs area as referred to in sub-section (1).

- (3) Any goods to be exported from Nepal or imported into Nepal shall be exported or imported only through the routes as referred to in sub-section (2).
- (4) The Director General may, subject to sub-section (3), so prescribe that the goods of any specific nature can be exported or imported only through any specific customs office.
- (5) Notwithstanding anything contained elsewhere in this Act, the Director General may so prescribe that the goods as prescribed or the goods up to the value as prescribed can be exported or imported through a sub-customs office.

4. Establishment of Customs Office:

The Government of Nepal may, by notification in the Nepal Gazette, establish a Customs Office or Sub-customs Office in any customs area.

Chapter-3

Provisions relating to Customs Duty

5. Customs duty to be charged:

Customs duty shall be chargeable on all goods to be exported or imported except those goods which enjoy customs duty exemption pursuant to this Act or the prevailing law.

6. Duty to be levied in event of re-import of exported goods:

(1) If any person re-imports any goods which have been manufactured or finished in Nepal and exported, such goods shall be subject to such duty as is chargeable on the importation of the goods of similar kind or to the same value, which have been manufactured or finished in a foreign country.

(2) Notwithstanding anything contained in sub-section (1), no customs duty shall be charged on the goods which have been returned back as follows:

(a) Having been exported through parcel by post but could not be delivered to the concerned person and thus returned back, or

(b) Having been returned back because the concerned person has refused to take delivery after clearance made by the Customs Office or after having arrived abroad, or

(c) Having been returned back because of being unable to meet standard quality due to an accident or natural calamity.

(3) Where the raw materials and subsidiary raw materials of the goods returned back pursuant to sub-section (1) were imported without paying duty, the duty chargeable on the quantity of the raw materials or subsidiary raw materials used in such goods shall also be recovered.

7. Duty not to be charged on goods left in customs office:

- (1) If any importer makes an application for not releasing any goods imported by that importer and for so leaving such goods with the Customs Office that they belong to the Government of Nepal, no duty shall be charged on such goods.
- (2) The Government of Nepal may itself use the goods so left pursuant to sub-section (1) or auction them in accordance with this Act.

Provided that where such goods are in such a condition that they can neither be brought into use nor be auctioned, the Customs Officer may remove such goods from the Customs Office or destroy them as prescribed; and the expenses incurred in such removal or destroy shall be recovered from the concerned importer himself or herself.

8. Base date for determination of duty:

- (1) The duty of any goods to be exported or imported shall be determined according to the tariff (rate of duty) prevailing on the date on which the declaration form of such goods is registered in the Customs Office.

Provided that where the declaration form has been registered in the Customs Office prior to the arrival of goods at the Customs Office, the duty shall be determined according to the

tariff prevailing on the date of arrival of such goods at that Office.

(2) Notwithstanding anything contained in sub-section (1), the duty of the following goods shall be determined on the following basis:

(a) In the case of goods imported under the diplomatic facility, duty facility or partial or full exemption, according to the tariff prevailing on the date of payment of duty of such goods,

(b) In the case of goods imported under the bank guarantee facility, according to the tariff prevailing on the date of clearance of such goods.

Chapter-4

Provisions Relating to Customs Duty Facility, Exemption and Other Facilities

9. Diplomatic facility, duty facility and customs duty exemption:

(1) Diplomatic facility or duty facility shall, on recommendation of the Ministry of Foreign Affairs, Government of Nepal, be accorded, as prescribed, to those bodies, officials or persons who are entitled to enjoy such diplomatic facility or duty facility under any bilateral or multilateral treaty or agreement to which Nepal is a party.

- (2) The Government of Nepal may, from time to time and by notification in the Nepal Gazette, accord the diplomatic facility or duty facility to such goods to be imported by such persons or bodies as specified in that notification.
- (3) The Government of Nepal may, from time to time and by notification in the Nepal Gazette, accord partial or full customs duty exemption to the goods specified in that notification.
- (4) The Government of Nepal may accord partial or full customs duty exemption to the goods to be imported in the name of any project to be operated under foreign loan or grant assistance or in the name of the contractor of such project.
- (5) The Government of Nepal may accord partial or full customs duty exemption to the fuel to be consumed during international flight, engine of aircraft, spare parts, machine, equipment thereof, food, liquors, beer and light drinks consumed in flight by an international air service company.
- (6) The provisions for according the duty facility to any goods to be brought again into Nepal from any part of Nepal via any abroad route shall be as prescribed.
- (7) The provisions for according the duty facility to any goods to be sent again to a foreign country from the foreign country via Nepal shall be as prescribed.

10. Power to accord bonded warehouse facility:

The Government of Nepal may, if it considers appropriate to accord the bonded warehouse facility to any person desirous of availing of the bonded warehouse facility, so accord the facility, as prescribed, that the bonded warehouse is operated subject to the terms as prescribed.

11. Power to accord facility to make import under bank guarantee facility:

- (1) The Government of Nepal may accord to any person the facility to import any goods under the bank guarantee facility in such manner as prescribed.
- (2) The Government of Nepal may accord the facility, as prescribed, to import under the bank guarantee facility, in accordance with the prescribed terms, such raw materials or subsidiary raw materials as to be imported by any industry for the purpose of manufacturing goods and export them or such goods as are imported for the operation of a duty free shop.
- (3) In according the facility to make import pursuant to sub-section (2), the concerned Customs Office shall take bank guarantee of the duty chargeable for such importation as well as such other duty, fee or penalty as may be chargeable or imposed on him or her in the event of violation of the terms referred to in sub-section (2).

12. Power of Government of Nepal to accord customs duty exemption and other facility to goods to be exported and imported by industry situated in special economic zone:

(1) The Government of Nepal shall accord customs duty exemption and other facility against bank guarantee to the following goods to be exported and imported by any industry situated in the special economic zone:

(a) Such raw materials, subsidiary raw materials as required to manufacture finished goods to be exported, packing materials and other materials to be used in manufacturing,

(b) Plants, machineries, machines, equipment, tools and spare parts as required for the industry, and up to three motor vehicles based on the size and nature of industry;

Explanation: For the purposes of this Section, "special economic zone" means a zone specified as a special economic zone by the Government of Nepal through notification in the Nepal Gazette.

(2) If any importer sells, as prescribed, any goods which that importer has imported to any industry situated in the special economic zone and that importer has paid the customs duty for importing such goods, the Customs Office shall refund, as prescribed, such customs duty to that importer.

- (3) If any industry situated outside the special economic zone sells any finished goods manufactured by that industry to any industry situated within the special economic zone, such customs duty and other facility as is accorded in the event of export shall be accorded as if that sale were an export.
- (4) If an industry situated within the special economic zone so sells any goods manufactured from the raw materials imported under the customs duty exemption that such goods are consumed in Nepal, such goods shall be allowed to be taken out of the special economic zone only after payment of duty chargeable on the raw materials used in such goods.
- (5) The Government of Nepal may, by notification in the Nepal Gazette, issue an order specifying the procedures on the transfer by an industry situated within the special economic zone of the ownership of goods imported under duty exemption to any person within or outside the special economic zone. It shall be the duty of the concerned industry to abide by such order.

Chapter-5

Provisions Relating to Determination of Customs Value

13. Bases for determination of customs value of goods to be imported:

- (1) The rules on customs valuation, annexes and interpretative notes set forth in the Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade 1994 shall be pursued in determining the customs value of imported goods.
- (2) The customs value of goods to be imported shall be determined on the basis of the transaction value of such goods, subject to sub-section (1).
- (3) The importer shall declare the transaction value, attaching therewith the description and documents proving the value of goods imported..
- (4) If the transaction value declared by the importer pursuant to sub-section (3) is in conformity with sub-section (1), the Customs Officer shall determine the customs value of the goods on the basis of such transaction value. If such transaction value does not appear to include freight, insurance and other related expenses, the Customs Officer shall determine the transaction value by adding an estimated amount likely to be incurred for the same.

- (5) The Director General may prescribe bases for fixing the estimated amount referred to in sub-section (4).
- (6) If there is a reasonable ground to believe that the value declared by the importer pursuant to sub-section (3) is doubtful, the Customs Officer may ask the importer to produce additional documents or evidence in writing to prove that such value is the actual transaction value. It shall be the responsibility of such importer to provide documents so asked.
- (7) If the customs value of any goods cannot be determined on the basis of the transaction value declared by the importer pursuant to sub-section (3) or the bills, invoices and documents submitted by the importer, the Customs Officer shall give a notice, accompanied by the reason for the same, to the concerned importer.
- (8) If the customs value cannot be determined on the basis of the transaction value pursuant to sub-section (2), the customs duty of such goods shall be determined on the basis of the transaction value of identical goods already imported into Nepal prior to the import of such goods.

Explanation: For the purposes of this Section, "identical goods" means goods which are the same in all respects, including physical characteristics, quality and reputation.

- (9) If the customs value cannot be determined on the basis of the transaction value of identical goods pursuant to sub-section (8), the customs duty of such goods shall be determined on the basis of the transaction value of similar goods already imported into Nepal prior to the import of such goods.

Explanation: For the purposes of this Section, "similar goods" means goods which, although not alike in all respects, have like characteristics and like component materials which enable them to perform the same functions and to be commercially interchangeable.

- (10) If the customs value cannot be determined on the basis of the transaction value of similar goods pursuant to sub-section (9) and such goods have already been imported into Nepal and sold at market to a person who is not related to the importer, the customs value of such goods shall be determined on the basis of deductive value method, by deducting the tax, duty levied in Nepal on the selling price of each unit of the maximum unit so sold, and other related costs and profits.
- (11) If the customs value cannot be determined pursuant to sub-section (10), the customs value shall be determined on the basis of computed value method, also calculating the costs incurred in the production or manufacturing of such goods and profits made or likely to be made by the seller while selling such goods to the importer.

- (12) If the customs value cannot be determined pursuant to sub-section (11), the Customs Officer shall so determine the customs value of such goods on a reasonable basis as not to be contrary to the provisions of sub-sections (2), (8), (9) and (10).
- (13) Notwithstanding anything contained in sub-sections (10) and (11), if the importer makes a request for the determination of customs value by adopting the procedures set forth in sub-section (11) prior to adopting the procedures set forth in sub-section (10), the Customs Officer may determine the customs value in accordance with the provisions of sub-section (11).
- (14) Notwithstanding anything contained elsewhere in this Section, if the owner of the goods imported under the Luggage and Baggage Order for personal purposes or the goods received as a gift or specimen/model and imported from a foreign country makes an application for the valuation of such goods, showing the reason for failure to indicate the transaction value thereof and if the Customs Officer considers the matter to be appropriate, he or she may determine a reasonable customs value of such goods.
- (15) If the value declared by an importer pursuant to sub-section (3) is less than the customs value determined by the Customs Officer pursuant to this Section, the Customs Officer may do the following in relation to such goods:

- (a) Clearing such goods by collecting fifty percent additional customs duty on such difference value, or
 - (b) With the prior approval of the Director General, purchasing, or causing to be purchased, such goods in a manner to pay the amount to be set by adding five percent amount to the value so declared to the importer.
- (16) In determining the customs value of goods in accordance with the provisions of this Section, the customs value shall normally be determined in a foreign currency. Where the valuation of goods on which the duty has to be paid at the time of import is made in a foreign currency, the conversion of such currency into Nepalese rupees shall be made according to the selling rate of foreign currency which is prescribed by the Nepal Rastra Bank and prevailing on the day of customs clearance of such goods. In the case of a foreign currency of which exchange rate is not prescribed by the Nepal Rastra Bank, such foreign currency shall be converted into American dollars, and the selling rate of American dollars shall be taken as the basis.

Provided that in converting the customs value of the goods of which duty is paid subsequent to the importation thereof under the diplomatic facility, duty facility or full or partial exemption of duty, such conversion shall be made according to the selling rate of foreign currency which is prescribed by

the Nepal Rastra Bank and prevailing on the day of payment of the remaining duty.

14. Power to determine customs value provisionally:

- (1) Notwithstanding anything contained elsewhere in this Act, the Customs Officer may, subject to Section 13, determine a reasonable provisional customs value of imported goods if:
 - (a) the importer makes an application, along with a reasonable reason, that he or she is not able to forthwith provide necessary documents and other related information as required for the valuation of goods,
 - (b) the customs value has to be or can be determined only after carrying out the laboratory test or other examination of goods or there appears a need to make further inquiry into the documents and information provided by the importer.
- (2) Where, after the determination of provisional customs value in accordance with the provisions of sub-section (1), the importer wishes to clear the goods by furnishing a deposit of the duty chargeable on such goods, the Customs Officer shall make clearance of such goods.
- (3) The Customs Officer shall determine the customs value of the goods under the provisions of Section 13 no later than thirty

days after the date of determination of the provisional value pursuant to sub-section (1).

- (4) If the customs value determined pursuant to sub-section (3) is more than the provisional customs value determined pursuant to sub-section (1), the Customs Office shall recover from such importer the duty chargeable on such excess value, and if it is less than that, the duty collected in excess shall be refunded to the importer.

15. Power to fix estimated amount of freight, insurance or other related costs:

- (1) Where, owing to a circumstance beyond his or her control, an importer is not able to forthwith submit documents of cost, insurance or related costs incurred in the importation of any goods, the importer may submit an application, accompanied by the reason for the same, to the Customs Officer for the fixation of the estimated amount of such freight, insurance or other related expenses.
- (2) Where, in inquiring into the application referred to in sub-section (1), the contents appear to be reasonable, the Customs Officer may fix the estimated amount for freight, insurance or other related expenses likely to be included in the transaction value of such goods.
- (3) The concerned importer shall submit documents and evidence relating to the actual freight, insurance and other related

expenses no later than ninety days after the date of fixation of the estimated amount of freight, insurance or other related costs pursuant to sub-section (2). If the amount set forth in the documents and evidence so submitted is more than the estimated amount fixed pursuant to sub-section (2), the importer shall pay the duty chargeable on such excess value, and if it is less than that, the Customs Office shall refund the remaining amount, upon deduction of the chargeable duty, to the importer.

- (4) Where the concerned importer fails to submit documents and evidence within the period referred to in sub-section (3) or unless it is proved otherwise, the estimated amount fixed by the Customs Officer pursuant to sub-section (2) shall be considered as the final amount of such freight, insurance or other related costs.

16. Determination of customs value of goods to be exported:

- (1) The invoice value declared by an exporter shall be the customs value of the goods to be exported.
- (2) Notwithstanding anything contained in sub-section (1), the Government of Nepal may, if considers necessary, determine separate customs value of any goods of specific nature to be exported, by notification in the Nepal Gazette. Where separate customs value is so determined, the customs vale of such goods shall be the invoice value declared by the exporter

or the customs value so determined by the Government of Nepal, whichever is higher.

- (3) The customs value referred to in sub-section (1) or (2) shall be the free on board (fob) value.

Explanation: For the purposes of this sub-section, "free on board (fob) value" means a value which includes the factory price of the goods to be exported and costs incurred in movement of such goods up to the concerned Customs Office of Nepal.

- (4) The value of goods to be determined pursuant to this Section shall be determined in foreign currency. Such foreign currency shall be converted into the Nepalese rupees according to the buying rate of foreign currency which is prescribed by the Nepal **Rastra Bank** and prevailing on the day of clearance of such goods.

Chapter-6

Provisions Relating to Declaration Form, Examination and Clearance

17. Details to be submitted:

The driver of a motor vehicle transporting any goods to be exported or imported shall provide such details of goods held in the vehicle as may be prescribed to the Customs Officer before such vehicle enter the Customs Office.

18. Declaration form to be filled up and submitted:

- (1) Any person who exports or imports any goods shall fill up the declaration form, accompanied by the documents as prescribed, and submit it to the Customs Officer of the concerned area.

Provided that, it shall not be necessary to fill up the declaration form in the case of those goods which have been exempted from customs duty by the Government of Nepal by notification in the Nepal Gazette, out of the goods contained in the luggage and baggage of passengers going out from Nepal and coming into from foreign countries.

- (2) In the event that, owing to the occurrence of a circumstance beyond control or any other reasonable reason, the concerned person is not able to submit any document as referred to in sub-section (1) along with the declaration form, such person may make an application, showing such circumstance or reason, to the Customs Officer for permission to submit such document later.
- (3) Where, upon examination of the application made pursuant to sub-section (2), such circumstance or reason appears to be reasonable, the concerned Customs Officer may prescribe the period within which such document has to be submitted.
- (4) While prescribing the period for the submission of document pursuant to sub-section (3), the Customs Officer may

prescribe any terms or ask for a reasonable deposit for security.

19. Examination of declaration form:

- (1) After the submission of a declaration form pursuant to Section 18, the concerned Customs Officer shall examine as to whether the goods declared in the declaration form are exportable or importable under law. While carrying out such examination, the Customs Officer may, as required, carry out or cause to be carried out physical inspection of the concerned goods.
- (2) If, in carrying out examination pursuant to sub-section (1), such goods are found to be non-exportable or non-importable or restricted ones, the matter shall be referred to the concerned body or authority for investigation or action under the prevailing laws.

20. Examination of goods:

- (1) If, in carrying out examination pursuant to Section 19, the concerned goods are found to be exportable or importable, the Customs Officer shall examine such goods in accordance with the provisions contained in Chapter-7.
- (2) Notwithstanding anything contained in sub-section (1), if it is not required to examine such goods in accordance with the selective method, the Customs Officer may examine the related documents only.

Explanation: For the purposes of this Section, "selective method" means a system so determined by the Department that any goods can be cleared, with or without examining such goods, or by examining documents only, taking into account the risks of revenue, trade, goods or other activities.

21. Valuation to be made:

After the examination of goods or documents pursuant to Section 20, the Customs Officer shall determine the customs value of the goods to be imported and of the goods to be exported under the provisions of Sections 13 and 16, respectively.

22. Determination of duty:

After the determination of the customs value pursuant to Section 21, the Customs Officer shall determine the duty chargeable on the goods.

23. Clearance of goods:

Except where exemption from or facility granting waiver of the duty is provided under the prevailing laws, the Customs Officer shall make clearance of goods only upon collecting the duty determined pursuant to Section 22.

24. Determination of duty prior to arrival of goods at Customs Office:

- (1) If any importer wishes to pay the duty chargeable on any goods to be imported by the importer prior to the arrival of

such goods at the concerned Customs Office, the importer may, for that purpose, make an application, accompanied by the declaration form filled up and such documents relating to such goods as referred to in Section 18, to the Customs Officer.

- (2) If, on examination of the application received pursuant to sub-section (1), it appears reasonable to so collect the duty, the Customs Officer may determine the duty pursuant to Section 22. The importer shall pay the duty so determined to the Customs Office.
- (3) If the rate of duty determined pursuant to sub-section (2) or the exchange rate of convertible foreign currency prevailing on the day of payment of duty differs from that prevailing on the day of clearance of goods, the rate prevailing on the day of clearance of goods shall be applied.
- (4) After those goods in respect whereof the duty has been paid pursuant to sub-section (2) have arrived at the Customs Office, the Office shall complete necessary procedures and make clearance of such goods with priority.

25. Export or import to be made:

- (1) The exporter or importer of any goods to be exported or imported or his or her customs agent may export or import such goods only after the declaration form or a receipt of payment of the duty pursuant to Section 23 has been

received, and after the Customs Officer has given permission to clear the goods upon making, or causing to be made, examination thereof, in the case of the goods mentioned in the proviso to sub-section (1) of Section 18.

- (2) If any person exports software through electronic means, such software shall be deemed to have been exported only after certification by the Nepal Rastra Bank, on the basis of, *inter alia*, the agreement relating to export, invoice and the evidence of payment made by the concerned importer.

26. Power to ask for proof, evidence or receipt:

- (1) Where there is a reasonable reason to believe that any person has imported or is going to export any goods and has not paid the customs duty or it is known that the customs duty has not been paid, any employee of the Customs Office may ask such person to furnish an evidence showing the payment of customs duty of such goods or the exemption of such goods from customs duty in the event of such exemption.
- (2) Such person shall show the evidence or proof asked pursuant to sub-section (1) to such employee. If that person fails to furnish such evidence or proof or if the proof submitted shows that the goods are not the same as mentioned in the proof, such employee shall produce such goods and person before the Customs Officer.

- (3) The Customs Officer may, upon production made pursuant to sub-section (2), issue an order to withhold such goods and shall take action against the person so produced on the offense of export or import smuggling.

27. Format of declaration form:

The format of declaration form shall be as prescribed.

Chapter-7

Provisions Relating to Examination of Goods

28. Power to open and examine consignment or packet:

- (1) The Customs Officer may open and examine, or give order to any of his or her sub-ordinate employees to open and examine, each and every consignment or packet of any goods whatsoever to be exported or imported or open and examine them randomly and casually or open and examine only a certain percentage of the same.
- (2) In making examination pursuant to sub-section (1), the examination of live animals, perishable goods and such other goods as the Customs Officer considers necessary shall be made first.
- (3) Where the Customs Officer or his or her sub-ordinate employee has opened and examined the consignment or packets of goods pursuant to sub-section (1), the method of

such examination and a clear description of the items so examined shall be set down in the declaration form.

- (4) If there is a suspicion about any consignment or packet examined or not examined under this Section or any information is received about the same, the Customs Officer shall give order to any of his or her sub-ordinates to examine such consignment or packet if it has not been examined or to re-examine the same if it has already been examined..
- (5) If any exporter or importer wishes to get the goods examined in his or her presence, that exporter or importer shall give information thereof in writing to the Customs Officer. Where information is so given, the Customs Officer may examine or cause to be examined the goods in presence of such exporter or importer.

Provided that if such exporter or importer is not present at the time specified by the Customs Officer, nothing shall bar the examining of goods in the absence of such exporter or importer.

- (6) While examining or causing examination pursuant to this Section, the Customs Officer may examine or cause examination only upon collection of the duty chargeable on the basis of declaration.
- (7) Where, in making examination pursuant to sub-section (6), the goods are not found the same as those set down in the

declaration made by the exporter or importer or his or her agent or in the document attached with the declaration form, the importer shall not be entitled to get refund of the duty or to reconcile or adjust it with the chargeable duty if the duty has been collected prior to the examination of such goods.

- (8) Prior to taking delivery of the goods once cleared from the customs area or after taking them outside the customs area, any officer deputed by the Director General or the Customs Officer of the concerned Customs Office may re-examine, or cause to be re-examined, such goods wholly or partly. While making such re-examination, the Director General or the Customs Officer shall provide information of the reason for such re-examination to the concerned importer.

29. Deemed examination:

If, while examining any consignment or packet pursuant to Section 28, the goods held in the consignment or packet are found to be conforming to the submitted bills, invoices, other documents or details, the goods in the other consignments or packets which have not been examined shall also be deemed to have been examined.

30. Special test of goods:

- (1) If it is required to subject any goods to a special test from the health or environmental perspective, the Customs Officer may get such goods tested by the concerned body or laboratory.

- (2) For the purpose of sub-section (1), the Customs Officer may take a specimen of such goods from the consignment or packet and send it to the concerned body or laboratory.
- (3) The concerned authority or laboratory shall promptly test the goods sent for test pursuant to sub-section (1) and send results thereof to the Customs Office promptly.
- (4) If, in carrying out test pursuant to sub-section (3), the goods appear to cause adverse effects or damage to the environment or health, the Customs Officer shall order the concerned importer to return such goods back to the concerned exporter of the foreign country, in such manner as prescribed.

Provided that, prior to making such order, the Customs Officer may ask the importer to submit an evidence showing the refund of foreign currency paid for such goods or a bond covenanting to have refund of such foreign currency.

- (5) If the concerned importer does not send back such goods pursuant to the order issued under sub-section (4), the Customs Officer may seize such goods and destroy or decompose such goods and shall recover from the concerned importer the expenses incurred or likely to be incurred in such destroy or decomposition.

31. Power to visit and examine goods in the concerned place:

- (1) Any exporter may submit an application to the Customs Officer to visit the production site or godown of any goods to be exported by the exporter and examine such goods.
- (2) If it appears to make examination of the goods as per the application received pursuant to sub-section (1), the Customs Officer may visit such production site or godown on his or her own and examine such goods or send any of his or her sub-ordinate employee to such site or godown for such examination, by collecting the fees as prescribed.
- (3) Any importer may submit an application, accompanied by the prescribed documents and the declaration form filled up, to the Customs Officer for the examination of the goods imported by the importer outside the customs area.
- (4) If, upon inquiring into the application received pursuant to sub-section (1), it appears reasonable to make such examination, the Customs Officer may, by obtaining prior approval of the Director General, visit the site outside the customs area on his or her own and examine the goods or send any of his or her sub-ordinate employee for such examination, by collecting the fees as prescribed.
- (5) Prior to making examination pursuant to sub-section (4), the Customs Officer shall take a deposit of an amount to be set by adding fifty per cent duty to the duty chargeable on the

goods according to the customs value declared by the importer. The Customs Office shall refund the excess amount to the importer if such deposit is more than the customs duty chargeable on such goods and recover from the importer the shortfall amount if such deposit is less than such customs duty.

32. Power to seal means of transport:

After the clearance of goods by the Customs Office, such goods may be kept in the means of transport which is to be used for transporting them, and the Customs Office may seal such means of transport.

33. Prohibition on opening, inspection and examination:

No body other than the authority authorized to make investigation under the prevailing laws on revenue leakage shall, without prior approval of the Ministry of Finance or the Director General, open, inspect and examine any goods cleared by the Customs Office and any means transporting such goods.

Chapter-8

Provisions Relating to Post Clearance **Audit, Search and Arrest**

34. Power to make post clearance **audit:**

(1) In order to ascertain whether the goods cleared by the Customs Office are the same as declared by an importer or

confirm to the declaration made by the importer or not, the Director General or Customs Officer may **audit**, *inter alia*, the importer's books relating to the purchase, import or sale of goods, records, books of accounts or similar other documents, bank records, computer system and all records related to his or her business.

- (2) If, upon **audit** made pursuant to sub-section (1), it is found that the goods imported by the importer are different than those declared by the importer or are inconsistent with the declaration made by the importer or the transaction value or the quantity of the goods has been declared less and by virtue thereof lesser duty has been recovered, the Customs Officer shall immediately recover from the importer the duty chargeable on such less value or quantity at the time of import and take action against such importer for the declaration of less transaction value or quantity, pursuant to this Act.
- (3) If, upon **audit** made pursuant to sub-section (1), it appears that less duty has been recovered by the reason of difference in sub-heading of commodity classification, the concerned Customs Office shall immediately recover such shortfall amount of duty from the importer.
- (4) The **audit** referred to in this Section may be made until four years after the date of clearance of goods.

35. Goods and persons to be produced before Customs Officer:

If any employee of the Customs Office or authority deputed by the Director General finds that any person has exported or imported any goods through any route other than the route prescribed pursuant to Section 3 or smuggled the goods or is going to make such export or import, such employee or authority shall capture such goods and the person and motor vehicle carrying such goods and produce them before the Customs Officer. The Customs Officer shall institute action against and in relation to the goods, person and motor vehicle so produced on the offense of export smuggling or import smuggling.

36. To make search on suspicion or ground:

If there is a reasonable ground or reason to believe that or there is a suspicion that any person has brought any goods subject to customs duty without paying such duty or smuggled and imported such goods or is going to smuggle and export such goods or has exported or imported or is going to export or import any restricted goods, any employee of the Customs Office may, at any time, stop such person or any motor vehicle and search such person or motor vehicle.

37. Demand of person to be searched for being produced before Customs Officer:

(1) Where any employee other than the Customs Officer or the employee designated for that purpose intends to make search

pursuant to Section 36, the concerned person may make a demand that he or she be produced before the Customs Officer prior to making such search.

- (2) Where demand is made for presence before the Customs Officer pursuant to sub-section (1), the employee of the concerned Customs Office shall produce him or her before the Customs Officer promptly.
- (3) Where the Customs Officer has a reasonable ground to search the person produced pursuant to sub-section (2), he or she himself or herself may search such person or cause any of his or her subordinate employees to make such search, and where the Customs Officer does not see such ground, he or she shall release such person immediately.

38. Import smuggling or export smuggling to be deemed:

Where, upon making a search pursuant to Section 36 or 39, any goods which are subject to the customs duty or which have to be exported or imported by making declaration pursuant to this Act are seized, the Customs Officer shall give order to the person searched to submit the declaration form of such goods and evidence of payment of duty if such goods are those which are subject to customs duty. In the event of failure to submit such declaration or evidence, such person shall be deemed to have committed export smuggling or import smuggling.

39. To search house, building, godown or place:

- (1) Where there is a reasonable ground to believe or doubt that any person has hidden or kept any goods brought into by evading the customs duty or by way of import smuggling in any house, building, godown or other place, the Director General or the concerned Customs Officer may make decision, accompanied by the reason, and search such house, building, godown or place or give order to make such search.
- (2) The employee who gets order pursuant to sub-section (1) shall, prior to searching such house, building, godown or place, give a notice, accompanied by the reason for making such search, to the owner of that house, building, godown or place or the person who are residing in such house, building, godown or place for the time being. If such owner or person refuses to acknowledge such notice, a copy of the notice shall be affixed to such house, building, godown or place in a manner conspicuous to all; and after the notice is so affixed, the concerned owner or person shall be deemed to have duly received the notice of search.
- (3) After the notice has been given to the concerned owner or person pursuant to sub-section (2), such owner or person shall allow the employee deputed to make search to search such house, building, godown or place.
- (4) If any person makes any obstruction or objection to making search pursuant to sub-sections (2) and (3), the employee

deputed to make search shall give a notice and opportunity to the persons who are staying in the house, building, godown or place to be searched to leave such house, building, godown or place. If such persons do not leave in spite of such notice and opportunity, such employee may search the house, building, godown or place required to be searched at any time between sunrise and sunset by opening or breaking the external or internal door, window or locker thereof also by using necessary force with the assistance of the security body.

- (5) In making search pursuant to this Section, the employee deputed to make search shall, to the extent of availability, make search in witness of the ward chairperson or ward member of the concerned Village Development Committee or Municipality or an employee of any office or house owner or his or her agent or any person having attained the age of sixteen years. If no such person is found to witness the search or such person refuses to witness the same, the person making search shall execute a memo of remarks to that effect and sign it.
- (6) If, on making search pursuant to this Section, any goods brought by evading the customs or by way of import smuggling are seized, the employee making such search shall take such goods in his or her custody, prepare an inventory indicating the details of such goods and deliver a copy of the inventory to the concerned person of the house, building, godown or place searched immediately. If the concerned

person refuses to receive such copy or if it is not possible to deliver it to such person, that copy shall be posted by executing a recognizance deed in witness of two witnesses. If the copy of inventory is so posted, it shall be deemed to have been delivered to the concerned person.

- (7) Such employee shall produce the goods and inventory as referred to in sub-section (6) to the concerned Customs Officer; and upon such production, the Customs Officer shall take action under this Act.

40. Power to arrest:

- (1) Where, upon making a search pursuant to Section 36 or 39, any person is found to have committed any offence under this Act, the employee making such search may arrest, or cause to be arrested, such person.
- (2) If there is a reasonable ground or reason to believe or doubt that any person is going to commit or has committed export smuggling or import smuggling or any act contrary to this Act, the concerned Customs Officer or any other employee of the Customs Office authorized by him or her may arrest, or cause to be arrested, such person in any motor vehicle or place.
- (3) Any person arrested pursuant to sub-section (1) or (2) shall be produced before the Customs Officer within twenty four hours excluding the time required for journey.

- (4) The Customs Officer shall immediately take legal action against the person produced pursuant to sub-section (3). Such person shall not be held in detention for more than twenty four hours without taking such action.

41. Power to release on bail or detain:

- (1) If any person produced pursuant to sub-section (3) of Section 40 is found to be an offender based on the evidence available for the time being, the Customs Officer may release such person on bail which includes the amount for imprisonment and fine that can be imposed on such person pursuant to this Act and the amount equal to the amount in controversy where such amount is also to be recovered on the condition that such person shall make presence at the prescribed place and time.
- (2) Any person who fails to furnish the bail demanded pursuant to sub-section (1) shall be held in detention until such bail is furnished to the Customs Office.
- (3) Notwithstanding anything contained in sub-section (1), if there is a ground that such person may destroy evidence if he or she is released on bail, the Customs Officer may forward action by holding such person in detention, by assigning the reason for the same.
- (4) Notwithstanding anything contained in sub-section (2) or (3), such person shall not be held in detention for a term that

exceeds the maximum term of punishment that can be imposed on such person pursuant to this Act.

- (5) While taking bail for punishment pursuant to sub-section (1), it shall be taken by fifty rupees for one day of imprisonment.

42. Subsequent arrest of absconding person:

If any person who commits any act that is considered an offence under this Act cannot be arrested at the time of commission of the offence or such person, despite being arrested, absconds, the Customs Officer or the employee authorized by him or her or the employee deputed for that purpose may arrest such person at any time. Action shall be taken against such person as if he or she were arrested at the time of commission of the offense.

43. Power to use maximum force:

- (1) If any person attempts to export or import any goods through any route other than that prescribed pursuant to Section 3, the Customs Officer or the employee of the Customs Office authorized by him or her or the competent government employee may stop such person.
- (2) If, while trying to stop such person pursuant to sub-section (1), such person manhandles or uses force, the Customs Officer or such employee shall request and convince such person not to do so.

- (3) If, despite the request and convincing pursuant to sub-section (2), that person does manhandling or uses force, the Customs Officer or such employee may arrest him or her.
- (4) If, while trying to make arrest pursuant to sub-section (3), that person uses force or tries to escape or go away and cannot be arrested for the time being, the employee deputed for security on the spot may, by order of such Customs Officer or competent authority for his or her security and for the observance of duties, first make an aerial firing and then open fire in such a manner as to cause a minimum of loss provided the situation cannot be controlled despite such firing or the person using force has also a weapon.
- (5) An employee of the Customs Office may order any person who makes movement by a motor vehicle through the route prescribed under Section 3 to stop, or cause to be stopped, such motor vehicle, as well. If such person does not carry out such order but manhandles or uses force and attempts to take away or takes away such motor vehicle without getting it examined, the employee deputed for the security of customs may, by order of the Customs Officer, open fire at the tyre of such motor vehicle in such a manner as to cause a minimum of loss.
- (6) If it is necessary to open fire pursuant to sub-section (4) and (5), the Customs Officer or the authorised person shall give

by faster means the information of that matter to the Director General or the Concerned Chief District Officer.

Chapter-9

Provisions Relating to Seizure, Forfeiture and Auction of Goods

44. Power to seize goods liable to be forfeited:

The Customs Officer or the employee of the Customs Office authorized by him or her or the employee authorized by the Government of Nepal may, if he or she sees or finds any goods liable to be forfeited pursuant to this Act, seize such goods at any place and time.

45. Proof of seizure to be provided:

The Customs Officer or the employee who seizes goods pursuant to Section 44 shall provide a proof indicating the reason for so seizing the goods and an inventory setting out the details of goods so seized to the owner of such goods within a maximum of three days after the seizure of such goods.

46. Handing over of goods:

(1) Any employee of the Customs Office or other body shall promptly hand over the goods seized by that employee or body pursuant to Section 44 and a copy of the inventory

referred to in Section 45 to the Customs Officer in accordance with this Act.

- (2) After the goods have been handed over pursuant to sub-section (1), the Customs Officer shall inquire into whether such goods are liable to be seized under this Act. If, upon such inquiry, it appears either that such goods have been seized for no reason or that it is not necessary to seize such goods, the Customs Officer shall immediately return such goods to the owner thereof.
- (3) If, upon making inquiry pursuant to sub-section (2), it appears that the goods are liable to be seized, the Customs Officer shall take action as referred to in this Act in relation to such goods.

47. Ownership of goods seized and not cleared from customs belonging to Government of Nepal:

- (1) Any goods which are seized under this Act shall belong to the Government of Nepal.
- (2) The owner of goods concerned shall take delivery of the goods held in customs within the prescribed period.
- (3) The concerned Customs Office shall publish a seven-day public notice for taking delivery of the goods which have not been cleared within the period referred to in sub-section (2).

- (4) If, after the publication of the notice referred to in sub-section (3), the owner of goods concerned makes an application, accompanied by a reasonable ground for not being able to clear the goods within the period referred to in sub-section (2), to the Customs Office and such reason appears to be reasonable, the Customs Officer may, by collecting the chargeable duty, permit the owner to clear such goods.
- (5) The concerned Customs Officer shall forfeit the goods not cleared from the Customs Office even upon the publication of the notice as referred to in sub-section (3). Such goods shall belong to the Government of Nepal.

48. Notice of forfeiture to be given:

Where any goods are forfeited pursuant to this Act, the Customs Officer shall give information thereof to the concerned exporter or importer.

49. Goods to be forfeited:

If a decision is made to forfeit any goods pursuant to this Act, the following goods related with such goods shall also be forfeited:

- (a) Parcels, packets or containers to pack or transport such goods,

- (b) All kinds of motor vehicles including, rickshaws, carts and animals, other than trains and aircrafts, used to transport such goods,
- (c) Clothes, furniture, electronic goods and other materials held in motor vehicles referred to in clause (b).

50. Power to auction:

- (1) Except where the Government of Nepal has itself used any goods which have been forfeited pursuant to this Act, the concerned Customs Officer may auction such goods as prescribed.
- (2) Notwithstanding anything contained in sub-section (1), provisions relating to the auction of the gold, silver or bullions which have been forfeited and devolved on the Government of Nepal because of failure to clear them from the Customs Office or those goods which have been so forfeited and devolved and can be sold only after obtaining license pursuant to the prevailing laws and other provisions pertaining thereto shall be as prescribed.
- (3) If any goods forfeited pursuant to this Act are such that their value may diminish because of being perishable or old or it is difficult to keep them because of the lack of godown or space or in the case of animals, the Customs Officer may immediately auction such goods as prescribed.

- (4) The Customs Office shall credit the proceeds of the auction referred to in sub-section (3) to the deposit account.
- (5) If it is held subsequently that those goods which have been auctioned pursuant to sub-section (1), (2) or (3) are to be returned to the owner thereof, only the proceeds of such auction shall be returned to that owner.

Provided that if any tax, charge or other fee or amount is chargeable on such proceeds, only the amount remaining after deducting such tax, charge, fee and amount shall be provided to the owner.

- (6) If it is not appropriate to hold in the Customs Office any motor vehicle used to transport goods by way of export smuggling or import smuggling and produced before that Office because of the lack of space or being unable to protect it, the concerned Customs Officer shall get the value of such vehicle fixed by the prescribed committee and auction, or cause to be auctioned, such vehicle at that value.
- (7) Notwithstanding anything contained in sub-section (6), the owner of such motor vehicle may submit an application to clear that motor vehicle, by furnishing a cash deposit of the amount consisting of the value fixed pursuant to sub-section (6) as well as the amount to be set by adding the tax and charge chargeable on such value pursuant to the prevailing laws.

- (8) Where an application is submitted pursuant to sub-section (7), the Customs Officer may collect such deposit and return the motor vehicle to that owner; and if, on taking action on and disposing such application, the motor vehicle is held to be forfeited, the Customs Office may credit the deposit so furnished into the revenue and return that motor vehicle to its owner. If it is decided that such motor vehicle is not liable to be forfeited and the owner of that vehicle is entitled to get it returned, the deposit furnished by that owner shall be refunded as prescribed.
- (9) Notwithstanding anything contained elsewhere in this Section, the Customs Officer may decompose, decay or destroy, as prescribed, those goods which cannot be auctioned pursuant to this Act or which cannot be brought into use in any manner.

Chapter-10

Provisions Relating to Customs Agent

51. Provisions relating to license of customs agent:

- (1) A person who wishes to act as the customs agent or representative of any importer or exporter to clear goods to be imported or exported from the Customs Office or to do any act related with the Customs Office shall obtain the license of customs agent from the Department or Customs Office.

- (2) The provisions relating to the license of customs agent shall be as prescribed.

52. Appointment of customs agent:

If any exporter or importer wishes to get the goods to be exported or imported cleared not by himself or herself but through a customs agent or to do any act related with the Customs Office not by himself or herself but through a customs agent, such exporter or importer may appoint his or her customs agent as prescribed.

53. Customs agent to be deemed owner of goods:

If the owner of any goods appoint any person as his or her customs agent to get such goods cleared from the Customs Office or to do any other act as referred to in this Act and the Rules framed under this Act, such customs agent shall, for that purpose, be deemed to be the owner of such goods.

54. Customs agent to be responsible:

If any customs agent appointed pursuant to Section 52 does any act contrary to this Act or the Rules framed under this Act, thereby causing any loss and damage to the owner of goods, such agent shall pay an amount equal to that loss to the owner of such goods, as prescribed.

55. License to be suspended and canceled:

- (1) The Customs Officer may suspend any customs agent on whom a fine is imposed pursuant to Section 59 or who does

any act contrary to this Act or the Rules framed under this Act for a period from one month to six months.

- (2) If any customs agent does the act referred to in sub-section (1) for the third time, the Customs Officer may cancel his or her license.
- (3) Prior to suspending pursuant to sub-section (1) or canceling the license pursuant to sub-section (2), the concerned Officer shall give an opportunity to such customs agent to defend himself or herself.
- (4) In the event of suspension pursuant to sub-section (1), such customs agent shall not do any act relating to customs during the period of such suspension, and in the event of cancellation of license pursuant to sub-section (2), such customs agent shall not be entitled to obtain the license of customs agent again.

56. Application:

Where the Customs Officer makes decision to suspend or cancel the license of a customs agent or to impose a fine on him or her pursuant to Section 55, the customs agent who is not satisfied with that decision may file an application to the Director General within thirty five days after the date of such decision. The Director General shall make decision on such application normally within thirty days **and such decision shall be final.**

Chapter-11

Punishment

57. Punishment:

- (1) If any person commits or attempts to commit export smuggling or import smuggling of any goods or exports or imports or attempts to export or import any goods through any route other than the route so prescribed under Section 3 that such goods are to be exported or imported only through that route, the Customs Officer may forfeit such goods and impose a fine equal to the amount in controversy of such goods or imprisonment as follows or both punishments:
 - (a) For a term not exceeding two months where the amount in controversy is from twenty five thousand to one hundred thousand rupees,
 - (b) For a term from two months to six months where the amount in controversy is from one hundred thousand rupees to five hundred thousand rupees,
 - (c) For a term from four months to one year where the amount in controversy is from five hundred thousand rupees to two million five hundred thousand rupees,
 - (d) For a term from eight months to two years where the amount in controversy is from two million five hundred thousand rupees to five million rupees,

- (e) For a term from one year to three years where the amount in controversy is from five million rupees to ten million rupees,
 - (f) For a term from two years to five years where the amount in controversy exceeds ten million rupees.
- (2) Where the motor vehicle used to transport the goods to be forfeited pursuant to sub-section (1) has been used with the consent or knowledge of the owner of that motor vehicle, the Customs Officer shall forfeit such motor vehicle and punish the owner with imprisonment for a term not exceeding one year. Where the driver of such motor vehicle has knowingly used it to transport such goods without consent or knowledge of the owner of that motor vehicle, the Customs Officer may punish such driver with a fine of up to five thousand rupees or with imprisonment for a term not exceeding one year or with both punishments.
- (3) The Customs Officer may punish any person who aids and abets the commission of offense referred to in sub-section (1) as if such person were the offender.
- (4) If any person hides or knowingly keeps any goods exported or imported by way of export or import smuggling, the Customs Officer may forfeit such goods and punish such person with a fine of up to ten thousand rupees.

- (5) If any exporter, importer or customs agent make declaration with under invoicing despite that the name, nature, physical features, characteristics, measurement, size and quality of goods are accurate, the Customs Officer may clear such goods by imposing a fine of cent percent of the value of those goods which have been under-invoiced on the owner of such goods and collecting the chargeable duty.
- (6) If any exporter, importer or customs agent makes declaration falsifying the country of origin despite that the name, nature, physical features, characteristics, measurement, size, quality and quantity of goods are accurate, the Customs Officer may clear such goods by imposing a fine that is equal to the duty chargeable on such goods on the owner of such goods and collecting the chargeable duty.
- (7) If any exporter or customs agent declares the quantity that exceeds the actual quantity of the goods to be exported, the Customs Officer may clear the goods by imposing a fine that is two hundred percent of the value of goods so declared as excess and mentioning that fact in the declaration form.
- (8) If any exporter or customs agent make declaration falsifying all or any details out of the name, nature, physical features, characteristics, measurement, size and quality of goods, the Customs Officer may forfeit such goods and impose a fine that is equal to the amount in controversy on the owner of such goods.

- (9) If any importer or customs agent makes declaration falsifying the goods or the materials of which the goods are made or falsifying all or any details out of the nature, physical features, characteristics, measurement, size and quality of goods or does not make declaration of any goods, the Customs Officer may forfeit such goods by imposing a fine that is equal to the value of such goods on the owner of such goods or clear such goods by imposing a fine that is equal to two hundred percent of the value of such goods and collecting the chargeable duty.
- (10) If any person causes or attempts to cause a loss of revenue or duty by submitting a forged, fake or false document to the Customs Office, the Customs Officer may punish such person with a fine that is two hundred percent of the amount of duty or revenue the loss of which has been so caused or attempted to be caused or with imprisonment for a term from six months to one year or with both punishments; and the matter shall be forwarded to the concerned body or authority to take action under the prevailing laws in relation to the commission of forgery of governmental documents.
- (11) If the owner of any goods or his or her agent opens in any manner any customs godown or goods stored in that godown with intention to steal goods or cause loss of or damage to such goods, the Customs Officer may punish such owner or agent with a fine not exceeding five thousand rupees.

- (12) If any person removes or takes goods stored in a customs godwon from such godown without approval of the Customs Office, the Customs Officer may punish such person with a fine that is equal to the amount in controversy and with imprisonment for a term not exceeding six months or with both punishments.
- (13) If any person knowingly writes, signs or uses the specific matter of the declaration form or document utilized in the performance of the functions of the Customs Office or forges or alters or destroys any document signed, stamped or sealed with initial, signed by or any sign or symbol affixed therein by the Customs Officer in the course of the performance of the functions of the Customs Office, the Customs Officer may punish such person with a fine not exceeding five thousand rupees and with imprisonment for a term not exceeding one year or with both punishments, and the matter shall be forwarded to the concerned body or authority to take action under the prevailing laws in relation to the commission of forgery of governmental documents.
- (14) If the person or employee who has the custody of the goods stored in the customs godown recklessly loses or knowingly damages such goods, the Customs Officer may punish such person or employee with a fine not exceeding five thousand rupees, by recovering from such person or employee the value of such goods and the chargeable duty.

- (15) If any unauthorized employee removes or gives order to remove any goods stored in the customs godown, the Customs Officer may punish such employee with a fine not exceeding five thousand rupees or with imprisonment for a term not exceeding two years or with both punishments.
- (16) If it appears, from the review carried out pursuant to Section 70, that there is a difference in the customs duty by the reason of submission by the owner of goods of fake bills, invoices or documents, the Customs Officer may punish such owner with a fine that is two hundred percent of the value of the goods cleared from the Customs Office or with imprisonment for a term not exceeding one year or with both punishments.
- (17) If any person commits any act contrary to this Act or the Rules framed under this Act, except that set forth in this Section, the Customs Officer may punish such person with a fine not exceeding five thousand rupees.

58. Punishment to those who cause obstruction:

If any person deliberately obstructs or hinders the Customs Officer or any employee of the Customs Office in the exercise of the powers conferred by this Act and the Rules framed under this Act, the Customs Officer shall punish such person with a fine not exceeding five thousand rupees or with imprisonment for a term not exceeding one year or with both punishments, if such person is a governmental employee, and with a fine not exceeding one thousand rupees or with imprisonment for a term not exceeding six

months or with both punishments if such person is not a governmental employee.

59. Punishment to customs agent:

- (1) The Customs Officer may punish a customs agent who commits any act as referred to in sub-sections (5), (6), (7), (8) and (9) of Section 57 with a fine from three thousand rupees to ten thousand rupees or with imprisonment for a term from one month to six months or with both punishments.
- (2) The owner of goods shall not be deemed to have been released from punishment or fine imposable on him or her pursuant to this Section by the reason only that the customs agent has been subject to punishment pursuant to sub-section (1).

60. Punishment to be imposable pursuant to prevailing laws:

Where any offense or act under this Act is punishable under the prevailing laws, this Act shall not be deemed to bar the taking of action and imposing of punishment also under such laws.

Chapter-12

Provisions Relating to Review and Appeal

61. Provisions relating to valuation review committee:

- (1) A person who is not satisfied with any decision or order made by the Customs Officer pursuant to Section 13 may, for the review of such decision or order, file an application, as

prescribed, to the valuation review committee formed pursuant to sub-section (2) no later than fifteen days after the date of such decision or order.

- (2) For the purpose of sub-section (1), the Government of Nepal shall form the following valuation review committee:

(a)	At least Gazetted First Class officer of the Civil Service who has knowledge and experience in the field of revenue administration	-Chairperson
(b)	One person who is incumbent in the office of at least Gazetted Second Class and has gained at least three years of experience in the Gazetted post on customs administration or who has retired from the office of that Class and has gained the said experience	-Member
(c)	One person who is incumbent in the office of at least Gazetted Second Class and has gained at least three years of experience in the Gazetted post on international trade	-Member

- (3) The term of the chairperson and members of the valuation review committee referred to in sub-section (2) shall be of three years.
- (4) Notwithstanding anything contained in sub-section (3), the Government of Nepal may, by providing an opportunity for defense, remove, at any time, the chairperson or any member of the valuation review committee from the office on grounds of his or her incompetence or misbehavior or failure to discharge the duties of his or her office honestly.
- (5) The valuation review committee shall, while making review pursuant to this Section, inquire into whether the customs valuation determined by the Customs Officer pursuant to Section 13 is accurate or not and may approve or void the valuation determined by the Customs Officer or make valuation of such goods pursuant to this Act. The valuation review committee shall also assign clear reasons and bases while so approving, voiding valuation or making valuation.
- (6) The other functions, duties, powers and procedures of the valuation review committee formed pursuant to sub-section (2) and the remuneration and terms and conditions of service of the chairperson and member of that committee shall be as prescribed.
- (7) A person who files an application pursuant to sub-section (1) shall, prior to making such application, furnish with the Customs Officer a deposit of the duty chargeable according

to the valuation determined by the Customs Officer pursuant to Section 13.

62. Appeal:

- (1) A person who is not satisfied with the customs duty determined by the Customs Officer or other employee under this Act or with any order or punishment or decision issued or made by the Customs Officer, except any decision or order referred to in Section 13, or with any decision made by the valuation review committee formed pursuant to Section 61 may make an appeal to the Revenue Tribunal within thirty five days after the date of the determination of such customs duty or the imposition of punishment or the making of decision.
- (2) A person who files an appeal pursuant to sub-section (1) may make such appeal by making payment of or furnishing a deposit of the duty and amount of fine and penalty chargeable pursuant to that decision or order against which such appeal is to be made, to or with the concerned Customs Office.
- (3) A person who files an appeal pursuant to sub-section (1) shall give a copy of such appeal to the concerned Customs Office no later than seven days after the filing of such appeal.
- (4) In the event of not being satisfied with any decision made by the valuation review committee formed pursuant to Section 61, the Customs Officer may file an appeal to the Revenue

Tribunal no later than thirty five days after the making of such decision.

Chapter-13

Provisions Relating to Punishment to Employees

63. Petition to be made:

- (1) If one has a reasonable cause to believe that the Customs Officer or any employee of the Customs Office has done any act contrary to this Act or the Rules framed under this Act or has caused revenue loss or done any act guided by the sole motive to harass any importer or exporter, one may file a petition to the Director General in the case of the Customs Officer and to the Customs Officer in the case of the employee of the Customs Office.
- (2) The Director General or the Customs Officer shall examine any petition made pursuant to sub-section (1) and give information thereof to the petitioner.
- (3) If, upon the examination conducted pursuant to sub-section (2), it appears that the Customs Officer or the employee of the Customs Office has done any act contrary to this Act or the Rules framed under this Act or has caused revenue loss or done any act guided by the motive to harass any importer or exporter, the Director General shall initiate departmental action against such Customs Officer and the Customs Officer shall initiate such action against the employee of the Customs

Office, and if any act considered to be corruption under the prevailing laws is found committed, the matter shall be referred to the concerned authority.

64. Notice of action and limitation:

No action may be instituted in relation to any act, which has been done considering that such act would be in accordance with this Act or the Rules framed under this Act, unless and until a period of two months has expired after a written notice, setting out the cause to institute the case against the Customs Officer or another employee, the name and address of the person to be plaintiff and of his or her attorney, if any, has been delivered to or sent by a registered post, to such Customs Officer or employee and a duplicate copy thereof has been submitted to the Director General.

65. Punishment to employees:

(1) Where departmental action is initiated against any civil employee who performs functions relating to customs under the prevailing Civil Service Act and Regulation and the competent authority is of the opinion that only the punishment specified in that Act and Regulation is inadequate, the competent authority specified in that Act and Regulation may also issue order for the recovery of all or any of the loss caused from the following act to any person from the property of such employee:

(a) Deliberate violation of the provisions of this Act, or

- (b) Commission of any act done deliberately or with mala fide intention to cause loss and damage to the Government of Nepal, or
 - (c) Except for the performance in good faith of the duties of his or her office in accordance with this Act in relation to any goods, disclosure of any matters to his or her knowledge by virtue of his or her office with intention to make benefits for him or her or for any other person or to cause loss to any person or showing or supplying any matter which has been assigned to him or her and is required to be kept secret to any person.
- (2) The concerned employee may file an appeal to the competent authority under the prevailing Civil Service Act and Regulation against any order issued by the competent authority under this Act; and such competent authority shall settle such appeal in accordance with that Act and Regulation.
 - (3) While recovering fine imposed pursuant to this Section, the competent authority may recover the same by exercising, and in accordance with, the prevailing laws on the recovery of court punishment and fine.
 - (4) Nothing contained in this Section shall be deemed to bar the provisions of prevailing laws under which court action can be instituted against any employee who commits offense.

Provided that no action under this Section shall be taken under this Section after court action is instituted.

66. Not to be liable for any act and action done in good faith:

Notwithstanding anything contained elsewhere in this Act, no customs employee shall be personally liable for any act and action done and taken in good faith in the course of discharging his or her duties.

67. Inspection:

- (1) The Ministry of Finance shall, in relation to the activities carried out by the Director General, and the Department shall, in relation to the activities carried out by the Customs Officer, make inspection once a year.
- (2) In carrying out inspection pursuant to sub-section (1), the Ministry of Finance and the Department shall inspect, *inter alia*, whether the duty of goods exported or imported has been recovered actually, whether post clearance **audit** has been made pursuant to Section 34, whether or not declaration review has been made pursuant to Section 70, whether the goods required to be auctioned have been auctioned in time and whether the revenue omitted to be collected has been recovered as promptly as possible and give a report of such inspection to the Council of Ministers and the Ministry of Finance, respectively.

- (3) **On** receipt of a report pursuant to sub-section (2), the Council of Ministers and the Ministry of Finance shall give necessary direction to the Ministry of Finance and the Department, respectively.
- (4) The Ministry of Finance shall monitor whether the direction referred to in sub-section (3) has been observed or not, and shall also mention matters pertaining thereto in the report to be submitted to the Council of Ministers pursuant to sub-section (2).

Chapter-14

Miscellaneous

68. Application for withholding goods intended to be exported or imported in violation of intellectual property rights:

- (1) If any person is going to export or import any goods in violation of intellectual property rights such as patent, design, trademark, and copy right acquired by any one pursuant to the prevailing laws, the concerned person may submit an application, accompanied by evidence, to the concerned Customs Officer for withholding such export or import.
- (2) If an application is made pursuant to sub-section (1), the concerned Customs Officer shall withhold such goods in the Customs Office and make a request to the concerned body or authority for necessary action in that respect.

- (3) Such body or authority shall, upon being requested pursuant to sub-section (2), take action in that respect and settle the matter in accordance with the prevailing laws and give information thereof to the Customs Office.
- (4) If, upon taking action in accordance with the prevailing laws, the body or authority referred to in sub-section (3), holds that such goods are liable to be forfeited, the Customs Officer shall hand over such goods to such body or authority.

69. Compensation for goods withheld in Customs Office or godown:

- (1) The Customs Office or the godown shall so safely keep the goods held in the Customs Office or the godown that no loss or damage is caused to such goods.
- (2) If the goods referred to in sub-section (1) are stolen, lost or otherwise destroyed, damaged or get damaged, except for a wear and tear due to a natural calamity or accident or wear and tear likely to arise normally in the course of holding or lifting goods, the owner of such goods shall be entitled to recover, as prescribed, compensation for such goods from the Customs Office or the body operating the godown.

However, such owner shall not be entitled to make a claim for compensation unless and until his or her title to such goods is established.

70. Power to review:

- (1) The concerned Customs Officer or the employee designated by him or her may review the declaration forms of the goods cleared by the Customs Office no later than four years after the date of clearance of such goods.
- (2) If, in making review pursuant to sub-section (1), it appears that the duty recoverable has been omitted from being recovered, the duty so omitted shall be recovered from the owner of such goods as if it were a governmental due.

71. Reward to person who arrests export or import smuggling or gives clues:

- (1) If any employee or person gives clues as to that any one has committed or is going to commit export or import smuggling of any goods or arrests such goods and hands over them to the Customs Office, reward, as prescribed, shall be provided to such employee or person if such act is proved.
- (2) The concerned Customs Office shall provide the reward referred to in sub-section (1) out of the proceeds of auction of the goods so exported or imported by way of smuggling.
- (3) Notwithstanding anything contained in sub-section (2), if the Government of Nepal makes a decision to provide such goods to any government body for use, such body shall get the value of those goods determined by the prescribed committee and, based on that value, provide the amount of reward referred to in sub-section (1) to the concerned Customs Office, and the

Customs Office shall provide that amount to the concerned person who has given clues and arrested them.

- (4) The Customs Office shall keep secret the name, surname and details of any informant who gives clues about any export or import smuggling pursuant to sub-section (1).
- (5) Notwithstanding anything contained in the prevailing Nepal laws, the Customs Office shall not be compelled to provide the name, surname and details of an informant as referred to in this Act to any person or body, except when so asked by a body carrying out investigations under law in the course of such investigations or by a court, and an informant shall not be compelled to appear in any court, body or office by the reason only that the informant has provided clues.
- (6) Other provisions relating to taking reports from informants and distribution of rewards shall be as prescribed.

72. Demurrage:

- (1) If the owner of goods stored in a customs godown operated by the Customs Office does not get clearance and get delivery of such goods within the prescribed time limit, demurrage shall be charged as prescribed.

Provided that no demurrage shall be charged in the case of those goods which could not be cleared by the Customs Officer because of confusion about the valuation, classification of goods or for other reason.

- (2) Notwithstanding anything contained in sub-section (1), if there is a reasonable ground for remitting demurrage chargeable on any goods because of the occurrence of any special circumstance or condition, the prescribed authority may make full or partial remission, as prescribed.

73. Goods not to be lifted until payment of fine:

If, in relation to any goods, a fine or excess duty is imposed or charged on the owner of such goods pursuant to this Act, such owner shall not be entitled to lift such goods from the Customs Office until that fine or excess duty is paid.

74. Payment of omitted amount or fine:

- (1) If it is subsequently discovered that any duty, fine or other amount payable by any person to the Customs Office pursuant to this Act or the prevailing laws has been omitted while making valuation or classification of any goods or because of mathematical error or otherwise, such Customs Office shall immediately recover the amount so omitted from that person.
- (2) If the concerned person does not pay the amount referred to in sub-section (1), that Office shall withhold the transactions of that person and recover that amount by auctioning, or causing to be auctioned, as prescribed, any goods whatsoever which belong to that person and are held in that Office or other Customs Offices.

- (3) If the amount of duty or fine referred to in sub-section (1) cannot be recovered even from the proceeds of auction made or caused to be made pursuant to sub-section (2), that duty or fine or amount shall be recovered from that person as if it were a governmental due.

75. Refund of customs duty or fine:

- (1) If any exporter or importer has paid the customs duty in excess of the duty which is chargeable on exportation or importation under the laws, the concerned Customs Office shall refund, as prescribed such excess customs duty to that exporter or importer.
- (2) Notwithstanding anything contained in sub-section (1), no customs duty shall be refunded on the following condition:
 - (a) If no application is submitted to the concerned Customs Office to take refund of such duty within sixty days after the release of goods, or
 - (b) If the figure claimed for refund is less than five hundred rupees.
- (3) If, in making decision on an appeal made under this Act against the duty or fine recovered by the Customs Officer, decision is made to waive all or any of the duty or fine so recovered, the Customs Officer may, notwithstanding anything contained in the prevailing laws, refund such customs duty or fine to the concerned

person only where no further appeal can be made against that order or only after the concerned court decides not to grant permission.

76. Owner of goods or agent to be responsible:

- (1) If, in the opening and examination subsequently by the competent authority, within or outside the customs area, of any goods which the Customs Office has already examined under Section 28 or 29 and cleared under Section 23, the goods or units or pieces inside the luggage or packets do not correspond to the bills, invoices, other documents or details submitted by the importer, the owner of such goods or his or her agent shall be responsible therefor.
- (2) A person holding any goods shall be responsible for the production of such evidence as is satisfactory to the Customs Officer that the person has imported such goods in accordance with law or has paid the duty chargeable on such goods in accordance with law.

77. Owner of goods to bear expenses:

The owner of goods shall at his or her own expense do such acts as carrying the goods, taking the goods to the proper place for their opening or examination, putting the goods on and off a machine, open and set aside the goods and putting marks on the containers, boxes, bags, packets, sacks of or containing the goods or similar other packing materials of the goods.

78. Duplicate copies to be provided:

- (1) The concerned person who wishes to obtain a duplicate copy of any certificate, bill or other document held in the Customs Office may submit an application, accompanied by the fees as prescribed.
- (2) The concerned Customs Officer may inquire into the application made pursuant to sub-section (1) and issue a duplicate copy of such bill or document.

79. Issuance of certificate of goods imported:

If a person who imports goods subjected to sales tax or any other tax in a foreign country submits an application to the concerned Customs Office for a certificate thereon, the Customs Officer may issue the certificate in the form as prescribed to the applicant, by collecting the fees as prescribed from such applicant.

80. Information to be sought:

- (1) Any importer may submit an application to the concerned Customs Office and seek information on the bases adopted by that Customs Office in the determination of customs value of the goods imported by the importer.
- (2) If an application is submitted pursuant to sub-section (1), that Office shall provide such information to that importer within seven days.

81. Issuance of summons and action and settlement:

- (1) Notwithstanding anything contained in the prevailing laws, in issuing the initial summons in the name of the concerned person in relation to an offense under this Act, the Customs

Officer or such other officer employee of the Customs Office as authorized by the Customs Officer shall issue such summons as prescribed.

- (2) The summons issued pursuant to sub-section (1) shall not be extended.
- (3) The Customs Officer shall settle any case filed pursuant to this Act normally within three months.
- (4) In the event of failure to settle any case within the time referred to in sub-section (3), information thereof, setting out the reason for such failure, shall be given to the Director General.

82. Mode of issuance of notice:

Except where separate provisions are made in this Act and the Rules framed under this Act, the Customs Office shall, while issuing a personal or public notice in the name of a person who has or may have concern with the activities of the Customs Office, issue a notice, as prescribed, by giving a period of seven days.

83. Delegation of powers:

- (1) The Government of Nepal may, by notification in the Nepal Gazette, delegate any or all of the powers conferred to it by this Act or the Rules framed under this Act to the Director General or any other official prescribed in that notification.
- (2) The Director General may, as required, delegate some of the powers conferred to him or her by this Act to any subordinate officer employee.

84. Power of Ministry of Finance to designate any official and confer powers to such official:

The Ministry of Finance may confer all or any of the powers which the Customs Officer has under this Act to any official.

85. Powers of Ministry of Finance to designate any official:

(1) If a petition is filed that the Customs Officer alone or in connivance with any other employee, is going to do or is doing or has done any act contrary to this Act or the Rules framed under this Act, the Ministry of Finance may designate another Customs Officer or other official to perform activities pertaining to that function.

(2) The official designated pursuant to sub-section (1) shall perform such activities in accordance with this Act.

86. To exercise same powers as court has:

For the purposes of this Act, the Customs Officer or other employee shall have the same powers as the court of first instance has under the prevailing laws in relation to the summoning of the concerned person, taking his or her deposition, examination of evidence, requiring the submission of documents and the trial of case.

87. Duty to render assistance and help:

If, in the course of exercising powers and performing duties under this Act or the Rules framed under this Act, the Customs Officer or other employee asks the police and other governmental employee for any kind of assistance or help, it shall be the duty of such police or employee to render such assistance or help.

88. Other body not to intervene:

No authority or body shall, in relation to any goods remaining within the Customs Office for export or import, make any kind of intervention until such goods are cleared by that Office and removed from the customs area.

89. Power to prescribe headings or sub-headings of goods:

- (1) If, in determining the customs duty, there is a doubt as to in which heading or sub-heading of the harmonized system do any goods fall, the Customs Officer shall classify such goods in the heading or sub-heading as prescribed by the Director General.
- (2) If, prior to the exportation or importation of any goods, any exporter or importer submits an application to the prescribed committee also comprising an expert in the field concerned for the specification of the heading or sub-heading of commodity classification of such goods, the committee may, also examining a sample of such goods, prescribe the heading or sub-heading of such goods.
- (3) The Director General and the committee shall, in prescribing a heading or sub-heading pursuant to sub-section (1) and sub-section (2), respectively, so prescribe based on the authentic text of the harmonized system of the World Customs Organization.
- (4) For the purposes of prescribing the heading or sub-heading of any goods pursuant to sub-sections (1) and (2), advice of the

concerned expert or national or international body may be sought.

- (5) The other functions and rules of procedures of the committee referred to in sub-section (2) shall be as prescribed.

90. Power to issue order:

If there arises any difficulty in the course of implementing this Act, the Ministry of Finance may, for the removal of such difficulty, publish a notice in the Nepal Gazette in a manner that such notice is not contrary to this Act.

91. Power to take action:

If any person arrests any other person while bringing goods through elsewhere than the customs area by evading the customs duty and produces such other person for action under this Act, the Director General or the official deputed by him or her shall have the power to take action against such person.

92. Power to frame Rules:

- (1) The Government of Nepal may frame Rules in order to implement the objectives of this Act.
- (2) Without prejudice to the generality of sub-section (1), the Government of Nepal may frame rules of origin in relation to goods to be exported or imported.

93. Power to make directives:

The Department may, subject to this Act or the Rules framed under this Act, make directives on the procedures of valuation of goods,

examination and clearance of goods and auction of goods by the Customs Office.

94. Repeal and saving:

- (1) The Customs Act, 2019 (1962 A.D.) is hereby repealed.
- (2) The Customs Department and Customs Offices established under the Customs Act, 2019 (1962 A.D.) shall be deemed to have been established under this Act.
- (3) All acts done and actions taken under the Customs Act, 2019 (1962 A.D.) shall be deemed to have been done and taken under this Act.

Date of certification: 2064.5.14 (31 August 2007)

By order,

Dr. Kul Ratna Bhurtel

Secretary of the Government of Nepal