

Commentary on
Somaliland Customs Act (Act No. 73/2016)

Published May 2018

Table of Contents for Customs Act

Part I: General Provisions

Scope and Basic Definitions

Section 1: Scope of the Act

Section 2: Uniform application of customs rules

Section 3: Customs territory

Section 4: Definitions

General Provisions relating in particular to the Rights and Obligations of Persons with regard to Customs Rules

Section 5: Right of representation

Decisions relating to the Application of Customs Rules

Section 6: Requests for a decision

Section 7: Operative date of a decision

Section 8: Annulment of decisions

Section 9: Failure to fulfill obligations or conditions

Section 10: Annulment on grounds unconnected with customs legislation

Section 11: Request for information

Section 12: Request for binding tariff and origin information

Other Provisions

Section 13: Customs control

Section 14: Obligations of economic operators

Section 15: Confidential information

Section 16: Period for keeping accompanying documentation

Section 17: Extension of the time limit for applying customs legislation

Section 18: Simplifications

Part II: Factors on the Basis of which Import Duties or Export Duties and other Measures in Respect of Trade in Goods are Applied

A. Customs Tariff of Somaliland and Tariff Classification of Goods

Section 19: Customs Tariff

Section 20: Favourable treatment due to end-use

B. Origin of Goods

Non-preferential Origin

Section 21: Scope of the non-preferential Origin Rules

Section 22: Goods Wholly Produced or Obtained

Section 23: Substantial transformation rule

Section 24: Proof of origin

Preferential Origin

Section 25: Preferential origin rules

C. Valuation

Section 26: Scope of the Chapter

Section 27: Purpose

Section 28: 1st valuation method: the transaction value

Section 29: Valuation methods 2 till 5

Section 30: Method 6: the fall-back method

Section 31: Additions

Section 32: Deductions

Section 33: Customs value of media equipment

Section 34: Exchange rates

Section 35: Exceptions

Section 36: Regulations under this Chapter

Part III: Provisions Applicable to Goods brought into the Customs Territory of Somaliland until they are assigned a Customs-Approved Treatment or Use

A. Entry of Goods into the Customs Territory of Somaliland

Section 37: Obligation to lodge a summary declaration

Section 38: Format of the summary declaration

- Section 39: Waiver to present a summary declaration
- Section 40: Customs supervision
- Section 41: Entry of goods
- Section 42: Force majeure
- B. Presentation of Goods to Customs
- Section 43: Presentation of goods to customs
- Section 44: Special cases for presentation
- Section 45: Prior examination
- Section 46: Unloading of goods presented to customs
- Section 47: Removal of goods
- Section 48: Obligation to assign goods a customs-approved treatment or use
- Section 49: Time limit for assigning goods to a customs-approved treatment or use
- C. Temporary Storage of Goods
- Section 50: Status of goods presented to customs
- Section 51: Storage approval
- Section 52: Handling of temporary stored goods
- Section 53: Time limit for temporary storage
- Section 54: Non-Somaliland goods which have moved under the transit procedure
- Section 55: Destruction of goods presented
- Section 56: Unauthorised entry of goods
- Part IV: Customs-Approved Treatment or Use**
- A. General Provisions
- Section 57: Definitions
- Section 58: Limitations and prohibitions
- B. Customs Declarations
- Section 59: Kind of declarations
- Section 60: Declarations in writing
- Section 61: Acceptance of a declaration
- Section 62: Conditions for making a declaration
- Section 63: Authorised amendments
- Section 64: Invalidation of a declaration
- Section 65: Date of acceptance of a declaration
- Section 66: Declarations other than in writing
- C. Control Measures
- Section 67: Powers for examining goods
- Section 68: Customs examination
- Section 69: Partial examination of goods
- Section 70: Results of the verification
- Section 71: Identification measures
- Section 72: Release of goods
- Section 73: Incurrence of a customs debt
- Section 74: Goods which cannot be released
- Section 75: Post clearance examinations of declarations
- Section 76: Simplifications
- D. Customs Procedures
- Release for Free Circulation
- Section 77: Status of goods
- Section 78: Time of acceptance
- Section 79: Tariff classification
- Section 80: End-use
- Section 81: Change of customs status
- Suspensive Arrangements and Customs Procedures with Economic Impact
- Provisions common to several procedures
- Section 82: Authorisations
- Section 83: Conditions for granting the authorisation
- Section 84: Changing the authorisation
- Section 85: Security

Section 86: Discharge of the procedure
 Section 87: Transfer of rights and obligations
 Transit
 Section 88: Use of the transit procedure
 Section 89: Ending of the procedure
 Section 90: Guarantees
 Section 91: Waiver of guarantee
 Section 92: Responsibilities of the principal
 Section 93: Detailed rules and exemptions
 E. Customs Warehouses
 Section 94: Use of the procedure
 Section 95: Different types of Customs warehouses
 Section 96: Authorisations
 Section 97: Responsibilities of the warehouse keeper
 Section 98: Responsibilities of the depositor
 Section 99: Transfer of rights and obligations
 Section 100: Guarantee
 Section 101: Stock records
 Section 102: Storage of goods
 Section 103: Entry into the stock records
 Section 104: Time limitation
 Section 105: Usual forms of handling
 Section 106: Temporary removal of goods
 Section 107: Transfer of goods
 Section 108: Incurrence of a customs debt
 F. Inward Processing
 Section 109: Use of the procedure
 Section 110: Use of equivalent goods
 Section 111: Application for an authorisation
 Section 112: Granting of an authorisation
 Section 113: Time for re-exportation
 Section 114: Rate of yield
 Section 115: Goods in an unaltered state
 Section 116: Incurrence of a customs debt
 Section 117: Compensating products
 Section 118: Temporary exportation
 Special provisions relating to the drawback system
 Section 119: The drawback system
 Section 120: Particulars to be mentioned
 Section 121: Exceptions within the drawback system
 Section 122: Temporary exportation within the drawback system
 Section 123: Repayment of remission
 Section 124: Export duties exemption
 Processing under customs control
 Section 125: Use of the procedure
 Section 126: Specific conditions
 Section 127: The authorisation
 Section 128: Granting of the authorisation
 Section 129: Period of discharge
 Section 130: Incurrence of a Customs debt
 Section 131: Preferential treatment
 Temporary importation
 Section 132: Use of the procedure
 Section 133: The authorisation
 Section 134: Identification of the goods
 Section 135: Time for re-exportation
 Section 136: Conditions for total relief

Section 137: Partial relief
 Section 138: Duties payable in case of partial relief
 Section 139: Incurrence of a customs debt
 Outward processing
 Section 140: Use of the procedure
 Section 141: Conditions
 Section 142: The Authorisation
 Section 143: Granting of the authorisation
 Section 144: Time limit for re-importation
 Section 145: Relief from import duties
 Section 146: Calculation of the relief
 Section 147: Repair
 Section 148: Calculation of duties in case of repair
 Section 149: The standard exchange system
 Section 150: Replacement goods
 Section 151: Conditions for using the standard exchange system
 Section 152: Prior importation
 Section 153: Date for calculating the deductions
 Section 154: Exceptions
 Section 155: Commercial policy measures
 Export
 Section 156: Use of the procedure
 Section 157: Release for export
 G. Other Customs Approved Treatment or Uses
 Section 158: Re-exportation, destruction and abandonment
Part V: Goods Leaving the Customs Territory of Somaliland
 Section 159: Obligation to lodge a declaration
 Section 160: Place for lodging the summary declaration
 Section 161: Format of the summary declaration
 Section 162: Customs supervision
Part VI: Relief Regimes
 Section 163: Relief from Customs Duties
 Section 164: Returned goods
 Section 165: State of the returned goods
 Section 166: Return of compensating products
Part VII: Customs Debt
 A. Incurrence of a Customs Debt
 Section 167: Duty payment at the point of declaration
 Section 168: Short levy of duty
 B. Recovery of a Customs Debt
 Section 169: Entry into the accounts
 Section 170: Recovery of duty by distress
 C. Security
 Section 171: Security on property for unpaid duty
 D. Extinction of a Customs Debt
 Section 172: Effect of an obligation to pay debt
 E. Drawback, Remission, Rebate and Refund
 Section 173: Drawback of duty
 Section 174: Remission of duty
 Section 175: Rebate of duty
 Section 176: Repayment of Customs duty when goods are returned
 Section 177: Refund of duty paid in error
Part VIII: Customs Offences
 Section 178: Offences by or in relation to officers
 Section 179: Use of Violence by a Person
 Section 180: Attempt to Commit offences
 Section 181: Offence towards a customs officer

Section 182: Offence to assume character of officer
Section 183: Master of vessel, etc., used for smuggling or evasion guilty of offence
Section 184: Offence in respect of prohibited restricted and uncustomed goods
Section 185: Offence to import or export concealed goods
Section 186: Offence to make or use false documents
Section 187: Refusal to produce documents
Section 188: Offence to use false measures
Section 189: Offence to interfere with customs property
Section 190: Uncustomed goods found to be reported
Section 191: Goods offered on pretence of being smuggled
Section 192: Aiders, abettors, etc
Section 193: Sale of adulterated petroleum products prohibited
Section 194: General penalty
Section 195: Goods liable to forfeiture
Section 196: Power to seize goods liable to forfeiture
Section 197: Procedure on seizure
Section 198: Effects of conviction, etc., on goods liable to forfeiture
Section 199: Procedure after notice of claim
Section 200: Provision relating to condemnation
Section 201: Restoration of seizures
Section 202: Administrative Settlement of cases by the Customs Authority

Part IX: Appeals

Section 203: Application for review of decision
Section 204: Appeal to Tax tribunal
Section 205: Establishment of a Tax Tribunal

Part X: Final Provisions

Section 206: Implementing provisions
Section 207: Appointment of customs area
Section 208: Repeal of Acts and Regulations
Section 209: Somali Text to Prevail
Section 210: Entry into force

Introduction

In April of 2016 the House of Representatives approved the Customs Bill and on July 16th 2016 the Vice-President of Somaliland signed the law. The Customs Act is a complete legislative body, that is meant to apply uniformly throughout the customs territory of the country, including land and water territory, the sub soil and the airspace of Somaliland. The customs areas established are at border crossing points, international airports, customs warehouses, and any other point within the Customs Territory as provided by law. The enactment of the Customs Law and repeal of the previous Customs Rules and Procedures Law No. 91/96 was a milestone for customs reform and modernization in Somaliland.

This Commentary acts as a guide to explain the major provisions of the Somaliland Customs Act, Act No. 73 of 2016. The Commentary covers each of 10 Parts of the Customs Act. The Commentary explains the provisions, in clear language, so that the Act may be understood by those administering the law and by taxpayers who are required to comply with the law.

The Commentary is not a definitive interpretation of the law. It is a guide as to how it should be applied, in light of the express wording of each provision, taking into account prevailing practice and concepts in relation to tax law and administration elsewhere in the region and worldwide.

The Commentary does not prevent any person from exercising their rights to dispute any assessment in accordance with the Act. It is not binding in law.

The Act is divided in Parts and Sections. The reference to a section is a reference to a section of the Act. Sections are numbered sequentially [“1., 2.” etc.]. Some sections are subdivided into subsections. These are also numbered sequentially [“(1), (2)” etc.].When reading a section, it is necessary to take account of all of the subsections to ensure a correct meaning of the provision.

The following paragraphs provide a summary of the provisions in the Customs Act No. 73 of 16th July 2016.

Part I: General Provisions (Sections 1 to 18)

Section 1 clarifies that customs rules shall consist of this Act and the regulations adopted to implement them thus drawing attention to the fact that prior to adoption of implementing regulations, the legal framework is not complete. The other sections provide for uniform application of the customs rules in the territory of Somaliland (Section 2), defines the customs territory in line with the Constitution of Somaliland (Section 3), and definitions of the terms used in the Act to achieve clarity and uniformity in meaning (Section 4). Section 5 provides for any person dealing with customs to do so directly or through an authorized representative, thus providing a basis for the licensing of customs agents (Section 62).

Sections 6 to 12 provide a framework for a system for requesting and issuing information, including binding tariff and origin information – an important way to ensure predictability, transparency and fairness in the administration of the customs rules. Sections 13 to 18 provide a basis for customs control of goods through risk management (including use of information technology for risk management purposes), border agency coordination, the requirement to maintain confidentiality of information unless required to reveal it in a judicial process, and the period in which customs documentation is required to be kept. Finally, it empowers the Minister of Finance to determine cases in which application of customs legislation may be simplified.

Part II: Factors on the Basis of which Import Duties or Export Duties and other Measures in Respect of Trade in Goods are Applied (Sections 19 to 36)

This part provides the legal basis for levying duties where a customs debt is incurred – the Customs Tariff of Somaliland which comprises a goods nomenclature based on the WCO Harmonized Commodity Description and Coding System, rates and items of charge on those goods, and any preferential or other measures applied on those goods. Secondly, it provides a legal basis for determination of the origin of goods, including definition of the origin criteria. Thirdly, it provides for valuation of goods for customs purposes using the Agreement on Customs Valuation with transaction value as the main concept.

Part III: Provisions Applicable to Goods brought into the Customs Territory of Somaliland until they are assigned a Customs-Approved Treatment or Use (Sections 37 to 56)

Goods coming into the customs territory are required to be covered by a summary declaration prior to arrival of such goods, whether through a manual document or electronic means, unless otherwise determined by the Minister of Finance (Section 37) or the Customs authority (Section 39). When the goods are brought into the customs territory, they are under customs supervision and remain so until their customs status is determined (Section 40). This part also provides for the manner in which the goods are entered (Section 41) and what to do in case a person is not able to comply with the requirement to present goods by reasons beyond their control or force majeure (Section 42). Sections 43 to 56 deal with presentation of goods to customs, including special cases of presentation such as travellers, conditions for prior examination, unloading and the requirement not to remove goods until they are assigned a, customs-approved treatment or use.

Part IV: Customs-Approved Treatment or Use (Sections 57 to 158)

This is the longest part of the Act, comprising over 100 sections that cover different customs procedures and the manner in which Customs administers them. In this regard, the main procedures are categorized into (a) suspensive arrangements where payment of duties and taxes is suspended with or without the requirement for a suitable guarantee (such as when goods are placed in the transit procedure, customs warehousing, inward processing using a form of suspension, processing under customs control, and temporary importation) and (b) customs procedures with economic impact which refers to customs warehousing, inward processing, processing under customs control, temporary importation and outward processing (Section 57).

Section 58 provides for imposition of restrictions and prohibitions on grounds of public morality, public policy or public security, the protection of the health and life of humans, animals or plants, the protection of national treasures, and protection of industrial or commercial property. Sections 59 to 66 provide for the making of written, oral and electronic declarations, amendments to such declarations, their invalidation, acceptance and the accompanying documents to such declarations. Sections 67 to 76 provide the control measures that customs may use over goods including powers of examining goods, verifying documents, identifying them, conditions for release, post-clearance audit, and simplification of declarations under conditions laid down by the Minister. Sections 77 to 158 provide details on customs procedures for goods brought into the customs territory including release for free circulation (Section 77 to 81), suspensive arrangements and customs procedures with economic impact including use of guarantees, duty drawback, required authorizations, and conditions for re-exportation, destruction and abandonment (Sections 82 to 158).

Part V: Goods Leaving the Customs Territory of Somaliland (Sections 159 to 162)

This part deals with the obligation to lodge a declaration for goods leaving the customs territory and conditions for waiving this obligation (compare Section 37 for goods entering the territory), the place for lodging the declaration, and the prescribed format for the declaration (compare Section 38), and the requirement for such goods to be under customs supervision (compare Section 40).

Part VI: Relief Regimes (Sections 163 to 166)

This part provides for the Minister of Finance to determine cases in which goods that are released for free circulation or exported or on account of special circumstances, may be granted relief from import duties or export duties (Section 163), provides relief from import duties for goods that are exported from Somaliland and subsequently returned within a period of three years (which may be extended on account of special circumstances, Section 164) provided the goods return in the same state in which they were exported unless a waiver is granted by the Minister of Finance (Section 165).

Part VII: Customs Debt (Sections 167 to 177)

Customs debt is defined in Section 3 as the obligation on a person to pay the amount of the import duties (customs debt on importation) or export duties (customs debt on exportation) which apply to specific goods under the Act or other Somaliland provisions in force. This part specifies how a customs debt is incurred (Sections 167 and 168), how it is recovered or secured (169 to 171), how it is extinguished through payment or write-off (172) and conditions for duty drawback, remissions, rebates and refunds (173 to 177). Customs is given powers to prescribe conditions on duty drawback for exports, and to inform the Minister in writing of debt write-offs and the reasons for such write-offs.

Part VIII: Customs Offences (Sections 178 to 202)

This part contains provisions for enforcement of the customs rules including specifying offences and applicable fines and penalties for the offences (178 to 194), goods liable to forfeiture (Section 195), customs seizure powers, procedures for seizure and claiming seized goods (Sections 196 to 199), condemnation (Section 200), restoration of seizure (Section 201) and administrative settlement of cases by Customs (Section 202).

Part IX: Appeals (Sections 203 to 205)

This part provides procedures for any person that is directly or indirectly affected by a customs decision to appeal to customs for review of such decision within thirty days after the date of the decision or omission to make a decision (Section 203), and provides for appeal to a Tax Appeals Tribunal in case the person is dissatisfied with the decision of Customs (Section 204) while Section 205 makes provision for establishment of the tribunal.

Part X: Final Provisions (Sections 206 to 210)

These final provisions include the power of the Minister of Finance to make implementing provisions or regulations (Section 206) and appoint customs areas in consultation with the Customs authority (Section 207). The Customs Rules and Procedures Law No. 91/96 is repealed (Section 208). It is provided that both the English and Somali versions of the law are official, but in accordance with Article 6 of the Constitution, the Somali version will prevail in case of any inconsistency between the Somali and English versions (Section 209). Finally, the date of the entry into force of the Act is provided as the date in which it is signed by the President of the Republic of Somaliland.

Although the Act was given assent on 16th July 2016, it cannot be implemented immediately for a number of reasons.

First and foremost, while Section 206 of the Act empowers the Minister for Finance to make implementing provisions for the Act, these provisions or regulations have not yet been made (such Regulations have been drafted but need revision and updating before they can be submitted to the Minister of Finance for approval). Regulations are needed to provide for simplified application of customs legislation in some circumstances (Section 18 and 76), to implement the provisions on customs valuation (Section 26 and 36), time limits for submission of summary declaration or waiver of such requirements at import and export, and the format of such declarations (Sections 37, 38, and 159). Other areas are making a list of restrictions and prohibitions on the basis of public morality, public policy or public security, the protection of the health and life of humans, animals or plants, the protection of national treasures, and protection of industrial or commercial property (Section 58), and determination of cases where existing economic conditions allow processing under customs control, so as not to have an adverse effect on domestic industry (Sections 126 and 128). The Minister also needs to make regulations specifying when non-Somaliland goods can be placed under suspensive arrangements without application of commercial policy measures and where destruction of such goods can be effected without prior permission from Customs (Section 158). Regulations are required for administration of import and export duty reliefs (Section 163) and conditions in which the Minister may waive the requirement for previously exported Somaliland goods to return in the same state to qualify for duty free entry (Section 165).

Secondly, while Section 19 provides guidance on what constitutes the Customs Tariff of Somaliland, it does not indicate how the tariff is to be made and by whom. The tariff is usually enacted as a schedule to the Act (compare Revenue Act No. 72 of 2016 where provision is made in schedules for computation of income tax small business income and rates of depreciation for depreciable assets, motor vehicles, and industrial buildings). Another major omission in relation to the customs tariff is that under the WCO Harmonized Commodity Description and Coding System (HS), interpretation is guided by what are known as General Rules for Interpretation of the HS. Tariff classification cannot be carried out without the rules as they are an essential part of the infrastructure of the HS.

The new Act also requires some legal review to correct a small number of reference mistakes and to update the reference to a person or entity called “customs authority” as having charge over the customs instead of “Director of Customs” and subsequently the Somaliland Revenue Authority.

Alignment is also required between the Customs Act and the Revenue Act. For example, it is not clear whether the Tax Appeals Tribunal established under Section 205 of the Customs Act is the same or different from the Tax (or Taxation) Appeals Tribunal(s) established under Chapter 6 (Sections 209 to 245) of the Revenue Act. This alignment should be done with the understanding that while the Customs Act is a taxing act to the extent that it provides for imposition of duties and taxes on internationally traded goods, it is more than a taxing act. Embedded in the Customs Act are non-tax issues such as territorial jurisdiction; international trade through bilateral, regional and multilateral agreements; international agreements related to trade, security, and the environment; and the laws of other government agencies related to the safety, security and well-being of citizens, the environment, and the economy. For this reason, the work of a Customs Tribunal (or a tribunal whose remit includes receiving appeals on customs issues) requires more than knowledge of laws on taxation.

Finally, the customs environment is always changing; it is never stable. It is affected by bilateral trade and investment agreements such as the Ethiopia-Somaliland Customs Transit Agreement (as amended) and the agreement between the Berbera Port Authority and Dubai Ports World on a concession for Berbera Port and establishment of duty free zones. It is also affected by such developments in neighbouring countries and within Somaliland which affect the movement of goods, conveyances and people. The legal and regulatory environment should always be reviewed to ensure relevance and effectiveness in the face of these changes.