

East Africa Post

N^{o.} 10897Rec'd a/c
28 Mar 08Governor No.
Ladler 92

(Subject.)

1908

26 Feb

last previous Paper.

Cor 1
31322

Customs Bill

Imports to be withheld assent pending
Govt's instructions which he request as
early as possible

(Minutes.)

Mr. Roscoe

Mr. Read

Taking first the points raised in the covering
despatch.

The question of the mode of valuation of goods
for the purpose of assessing ad valorem duties has
already been discussed at length, and was left
to the local government. It has been dealt
with in sections 29 and 35. The former
section provides that the Chief of Customs
may fix tariff values of any (specific) goods.
The latter section provides that (presumably in
the absence of tariff values fixed under s. 29)
the value shall be

"the cost value, for which the goods are
capable of being sold without profit or loss to
the importer or exporter at the time and
place of importation or exportation."

This definition has been applied to cover
both imports & exports, but, as regards imports,

it seems a cumbersome way of saying cost, freight, insurance and incidental charges. While as regards exports, there will be difficulty in arriving at the value from this definition when the exports have been produced by the exporters, and no tariff values have been fixed under s. 29.

In the case of imports, no provision has been made for the difficulties which arise in determining freight or in cases of mixed consignments, where the actual freight on the various classes of articles is not ascertainable separately. This difficulty, which has sometimes been met by naming up scales for freight estimated as a percentage of the value of different classes of articles, may be left to be dealt with when it crops up.

There is no objection to the provision in s. 3 on a system of percentages to cover certain charges for delivery of imports.

I think the section may be approved, though it may have to be amended later on.

Provision for raising duty on spirits to Rs. 5 a gallon, 1.61.

This provision is contrary to the treaty of 20 Dec 1885 between Germany and Tanganyika Art. III para 3. The provision seems to be divisible in half, and the suggestion that 2½ may be taken to be sufficient & 2½ may be left for the 20. It will be necessary however already import an amendment notwithstanding the 1.61.

I am now for preparing a file showing the position of German external commercial rights (20 paragraphs) nothing has come

yet of the proposal to make a fresh treaty with Germany.

585

German rights under the treaty of 1885 appear from p. 46 of C. 1910 to extend over the ~~territorial~~ ^{coastal} ~~territory~~ ^{of} of the coast line of the East African Protectorate, as far north as Kilimani. They thus include Mombasa and Malindi.

3/ Drawbacks on re-exportation, 1.5 80

The proposal is to give a drawback equal to the duty paid, charging only a small fee of 25c., and its object is to encourage a depot trade.

With this object the provision seems fully justified, but where there is no depot trade, this forfeits the duty paid. It is a more usual rate of drawback.

4/ Union points.

The other alterations in the proposed Dept do not seem to call for remark except

s. 68 Bankers' or other approved guarantees may be taken in lieu of cash for import duty on transit goods

s. 91. The fees for overtime shall be distributed among the staff of the Customs Dept.

It is more usual, & I think more economical & satisfactory, that the staff should be paid for overtime according to an hourly rate based on their salaries. The Government might reasonably make a profit on the overtime work.

s. 129 1882 about the coasting trade are new.

There is an old draft of a Coase by law no. 4461, 60, 6511, 102, 116 where marked, and I have also marked a few misprints. The only material one is in s. 12 line 5, where "tariffy" should be "tariffy".

10pm Sat
1910

1.36 of 0.4900
hundred

1.36 of 0.4900
hundred

? Call attention
to this
PSA

Send and copy to D.O. and ask them to take such steps as they may think to consider the points raised in connection with the extension of the City of New Bedford if necessary, together with the cost of buying to the power plant.

Send and copy to D.O. and ask them to consider the points raised in connection with S. 61 and the Treaty of 1893.

C.W. 13 A.B

In Read & approved

D.A. 1/14 1914

Done.

A. J. R.

1/4/4

Governor's Office,

Nairobi,

February 26th 1906.

EAST AFRICAN PROTECTORATE.

No. 92

(Incl. 8)

C 1
10637

R.C.P.
R.M. 30

My Lord,

I have the honour to transmit herewith for Your Lordship's approval copies of the Customs Bill as finally passed by the Legislative Council.

2. It will be within Your Lordship's recollection that the original draft prepared by Mr. Barth, at that time Crown Advocate, was assented to with certain suggested amendments, via Colonial Office despatch No. 751 of November 16th 1906. These have now been incorporated in the Bill.

3. The subsequent establishment of the Legislative Council rendered it necessary that the draft should receive the consideration of that body and it was accordingly introduced as a Bill in August last and formed the subject of the most careful attention and scrutiny by the Council both as a whole and in Special Committee for a period of some five months.

4. As a result of their deliberations certain important amendments have been introduced the scope of which is contained in the explanatory memorandum by the Crown Advocate. I would wish however to make a few remarks on the more salient points.

RECOMMENDATION OF GOVERNOR.

FOR THE GOVERNOR,

DOWNING STREET,

LONDON, S.W.

5. The first alteration of note is the method of estimating the ad valorem duty on goods arriving in the Protectorate. The basis now adopted of the value of the merchandise delivered in the Captain's Room appears to be equitable.

6. As regards the enhanced duties on spirits, I have the honour to request Your Lordship's decision on the question of our power to raise them in view of the Treaty between Zanzibar and Germany which limits them to 25% of the total value. This represents approximately the present rate and would be considerably exceeded by the proposed charge of Rs.5/- per gallon. On the other hand the Zanzibar Government evidently does not consider itself in any way restricted in this respect as it already imposes a duty equal to that which we are proposing.

7. As regards the remission of the duty in the case of goods re-exported commercial considerations of far reaching importance seem to render the concession desirable in order to give Mombasa equal advantages with Zanzibar and the ports of German East Africa as a distributing centre.

8. In conclusion I would express the hope that the Bill, representing the matured opinion of the Committee as well as the official committee and having made no concession to the prosperity and development of the trade of the Protectorate and the ~~Colonies~~ Your Lordship's approval.

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S. I have informed my agent to file the bill pending
Your Lordship's instructions which, I would request,
may be communicated as early as may be convenient.

I have the honor to be,
With the highest respect,

My Lord,
Your Lordship's most obedient,
humble servant,

Thos. Walker

In Despatch No. 73 of 26 Mar. 1907.

C. O. 10897

REC'D
REC'D 28 MAR 08

MEMORANDUM

THE CUSTOMS ORDINANCE 1907.

A draft Customs Ordinance which was prepared by Mr. Barth was sometime in 1906 transmitted to the Secretary of State for his approval. The draft was returned here in November of that year together with a despatch in which the Secretary of State suggested certain amendments in the draft Ordinance.

The amendments suggested in that despatch together with other amendments of an important character were made in the Ordinance before it was submitted to the Legislative Council.

A special committee of the Council was appointed to consider and report to the Council on ^{the} provisions of this Ordinance as introduced and as a result of the recommendations of that Committee some alterations of a substantial nature were made. As the greater part of the Ordinance has been seen and approved by the Secretary of State I propose in this Memorandum to deal only with those alterations which have been made since the draft Ordinance was returned from the Colonial Office and which are not merely alterations in form.

The manner of estimating the value of goods imported or

the original cost of goods imported or the value of goods imported or

the value of all goods which accompanied with which they are imported will be estimated.

(a) The underwritten fine, less trade discount, for which goods of like kind and quality are sold, or are paid for being delivered and class of importation or exportation, as the case may be, without any abatement or deduction whatever except (in the case of goods imported) of the amount of the duties payable on the importation thereof, or

(b) When such price is not ascertainable, the cost at which goods of the like kind and quality could be delivered at such place, without any statement or deduction except as aforesaid.

This definition which is that given in the Customs Regulations 1899 (No. 17 of 1899) has always been the cause of vexatious and irritating disputes between the Customs authorities and the public as there are obvious difficulties in ascertaining the wholesale market price of merchandise in this Protectorate where there are but few merchants.

It has hitherto been the practice in the Customs department when valuing goods for the purposes of levying Customs duty to ~~try~~ to ascertain the wholesale market price of goods imported by merchants by adding to the C.I.F. price of the goods a percentage to cover the ~~whole~~ merchant's profit and the cost of removing the goods from the ship to the merchant's place of business. This practice has very naturally given rise to the complaint that the merchant is called upon to pay a heavier import duty than the private importer whose goods were usually valued in the manner prescribed in paragraph (b).

The Members of the Council were unanimously of opinion that the value of goods for which duty is leviable ad valorem should be the cost of the goods delivered in the Customs house as it was considered that the present cause of complaint would thereby be removed without reducing the revenue derived from Customs duty to any appreciable extent and the definition of "real value" as given in Section 36 of the Ordinance was substituted for the one set out above.

With regard to the duty on spirits.

The East Africa Liquor Ordinance 1902 (No. 29 of 1902) imposed a duty on distilled liquors at the rate of 2 rupees the gallon at 50 degrees of the Gay-Lussac alcoholometer.

At the present time import duty at that rate is levied and

the draft Customs Ordinance provided that the duty at that rate
should continue to be leviable on distilled liquors, ~~can~~ ^{with future} be
Cologne and lavender water.

The special Committee of the Council recommended that the import duty on spirits should be raised from 2 rupees to 5 rupees per gallon and that recommendation was unanimously adopted by the Council and the Ordinance was amended accordingly.

The duty at present leviable on spirits is extremely low and there would appear to be no valid objection to increasing the duty to that provided for by the Ordinance.

I am informed that the Zanzibar Government has by an Order dated December 24th 07 increased the duty on spirits imported into Zanzibar to 5 rupees a gallon and it would therefore appear that the Zanzibar Government does not consider itself bound by such part of the ~~treaties~~ which have been entered into by H.R. The Sultan of Zanzibar as limits the duty which may be imposed on spirits imported into the Sultan's Dominions to 25 percent on the value of the spirits (Article VII of the Treaty between Germany and Zanzibar dated December 20th 1885).

The returns made by the Customs department show that the present duty (2 rupees a gallon) equals 25 percent on the declared value of the spirits imported so that the duty provided for by this Ordinance will exceed by a considerable amount the maximum duty permitted to be levied under the treaties referred to.

Transit and re-exported goods.

In the original draft Ordinance a distinction was made between "Transit goods" and "re-exported goods".

The draft Ordinance provided that whenever goods should be introduced into the Protectorate and declared to be in transit through the Protectorate, the transit agent should pay the import duty on the declared value of the goods, but that such duty should be repaid when the goods left the Protectorate.

With regard to "re-exported goods" the draft Ordinance provided that whenever goods capable of being easily identified should be re-exported within 12 months from the date of the payment of import duty three quarters of such duty should be refunded.

One of the matters referred to the special Committee for consideration and report was the question as to whether it would be advisable to place goods declared in transit and goods "re-exported" within 12 months from the date of the payment of import duty thereon in the same position, so that in both cases the whole of the import duty should be refunded.

On this question the Committee reported as follows:-

"After mature consideration and in view of the action recently taken by the Zanzibar Government the Committee have decided to recommend to the Council the utmost liberty as regards these goods".

During the debate on the Bill in general Committee it was decided to increase the drawback or refund on re-exported goods from $\frac{3}{4}$ ths of the duty originally paid on their import to $\frac{4}{5}$ ths. The special Committee now recommend that the whole of the duty originally paid be refunded.

The chief reason for recommending this step is that the Zanzibar Government having recently adopted it, there is a danger of merchants with interests not only in the East Africa Protectorate but also in Zanzibar and German East Africa, maintaining the stock of goods at Zanzibar to the detriment of trade in British East Africa.

There will be an immediate loss of revenue by this concession which in the figures for 1906-07 would amount to about £10,000 per annum on the old scale of drawback and to half that amount on the $\frac{4}{5}$ ths scale adopted by the General Committee. This loss will however, be more than covered by the increase in import

duty on spirits. Further, the Committee is of opinion that the ultimate benefit to the Protectorate by the stimulus which will be given to trade will more than counterbalance the loss.

Every ~~which~~ steamer spends in the British East African Ports in discharging or landing cargo means more money spent in the Protectorate, and the popularising of Mombasa as a depot for merchants with interest in the East Coast of Africa means an increase of population tending to the same ends.

It may be urged that the natural advantages which Zanzibar possesses with its good water supply will ensure that port continuing to be more popular than Mombasa. But it must not be overlooked that it is easier to establish a trade than to deflect it and the Special Committee consider that every effort should be made to induce merchants to establish their head-quarters in British territory.

Furthermore the Committee trust that the Government will at no distant date see fit to provide Mombasa with a good permanent water supply in which its superiority as a port will be firmly established. The Committee has also in mind the results which may be expected from the action of the German Government in despatching a high Official, who before accepting office was one of the best known German business men, to inspect the German East African possessions. The Committee therefore trust that the Council will support its recommendations with regard to trading facilities in the Ports in British Territory and however the clerical work which will be thrown upon the Customs Department by the clearing of re-exported goods will be very considerable, the Committee recommend that for the present, at any rate the administration charge of 2½ cents per cwt may be levied on re-exported goods as is at present done with regard to transit goods.

The Committee feel bound to draw attention to the fact that

the Indian Government refunds ~~the~~ and not the whole of the duty paid on re-exported goods but the same conditions which have induced the Committee to make their recommendations do not exist in India.

As regards transit goods the Committee recommends that the present system of insisting on a deposit and subsequent refund of the amount of duty leviable, be modified by allowing merchants to give a bankers guarantee for the amount due.

By the existing system the merchants lose interest on the amount deposited by them, which appears to the Committee to be an unnecessary hardship".

The Council adopted all the recommendations set out above made by the Special Committee and the Ordinance has been altered accordingly.

In the Schedule attached hereto will be found set forth ~~xx~~ other alterations which have been made in the Ordinance since the draft was approved by the Secretary of State, together with the reasons for the same.

This Ordinance should be submitted to the Secretary of State before being assented to by His Excellency on behalf of His Majesty.

W. R. M. Conlee.

CROWN ADVOCATE.

29-1-08

S C H E D U L E.

Sections of the "Customs Ordinance 1907" in which alterations or additions have been made since the draft Ordinance was submitted to the Secretary of State.

Sections	Remarks.
Section 3. Definitions.	In the definition of "Port" the words "and place of entry" have been added on the instructions of the Secretary of State.
Section 7. Administrative Officers to give instructions to give instructions.	The second paragraph of this Section has been added in accordance with the Secretary of State's instructions.
Section 11. Rewards, detection of smuggling.	In the original Section power was given to the Chief of Customs to reward Customs Officer for detecting smuggling. In the Section as amended by the Council that power can only be exercised by the Governor in special cases on the recommendation of the Chief of Customs. Sub-section 2 of Section 11 has been added so as to enable a reward to be made to a person other than a Customs Officer for information given which may lead to a detection of smuggling.
Section 15. The Governor may appoint warehousing ports.	The last paragraph of this Section has been added in accordance with the instructions of the Secretary of State.
Section 17. Rates of storage for goods deposited in warehouses to be fixed.	In the original draft ordinance the second paragraph of this Section fixed the period during which importers would be entitled to leave their goods in the Customs premises free of cost at 72 hours. With the present inadequate accommodation in the Mombasa Customs premises it is often impossible for an importer to find his goods within that period and therefore through no fault of the importer the goods remain on the Customs premises for more than 72 hours. When the proposed Customs premises at Kilimani are completed it may be found that that 3 days will be sufficient time to permit of the removal of the goods from the Customs premises. For these reasons the paragraph referred to has been altered to fix the period from time to time.
Section 18. Power to license private warehouses.	In line one of this Section "Chief of Customs" has been substituted for "Provincial Commissioner" the Provincial Commissioner being in no way concerned with the Customs Department.

Sections.

Remarks.

~~Section 26.~~
This Section as originally drafted provided
that the rent payable in respect of goods deposited
in a private warehouse should be the same as that
payable in a Customs warehouse.
The Section has been altered in accordance
with the instructions of the Secretary of State
and provision is now made for the rate of rent
to be fixed by the Governor from time to time.

Section 23.

~~Penalty for continuing
private warehouse
without licence.~~

This Section as originally drafted provided
that the rent payable in respect of goods deposited
in a private warehouse should be the same as that
payable in a Customs warehouse.

The Section has been altered in accordance
with the instructions of the Secretary of State
and provision is now made for the rate of rent
to be fixed by the Governor from time to time.

this

"At the end of" ~~Section~~ the words "during
which he shall continue to store warehouse goods
without licence" have been substituted for the
word "transpiring between the expiration of
such licence and its renewal".

The latter words would seem to imply that
the owner of a licensed Warehouse had the right
to demand a renewal of his licence.

Section 27.

~~Export duty to be
collected at the first
Customs port from
which goods are
exported through agents from some of the
smaller sea ports.~~

The proviso to this Section has been added to
the effect that merchants resident in Mombasa paying
Customs duty in respect of produce
exported through agents from some of the
smaller sea ports.

Section 32.

~~Re-imported articles
of foreign produce.~~

This Section has been added at the request
of the Chief of Customs who complains that the
time of his staff is considerably wasted in
dealing with claims made by persons for a remis-
sion of import duty in respect of goods alleged
to be re-imported.

The proviso ~~as~~ with regard to guns and
rifles is added as guns and rifles are easily
identified owing to the fact that they are
stamped and registered on information.

Section 34.

~~Real value defined.~~

This is a new definition of real value
substituted for that given in the original draft
Ordinance. The reason for this alteration
in the law is given in paragraph 2 of the
Memorandum herewith.

Section 35.

~~Deposit of money
by importers.~~

In the original draft this Section provided
that an importer should deposit in the case of certain
classes of goods. In the Section deposit is times the value of
the goods. This was evidently a mistake and has
been altered so as to have the import duty on the
goods paid in full within six months.

The import duty is to be paid within six months of the time
when the declaration is made for import or export and declared
by the Agent when he has been permitted to
deposit import duty under the preceding Section
has been extended from three to six months.

This alteration has been considered necessary
to enable Coast Agents to obtain the necessary
information from their clients who may be travelling
in the outlying districts and with whom it
may be difficult to get into communication.

Sections.	Remarks.
	In this Section and in Section 43 the power of rewarding an officer for detecting treasury violation has been transferred to to the Chief of Customs to the Governor. It is considered that such reward should be given in special cases only.
Section 52. No refund of charges erroneously levied or paid unless claimed within six months.	This Section as originally drafted provided that an application for a refund of duty paid in error should be made within three months. This period has been extended to six months to permit of Coast Agents receiving instructions from their clients in the outlying districts.
Section 52. Crown goods or goods exempted from duty to be liable thereafter when sold.	This Section has been extended in accordance with the Secretary of State's instructions so as to include gun, ammunition, horses allowed to Officials free of duty wines and stores of Governor if sold, and materials used by Government contractors if imported free and sold.
Section 61. Special rates for distilled liquors Hau-de-Cologne and Lavender Water imported.	This import duty under this Section has been increased from 2 rupees per gallon to five rupees a gallon. (See para 3 of the Memorandum Hareis).
Section 63. List of exemptions from import duty.	The following exemptions have been added:- (4) "All horses and mules". This has been added with the consent of the Secretary of State (C.O. despatch No. 751 of 06). (5) Ostriches have been included in the definition of stock. (10) "Surgical windows and brasses" have been placed in the same position as Tombstones and ornaments for graves. (11) This originally read "Gold bullion and silver coin". The words "and gold" etc. have been deleted. The sovereign is exempt under (14) (16). The words "and lime" have been added to this exemption as it is considered that as salt imports for the purpose of pickling should be subject to import duty. (17) "Machinery" have been added with the consent of the Secretary of State (C.O. despatch No. 170 of 07). "Manufactures" were added in the last of exemptions by the Legislative Council. (18) "Industrial machinery". This addition was made in accordance with instructions from the Secretary of State (C.O. despatch No. 28 of 07).

Section.	Remarks.	4.
Section 67. Goods imported for conveyance by Uganda Railway intranxit to pass through Kilindini Customs House.	Transit and Re-export Ordinance 1905. As the Customs premises at Kilindini are not yet completed this provision is made in the Section for postponing the operation of the Section until such time as they may properly be entered.	
Section 68. Transit agent to pay duty on declared value of goods or give a bankers guarantee.	The original provision was to the effect that the transit agent should in every case deposit the whole of the import duty on the goods. This has been altered so as to permit the Chief of Customs to accept in lieu of the deposit a sufficient guarantee that the duty will be paid if the goods are not re-exported within 6 months. This alteration has been made at the request and in the interest of merchants who under the existing law lose the interest on their money deposited.	
Section 69. Drawback allowed on re-export.	Under the Ordinance as originally drafted only three-fourths of the import duty was refunded in the event of the goods being re-exported. This has been altered and under this Section the whole of the duty is refunded (see para 4 of the Memorandum hereto). The proviso has been altered to the extent of making it necessary that the person claiming the refund should produce the receipt granted in respect of the import duty originally paid.	
Section 81. Conditions of grant of drawbacks.	Condition (f) has been added at the request of the Chief of Customs. Considerable search in the books of the department is required in order to verify an application for refund and it is therefore neither in the interest of the service or the public that the demand for a refund of a very small sum should be allowed.	
Section 83. Goods to be declared for transhipment within 7 days after arrival.	The period within which such declaration may be made has been extended from 24 hours to 7 days.	
Section 84. Goods not to be landed on Sundays or holidays without permission, except within 12 hours.	In line 3 of this Section the word "landed" has been substituted for "discharged". As there appears to be no sufficient reason for allowing goods to be discharged into lighters on Sunday or holidays for more than 12 hours during the week, the Customs House at Mombasa and Kilindini shall be open for the landing and shipping of goods as has been fixed at "from 7 a.m. to 1 p.m." instead of from 7 a.m. to 12 noon; and from 2 p.m. to 5 p.m. as was originally provided.	

Sections.**Remarks.****Section 90.**

Application to be made to ship or land goods on Sundays and working days.

This Section has been altered so as to allow of goods being shipped or landed on Sundays or holidays provided that notice is given to the Customs authorities.

Under the Section as originally drafted, the permission of an Officer of Customs was required before goods could be landed on a Sunday.

The Section has been further altered so as to permit of the fees payable for landing the goods by a Government officer being all paid in full at the time.

Section 102.

No compensation for loss or injury except ~~on account of~~ except on account of the neglect or wilful act of an officer of customs.

The words "on the neglect or wilful act of an officer of customs" in the last line of this Section have been substituted for "the neglect or the wilful embezzlement, waste, spoliation or destruction of any officer of customs".

Section 116.

Notice of non-shipment or re-landing and return of duty thereon.

In the original of this Section the words "if the Chief of Customs is satisfied" in a certain place could not have been written as "the collector" in "the collector" have been added.

Chapter X.**Charting trade.**

Sections 129, 130, 131 & 132.

In this Chapter it has been inserted that in the original draft no provision was made with regard to the Coasting Trade.

The provisions of Section 130 are necessary in order that some stock may be put upon ships which will be returning to carry goods from one port in the Protectorate to another and that a certain time of detection shall be given to the Collector of the Protectorate.

Section 133.**Prohibitions.**

In this Section the words from "manufactured articles" to the words "and not of such manufacture" have been inserted.

Schedule D.**Export duties.**

In the original Schedule Ostrich feathers with an export duty of 10 percent was included in it is Schedule Under the Octroi Finance 1902 provision has been made whereby the export duty on ostrich feather is suspended for 4 years and therefore the provision with regard to ostrich feather has been deleted.

Schedule E.**Crane tariff.**

The fees leviable for the use of the Government Crane have been reduced.

It was considered that if the scale originally inserted in this Schedule was retained the Government would make in undue profit on what is practically a trade monopoly.

The scale of charges now fixed is sufficient for the working and maintaining of the crane.

for 200
10547

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28 April 2008

Sor

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I am directed by
the Earl of Cress to

transmit by you, to be
laid before Sir: Sir E.
Grey, the accompanying
copy of a despatch which
has been received from
the Gov: of the R.A.S., ~~regarding~~
enclosing a copy of a
Customs Bill which has
been passed by the
Legislative Council of
the Port².

2. Before authorizing
the Fox to consent to
the Bill, have been
well acquainted
furnished with the Dr.
Grey's views on the
point raised on page 6