

1935.

Kenya.

No. 38097

SUBJECT

C0533/458

Customs Revenue Allocation:

Allocation.

Previous

3315/33.

Subsequent

6151/20/36. Gen.

Remnds. for approval. modification of existing  
procedures governing allocation of Customs Revenue  
between Kya. Olga. Trs. of Bill  
which it is prepared to introduce. Together with  
memo by Commission of Customs. Request early  
reply.

I am quite  
certain it  
isnt

(D)  
Now R. Geog.

Arch  
8/1/36

[I am not quite sure that this  
is properly an Economic matter, but  
it doesn't hurt.]

The proposal in para 1 (i) is not  
amplified in the notes but seems  
unexceptionable.

The proposal in para 2 (ii) is  
clearly explained in the Com<sup>rs</sup> of  
Customs' memo. & also seems  
unexceptionable.

The proposal in para 4 is  
purely a matter of accounting in  
regard to which we do have  
DCA's views.

Subject to his approval  
? tel. approving proposal

Geoffrey  
5/1/36

Mr. Flood,

I enclose in original and for return a letter dated 5.9.34, which I received from the Auditor of Kenya on this subject, together with a copy of my reply, and of previous correspondence.

2. As you will see from the correspondence which I enclose, I consider that there is a strong practical reason why the proposal referred to in paragraph 4 of the Governor's despatch at No.1. may have to be approved even though it does involve a second-best method of accounting.

3. As regards the proposal in paragraph 3 of No.1., you will see that in my letter of 8.5.35 to the Auditor, I refer to an old ruling by Lord Elgin. This old but very definite ruling was to the effect that the present system as laid down in Col. Reg. 265 (formerly Financial Instruction No.59) should be maintained, inasmuch as the experience of the Colonial Office has shown that the alternative system proposed would not be unattended with danger.

Col. Reg. 265 (1908 Edition) ran:- In all cases the gross amounts due must be collected and paid into, or accounted for to, the Treasury. No abatements or counter claims are to be admitted except in respect of commission to auctioneers, which will be dealt with by deduction from the amounts realized by sales by auction, the net proceeds only being brought to credit. Any other charges upon the revenue, such as drawbacks of Customs duties and percentages

percentages on collection or postage and money order commissions, and should appear as expenditure supported by proper vouchers.

The proposal of the C. & A.G. which the Colonial Office thus rejected was that 'refunds of Revenue and drawbacks of Customs duty' should be treated 'as direct deductions from Revenue, the net receipts only being credited in the Colony's Account, and to discontinue the provision under Expenditure for charges in respect of refunds and drawbacks'. The C. & A.G. supported this proposal on the grounds:

(a) It would bring the Col. Accounts into line with those of the Imperial Customs Dept. as laid down in the Exchequer and Audit Department Act 1886. Section 10.

(b) It would afford a more accurate record of revenue.

(c) It would be of special advantage in the case of a Colony which is called upon to pay for any purpose an annual contribution calculated upon its gross revenue.

*A. J. Harding*

Director of Colonial Audit.

11<sup>th</sup> Dec 1935

General Dept.

This seems to be all right as regards

- a) The Amending Ordinance to allow Uganda to get the duty on goods re-exported on which no drawback is payable. At present Kenya gets all such duty which is not fair
- b) The proposal in para 4 of the despatch to allow deposits to be made of Customs duty to be regarded

8.5.35.  
D.C.A. to Auditor  
5.9.34.  
Auditor to D.C.A.  
28.8.35.  
D.C.A. to Auditor.  
13.8.35.  
Auditor to D.C.A.

C.O. to C. & A.G.  
26th March, 1908.  
A.O./5368/08 W.Afr.

words underlined in red ink were omitted in the 1928 & 1935 Editions of Col. Regs.

as revenue in the year in which they are paid. This does involve a "second-best accounting" as the D.C.A. says but the practical advantage is admitted & there is no risk of loss.

The trouble is over (c) Kenya wants to treat refunds of duty as 'revenue debits' and not show them as Kenya expenditures. This involves a conflict with C.R. 232 which requires gross amounts to be shown. The C.O.A.C. in 1908 was prepared to support this but the C.O. demurred.

As Kenya points out the practice now followed results in some unfairness as all the refund falls against Kenya even if the goods were Uganda's. In the circumstances of this joint service I should be inclined to give way to Kenya if we could get the D.C.A. to agree but I must send to you for comment.

J.E.O. Hunt  
13/12

I agree with Mr. Hood & should agree to a relaxation of C.R. 232 so far as concerns refunds of customs duty in this part of the service.

Since the present method of charging refunds to expenditure inflates the post revenue, in which in some local military contributions are shown based, the question of appropriate relaxation of the regulations so as to bring it into line with the house practice of the Board of Customs (assuming that there has been no allocation in that practice) might be considered in say, 3 months time.

J.E.O. Hunt  
14/12/35

I agree. As regards (c) the present practice, which charges refunds to Kenya whereas payment was debited between Kenya & Uganda, is indefensible.

J.P.V. Varian 14/12

1/12/35  
In 3 months perhaps Mr. Lloyd will then indicate to what extent steps of mins. & course shd. be made for reasons of this point in the general service.  
14/12/35

D.C.A.

Do you see any objection to what is proposed?

W.S.

19/12/35

3572/11

Sir John Shuckburgh,

No. I felt obliged to draw attention to Lord Elgin's ruling of 1908; but, in the special circumstances of this Kenya Uganda Customs case, I have no wish to oppose the special departure from the Regulations which it is proposed that the Secretary of State should sanction.

I have retained the Auditor's letter of 5th September (with enclosures).

J. Fisher  
for Director of Colonial Audit. (on leave)  
23 DEC. 1935

B Kenya Tel 306

Acts. for reply to (1).

128/12/35

DESTROYED UNDER STATUTE

As proposed

W.S. 30/12/35

at on cl

n. Yeag. Jha.  
8/1/36  
M. Jha. Jha.  
of.  
M. Jha. Jha.

To. Gov Kenya Tel 369 (1KZ ans) 31.12.35

C9

FINANCE

- Customs & Excise Revenue;
- Allocation as between
- Kenya - Uganda -
- (Allocating procedure)

~~DESTROYED UNDER STATUTE~~

Spans to Libry.

Govt. Order - No. 16

10.1.36

Two 2 authentic copies + 12 printed copies of  
Customs & Excise Revenue Allocation (Amendment) Ordinance 1935  
(No. 16 of 1935) together with legal Opns.

This has been agreed to in  
principle. The Ordinance  
agrees with the draft  
Bill enclosed in No. 1.

Subject to legal Opns

Saunder G.S.

C. J. P. M. M. M.  
14/1/36

Copies of No. 1 + 3  
+ minutes thereon re'd  
on 6/1/20/36 gen.

No. of Opns

14/2

14 2.

J. J. P. M. M. M.  
18/2

Noted.  
(84) E. Jha.  
Library 28.2.36.

To. Kya. 122. (4 Ans) 8/3.24.2.36. at over

C. O.

Mr.  
Mr.  
Mr.

Sir C. Parkinson.  
Sir G. Tomlinson.  
Sir C. Bottomley.  
Sir J. Shuckburgh.  
Permt. U.S. of S.  
Parly. U.S. of S.  
Secretary of State.

East wood 31 R83  
Kood 31 atone

15220/27A/35-1  
5  
Corder & Sent  
7:30 pm  
31.12.35  
7.15 pm

C. D.  
R 1 - JAN  
D 1 -

No 369

You tel no 306  
You left of 14 Mar no

DRAFT. Crt. tel  
france

581 proposals  
approved

Governor  
Nairidi

Seces

**FURTHER ACTION.**

Dec to see in  
case he indicates  
take off

Genl. P. ...  
note

Seen - copy  
retained  
21. standing  
3/1/36 DCA

Recin: to Mr & Mrs ...  
consider re. reg  
I spoke to Mr ...  
to Mr ... 8/1/36

3575/17.

- 8 MAY 1935

Sir,

I have the honour to refer to your letter No: 966 of the 5th of September last, regarding the allocation of Customs revenue between Kenya and Uganda and its bearing on the method of accounting for refunds of Customs duty and of Customs deposits on provisional entries, and to express my regret that an answer has been so long delayed.

2. The position is that the fairest system that has so far been devised for the allocation of Customs revenue between the two Administrations requires that all the transactions in a year should be brought into the calculations for that year, and in order to secure this system it is proposed to abandon two accounting principles:- viz.

I. That Customs Deposits are Deposits and not Revenue,

II. That Refunds of Revenue in a subsequent year should be accounted for as expenditure and not as Revenue-debits.

3.

The Auditor,

KENYA.

3. Of the four reasons which you give in paragraph 2 of your letter for abandoning I, it might be urged:-

Firstly, that (a) is hardly a good reason for taking into revenue money which is not revenue.

Secondly, that it is not sound policy to do without proper accounting in order to save staff.

Reason (c) merely emphasizes (a) and shows the degree of departure from principle I that is involved.

Reason (d) however, is one of considerable practical force in view of the special circumstances and the difficulty of devising any better system of allocation of the revenue between the two administrations. This is, I think, one of the cases where a second-best method of accounting may have to be accepted in order to secure a substantial practical advantage of another kind. If therefore the whole case were to be put to the Secretary of State and his approval sought for the adoption of the procedure now proposed, I should not be inclined to oppose it. I think it well however to enclose for your information copies of correspondence which embodies an old ruling by Lord Elgin, which will no doubt be borne in mind in the event



event of the Kenya Government, with the concurrence of the Uganda Government, submitting the question to the Secretary of State.

I have the honour to be,

Sir,

Your obedient Servant,

(SIGNED) A. J. HARDING.

Director of Colonial Audit.

3575/16.

BY AIR MAIL.

28 AUG. 1934

Sir,

I have the honour to refer to your letter No: 888 of the 13th of August, and to inform you that Section 63 of the Kenya Customs Management Ordinance, No: 25 of 1926, and the same section of the Uganda Customs Ordinance, No: 14 of 1926, require the owner of goods when making a provisional entry to deposit a sum sufficient to cover the duty involved. It seems, therefore, that it is the intention that amounts received on provisional entries shall be credited to a deposit account - the deposit account being cleared, and revenue credited, when the perfect entry is passed.

2. I shall be glad if you will inform me whether there is any local objection to accounting for amounts received on provisional entries through a deposit account, as if this procedure were adopted it would seem that the objection to which you refer, arising out of the present method of accounting, would disappear.

I have the honour to be,

Sir,

Your obedient Servant,

(SGD) H. V. CUSACK.

for Director of  
Colonial Audit.

13th August, 1934.

Ref.No. 888.

Sir,

I have the honour to inform you that the question has arisen, in connection with the allocation of Customs Revenue between Kenya and Uganda, of a departure from the existing practice of debiting all refunds of Revenue collected in previous years to a subhead of Miscellaneous expenditure.

2. This practice, which applies both to refunds of revenue and recovery of overpayments (credited on the same principle to Miscellaneous Revenue) dates from the receipt of a Reference Sheet, No. 14/1918-19 dated the 11th January, 1922, in connection with the audit annual report for the year 1918-19.

3. As regards recoveries it is manifestly undesirable that funds duly voted by the Legislature should be fortuitously increased by the correction of an error which occurred in some previous year. The present question, however, is entirely one of refunds of revenue, to which that argument does not apply, and the remaining reason, that each year's accounts are complete in themselves, need not, I submit, be held to prevail if it can be shown that such complete separation of one year's accounts from the next does in fact upset the accuracy of inter-territorial adjustment between two dependencies.

4. The question arises from the privilege allowed by the Customs Laws to importers of clearing goods in respect of which all the documents have not been received on a "provisional entry", a payment being made, which is credited direct to revenue, sufficient to cover the import duty and allow a small margin. When the documents arrive the entire sum paid on the provisional entry is refunded and the correct duty collected and brought to account on a "perfect entry".

5. If the second transaction takes place in a later financial year the refund in respect of the "provisional entry" is debited, in accordance with the ruling referred to above, to Miscellaneous Expenditure.

6. During 1933 such refunds, charged to expenditure because the "provisional entry" was made in 1932, reached a total of nearly 27,000, so that taking the years 1932 and 1933 together the Customs revenue was credited with this sum twice, plus the margin allowed on each entry, and the amount available for division with Uganda was inflated accordingly.

7.....

THE DIRECTOR OF COLONIAL AUDIT,  
QUEEN ANNE'S CHAMBERS,  
DEAN BARRAR STREET,  
LONDON, E.W.1.

7. Both the Commissioner of Customs and the late Commissioner of Customs, Mr. Walsh (now Treasurer) hold very strongly that in order to secure a fair division all such refunds should be debited to revenue irrespective of the year of original collection, and after going into the question very thoroughly I agree with this view subject to your approval.

8. The complete correspondence, which deals also with another point in connection with the inter-territorial allocation will be forwarded later, but if I have given sufficient information to enable you to arrive at a decision I shall be very grateful for a reply by air mail, as the decision will affect the 1935 Estimates which are now in course of preparation.

I have the honour to be,

Sir,

Your obedient servant,



AUDITOR



RECEIVED  
23 NOV 1935  
C. O. REGY

11/23 November, 1935.

15228/2A

Sir,

I have the honour to address you on the subject of the procedure governing the Allocation of Customs and Excise Revenue between Kenya and Uganda, and to recommend for your approval a modification of the existing procedure in the following respects, as proposed by the Commissioner of Customs, Kenya and Uganda:-

(i) By discontinuing the practice of debiting Uganda with duty in respect of goods re-exported from Uganda on which no drawback is due or claimed, corresponding debits not being raised against Kenya in similar circumstances; and

(ii) By discontinuing the practice of debiting refunds of duty made in a year subsequent to the year of collection to a purely Kenya expenditure vote, all such refunds to be accounted for in future as revenue debits.

2. I am advised that before the modification of procedure at (i) can be applied, a further amendment of the Customs Revenue Allocation Ordinance, 1927, will be necessary. It is proposed therefore to publish the accompanying

Bill.

Bill for introduction into Legislative Council, subject to the approval of my Executive Council.

3. It is understood that the modification at (ii) is in conflict with Colonial Regulation No. 232 and I have therefore to request your approval of the proposal, which is discussed in detail in the accompanying memorandum prepared by the Commissioner of Customs. Subject to your approval I propose that the new procedure should become operative from the 1st January, 1936, and I should accordingly/

Memorandum.

accordingly be glad of a reply at your earliest convenience.

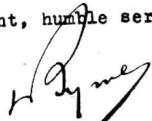
4. You will observe that the enclosed Memorandum also recommends that your approval should be sought to continue the practice of crediting deposits of duty collected on Provisional Bills of Entry to revenue. It appears that this practice is contrary to the principle usually observed in Colonial Regulations accounting procedure and, never having been formally sanctioned, has now come under the notice of the Director of Colonial Audit. I should be glad to receive your approval for this departure from normal procedure accordingly.

5. The Government of Uganda has expressed itself in agreement with the proposals contained in this despatch and I am satisfied that the modifications of procedure which have been recommended will result in a more equitable division of Customs Revenue between the two territories.

I have the honour to be,

Sir,

Your most obedient, humble servant,

*BYRNE*  
  
 BRIGADIER GENERAL.  
 G O V E R N O R.

A BILL TO AMEND THE CUSTOMS AND EXCISE REVENUE ALLOCATION ORDINANCE, 1927.

BE IT ENACTED by the Governor of the Colony of Kenya, with the advice and consent of the Legislative Council thereof -

Short Title and commencement.

No.16 of 1927.

Amendment of Section 3 of the Principal Ordinance. No.37 of 1933.

1. This Ordinance may be cited as the Customs and Excise Revenue Allocation (Amendment) Ordinance, 1935, and shall be read as one with the Customs and Excise Revenue Allocation Ordinance, 1927, hereinafter referred to as the Principal Ordinance, and shall come into operation on the first day of January, 1935.

2. Section 3 of the Principal Ordinance as repealed and replaced by the Customs Revenue Allocation (Amendment) Ordinance, 1933, is hereby amended by the addition thereto of the following -

"For the purposes of this section the expression 'goods retained in the Uganda Protectorate' shall include goods re-exported from the Uganda Protectorate on which no drawback of duty is paid."

OBJECTS AND REASONS.

This amending Bill is designed to modify the existing procedure under the Customs and Excise Revenue Allocation Ordinance whereby Uganda is debited with duty in respect of goods re-exported on which no drawback is due or claimed. It is desired that the benefit of such duty in respect of Uganda transactions should accrue to Uganda.

No expenditure of public moneys will be involved if the provisions of this Bill become law.

MEMORANDUM  
ON CUSTOMS AND EXCISE REVENUE  
ALLOCATION PROCEDURE.

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The procedure governing the allocation of the common revenue of Customs and Excise collected by the joint Kenya and Uganda Customs department is regulated by "The Customs Revenue Allocation Ordinance, 1927" as amended by "The Customs Revenue Allocation (Amendment) Ordinance, 1933".

2. The general principle of division which the Ordinance seeks to apply is that each territory shall be credited with the net duty collected on the goods actually consumed in the territory, and that the cost of collection shall be shared by the two territories proportionately to net amount of duty with which each is credited.

3. For purposes of disciplinary and financial control the joint Customs service is operated as a Kenya department, revenue collections being paid into the Kenya Treasury and expenditure voted by the Kenya Legislature. Uganda's share of the revenue is transferred from the Kenya to the Uganda Treasury, the net amount transferable being the duty credits less the share of cost of collection assessed in accordance with the principle explained in the preceding paragraph, in so far as existing accounting practice permits.

4. Existing accounting practice introduces an element of error in the assessment of the net amount transferable to Uganda in the following manner. Refunds of duty made in the current year of collection are accounted for as revenue debits. Refunds of duty made in



10  
A year subsequent to the year of collection are accounted for as expenditure and debited to a Kenya Miscellaneous expenditure vote. The latter transactions cannot be brought within the purview of the calculations governing the inter-territorial allocation of net duty and collecting costs, upon the basis of which the annual payment to Uganda is made. Thus the common duty which is subject to annual division is not all net duty, but contains an amount of gross duty in respect of which no subsequent adjustments are made in the allocation account, and to this extent actual procedure is in conflict with the general principle referred to in paragraph 2.

5. In order to remedy this position, it is recommended that the practice of debiting refunds of revenue in a subsequent year to an exclusively Kenya vote should be abandoned and that all such refunds should be treated as revenue debits irrespective of the year of collection. It is understood that the Secretary of State's approval of this recommendation is necessary.

6. The suggested modification of orthodox accounting procedure is all the more necessary because of the practice in force of crediting deposits of duty collected on Provisional Bills of Entry direct to revenue. Refunds of deposits made in a subsequent year are accordingly treated as ordinary refunds of duty and are included in the debits to the appropriate Kenya Miscellaneous expenditure vote.

7. The practice of accounting for Provisional entry deposits as revenue may itself be open to objection as a departure from correct procedure. Apart, however, from the fact that the practice now in force is much the more convenient/

convenient, the adoption of the more correct procedure  
would be inconsistent with the aim of the revenue  
allocation system in requiring that all the transactions  
in a year should be brought into the calculations for  
that year. It is therefore recommended that approval of  
the Secretary of State should be sought to continue the  
existing practice of accounting for duty deposits as  
revenue, it having been indicated by the Auditor that  
such approval is necessary.

17  
and

/s.c.