

OBJECTS AND REASONS

This Bill would revise the law relating to the imposition of environmental levy in order to make the law consistent with the provisions of the Revised Treaty of Chaguaramas and at the same time to validate the environmental levy paid and collected pursuant to the 2008 Budgetary Proposals.

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FIRST SCHEDULE

SECOND SCHEDULE

BARBADOS

A Bill entitled

This Act would revise the law relating to the imposition of environmental levy in order to make the law consistent with the provisions of the Revised Treaty of Chaguaramas and at the same time to validate the environmental levy paid and collected pursuant to the 2008 Budgetary Proposals.

ENACTED by the Parliament of Barbados as follows:

1. This Act may be cited as the *Environmental Levy Act, 2010*. Short title.

2. (1) In this Act,

Interpreta-
tion.

"approved form" means a form prescribed by the Comptroller;

"assessment" means a determination of the amount of

- (a) chargeable value of goods, or where a levy is chargeable by reference to the quantity of goods, the quantity of the chargeable goods; and

(b) the levy payable on those goods,

and includes a determination made either by a registered manufacturer in a monthly statement by him, or a determination made by the Comptroller pursuant to section 15;

Cap. 66. "authorised person" means a person referred to in section 4(2) of the *Customs Act*;

"chargeable goods" means goods in respect of which a levy is payable under section 4;

"Comptroller" means the Comptroller of Customs;

Cap. 66. "document" has the meaning assigned to it in the *Customs Act*;

"export" means to take or cause to be taken out of Barbados;

"goods" means all forms of personal property other than money and includes used as well as new goods;

"import" means to bring or cause to be brought into Barbados;

"levy" means the environmental levy imposed by section 4;

"manufacturer" in relation to chargeable goods includes goods grown or produced and the application of any process in the course of the making of any goods;

"registered manufacturer" means a person to whom a certificate of registration has been issued under section 13;

"sale" in relation to chargeable goods includes the

- (a) disposal of goods for consideration;
- (b) transfer of possession of goods under a hire purchase agreement;
- (c) disposal of goods under an agreement whereby the purchase price is wholly or partly payable in instalments; or

- (d) transfer of trading stock by the owner of a business for the personal use of himself, an employee or some other person, other than by way of disposal for consideration;

"Tribunal" means the Value Added Tax Appeal Tribunal established under section 87 of the *Value Added Tax Act*.

Cap. 87.

(2) Where the levy is chargeable on goods by reference to a specific quantity measured by volume, number or weight, if the goods are imported or manufactured and sold in Barbados in any container

- (a) intended for sale; or
- (b) of a kind usually sold with the goods in a sale by retail and marked, labelled or commonly sold as containing a specific quantity of goods,

then for the purposes of determining the tax chargeable, the container is presumed to contain not less than that specific quantity, unless the contrary is shown to the satisfaction of the Comptroller.

(3) Part I of the *Customs Tariff* shall apply in respect of the classification and the description of the goods specified in the *First* and *Second Schedules*.

First
Schedule.
Second
Schedule.
Administra-
tion.

3. (1) This Act shall be administered by the Comptroller.

(2) It is the duty of the Comptroller to

- (a) cause to be laid before Parliament at regular intervals quarterly statements showing
- (i) the total amount of environmental levy due and payable on locally manufactured goods;
- (ii) the amount of the levy paid;
- (iii) the amount of levy unpaid, if any;

- (iv) a summary of the reasons for non-payments; and
- (b) present to the Minister twice a year, a confidential report on the operation of the Act.
- Environmental levy. **4.** (1) Subject to subsection (2), there shall be charged, levied and collected on every good
- (a) imported into Barbados; and
- (b) manufactured in Barbados
- an amount to be known as an environmental levy at the rates specified in the *First Schedule*.
- First Schedule.
- (2) Notwithstanding subsection (1), no levy shall be charged, levied or collected on goods imported into or manufactured in Barbados that are specified in the *Second Schedule*.
- Second Schedule.
- (3) The Minister may by order amend the *Schedules*.
- Schedules.
- Purpose of the levy. **5.** The levy shall be used
- (a) to defray the cost of the disposal of refuse generated by the use of goods referred to in section 4;
- (b) to defray the cost of operating and maintaining refuse disposal sites;
- (c) for the preservation and enhancement of the environment; or
- (d) for any other purpose determined by the Minister.
- Purpose of the levy.
- Charge of levy. **6.** The levy shall be charged on
- (a) the customs value of imported goods referred to in section 7(1)(a), as if the levy were a duty of customs within the meaning of the *Customs Act*; or
- Charge of levy.
- Cap. 66.

- (b) the price of the goods where the goods are manufactured in Barbados.

7. (1) Where the levy is chargeable under this Act on goods by reference to their value, and those goods are Value of goods.

- (a) imported into Barbados, the value of the goods, shall be the customs value of the goods as determined under the *Customs Act*, at the time the goods are entered for use in Barbados; or Cap. 66.
- (b) manufactured in Barbados, the value of the goods shall be the price of the goods.

(2) In determining the price of goods manufactured in Barbados, the following assumptions are to be made:

- (a) the price is the sole consideration;
- (b) the price is not influenced by any commercial, financial or other relationship whether contractual or otherwise, between the seller and any person associated in business with the seller and the purchaser or any person associated in business with the purchaser, other than the relationship created by the sale;
- (c) no part of the proceeds of any subsequent sale or use of the goods will accrue, either directly or indirectly, to the seller or any person associated in business with, the seller; and
- (d) commission and all other costs, charges and expenses incidental to the making of any contract for sale of the goods, except any levy payable thereon, are to be paid by the seller.

(3) For the purposes of subsection (2), two persons are associated in business with one another, whether directly or indirectly where,

- (a) either of them has an interest in the business or property of the other;

- (b) both of them have a common interest in any business or property; or
- (c) a third person has an interest in the business or property of both of them.

Determina-
tion of tax
chargeable.
Cap. 66.

8. Section 106 of the *Customs Act* applies to this Act with respect to the re-importation of goods to which this Act relates and shall be construed with such modifications and adaptations as are necessary for the purpose of giving the necessary effect to this Act.

Application
of *Customs*
Act.
Cap. 66.

9. (1) The provisions of the *Customs Act* and the regulations made thereunder relating to

- (a) the payment, collection and recovery of duties under that Act; and
- (b) the contravention of that Act

apply with such modifications and adaptations as are necessary, to the payment, collection and recovery of the levy and to the contravention of this Act.

Payment of
levy.

10. (1) The levy is due and payable to the Comptroller by the importer or the manufacturer of goods as the case may be,

- (a) on any goods that are imported,
 - (i) before the goods are cleared for entry into Barbados; or
 - (ii) in the case of passengers' baggage or of goods imported by post for which no entry is required, before delivery to the passenger or to the addressee; or
- (b) on any goods that are manufactured for sale in Barbados, within 21 days after the end of the quarter during which the sale is made.

(2) Where pursuant to an assessment or reassessment made by the Comptroller a liability or further liability to pay the levy arises, the levy becomes due and payable within 21 days after the issue of the notice of assessment or reassessment as the case may be; but the interest charged under section 33 shall be calculated from the date specified in subsection (1).

11. (1) The Comptroller may grant permission for the importation of goods without payment of the levy upon being satisfied that ^{Exemption.}

- (a) the goods are imported for temporary use or for a temporary purpose only;
- (b) the goods are to be exported within 3 months from the grant of the permission; and
- (c) the person to whom the permission has been granted shall deposit in the hands of the Comptroller an amount equal to the levy payable on the imported goods; or, at the discretion of the Comptroller, give security for the levy.

(2) Where the goods imported under subsection (1) are not exported within a period of 3 months from the date the permission to import was granted to the importer

- (a) any deposit with the Comptroller under paragraph (c) of subsection (1) shall be brought into account as levy; or
- (b) if security has been given under paragraph (c) of subsection (1), the importer shall pay to the Comptroller the full amount of the levy payable on the goods imported.

(3) Where the goods referred to in subsections (1) and (2) are exported, the deposit on the goods shall be refunded and the security cancelled.

(4) Notwithstanding subsections (1) and (2), the Comptroller may, on the provision by an importer of an additional security, allow an additional period for export of the goods upon being satisfied that the goods

imported are the *bona fide* property of a person on a temporary visit to Barbados or are being used *bona fide* by that person.

Consolidated Fund. **12.** The levy collected pursuant to this Act shall be paid into the Consolidated Fund.

Registration of manufactures. **13.** (1) Subject to subsection (3), a person who carries on the business, whether alone or with other persons, of the manufacture of chargeable goods for consumption in Barbados, shall apply to the Comptroller in the approved form to be registered under this Act.

(2) An application under subsection (1) shall be made within one month of the date of commencement of this Act or of the commencement of the business, whichever is the later.

Cap. 70. (3) A person who, on the date of commencement of this Act, was registered under the *Environmental Levy Act* shall be deemed to be registered under this Act, without further application.

(4) The Comptroller shall issue to

(a) an applicant on registration; or

(b) a person referred to in subsection (3),

a certificate of registration containing a registration number and such other particulars as the Comptroller determines.

(5) Where a person whom the Comptroller considers ought to be registered under this Act, fails to apply for registration within the time specified in subsection (2), then, subject to subsection (6) and (7), the Comptroller shall register that person and issue a registration certificate accordingly.

(6) Before registering a person to whom subsection (5) applies, the Comptroller shall serve notice upon that person of his intention to register that person under this section and shall, in the absence of any objection under subsection (7), proceed to register that person.

(7) A person to whom a notice has been served under subsection (6) may within 21 days of receiving the notice, object to the registration and sections 19 and 20 apply in the same manner as if the objection were an objection to an assessment.

14. (1) A registered manufacturer shall submit to the Comptroller, in the approved form not later than 21 days after the end of each quarter, a statement containing the prescribed matters. Quarterly statements.

(2) The Comptroller may extend the period within which a statement is to be submitted upon application of the registered manufacturer, if the Comptroller is satisfied that it is reasonable to grant an extension.

15. (1) Subject to subsections (2) and (3), a registered manufacturer shall submit to the Comptroller in the approved form, not later than 31st March following the end of each calendar year, an annual statement containing the prescribed matters. Annual statement.

(2) Where a registered manufacturer ceases to carry on business, or ceases to manufacture chargeable goods, during a calendar year, he shall submit the annual statement for that year at the same time as the statement for the last month for which a statement was due.

(3) The annual statement shall relate to the period beginning 1st January and ending with the date of the cessation of business or of the manufacture of chargeable goods.

(4) The annual statement shall contain a summary for the year of the information required to be submitted under section 14 for each quarter, and in the event of there being any deficiency between the total amount of levy payable and the total payments made to the Comptroller, the manufacturer must account for the deficiency at the time at which the annual statement is submitted.

- Assessment. **16. (1) Where**
- (a) a registered manufacturer fails to submit quarterly statements; or
 - (b) the Comptroller is not satisfied as to the accuracy of a quarterly statement submitted by the manufacturer,

the Comptroller may make an assessment, or where the levy has already been assessed by the manufacturer, a reassessment of the levy payable.

(2) Where the Comptroller is not satisfied with the declared value of chargeable goods imported, he may make an assessment of the value.

- Time limit for assessment. **17. (1) An assessment or a reassessment, in respect of any quarter as the case may be, may be made by the Comptroller of Customs**

- (a) at any time, in the case where the registered manufacturer fails to submit a quarterly statement, or submits an inaccurate statement; and
- (b) in any other case, within 5 years after the end of the quarter in respect of which a statement is submitted.

(2) Where on the determination of an appeal the decision of the Value Added Tax Appeal Tribunal or of any subsequent appellate court requires the reduction of, or an increase in, an assessment, the Comptroller shall give effect to the decision and issue a notice of reassessment accordingly.

18. (1) Where the Comptroller assesses the levy payable pursuant to section 16(1) in respect of a quarter, he must issue a notice of assessment or reassessment, as the case may be, in the approved form to the registered manufacturer showing the amount or quantity of chargeable goods and the levy payable thereon for that quarter.

Notice of assessment or reassessment.

(2) Where the Comptroller assesses the levy payable pursuant to section 16(2), he must issue a notice of assessment in the approved form to the importer showing

- (a) the amount or quantity of chargeable goods; and
- (b) the levy payable on those goods.

19. (1) A person who objects to an assessment or reassessment made by the Comptroller under section 16 may deliver to the Comptroller a notice of objection within 21 days after the date of the notice of assessment or reassessment or within such further time as the Comptroller allows.

Objection.

(2) A notice of objection shall be in writing and shall contain the precise grounds of objection.

20. (1) The Comptroller shall give any person who has lodged an objection in accordance with section 18 an opportunity to support the objection by written or oral submissions.

Decision of the Comptroller.

(2) The Comptroller may either allow or disallow the objection in whole or in part and shall in writing inform the objector of the decision of the Comptroller.

(3) Where a decision of the Comptroller in determining an objection requires the reduction of, or an increase in, an assessment, the Comptroller shall issue a notice of reassessment at the same time as the notice of the decision on the objection is issued.

21. (1) Any person who is aggrieved by a decision of the Comptroller under section 13 or 20 may appeal to the Tribunal by notice of appeal given within 30 days after the date of the decision of the objection or within such further time as the Tribunal allows.

Appeal to the Value Added Tax Appeal Tribunal.

(2) Where a person has filed a notice of objection under section 18 and the Comptroller has not, within 6 months thereafter, delivered to the person a notice of the decision under section 20(3), that person may appeal to the Tribunal.

Cap. 87. (3) Subject to this section, the Tribunal shall hear and determine every appeal made under this Act in the same manner as if it were an appeal made under the *Value Added Tax Act*.

(4) At the hearing of an appeal under this Act, the onus of proof that an assessment is excessive lies with the appellant.

(5) In determining an appeal under this Act, the Tribunal may review in relation to the decision of the Comptroller of Customs,

- (a) any finding of fact made by the Comptroller;
- (b) any exercise of discretion made by the Comptroller; or
- (c) an opinion formed by the Comptroller.

(6) On the hearing of an appeal under this Act, the Tribunal may

- (a) confirm, increase or order the reduction of an assessment; or
- (b) make such other order as it thinks fit.

(7) On an appeal to the Tribunal, the appellant and the Comptroller must each bear his own costs.

Appeal to
the High
Court.

22. (1) The appellant or the Comptroller may appeal on a question of law to the High Court from any decision of the Tribunal.

- (2) On an appeal under this section, the High Court may
 - (a) confirm, increase or order the reduction of any assessment or make such other order as it thinks fit; and
 - (b) make such order as to costs as it thinks fit.

23. (1) Subject to subsection (2), the obligation to pay the levy chargeable under this Act shall not be suspended by reason of any notice of objection or appeal having been made against an assessment; and the levy may be recovered by the Comptroller as if no such obligation or appeal had been made. Suspension of payment of levy.

(2) The Comptroller may, subject to such terms and conditions as he may impose including the giving of security for payment, suspend recovery pending the determination of the objection or appeal.

24. (1) A registered manufacturer shall keep in the English Language, such records or books of account as are necessary to reflect the time and full nature of the transactions of his business and to enable Record of transactions.

- (a) the presumptive yield;
- (b) the quantity of any goods; and
- (c) the levy payable under this Act

to be determined.

(2) Where

- (a) the Comptroller is of the opinion that records or books of accounts are not being kept in accordance with subsection (1); or
- (b) no records or books of account are being kept by a registered manufacturer,

then in addition to any proceedings that may be taken under section 38, the Comptroller may direct the manufacturer to keep such records or books of account as he specifies; and the registered manufacturer shall comply with the direction of the Comptroller.

(3) The records or books of account required by this section shall be kept at the principal place of business of the registered manufacturer unless the Comptroller otherwise approves.

(4) For the purpose of this section "presumptive yield" means the amount or quantity of a finished product that can be had or yielded from a given quantity of raw material.

(5) A registered manufacturer shall preserve all books of account and other records that are essential to the explanation or verification of any entry in the books of account referred to in subsection (1) for a period of 6 years after the end of the period to which they relate, unless the Comptroller, by notice in writing, approves of their disposal within a shorter period.

Submission
of informa-
tion.

25. (1) For the purpose of administering and enforcing this Act, including the obtaining of information in respect of the business activities of any person who is or may be liable to pay the levy, the Comptroller may by notice in writing require that person or any other person to

- (a) submit to the Comptroller within the time specified in the notice, quarterly statements, annual statements, or such other information as the Comptroller may require;
- (b) produce at a time and place specified in the notice for examination by the Comptroller, any invoices, books of accounts or other documents that the Comptroller considers necessary for the purpose;
- (c) attend at the time and place specified in the notice, for the purpose of being examined by the Comptroller in relation to the business activities of the registered manufacturer or any other person or any transaction or matter appearing to the Comptroller to be relevant.

(2) The Comptroller may make copies of any books of account or other documents produced pursuant to this section, or may take extracts from them or retain the books of account or the other documents for any of the purposes of this Act.

Examination
of business
premises.

26. (1) For the purpose of performing his functions under this Act, the Comptroller may carry out an examination of the business

activities of a registered manufacturer or a person who, in the opinion of the Comptroller ought to become a registered manufacturer.

(2) For the purposes of subsection (1), the Comptroller, or any authorised person may at any reasonable time and subject to prior notice, enter premises where any business is carried on by a person to whom subsection (1) refers or premises on which he has reasonable grounds for believing that records or books of account are kept and

- (a) examine the records or books of account and any other documents that relate to the activities of the business;
- (b) inspect any raw materials, trading stock, or other assets, the inspection of which may, in the opinion of the Comptroller or authorised person, as the case may be, assist him in determining
 - (i) the accuracy of any inventory of trading stock or of the records or books of account; or
 - (ii) the amount of levy payable under this Act;
- (c) require the owner of the business, or any employee or agent, to give him such reasonable assistance in connection with the examination or inspection as may be necessary and to answer orally or in writing any questions relating thereto.

(3) Where during the course of any examination or inspection it appears to the Comptroller or the authorised officer that there may not have been a correct disclosure of liability to pay the levy, the Comptroller may take possession of any books of accounts or other documents for further examination; and after examination may retain or make copies of or take extracts from the book or documents for any of the purposes of this Act.

27. (1) The levy, when it becomes due and payable, is a debt to the Crown and may be recovered by the Comptroller in civil proceedings in the magistrate's court for District 'A', notwithstanding that the amount exceeds the normal monetary limit of the jurisdiction of the magistrate. Recovery of levy.

(2) In any proceedings for the recovery of the levy, it is not a defence that the

- (a) price of the goods or the customs value of the goods on which the levy liability is based is incorrect;
- (b) levy payable is excessive; or
- (c) assessment is the subject of objection or appeal.

(3) For the purposes of this section "levy" includes any interest or penalty imposed under sections 33 and 34.

Recovery of
levy from
persons
leaving
Barbados.

28. Where the Comptroller has reasonable grounds for believing that a person will leave Barbados owing money under this Act, whether or not presently due and payable, or might upon assessment owe moneys under this Act, the Comptroller may, by notice in writing served on that person, require that person to pay the amount owing or give security, to the satisfaction of the Comptroller, for the payment thereof or to secure the amount that may be owing, as the case may be, within the time specified in the notice.

Appoint-
ment of
agent.

29. (1) Subject to subsection (2), where a registered manufacturer is resident outside Barbados, he shall appoint a person resident in Barbados as his agent in relation to the submission of statements, the payment of the levy and the performance of or compliance with any other duties or obligations imposed on him by or under this Act.

(2) Where a person fails to appoint an agent as is required by subsection (1), the Comptroller may, by notice in writing, appoint any person resident in Barbados appearing to the Comptroller to have the management or control of the business in Barbados of the registered manufacturer and the person so appointed shall discharge the same duties or obligations as if he were appointed by his principal.

(3) Where a registered manufacturer

- (a) dies or becomes bankrupt or is otherwise legally incapable; or

(b) being a company, goes into liquidation

the executor, trustee or liquidator, as the case may be, of that person shall discharge the duties and obligations imposed on the registered manufacturer by or under this Act.

30. (1) A person appointed agent under section 29, who pays the levy under this Act is entitled to recover the amount paid from the person on whose behalf it is paid or to retain out of any moneys that are in his possession or may come to him in his capacity as agent, an amount equal to the levy paid. Indemnity agent.

(2) An agent is personally liable for any levy payable by him in his capacity as agent where, the levy remains unpaid, he disposes of or parts with any moneys or other assets that are in his possession or come to him after the date on which the levy is due, if the levy could legally have been paid out of the moneys or other assets.

31. (1) The Minister may remit, wholly or in part, any levy payable Remission of levy.

(a) where he is satisfied that it is just and equitable to do so; or

(b) to give effect to the terms of any agreement or arrangement that is binding on the Crown.

(2) Where any levy remitted under this section has already been paid, the levy shall be refunded by the Comptroller.

32. (1) A person who imports goods specified in the *First Schedule* shall be granted a refund of the levy paid by him where he satisfies the Comptroller that the imported goods have been re-exported. Refund of levy. First Schedule.

(2) Where on an appeal it is found that an importer or registered manufacturer has overpaid an amount of levy, the Comptroller shall refund the amount of the excess.

(3) Where, for any other reason, the amount of levy paid by a registered manufacturer in respect of any month exceeds the amount properly payable under this Act, the Comptroller may, upon application in writing made within 5 years after the end of the month to which the overpayment of levy relates, refund the amount of the excess.

(4) Notwithstanding subsections (2) and (3), where any levy is due and payable but remains unpaid in respect of any other month, instead of refunding the excess, the Comptroller may apply the excess towards the unpaid levy.

(5) A refund made under this section or section 33 is a charge on the Consolidated Fund.

Interest on
unpaid levy.

33. The levy chargeable under this Act and remaining unpaid after the time specified in section 10(1)(b) bears interest at the rate of $1\frac{1}{2}$ per cent per month or part thereof for the period during which the levy remains unpaid.

Penalty.

34. (1) Where a registered manufacturer fails to submit a quarterly statement within the time specified in section 14(1) or any extended time allowed under section 14(2), the manufacturer is liable to a penalty of 10 per cent of the levy payable and unpaid at that time.

(2) Where a registered manufacturer fails to submit an annual statement within the time specified in section 15, he is liable to a penalty of \$500.

(3) Where a registered manufacturer submits an incorrect quarterly statement by reason of

(a) his failure to disclose the quantity of any chargeable goods sold during that quarter;

(b) the fact that the calculation of the levy chargeable was at a rate lower than that applicable to any chargeable goods sold during that quarter; or

- (c) his failure to disclose any fact, the disclosure of which would result in an increase in his liability to pay the levy,

the manufacturer is liable to a penalty in accordance with subsection (4).

(4) Where an inaccuracy of the quarterly statement was attributable to

- (a) neglect, the manufacturer is liable to a penalty of 50 per cent of the levy that would have been lost if he had been assessed on the basis of the incorrect statement as submitted;
- (b) wilful default, the manufacturer is liable to a penalty not exceeding the amount of the levy that would have been lost if he has been assessed on the basis of the incorrect statement submitted.

(5) A penalty incurred by virtue of this section is payable to the Comptroller and is recovered by him as a debt due to the Crown in civil proceedings before a magistrate for District 'A', notwithstanding that the amount sought to be recovered exceeds the normal monetary limit on the jurisdiction of the magistrate's courts.

35. A person who

Offences.

- (a) fails to apply for registration as a registered manufacturer when liable to do so;
- (b) fails to submit to the Comptroller any statement as required under this Act;
- (c) fails to comply with the requirements of any notice in writing issued to him under this Act;
- (d) refuses to answer truly and fully any questions put to him or to supply any information required from him in relation to the manufacture of chargeable goods;

- (e) fails to keep a proper record of his transactions or to preserve any books of account or other records as required under section 24;
- (f) fails to disclose in any quarterly statement made by him the quantity of any chargeable goods sold by him during the relevant month or any material facts that are required to be disclosed;
- (g) signs any statement submitted to the Comptroller without reasonable grounds for believing that statement or any part thereof, to be correct;
- (h) obstructs or hinders the Comptroller or authorised person in the discharge of his functions under this Act,

is guilty of an offence and is liable on summary conviction to a fine of \$5 000 or to imprisonment for 1 year and in the case of a continuing offence, to a fine of \$500 for each day or part thereof during which the offence continues after a conviction is first obtained.

Offences
respecting
liability to
pay levy.

36. (1) A person who wilfully and with intent to evade liability to pay the levy

- (a) makes, causes or allows to be made any incorrect statement submitted under this Act;
- (b) signs any statement submitted to the Comptroller having reason to believe the contents of the statement or other information to be incorrect;
- (c) gives an incorrect answer, verbally or in writing, to any request for information made by the Comptroller;
- (d) prepares, maintains or authorises the preparation or maintenance of any incorrect books of account or other records;
- (e) falsifies or authorises the falsification of any books of account or other records; or

(f) makes use of or authorises the use of any fraud whatever,

is guilty of an offence and is liable on summary conviction to a fine of \$10 000 or to imprisonment for a term of 2 years.

(2) In any proceedings under this section, if it is proved that any incorrect information is given or entry made in any statement, answer, book of account or other records by any person, that person is presumed, until the contrary is shown, to have made, caused or allowed to be made or caused that incorrect information, statement or entry with intent to evade liability to the levy.

37. Where any person wilfully

(a) makes or submits on behalf of another person;

(b) aids or abets another person to make or deliver,

an incorrect statement or incorrect information affecting the liability of that other person to pay the levy, the first mentioned person is guilty of an offence and is liable on summary conviction to a fine of \$5 000 or to imprisonment for a term of 1 year.

38. Proceedings for an offence under this Act may be instituted by the Comptroller.

Aiding or abetting an offence.

Prosecutions.

39. Proceedings in relation to an offence under this Act may be commenced within 3 years after the offence is committed or within 1 year after the commission of the offence comes to the knowledge of the Comptroller, whichever is the later.

Time limit for proceedings.

40. (1) The Minister may make regulations for

(a) those matters which are required to be prescribed; and

(b) giving effect to the provisions of this Act.

Regulations.

(2) Regulations made under this section are subject to negative resolution.

Validation.
Cap. 85.
Cap. 70. **41.** Notwithstanding sections 3(2) and 5 of the *Provisional Collection of Taxes Act*, the environmental levy purportedly paid and collected under the *Environmental Levy Act*, from the 3rd day of September, 2008 pursuant to the 2008 Budgetary Proposals, is deemed to have been validly paid and collected.

Repeal of
Cap. 70. **42.** The *Environmental Levy Act* is hereby repealed.

Commence-
ment. **43.** Sections 1 to 40 and 42 of this Act shall come into operation on the 1st day of April, 2010.

FIRST SCHEDULE

(Section 4(1))

Description of Goods	Rate for each item of goods
	\$
1. (a) Motor vehicles	
(i) new and used cars	1500.00
(ii) other vehicles	300.00
(b) tyres (other than motor cycle or bicycle tyres)	20.00
(c) motor cycle tyres	2.00
(d) bicycle tyres	2.00
(e) refrigerators	30.00
(f) freezers	30.00
(g) stoves and ranges under tariff heading number 7321.11.10 and stoves and cookers under tariff heading number 8516.60.10	30.00
(h) washing machines	30.00
(i) dishwashing machines	30.00
(j) television sets	20.00
(k) mattresses	20.00
(l) electric accumulators under tariff heading number 85.07	20.00

Other Goods

2. An *ad valorem* levy of 2 per cent on all goods except those referred to in paragraphs 1 and 3.
3. An *ad valorem* levy of 3 per cent on
 - (i) goods imported in containers made of plastic, glass or metal;
 - (ii) goods imported in containers made of paperboard; and
 - (iii) empty containers made of plastic, glass, metal or paperboard.

SECOND SCHEDULE

(Section 4(2))

<i>Tariff Heading No.</i>	<i>Description of Goods</i>
0201.30.30	Meat of bovine animals, fresh or chilled, minced (ground)
0201.30.90	Meat of bovine animals, fresh or chilled, other
0202.30.30	Meat of bovine animals, frozen minced (ground)
0202.30.90	Boneless: other
02.04	Meat of sheep or goats, fresh, chilled or frozen
0206.49.10	Pig trotters
0402.99.10	Condensed Milk
0405.90.20	Ghee
07.13	Dried leguminous vegetables, shelled, whether or not skinned or split
09.01	Coffee
09.02	Tea
0907.00.00	Whole cloves
0910.10.00	Ginger
0910.30.00	Tumeric
15.09	Olive oil and its fractions, whether or not refined, but not chemically modified
15.10	Other oils and their fractions, obtained solely from olives, whether or not refined, but not chemically modified, including blends of these oils or fractions of heading 15.09

SECOND SCHEDULE (CONTD)

<i>Tariff Heading No</i>	<i>Description of Goods</i>
15.11	Palm oil and its fractions, whether or not refined, but not chemically modified.
15.12	Sunflower seed, safflower or cottonseed oil and fractions thereof, whether or not refined, but not chemically modified
15.13	Coconut (copra), palm kernel or babassu oil and fractions thereof, whether or not refined, but not chemically modified
15.14	Rape, colza or mustard oil and its fractions thereof, whether or not refined, but not chemically modified
15.15	Other fixed vegetable fats and oils (including jojoba oil) and their fractions, whether or not refined, but not chemically modified
1602.50.10	Canned corned beef
1604.12.00	Herrings
1604.13.10	Sardines
1901.10.00.00	Preparations for infant use, put up for retail sale
1901.10.00.10	Preparations for infant use, put up for retail sale (milk and soya bean flour based)
1901.10.00.90	Other preparations for infant use, put up for retail sale
19.04	Prepared foods obtained by the swelling or roasting of cereals or cereal products (for example, corn flakes); cereals (other than maize (corn) in grain form or in the form of flakes or other worked grains (except flour, groats and meal), precooked or otherwise prepared, not elsewhere specified or included
2102.10.00	Active yeasts

SECOND SCHEDULE (CONCLD)

<i>Tariff Heading No</i>	<i>Description of Goods</i>
2102.30.00	Baking powder
21.04	Soups and broths and preparations thereof; homogenized composite food preparations
3307.20.00	Personal deodorants and anti-perspirants
3401.11.10	Medicated soap
4818.40.10	Sanitary towels and tampons

ENVIRONMENTAL LEVY BILL, 2010

EXPLANATORY MEMORANDUM

The draft Bill would revise the law relating to the imposition of environmental levy in order to make the law consistent with the provisions of the Revised Treaty of Chaguaramas and at the same time validate the environmental levy paid and collected pursuant to the 2008 Budgetary Proposals.

Clause 1 provides the short title of the Bill.

Clause 2 provides for the interpretation of the terms in the Bill.

Clause 3 provides for the Comptroller to administer the Bill and sets out the duty of the Comptroller to

- (a)* lay quarterly statements before Parliament at regular intervals; and
- (b)* present to the Minister on a semi-annual basis a confidential report on the operation of the Act.

Clause 4 provides that

- (a)* the environmental levy shall be charged, levied and collected on every good imported into Barbados and manufactured in Barbados;
- (b)* no environmental levy will be charged, levied or collected on the goods set out in the Second Schedule whether those goods are imported into or manufactured in Barbados; and
- (c)* the Minister may amend the Schedules by order.

The rate of the levy is specified in the First Schedule.

Clause 5 provides the purpose of the levy which is primarily for the preservation and enhancement of the environment.

Clause 6 states that the levy shall be charged on the customs value of imported goods and the price of the goods where they are manufactured in Barbados.

Clause 7 provides

- (a) that the levy chargeable is determined by the value of the goods;
- (b) how to determine the price of goods manufactured in Barbados;
- (c) how to determine whether two persons are associated in business with one another.

Clause 8 provides that section 106 of the *Customs Act* applies to this Act with such modifications and adaptations as are necessary for the purpose of giving the necessary effect to this Act.

Clause 9 states that the provisions of the *Customs Act* and regulations relating to the payment, collection and recovery of duties under the Act and contravention of that Act apply *mutatis mutandis* to the payment, collection and recovery of the levy and contravention of the *Environmental Levy Bill, 2010*.

Clause 10 provides when payment of the levy is due and payable to the Comptroller by the importer or registered manufacturer on any goods that are

- (a) imported into Barbados; and
- (b) manufactured for sale in Barbados.

Clause 11 states the circumstances in which the Comptroller may grant permission for the importation of goods without payment of the levy.

Clause 12 provides that the levy is to be paid into the Consolidated Fund.

Clause 13 provides that registered manufacturers of chargeable goods for consumption in Barbados shall apply to the Commissioner in the approved form to be registered under the Act.

Clause 14 provides that a registered manufacturer shall submit to the Comptroller quarterly statements containing the prescribed matters. The statements shall be submitted not later than 21 days after the end of each quarter, but this period may be extended by the Comptroller.

Clause 15 states that a registered manufacturer shall submit to the Comptroller not later than 31st March following the end of each calendar year, an annual statement which shall contain a summary for the year of the information required to be submitted under clause 13 for each quarter, amongst other matters.

Clause 16 provides for an assessment to be made by the Comptroller in certain circumstances or for a reassessment of the levy to be made where the levy has already been assessed by the registered manufacturer. Where the Comptroller is not satisfied with the declared value of chargeable goods, he may make an assessment of the value.

Clause 17 states that an assessment or reassessment may be made by the Comptroller in respect of any quarter in specified circumstances. The clause also provides that where a determination or decision of an appeal or Value Added Tax Tribunal required a reduction of or an increase in an assessment, the Comptroller shall give effect to the decision and issue a notice of reassessment accordingly.

Clause 18 provides that a Comptroller must issue a notice of assessment or reassessment in the approved form to the registered manufacturer where he assesses the levy payable for a quarter.

Clause 19 provides that a person who objects to an assessment or reassessment made by the Comptroller may deliver a notice of objection within 21 days after the date of the notice of assessment or reassessment or within such further time as the Comptroller allows. The notice shall be in writing and shall contain the precise grounds of objection.

Clause 20 states *inter alia* that the Comptroller must give a person who has lodged an objection an opportunity, either written or oral, to support the objection. The Comptroller may either allow or disallow the objection in whole or in part and must inform the objector of his decision.

Clause 21 provides *inter alia* that a person who is aggrieved by a decision of the Comptroller under section 12 or 19 may appeal to the Tribunal within 30 days of the decision of the objection or within such further time as the Tribunal allows.

Clause 22 provides that an appellant or Comptroller may appeal on a question of law to the High Court from a decision of the Tribunal and the High Court may

- (a) confirm, increase or order the reduction of any assessment or make such other order as it thinks fit; and
- (b) make such order as to cost as it thinks fit.

Clause 23 gives the Comptroller the discretion to suspend the recovery of the levy pending the determination of an objection or appeal.

Clause 24 states *inter alia* that the registered manufacturer shall keep such records or books of account to reflect the time and full nature of the transactions of the business.

Where the Comptroller is of the opinion that records or books are not being kept or not being properly kept he may direct the registered manufacturer to keep records or books and the registered manufacturer shall comply with the direction of the Comptroller.

The records or books of account shall be kept at the principal place of business of the registered manufacturer unless the Comptroller otherwise approves.

Clause 25 provides that for the purpose of administering the Act, the Comptroller may by notice in writing require the registered manufacturer or any other person to submit stated information.

Clause 26 states that the Comptroller may carry out an examination of the business activities of a registered manufacturer. The Comptroller or authorized person may enter premises where the business is carried on, examine records or books of account and inspect any raw material, trading stock or other assets.

The Comptroller may during the course of an examination take possession of any books, accounts or documents for further examination and after examination may retain or make copies of or take extracts from the books or documents.

Clause 27 provides that the levy when due and payable is a debt to the Crown and may be recovered by the Comptroller in civil proceedings notwithstanding that the amount exceeds the normal monetary limit of the jurisdiction of the magistrate.

In proceedings for the recovery of the levy it is not a defence that

- (a) the price of the goods or customs value of the goods is incorrect;
- (b) the levy payable is excessive; or
- (c) the assessment is the subject of objection or appeal.

Clause 28 provides for the recovery of a levy from persons leaving Barbados.

Clause 29 provides for the appointment of an agent.

Clause 30 provides for the indemnity of an agent.

Clause 31 provides that the Minister may remit any levy where he is satisfied it is just to do so, or to give effect to the terms of any agreement or arrangement that is binding on the Crown.

Where a levy remitted under this clause has been paid, it shall be refunded by the Comptroller.

Clause 32 provides for the refund of a levy paid by a person who imports goods that are re-exported. The goods in question are those specified in the First Schedule.

Where on appeal it is found that an importer or registered manufacturer has overpaid an amount of levy, the Comptroller shall refund the excess. A refund made under this clause and clause 32 is a charge on the Consolidated Fund.

Clause 33 provides that the rate of interest on a levy chargeable under the Act and remaining unpaid is 1½ percent.

Clause 34 provides *inter alia* for a penalty to be applied in respect of an unsubmitted quarterly or annual statement or an inaccurate or incorrect quarterly statement.

Clause 35 provides for the offences created under the Act.

Clause 36 provides for offences respecting liability to pay the levy.

Clause 37 makes provision for aiding or abetting an offence.

Clause 38 states that prosecutions may be instituted by the Comptroller.

Clause 39 provides for the commencement of proceedings within a 3 year time limit of the date the offence is committed or within 1 year after the offence comes to the knowledge of the Comptroller.

Clause 40 states that the Minister may make regulations for those matters which are required to be prescribed and also to give effect to the provisions of the Act.

Clause 41 provides for the validation of the environmental levy purportedly paid and collected under the *Environmental Levy Act*, Cap. 70 from the 3rd day of September, 2008 pursuant to the 2008 Budgetary Proposals.

Clause 42 provides for the repeal of the *Environmental Levy Act*, Cap. 70.

Clause 43 provides for the commencement of sections 1 to 40 and 42 of the Act on the 1st day of April, 2010.

FIRST SCHEDULE speaks to the goods that are imported and manufactured in Barbados and the rate of environmental levy that is attached to those goods.

SECOND SCHEDULE states the goods to which no levy shall be charged, whether the goods are imported into or manufactured in Barbados.