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This Bill would reform the law on customs and repeal the *Customs Act*, Cap. 66.

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SCHEDULE
Customs Appeal Tribunal

BARBADOS

A Bill entitled

An Act to reform the law on customs and repeal the *Customs Act*, Cap. 66.

ENACTED by the Parliament of Barbados as follows:

PART I

PRELIMINARY

Short title

1. This Act may be cited as the *Customs Act, 2021*.

Interpretation

2. In this Act,

“advance cargo information” means such information as may be prescribed to be provided to the Comptroller in advance in respect of goods to be transported to Barbados on board a vessel or an aircraft;

“advance passenger information” means such information as may be prescribed to be provided to the Comptroller in advance in respect of individuals, including crew, to be transported to Barbados on board a vessel or an aircraft;

“agent” means a person, including a licensed customs broker, who is authorized in writing by another person to perform any act on his behalf to fulfill any obligation under this Act;

“assessment” means a determination of the amount of duty and taxes owing on imported or exported goods, calculated in accordance with this Act, and of any applicable penalty;

“assigned matter” means a matter in relation to which the Comptroller is required, under any enactment, to perform a duty;

“audit” means a compliance measure undertaken by the Comptroller to ensure that all applicable obligations under this Act have been met;

“authorized” means authorized by the Comptroller;

- “authorized economic operator” means a person who is accorded that status in accordance with Part XVI and the regulations made under this Act;
- “authorized officer” means a person authorized by the Comptroller under section 5 to perform a function;
- “bulk” means goods that are transported on board a vessel loose or in mass without containment or packaging;
- “cargo” means all goods, mail and stores transported on board a vessel or an aircraft for consideration;
- “CARICOM”, “Caribbean Community” or “Community” means the Caribbean Community established by Article 2 of the Revised Treaty;
- “clearance” means the authorization to remove imported goods or goods destined for export from a customs controlled area, licensed warehouse or duty free zone, which is issued by a customs officer at the completion of the formalities required by this Act;
- “commander” means the captain of a ship or an aircraft;
- “Comptroller” means the Comptroller of the Customs and Excise Department;
- “container” means a receptacle that
- (a) is intended for containing goods;
 - (b) is of permanent character and suitable for repeated use;
 - (c) is designed to carry goods by one or more modes of transport without intermediate reloading; and
 - (d) has an internal volume of one or more cubic meters;
- “crew” means persons employed on board a vessel or an aircraft during a voyage or flight, whether or not they are on the crew list;
- “customs broker” means a person who holds a licence issued by the Comptroller;
- “customs controlled area” means a place designated as such by the Comptroller under Part V;

“Customs Department” means the Customs and Excise Department;

“customs direction” means a lawful request, order, command or instruction in any form by a customs officer to a person specifically, or to the public generally, to perform an obligation under this Act, or to refrain from a contravention of this Act;

“customs officer” includes the Comptroller, a Deputy Comptroller and an Assistant Comptroller;

“customs services” means services provided by customs officers under this Act;

“Customs Tariff” means the Common External Tariff established in accordance with the Revised Treaty forming part of the customs laws of Barbados;

“customs value” means the value of imported or exported goods calculated in accordance with this Act;

“data message” means a messaging standard for electronic communication;

“declarant” means a person who submits a declaration or a person in whose name the declaration is made;

“declaration” means a statement, report or account submitted in any form or manner to a customs officer to fulfill an obligation under this Act;

“document” includes

- (a) any paper or other material on which there is writing, drawing or representation of any kind;
- (b) any information recorded or stored by means of any tape recorder, computer or other device and any material subsequently derived from the information so recorded or stored;
- (c) any information in digital or electronic format;

“drawback” means a refund, on exportation, of all or part of any customs duty paid on importation;

- “drawback goods” means goods in respect of which a claim for drawback has been or is to be made;
- “duty” means any tax, surtax or other amount imposed on imported goods or goods destined for export under the Customs Tariff but does not include a penalty assessed under this Act;
- “entered”, in relation to goods, means goods that have been properly accounted for to the satisfaction of the Comptroller;
- “export” means to take, or cause goods to be taken, out of Barbados;
- “exporter” means the owner or other person beneficially interested in exported goods;
- “former Act” means the *Customs Act*, Cap. 66;
- “goods” includes any tangible property including vessels, aircraft, animals, documents, currency and monetary instruments and mail;
- “Government”, in relation to any customs controlled area or transit shed, means a customs controlled area or transit shed vested in or occupied by the Government;
- “Government warehouse” means a place provided by the Government for the deposit of unentered, unexamined, detained or seized goods or for goods required by this Act to be deposited therein for the security of the goods and for the duty due in respect of them;
- “import” means to bring goods or cause goods to be brought into Barbados;
- “importer” means the owner or other person beneficially interested in imported goods;
- “in transit”, in relation to imported goods, means the customs procedure under which the goods are transferred under customs control from a customs controlled area or licensed warehouse to another customs controlled area for export;

- “licensed warehouse” means a warehouse which a person has been granted a licence to operate pursuant to section 46;
- “Minister” means the Minister responsible for Finance;
- “non-community goods” means goods which do not conform to the Community rules of origin;
- “occupier” means a person who signs as principal any bond in respect of any building or place used as a warehouse for the deposit of goods that have not been cleared;
- “passenger” means a person, other than a crew member, being transported on a vessel or an aircraft;
- “passenger baggage” means goods carried on a vessel or an aircraft whether in the passenger’s personal possession or not;
- “port” means an airport or a seaport, and includes any place appointed by the Minister by notice, subject to any conditions or limitations specified in the notice, to be a port for the purposes of this Act;
- “prohibited or restricted goods” means goods of a class or description of which the importation or exportation is prohibited or restricted under this Act;
- “record” means any material on which information or data is recorded or stored which is capable of being read or understood by a person or a computer system or other device;
- “Revised Treaty” means to the Revised Treaty of Chaguaramas establishing the Caribbean Community including the CARICOM Single Market and Economy signed at Nassau, The Bahamas on 5th July, 2001;
- “stores” means such classes of goods as are prescribed under section 35;
- “System” in relation to automation, means the Customs Automated Control System referred to in section 16;
- “territorial waters” has the meaning assigned to it by section 3 of the *Barbados Territorial Waters Act*, Cap. 386;

“transshipment” means the customs procedure under which goods are transferred under customs control from the importing vessel or aircraft to the exporting vessel or aircraft;

“trusted trader” means a person who is accorded that status in accordance with Part XVI and the regulations made under this Act;

“uncustomed goods” means goods that have been imported or exported without having been declared to, and cleared by, a customs officer.

PART II

ADMINISTRATION

Comptroller to administer the Act

3. The Comptroller is responsible for the general management and administration of this Act.

Duties and responsibilities of the Comptroller

4.(1) The Comptroller shall, for the proper and efficient management and administration of the Customs and Excise Department, and subject to the direction of the Minister

- (a) establish and maintain administrative, financial, communicative and other systems necessary for the administration and management of this Act;
- (b) implement such electronic and other systems as the Comptroller thinks fit for the modernization of customs services;
- (c) arrange for the design and implementation of training and other programmes necessary for the guidance of persons to whom access to the electronic and other systems may be granted, or who are otherwise required under this Act to engage in customs procedures; and

(d) determine, and inform the public of, the level of training or certification required for the grant of licences or permits to access the electronic and other systems of the Customs and Excise Department.

(2) The Comptroller may, in the exercise of his functions, execute any document or agreement required under this Act to be entered into between the Comptroller and any other person.

Duties and responsibilities of customs officers

5.(1) A customs officer shall perform the duties assigned by or on behalf of the Comptroller and shall do so in accordance with

- (a) instructions issued by the Comptroller, subject to any limitations;
- (b) such procedures as the Comptroller determines; and
- (c) the hierarchical or other system of customs management determined by the Comptroller to be appropriate whereby customs officers are entrusted with responsibilities according to rank or to any other specified basis.

(2) A customs officer may, subject to subsection (1), perform any enforcement function at any time and place and may, where performing an enforcement function

- (a) be accompanied and assisted by one or more members of the Police Force or such other persons as may reasonably be required for the performance of the function; or
- (b) use any aids, including any equipment or device, subject to compliance with any applicable law regarding the use of the aids.

(3) A person who assists a customs officer under subsection (2) shall, for the purpose of such assistance, be deemed to be a customs officer working under the supervision of the customs officer being assisted.

- (4) The Comptroller may authorize a person who is not a customs officer to perform a function that may be performed by a customs officer under this Act,
- (a) an authorized officer shall, for the purpose of performing the function, be deemed to be a customs officer; and
 - (b) the term “customs officer” shall be deemed to include an authorized officer.
- (5) The authorization referred to in subsection (4) shall be in writing and shall specify
- (a) the function that may be performed by the authorized officer; and
 - (b) the terms of the authorization, which shall be for such period, not exceeding 3 years, as the Comptroller determines.
- (6) The Comptroller may
- (a) renew an authorization referred to in subsection (4); or
 - (b) revoke the authorization
 - (i) for incapacity, neglect of duty or misconduct of the authorized officer;
 - (ii) where the authorized officer gives written notice to the Comptroller that he wishes to have the authorization revoked; or
 - (iii) where, in the opinion of the Comptroller, the authorization is no longer necessary.
- (7) Where a person ceases to be authorized under this section, the person shall surrender to the Comptroller all articles and documents received in relation to the authorization.
- (8) An act required or authorized by this Act to be performed by the Comptroller may be performed by any customs officer authorized by the Comptroller to perform such act.
- (9) The Comptroller shall issue an identification card to every customs officer.

(10) Where a customs officer exercises any power under this Act, the officer shall, on request, produce the identification card for inspection.

Obligations of a customs officer

6.(1) A customs officer shall avoid acts

- (a) that may give rise to a conflict between his private interest and his duties and responsibilities; and
- (b) in which his private interests could improperly influence the performance of his duties,

under this Act.

(2) A customs officer shall, upon every anniversary, submit to the Comptroller, a declaration of interest in such form as the Comptroller determines, specifying whether he has any material, financial or other interest in, or stands to benefit materially from any business activity relating to

- (a) the clearance of goods or other customs procedures;
- (b) the import or export of goods; or
- (c) the production, processing, sale, handling, storage, manufacturing or transport of goods,

(3) Notwithstanding subsection (2), a customs officer shall, as soon as practicable, in such form as the Comptroller determines, after he becomes aware of it, notify the Comptroller of any situation or circumstance which may give rise to a conflict of interest under subsection (1) or in relation to which he stands to benefit materially under subsection (2).

(4) A declaration of interest under subsection (2) and a notification under subsection (3) shall, in the case of the Comptroller, be submitted to the Chairman of the Protective Services Commission.

(5) Failure of a customs officer to comply with subsection (2) or (3) constitutes misconduct within the *Public Service Act*, Cap. 29.

(6) A customs officer who fails to comply with subsection (3) is guilty of an offence and is liable on summary conviction to a fine of \$50 000 or to imprisonment for 12 months or to both, and any interest or benefit acquired as a result of the conflict of interest shall be forfeited.

Comptroller to keep registers, records and information

7. The Comptroller shall keep such registers, records and information as the Comptroller considers necessary for the administration of this Act.

Comptroller to provide information to the public

8. The Comptroller shall, through the Customs Department's website and any other medium he considers appropriate, provide the public with up-to-date information

- (a) relating to the operations, procedures and policies of the Customs Department;
- (b) relating to customs services;
- (c) to give assistance and guidance to the public with respect to any obligations and requirements to be met under this Act; and
- (d) for the general awareness of the public.

Cooperation and information sharing and other agreements

9.(1) The Comptroller may, with the approval of the Minister, and subject to any enactment relating to the sharing of information, enter into information sharing agreements and other written arrangements, including mutual assistance agreements, with other government agencies, relevant regional agencies and any foreign customs administration to promote cooperation and prevent the occurrence of customs and other cross-border offences including money laundering and terrorism and its financing.

(2) The Comptroller shall provide administrative assistance in customs matters to Member States in accordance with agreements between the parties.

(3) Without prejudice to the generality of subsection (1), for the purpose of minimizing risk and preventing fraud, the Customs Department and other government agencies may share information in relation to

- (a) the entry, exit, transit, storage and end use of goods in circulation between Barbados and other countries;
- (b) the presence and movement of non-community goods under the end use regime; and
- (c) any other matter that may assist in the prevention and control of criminal activity.

Confidentiality

10.(1) The information contained in a customs declaration, supporting documents and any information obtained from an owner, importer or exporter or about an importer or exporter in the course of the collection of duty, audit, investigation or enforcement process is confidential information.

(2) Every person having an official duty under this Act or being employed in the administration of this Act shall regard as secret and confidential all documents and information relating to the valuation or assessment of customs duties in respect of imported goods or the mitigation of a penalty.

(3) A person who has in his possession or has control of any confidential information or any document that contains confidential information shall not disclose the information or anything contained in such document to any person.

(4) A person exercising power under this Act or in relation to an assigned matter shall not communicate to any unauthorized person either directly or indirectly, any information or document obtained

- (a) in the exercise of any power under this Act; or
- (b) in relation to an assigned matter.

(5) A person exercising power under this Act or in relation to an assigned matter who, having possession of, or control over any information or document obtained as described in subsection (4)

- (a) communicates such information or anything contained in such document to an unauthorized person; or
- (b) permits an unauthorized person to have access to the document or information

is guilty of an offence and is liable on summary conviction to a fine of \$50 000 or to imprisonment for 12 months or to both.

(6) Nothing in subsection (5) prevents the disclosure of any document or information where that disclosure is authorized by the Comptroller in accordance with subsection (7).

(7) The Comptroller may disclose or authorize the disclosure of any document or information pursuant to any enactment or any treaty, agreement or arrangement concluded by the Government.

(8) The information that may be disclosed pursuant to subsection (7) includes information about

- (a) the movement of vessels and aircraft, including passenger and crew lists;
- (b) past travel history, general history and *modus operandi* of specified people;
- (c) currency and documents relating to other relevant financial transactions, including money laundering;
- (d) intelligence analysis, assessments and reports; and
- (e) the details of persons who are known or suspected to be involved in illicit activities.

(9) Notwithstanding subsections (2) and (3), nothing in this section prevents the disclosure of confidential information or production of any document containing confidential information to

- (a) any person for the purposes of this Act;
- (b) the Barbados Revenue Authority in the course of and for the purpose of carrying out its official duties;
- (c) a law enforcement agency for the purpose of carrying out its official duties;
- (d) a court of competent jurisdiction, in proceedings regarding liability under this Act, or the responsibility of any person for tax violations or offences, or in a criminal or civil matter;
- (e) the competent authority of a foreign country in accordance with a treaty or other agreement to which Barbados is a party;
- (f) any other government authority of another country for the purpose of carrying out its official duties in accordance with an international agreement to which Barbados is a party; or
- (g) any person with the consent of the owner, importer or exporter, as the case may be.

(10) A person who receives information under subsection (9) shall maintain the confidentiality of the information, except to the minimum extent necessary to achieve the purpose or objective for which disclosure is permitted.

(11) A person who discloses confidential information contrary to this section is guilty of an offence and is liable on summary conviction to a fine of \$50 000 or to imprisonment for 12 months or to both.

Police powers of customs officers and assistance to be rendered by police

- 11.** For the purposes of this Act
- (a) all customs officers shall have the same powers, authorities and privileges as are given by law to members of the Police Force; and
 - (b) it shall be the duty of every member of the Police Force and of every Island Constable to assist in the enforcement of the law relating to any assigned matter.

Action against officer

- 12.** No action, suit or other proceeding shall be brought or instituted personally against any officer in respect of any act performed by him in pursuance of any power granted to him or any duty imposed on him by this Act unless the act was not performed in good faith.

Request to extend hours beyond regular working hours

- 13.(1)** A request by a person for customs services outside regular working hours shall be made in an electronic form or such other form as the Comptroller determines.
- (2) The Comptroller may grant the request
- (a) in accordance with such regulations as may be prescribed; and
 - (b) upon payment of the prescribed fee.

Provision of information by Comptroller upon request

- 14.** Any person may request information concerning the application of this Act from the Comptroller in such manner as may be prescribed.

Provision of information to Comptroller

15.(1) Notwithstanding section 171, any person directly or indirectly involved in the completion of customs formalities or in customs controls shall, at the request of the Comptroller and within such period as may be specified, provide any required documents and information, in an appropriate form, and any assistance necessary for the completion of those formalities or controls.

(2) All persons required to provide information under this Act shall provide true, accurate and complete information and shall answer any question posed by a customs officer.

(3) The submission of a customs declaration or notification, a request for authorization or any other decision or the provision of any information in any form required by or given to the Comptroller, renders the person concerned responsible for

- (a) the accuracy and completeness of the information given in the declaration, notification or application;
- (b) the authenticity, accuracy and validity of any document supporting the declaration, notification or application;
- (c) where applicable, compliance with all of the obligations relating to the placing of goods under the customs procedure concerned or to the conduct of the authorized operations.

(4) Where the declaration, notification or application submitted or information provided is submitted by a customs agent of the person concerned, the agent shall also be bound by the obligations set out in this section.

PART III

CUSTOMS AUTOMATED CONTROL SYSTEM

Customs Automated Control System

16. The electronic information declaration and clearing system known as the Customs Automated Control System shall be used for the transmission of all information required to be provided to the Comptroller for the purposes of this Act by persons and for the Comptroller to communicate with persons regarding their transmissions.

Automation of data processing

17.(1) Subject to this Act, all exchange of information between the Comptroller and persons obligated to provide information under this Act shall be made using electronic data-processing techniques and, where required, shall include the tax identification number of the person.

(2) The Minister may make regulations

- (a) in relation to the operation of the system, including access to the system, the use of the system and the security of the system;
- (b) to provide for the cases in which information may be communicated on paper or by means other than electronic means under this Act.

PART IV

RISK MANAGEMENT

Risk management system

18.(1) The Comptroller shall adopt and maintain a risk management system through such selectivity criteria as may be appropriate in order to

- (a) evaluate the risks associated with any consignments and any other matter relating to customs control;
- (b) develop necessary countermeasures;
- (c) concentrate customs control and other relevant border controls on high-risk consignments; and
- (d) expedite the clearance of low-risk consignments.

(2) The Comptroller shall

- (a) base customs controls, other than random controls, primarily on risk analysis using electronic data processing techniques for the purpose of identifying and evaluating risks and developing necessary countermeasures, on the basis of criteria developed at the domestic, Community and international level;
- (b) base customs controls on risk management principles; and
- (c) limit customs controls to the minimum required to ensure compliance with this Act.

Risk management framework

19.(1) The Comptroller shall develop, maintain and employ a risk management framework, based upon analysis and the exchange of risk information with the Caribbean Community, and establish among other things, risk and evaluation criteria, control measures and priority areas for control.

- (2) Controls based on the information and criteria referred to in subsection (1) shall be carried out without prejudice to other controls.

PART V

CUSTOMS CONTROLLED AREAS

Customs controlled areas

20.(1) The Comptroller may designate for such periods and subject to such conditions as the Comptroller considers appropriate, any place as a customs controlled area to be used for the entry, unloading, storage, removal and loading of goods and the report and clearance of vessels and aircraft.

- (2) A person who contravenes a condition imposed by the Comptroller under section (1) is liable to pay an administrative penalty not exceeding \$10 000.

Deeming area as customs controlled area

21. Where an act is required to be performed in a particular place within a customs controlled area, it shall be deemed to be performed in such a place where it is performed in a place authorized by the Comptroller for the purpose.

Access to customs controlled area

22.(1) An owner of a customs controlled area or a commander of a vessel or an aircraft within a customs controlled area shall, on demand by a customs officer, grant the customs officer immediate access to the customs controlled area or to the vessel or aircraft, as the case may be.

- (2) A person who contravenes subsection (1) is guilty of an offence and is liable on summary conviction to a fine of \$10 000 or to imprisonment for one year or to both.

(3) Without prejudice to any action which may be instituted under subsection (2), where a person referred to in subsection (1) fails or refuses to grant a customs officer immediate access to a customs controlled area or to a vessel or an aircraft

- (a) the customs officer may cause the customs controlled area or the vessel or aircraft to be opened by such means as the customs officer considers reasonable in the circumstances; and
- (b) the person who failed or refused to grant access is liable for any expenses or damage incurred or sustained as a result of the action taken by the customs officer under paragraph (a).

Responsibility for goods in customs controlled area

23. Where goods are deposited in a customs controlled area

- (a) the commander of the vessel or aircraft from which the goods were deposited; and
- (b) the owner of the customs controlled area,

are jointly and severally responsible for the goods during the period of storage in the customs controlled area.

Permission to enter a customs controlled area

24.(1) The Comptroller shall require any person who enters a customs controlled area to wear an identification card in such form as the Comptroller determines.

(2) Except where a person is permitted to enter the customs controlled area under any other enactment, a person shall not enter a customs controlled area unless he

- (a) obtains, by electronic means or otherwise, the permission of a customs officer;

- (b) satisfies the customs officer that he is entering the customs controlled area in relation to the business for which the permission was given by the customs officer; and
 - (c) wears an official identification card issued by the Comptroller.
- (3) A person who contravenes subsection (2) is liable to pay an administrative penalty not exceeding \$10 000.

PART VI

PRE-ARRIVAL PROCESSING

Advance passenger and advance cargo information

25.(1) The commander of a vessel or an aircraft, whether laden or unladen, that is expected to arrive in Barbados, shall, prior to the arrival of the vessel or aircraft, and within such time and manner as may be prescribed, provide the Comptroller with advance passenger information and advance cargo information in electronic form.

(2) Subsection (1) shall apply subject to any law which makes provision for a single window system for Barbados.

(3) Advance passenger information and advance cargo information may be shared with other government agencies to conduct pre-arrival screening of persons and cargo.

Failure to provide advance information

26.(1) Where the commander of a vessel or an aircraft fails to submit advance passenger information or advance cargo information in accordance with section 25 the commander of the vessel or aircraft is liable to pay an administrative penalty not exceeding \$200 000 and the vessel or aircraft may be detained or seized.

- (2) A vessel or aircraft seized under subsection (1) may be released by the Comptroller on the lodgment of a bond in such amount as may be prescribed.
- (3) The Comptroller shall release the bond lodged under subsection (2) upon receipt of the information and payment of the penalty.

PART VII

ARRIVAL REPORTING

Vessels and aircraft to arrive at customs controlled area

- 27.(1)** The commander of a vessel or an aircraft transporting persons or goods from a place outside Barbados shall arrive in Barbados at a port.
- (2) A person who contravenes subsection (1) is guilty of an offence and is liable on summary conviction to a fine of \$100 000 or to imprisonment for 2 years or to both.

Vessels or aircraft arriving at place other than customs controlled area

- 28.(1)** Nothing in section 27 applies to a vessel or an aircraft that anchors or lands at a place other than a port where the arrival is
 - (a) in compliance with any statutory or other requirement relating to navigation;
 - (b) compelled by accident, weather or other necessity; or
 - (c) authorized by the Comptroller.
- (2) Where a vessel or an aircraft anchors or lands at a place other than a port, the commander
 - (a) shall immediately report the arrival of the vessel or aircraft to a customs officer or to a member of the Police Force;

- (b) shall not, without the consent of a customs officer, permit any goods carried in the vessel or aircraft to be unloaded, or any of the crew or passengers to depart from its vicinity; and
 - (c) shall comply with any customs direction given in respect of any goods, crew or passengers transported in the vessel or aircraft.
- (3) Subject to any authorization granted by the Comptroller, no member of the crew and no passenger on a vessel or an aircraft described in subsection (2) shall, without the consent of a customs officer,
 - (a) unload goods from the vessel or aircraft; or
 - (b) disembark from or board the vessel or aircraft,

and the crew and passengers shall comply with any customs directions given.

(4) A person who contravenes subsection (2) or (3) is guilty of an offence and is liable on summary conviction to a fine of \$100 000 or to imprisonment for 2 years or to both.

- (5) Notwithstanding subsection (2),
 - (a) the departure of passengers or members of the crew from the vicinity of the vessel or aircraft; or
 - (b) the removal of goods from the vessel or aircraft,

shall not constitute a contravention of this Act where the departure or removal is necessary for reasons of health, safety or the preservation of life or property.

Questions to be answered on arrival of vessel or aircraft

29.(1) The commander or owner of a vessel or an aircraft and any crew on board shall

- (a) answer any questions posed by a customs officer relating to the vessel or aircraft, the goods on board, the crew, and the voyage or flight; and

- (b) at the request of the customs officer, produce any books and other documents within the control of the commander, owner or crew member.
- (2) Subsection (1) applies to a vessel or an aircraft that
- (a) has arrived in Barbados from a place outside Barbados;
 - (b) is in Barbados, and is carrying
 - (i) international cargo, international crew or international passengers; and
 - (ii) domestic cargo;
 - (c) is in Barbados and which a customs officer has reasonable cause to suspect has been or is about to be involved in
 - (i) the commission of an offence under this Act; or
 - (ii) the importation or exportation of any dutiable, uncustomed, prohibited, restricted or forfeited goods.
- (3) A person who
- (a) refuses to answer any question put to him by a customs officer under subsection (1)(a);
 - (b) knowingly gives a false answer to any question posed by a customs officer; or
 - (c) fails to comply with a request made under subsection (1)(b),

is guilty of an offence and is liable on summary conviction to a fine of \$100 000 or to imprisonment for 2 years or to both.

Request to stop vessel or aircraft

30.(1) The commander of a vessel or an aircraft arriving in Barbados shall, on being so directed by a customs officer,

- (a) stop the vessel or aircraft for boarding; and

- (b) ensure that the vessel or aircraft remains stationary until the customs officer directs that the vessel or aircraft may proceed.
- (2) The commander shall, by all reasonable means, facilitate the boarding of the vessel or aircraft by the customs officer.
- (3) The commander shall, if so directed by the customs officer, cause the vessel or aircraft to leave Barbados immediately or within such time as the customs officer directs.
- (4) A person who contravenes this section is guilty of an offence and is liable on summary conviction to a fine of \$250 000 or to imprisonment for 5 years or to both.

Report of arrival of vessel or aircraft

31. Where a vessel or an aircraft arrives at a port from a place outside Barbados

- (a) carrying passengers from a place outside Barbados; or
- (b) carrying goods from a place outside Barbados that have not yet been cleared on importation,

the commander of the vessel or aircraft or his agent shall, upon arrival, submit a declaration containing such information and in such form and manner as the Comptroller determines.

Disembarkation

32.(1) Subject to such exemptions as may be prescribed, a person who is on board a vessel or an aircraft that has arrived in Barbados shall comply with every customs direction concerning disembarkation.

(2) For the purposes of this section and section 33, a customs direction includes a direction given by the person in charge of the vessel or aircraft or by a crew member at the direction of a customs officer.

- (3) A person who disembarks from a vessel or an aircraft that has arrived in Barbados shall, unless otherwise directed by a customs officer,
- (a) proceed directly to the designated customs controlled area; and
 - (b) remain in the customs controlled area for such reasonable time as the customs officer may require for the purpose of enabling the customs officer to exercise any function under this Act in relation to the person.
- (4) A person who contravenes this section is guilty of an offence and is liable on summary conviction to a fine of \$5 000.

Baggage to be presented

- 33.(1)** Subject to such exemptions as may be prescribed, a person who disembarks from a vessel or an aircraft that has arrived in Barbados from a place outside Barbados shall
- (a) present his accompanying baggage to the customs officer for examination when required;
 - (b) comply with any customs direction relating to the movement of the baggage within the customs controlled area or from any vessel or aircraft to a customs controlled area; and
 - (c) answer any questions posed by the customs officer.
- (2) A person moving or handling the baggage of a person referred to in subsection (1) shall comply with every customs direction relating to the movement of the baggage
- (a) from any vessel or aircraft to a customs controlled area; and
 - (b) within the customs controlled area.
- (3) A person who contravenes this section is guilty of an offence and is liable on summary conviction to a fine of \$50 000 or to imprisonment for 12 months or to both.

Goods in transit

34.(1) This Act, insofar as it is applicable, and subject to any regulations made hereunder regarding goods in transit, shall be deemed to apply to goods declared in transit to a destination beyond Barbados.

(2) The Minister may by regulations prescribe a licensing procedure in relation to the import or export of goods in transit and may designate the authority from whom licences are to be obtained.

(3) The authority referred to in subsection (2) may, by instrument in writing, delegate to such public officers as the authority determines, the power to issue licences in respect of goods in transit.

Stores

35.(1) The Minister may by regulations prescribe as stores such classes of goods as may be appropriate for use on board a vessel or an aircraft.

(2) For the purposes of subsection (1), the following goods are considered to be stores:

- (a) goods that are consumed in the operation and maintenance of the vessel or aircraft;
- (b) goods that are consumed by a person on board the vessel or aircraft;
- (c) fuel, spare parts and other articles or equipment, whether or not for immediate fitting; or
- (d) souvenirs, gifts, edible supplies, wines, spirits, ales, beers, domestic or imported cigars or domestic, stamped manufactured tobacco or imported manufactured tobacco, that are sold on board the vessel or aircraft.

Sealing requirements

36.(1) Where a vessel or an aircraft arrives at a port in Barbados, the commander of the vessel or aircraft shall place alcohol, tobacco and other goods for sale on board the vessel or aircraft under lock or seal and shall keep them there while the vessel or aircraft is in the port except where otherwise authorized by a customs officer.

(2) Stores for use on board a vessel or an aircraft shall remain sealed when the goods are moved to the vessel or aircraft from a licensed warehouse or to a licensed warehouse from the vessel or aircraft.

Waiver of duties and taxes on goods for emergency use

37.(1) In this section, “emergency” means an urgent or critical situation of a temporary nature that

- (a) is of such proportions or nature as to exceed the capacity of Barbados to deal with such situations;
- (b) is caused by an actual or imminent
 - (i) fire, flood, drought, storm, earthquake or other natural phenomenon;
 - (ii) disease in human beings, animals or plants;
 - (iii) accident or pollution; or
 - (iv) act of sabotage or terrorism; and
- (c) results or may result in
 - (i) danger to the lives, health or safety of individuals;
 - (ii) danger to property;
 - (iii) social disruption; or
 - (iv) a breakdown in the flow of essential goods, services or resources.

- (2) Any duties and taxes payable on goods that are imported into Barbados for use in connection with an emergency are waived.
- (3) Goods in respect of which a waiver is granted pursuant to subsection (2), except goods that are consumed or destroyed during the emergency, shall, where they are no longer required, be exported from Barbados.

Reporting of currency and monetary instruments

38.(1) A report shall be made to a customs officer with respect to the import or export of any currency or monetary instrument of a value equal to or greater than such amount as may be prescribed.

- (2) Where the currency or monetary instrument is
 - (a) in the actual possession of a person arriving in or departing from Barbados, or forms part of his baggage where he and his baggage are being carried on board the same vessel or aircraft, the report shall be made by the person;
 - (b) imported into Barbados by courier or as mail, the report shall be made by the exporter of the currency or monetary instrument;
 - (c) exported from Barbados by courier or as mail, the report shall be made by the exporter of the currency or monetary instrument; and
 - (d) imported or exported in any other case, the report shall be made by the person on whose behalf the currency or monetary instrument is imported or exported.
- (3) Where a person is arriving in or departing from Barbados with any currency or monetary instrument in respect of which a report is made, upon request by a customs officer, the currency or monetary instrument shall be presented to the officer, and any relevant vessel or aircraft or part of a vessel or an aircraft, or any baggage, shall be unloaded, and any package or container shall be opened or unpacked, for examination by the customs officer.

- (4) Any currency or monetary instrument that, in contravention of this section, is not reported or is suspected on reasonable grounds by a customs officer to be proceeds or an instrumentality of crime may be seized and forfeited.

PART VIII

IMPORT PROCESSING

Goods subject to customs control

- 39.(1)** All goods imported into Barbados
- (a) shall be presented to a customs officer upon their arrival at a customs controlled area or any other place designated by the Comptroller for the purpose or in a duty free zone; and
 - (b) are subject to customs control until they are cleared by a customs officer.
- (2) Goods that are removed from a customs controlled area or a licensed warehouse to another customs controlled area or licensed warehouse shall not be considered as removed or cleared for domestic use.

Submission of customs declaration

- 40.(1)** Except as otherwise prescribed, all imported goods, including goods prescribed to be exempt from duty and tax under Part II of the *Customs Tariff*, shall be declared in such form and manner and within such time as the Comptroller determines.
- (2) Where a customs declaration made under subsection (1) is inaccurate or incomplete, the declarant shall, as soon as the error is discovered, submit to the customs officer a full and accurate account of the goods.

- (3) A person who submits a declaration may, in accordance with any conditions that the customs officer may impose
- (a) inspect the goods; or
 - (b) draw samples from the goods.
- (4) A person who enters goods under this section shall
- (a) answer any question asked by a customs officer with respect to the goods; and
 - (b) on the request of the customs officer,
 - (i) present the goods to the officer;
 - (ii) remove any covering from the goods; and
 - (iii) open and unpack any package that the officer wishes to examine.
- (5) A person who contravenes this section is liable to pay an administrative penalty not exceeding \$10 000.

Oral declaration

41. The Comptroller may permit a customs declaration to be made orally where goods for private consumption below such value as may be prescribed are imported by post or courier.

Acceptance of customs declaration

42. The Comptroller shall cause a customs declaration which complies with the conditions prescribed in this Act to be accepted by the System provided that the goods to which the declaration refers have been presented to a custom officer or, at the discretion of the Comptroller, are made available for the purposes of customs control.

Amendment of customs declaration

43.(1) Subject to subsections (2) and (4), the Comptroller shall, upon a declarant's request, permit the declarant to amend one or more statements in his customs declaration after it has been accepted by the Comptroller.

(2) The Comptroller shall not permit a declarant to amend his declaration after the Comptroller has

- (a) informed the declarant of the intention to conduct an examination of goods;
- (b) identified inaccuracies in the declared particulars; or
- (c) begun an audit or verification of the declared particulars.

(3) Notwithstanding subsection (2)(c), the Comptroller may, upon a declarant's request, permit the declarant to amend his declaration after verification of the declaration has begun

- (a) where the Comptroller considers it reasonable to do so; and
- (b) under such conditions as may be prescribed.

(4) Notwithstanding subsections (1) and (3), a declarant shall not amend his declaration to cause the declaration to apply to goods other than those initially declared.

Simplified entry procedures

44. The Comptroller may, in such circumstances as may be prescribed and subject to maintaining appropriate customs controls, permit the use of specific, simplified entry procedures to expedite the clearance of goods and in particular, may

- (a) provide for information required for the purpose of clearing an express shipment to be submitted and processed before the shipment arrives;

- (b) allow a single, electronic submission of information, such as a simplified or provisional customs declaration, covering all goods contained in a shipment, subject to completion within a specified period;
- (c) expedite the clearance of the shipment on the basis of minimum documentation or a single submission of information, where possible;
- (d) provide for the shipment, under normal circumstances, to be cleared immediately after arrival, if the required documentation and information are submitted; and
- (e) provide for inspection and clearance of goods outside the designated hours of business or away from the usual customs controlled areas and for the waiver of any fees payable for such inspection and clearance.

Provisional assessment by customs officer

45.(1) Where in the course of verification of a customs declaration, the Comptroller disputes the information provided on the declaration in respect of the classification, origin or value of the goods and the declarant does not agree with the assessment of the Comptroller, the Comptroller may direct that

- (a) the assessment be treated as a provisional assessment; and
- (b) the goods be provisionally cleared based on the payment of the amount of duty calculated by the importer and the provision of a deposit by the importer for an amount equal to any additional duty provisionally assessed.

(2) Where the Comptroller is unable to make a proper assessment of the value of goods to be entered due to the failure of the importer to produce satisfactory documentary evidence of the value of the goods, the Comptroller may direct that

- (a) the goods be examined, and a provisional assessment made, of the value and of the duty payable; and

- (b) the goods be provisionally cleared based on the payment of the amount of duty calculated by the importer and the provision of a deposit by the importer for an amount equal to any additional duty provisionally assessed.
- (3) Where goods are pending final clearance pursuant to subsection (1) or (2), the Comptroller shall give notice in writing to the importer indicating
 - (a) the provisional assessment made;
 - (b) the basis for the assessment; and
 - (c) the documents or other information relating to the value of the goods that the importer is required to produce within 30 days of the provisional entry.
- (4) The amount of duty that was provisionally assessed under subsection (1) or (2) shall be treated as the final assessment and the deposit paid shall be brought to account as revenue where
 - (a) the documents or other information required under subsection (3) have not been produced within the specified time; or
 - (b) the importer informs the Comptroller in writing before the expiration of the specified time that he is unable to produce any further documents or information,unless the importer commences appeal proceedings within the required time period.
- (5) The Comptroller shall notify the importer of a final assessment determined under subsection (4) within 2 weeks of the date of the assessment.
- (6) Where the additional documents or other information required under subsection (3)(c) have been provided to the satisfaction of the Comptroller and the duty assessed by the Comptroller is more than, or less than, the provisional assessment made under subsection (1) or (2), the difference in duty shall either be refunded to, or paid by the importer, as the case may be, and any bond secured for the payment of duties or charges shall be cancelled.

PART IX

WAREHOUSING AND EXAMINATION OF GOODS

Approval of warehouses and licence to operate

46.(1) The Comptroller may appoint, for such period and subject to such conditions as the Comptroller may determine, any secure place as a warehouse to be used for the deposit of goods and the keeping and security of goods that are

- (a) chargeable with customs duty;
- (b) for exportation; or
- (c) for use as stores.

(2) The Comptroller may, in accordance with such provisions as may be prescribed, issue a licence to a person to operate a private warehouse.

Removal of goods from customs controlled area

47.(1) Imported goods shall not be delivered or removed from a customs controlled area except

- (a) with the permission of a customs officer after entry has been made in the approved form and manner to the satisfaction of the customs officer;
- (b) pursuant to a permit or other authorization granted by the Comptroller in respect of the goods, subject to any conditions imposed by the Comptroller;
- (c) by a customs officer in the performance of his duties; or
- (d) as otherwise provided by this Act.

(2) Notwithstanding subsection (1)(a), while goods remain subject to customs control, the Comptroller may revoke any notice of delivery given in respect of the goods.

(3) The Comptroller may, by notice in writing, vary or revoke any conditions under which a permit is granted under subsection (1).

(4) A person who is dissatisfied with a decision of the Comptroller under subsection (2) or (3) may, within 14 days after the date on which notice of the decision is given, request the Comptroller in writing, to reconsider the decision.

Removal of uncleared goods to warehouse

48.(1) Where, in the case of imported goods,

(a) clearance has not taken place

(i) within 7 days of importation by air;

(ii) within 14 days of importation by sea;

(iii) within 30 days of importation for transshipment; or

(iv) within 21 days from the date on which a report was made of the importation under section 31, or where no such report was made, the date on which a report should have been made; or

(b) the goods have been cleared, but they have not been unloaded from the importing vessel or aircraft by the expiration of the applicable period referred to in paragraph (a),

the customs officer may, subject to subsection (2) and such other requirements as may be prescribed, cause the goods to be deposited in the Government warehouse.

(2) Goods shall be deposited in the Government warehouse except where they are

(a) of such type as may be prescribed; or

(b) in the opinion of the Comptroller, of a perishable nature, in which case the Comptroller may sell or otherwise dispose of them.

- (3) The Comptroller shall, within 7 days of the decision to remove goods under subsection (1) or to sell or dispose of goods under subsection (2), notify the importer of the goods of the decision.
- (4) Where a restriction is placed on the unloading of goods from a vessel or an aircraft by virtue of an enactment relating to the prevention of an epidemic or infectious disease, the date of the removal of the restriction shall, in relation to the unloading of the goods, be deemed to be the date of importation.

Control of movement of uncleared goods

- 49.(1)** The Minister may make regulations respecting the manner in which, and the conditions under which, goods subject to this section may be moved
- (a) within a customs controlled area;
 - (b) between customs controlled areas; or
 - (c) between a customs controlled area and any other place.
- (2) This section applies to
- (a) goods chargeable with duty that has not been paid;
 - (b) goods on which a drawback has been paid; and
 - (c) any other goods that have not been cleared by the Comptroller.
- (3) Regulations made under subsection (1) may require that goods referred to in subsection (2) be moved only
- (a) by a person licensed by the Comptroller for the purpose; or
 - (b) by such means as may be approved by the Comptroller for the purpose.
- (4) A licence or approval for the purposes of subsection (3) may be granted for such period and subject to such conditions and restrictions as the Comptroller thinks fit.
- (5) The Comptroller may, at any time, for reasonable cause, revoke or vary the terms of the licence or approval granted under this section.

(6) The Comptroller shall not exercise the power conferred under subsection (5) without first giving the licensee an opportunity to be heard.

(7) A person who contravenes

(a) any regulations made under this section;

(b) a condition imposed pursuant to this section; or

(c) a term of any licence or approval granted,

is guilty of an offence and is liable on summary conviction to a fine of \$100 000.

(8) Where a person is convicted of an offence under subsection (7), the licence of the person shall be revoked and the person shall be ineligible to hold another licence for a period of 2 years.

Certain goods not to be warehoused

50. The Minister may make regulations prescribing the classes or descriptions of goods that shall not be warehoused, unless they are constructively warehoused for short-term storage, and for the treatment of such goods.

Removal from warehouse

51.(1) Every good may be examined by a customs officer upon removal from a warehouse for entry for domestic use, for entry for use as stores or for export.

(2) The occupier of a warehouse is liable for the duty due where a discrepancy is discovered in the goods at the time of delivery for entry for domestic use, for entry for use as stores or for export or at any earlier time when a discrepancy is discovered.

(3) The duty due on any excess goods over the quantity declared on importation and the quantity found at the time of removal, together with any necessary expenses and charges incurred in respect of the goods, shall be paid to the Comptroller unless the excess is permitted by law.

(4) Where an excess quantity of goods is found on examination by the occupier of the warehouse, the excess shall be re-warehoused in the name of the owner of the goods in the same manner as on first importation.

Loss or deterioration of goods

52.(1) Where at the time goods are to be lawfully removed from a warehouse, all or part of the goods are found to be missing, notwithstanding any other fine or liability to forfeiture incurred under this Act, the occupier of the warehouse shall, in addition to any restitution owed to the owner of the goods, pay to the Comptroller

- (a) the duty that such goods would have borne if they had been entered for domestic use on the date of the discovery of the deficiency; or
- (b) an amount that is, in the opinion of the Comptroller, the customs value of the goods, where the goods are not for domestic use.

(2) Where goods have been lawfully removed from one warehouse for transport to another warehouse or to a place other than a warehouse, and no duty has been paid in respect of them, and the goods fail to reach the other warehouse or the place then, notwithstanding any penalty or liability to forfeiture incurred under this Act, the transporter of the goods shall pay to the Comptroller

- (a) the duty that the goods would have borne if they had been entered for domestic use on the date of their removal from the warehouse; or
- (b) in the case of goods not eligible for domestic use, an amount that is, in the opinion of the Comptroller, the customs value of the goods.

(3) Where warehoused goods are damaged, destroyed or unlawfully removed by or with the assistance of a customs officer and the officer is convicted of an offence in relation to the damage, destruction or removal, then,

- (a) except where the occupier of the warehouse or the owner of the goods was a party to the offence, the Comptroller shall pay compensation for any loss caused by the damage, destruction or removal; and

- (b) notwithstanding any other provision of this Act
 - (i) no duty shall be payable on the goods by the occupier or the owner; and
 - (ii) any sum paid by way of duty before the conviction of the customs officer shall be repaid.

Goods not to be removed unless duties paid

53. Unless otherwise permitted by this Act, goods may not be removed from a warehouse

- (a) until all duty chargeable on those goods and any charges in respect of the removal of those goods from the warehouse have been paid; and
- (b) in the case of goods requiring entry and not yet entered, until the goods have been entered.

Opening warehouse or customs controlled area without permission

54. A person

- (a) who opens a warehouse or customs controlled area; or
- (b) gains access to goods within a warehouse or customs controlled area,

without the consent of a customs officer is guilty of an offence and is liable on summary conviction to a fine of \$100 000 or to imprisonment for 2 years or to both.

PART X

CLEARANCE

Conditions for clearance

55. A customs officer shall cleared goods from customs control where satisfied that

- (a) all duties and taxes have been accounted for the prescribed manner and either paid or secured by means of a bond or other arrangement;
- (b) all other customs procedures have been duly observed and completed; and
- (c) the requirements of any other applicable enactment have been complied with.

Clearance priority for certain goods

56. Perishable goods and live animals shall be cleared by a customs officer in the shortest possible time.

PART XI

CALCULATION OF CUSTOMS VALUE OF GOODS

Interpretation of Part XI

57.(1) For purposes of this Part,

“country of importation” means country or customs territory of importation;

“customs value of imported goods” means the value of goods for the purposes of levying ad valorem duties of customs on imported goods;

“goods of the same class or kind” means goods which fall within a group or range of goods produced by a particular industry or industry sector and includes identical or similar goods.

“identical goods” means goods which are the same in all respects, including physical characteristics, quality and reputation; and minor differences in appearance does not preclude goods otherwise conforming to the definition from being regarded as identical;

“produced” includes grown, manufactured and mined;

“similar goods” means goods which, although not alike in all respects, have like characteristics and like component materials which enable them to perform the same functions and to be commercially interchangeable; and the quality of the goods, their reputation and the existence of a trademark are among the factors to be considered in determining whether goods are similar;

(2) For the purposes of this Part,

- (a) “identical goods” and “similar goods” do not include, as the case may be, goods which incorporate or reflect engineering, development, artwork, design work, and plans and sketches for which no adjustment has been made under section 60(1)(b)(iv) because such elements were undertaken in the country of importation;
- (b) goods shall not be regarded as “identical goods” or “similar goods” unless they were produced in the same country as the goods being valued;
- (c) goods produced by a different person shall be taken into account only where there are no identical goods or similar goods, as the case may be, produced by the same person as the goods being valued;
- (d) persons shall be deemed to be related only where
 - (i) they are officers or directors of one another’s businesses;
 - (ii) they are legally recognized partners in business;

- (iii) they are employer and employee;
 - (iv) any person directly or indirectly owns, controls or holds 5 per cent or more of the outstanding voting stock or shares of both of them;
 - (v) one of them directly or indirectly controls the other;
 - (vi) both of them are directly or indirectly controlled by a third person;
 - (vii) together they directly or indirectly control a third person; or
 - (viii) they are members of the same family; and
- (e) persons who are associated in business with one another in that one is the sole agent, sole distributor or sole concessionaire, however described, of the other shall be deemed to be related for the purposes of this Part where they fall within the criteria of this Part.

Declaration of customs value of imported goods

58.(1) A person shall, upon making an entry, specify the customs value of the imported goods.

(2) The customs value of imported goods shall be determined in accordance with this Part.

(3) The currency exchange rate in effect on the date of submission of the entry shall be applied in determining the customs value of the goods, unless otherwise prescribed.

Transaction value of imported goods

59.(1) The customs value of imported goods shall be the transaction value, that is, the price actually paid or payable for the goods when sold for export to Barbados, adjusted in accordance with section 60, provided that

- (a) there are no restrictions on the disposition or use of the goods by the buyer other than restrictions that
 - (i) are imposed or required under any other law;
 - (ii) limit the geographical area in which the goods may be resold; or
 - (iii) do not substantially affect the value of the goods;
- (b) the sale or price is not subject to some condition or consideration for which a value cannot be determined with respect to the goods being valued;
- (c) no part of the proceeds of any subsequent resale, disposal or use of the goods by the buyer will accrue directly or indirectly to the seller, unless an appropriate adjustment can be made in accordance with section 60; and
- (d) the buyer and seller are not related, or where the buyer and seller are related, that the transaction value is acceptable under subsections (2), (3), (4) and (5).

(2) In determining whether the transaction value is acceptable for the purposes of subsection (1)

- (a) the fact that the buyer and the seller are related within the meaning of section 57(d) shall not in itself be grounds for regarding the transaction value as unacceptable; and
- (b) the circumstances surrounding the sale shall be examined, and the transaction value accepted, provided that the relationship did not influence the price.

(3) For the purposes of subsection (2), in a sale between related persons, the transaction value shall be accepted, and the goods valued in accordance with subsection (1), where the importer demonstrates that such value closely approximates to one of the following occurring at or about the same time:

- (a) the transaction value in sales to unrelated buyers of identical or similar goods for export to Barbados;
- (b) the customs value of identical or similar goods as determined under section 64;
- (c) the customs value of identical or similar goods as determined under section 65;

(4) In applying the tests set out in subsection (3), due account shall be taken of demonstrated differences in commercial levels, quantity levels, the elements enumerated in section 60 and costs incurred by the seller in sales in which the seller and the buyer are not related, that are not incurred by the seller in sales in which the seller and the buyer are related.

(5) The tests set out in subsection (3)(b) shall be used at the initiative of the importer and only for comparison purposes; and substitute values may not be established under subsection (3).

(6) Where, in the light of information provided by the importer or otherwise, the Comptroller has grounds for considering that the relationship between the buyer and the seller influenced the price, the Comptroller shall communicate the grounds to the importer and the importer shall be given an opportunity to be heard.

(7) Where the importer so requests, the Comptroller shall communicate the grounds in writing.

Additions to the price actually paid or payable

60.(1) In determining the customs value under section 59, there shall be added to the price actually paid or payable for the imported goods:

- (a) the following, to the extent that they are incurred by the buyer but are not included in the price actually paid or payable for the goods:
 - (i) commissions and brokerage, except buying commissions;
 - (ii) the cost of containers which are treated as being one for customs purposes with the goods in question; and
 - (iii) the cost of packing, whether for labour or materials;
- (b) the value, apportioned as appropriate, of the following goods and services where supplied directly or indirectly by the buyer free of charge or at reduced cost for use in connection with the production and sale for export of the imported goods, to the extent that such value has not been included in the price actually paid or payable:
 - (i) materials, components, parts and similar items incorporated in the imported goods;
 - (ii) tools, dies, moulds and similar items used in the production of the imported goods;
 - (iii) materials consumed in the production of the imported goods;
 - (iv) engineering, development, artwork, design work, plans and sketches, undertaken elsewhere than in Barbados and necessary for the production of the imported goods;
- (c) royalties and licence fees related to the goods being valued that the buyer must pay, either directly or indirectly, as a condition of sale of the goods being valued, to the extent that such royalties and fees are not included in the price actually paid or payable;

- (d) the value of any part of the proceeds of any subsequent resale, disposal or use of the imported goods that accrues directly or indirectly to the seller;
 - (e) the cost of transport of the imported goods to the port or place of importation;
 - (f) loading, unloading and handling charges associated with the transport of the imported goods to the port or place of importation; and
 - (g) the cost of insurance.
- (2) Additions to the price actually paid or payable shall be made under this section only on the basis of objective and quantifiable information.
- (3) No additions shall be made to the price actually paid or payable in determining the customs value except as provided in this section.

Transaction value of identical goods

61.(1) Where the customs value of the imported goods cannot be determined under section 59, the customs value shall be the transaction value of identical goods sold for export to Barbados and exported at or about the same time, and in a sale at the same commercial level and in substantially the same quantity, as the goods being valued.

(2) Where no such sale as described in subsection (1) is found, the transaction value of identical goods sold at a different commercial level or in different quantities or both, adjusted to take account of differences attributable to commercial level or to quantity or both, shall be used, provided that such adjustments can be made based on demonstrated evidence which clearly establishes the reasonableness and accuracy of the adjustment, whether the adjustment leads to an increase or a decrease in the value.

(3) Where the costs and charges referred to in section 60(1) are included in the transaction value, an adjustment shall be made to take account of significant differences in such costs and charges between the imported goods and the

identical goods in question arising from differences in distances and modes of transport.

(3) Where, in applying this section, more than one transaction value of identical goods is found, the lowest such value shall be used to determine the customs value of the imported goods.

Transaction value of similar goods

62.(1) Where the customs value of the imported goods cannot be determined under sections 59 and 61, the customs value shall be the transaction value of similar goods sold for export to Barbados and exported at or about the same time, and in a sale at the same commercial level and in substantially the same quantity, as the goods being valued.

(2) Where no such sale as described in subsection (1) is found, the transaction value of similar goods sold at a different commercial level or in different quantities or both, adjusted to take account of differences attributable to commercial level or to quantity or both, shall be used, provided that such adjustments can be made on the basis of demonstrated evidence which clearly establishes the reasonableness and accuracy of the adjustment, whether the adjustment leads to an increase or a decrease in the value.

(3) Where the costs and charges referred to in section 60(1) are included in the transaction value, an adjustment shall be made to take account of significant differences in such costs and charges between the imported goods and the similar goods in question arising from differences in distances and modes of transport.

(4) Where, in applying this section, more than one transaction value of similar goods is found, the lowest such value shall be used to determine the customs value of the imported goods.

Order or application of deductive value and computed value methods

63.(1) Where the customs value of the imported goods cannot be determined under sections 59, 61 and 62, the customs value shall be determined under section

64 or, where the customs value cannot be determined under that section, under section 65.

(2) Notwithstanding subsection (1), at the request of the importer, the order of application of section 64 and section 65 shall be reversed.

Deductive value

64.(1) Where the imported goods or identical or similar imported goods are sold in Barbados in the condition as imported, the customs value of the imported goods under this section shall be based on the unit price at which the imported goods or identical or similar imported goods are so sold in the greatest aggregate quantity, at or about the time of the importation of the goods being valued, to persons who are not related to the persons from whom they buy such goods, subject to deductions for the following:

(a) either

(i) the commission usually paid or agreed to be paid; or

(ii) the additions usually made for profit and general expenses,

in connection with sales in Barbados of imported goods of the same class or kind;

(b) the usual costs of transport and insurance and associated costs incurred within Barbados; and

(c) the customs duties and other taxes payable in Barbados by reason of the importation or sale of the goods.

(2) Where neither the imported goods nor identical nor similar imported goods are sold at or about the time of importation of the goods being valued, the customs value shall, subject to subsection (1), be based on the unit price at which the imported goods or identical or similar imported goods are sold in Barbados in the condition as imported at the earliest date after the importation of the goods being valued but before the expiration of 90 days after such importation.

(3) Where neither the imported goods nor identical nor similar imported goods are sold in Barbados in the condition as imported, if the importer so requests, the customs value shall be based on the unit price at which the imported goods, after further processing, are sold in the greatest aggregate quantity to persons in Barbados who are not related to the persons from whom they buy such goods, due allowance being made for the value added by such processing and the deductions provided for in subsection (1).

Computed value

65. The customs value of imported goods under this section shall be based on a computed value which shall consist of the sum of:

- (a) the cost or value of materials and fabrication or other processing employed in producing the imported goods;
- (b) an amount for profit and general expenses equal to that usually reflected in sales of goods of the same class or kind as the goods being valued which are made by producers in the country of exportation for export to Barbados; and
- (c) the cost or value of all expenses referred to in section 60(1).

Residual method

66.(1) Where the customs value of the imported goods cannot be determined under section 59 to 65, the customs value shall be determined

- (a) using reasonable means consistent with the principles and general provisions of this Act and of Article VII of General Agreement on Trade and Tariffs 1994; and
 - (b) on the basis of information available in Barbados.
- (2) No customs value shall be determined under this section on the basis of
- (a) the selling price in Barbados of goods produced in another country;

- (b) a system which provides for the acceptance, for customs purposes, of the higher of two alternative values;
 - (c) the price of goods on the domestic market of the country of exportation;
 - (d) the cost of production other than computed values which have been determined for identical or similar goods in accordance with section 65;
 - (e) the price of the goods for export to a country other than Barbados;
 - (f) minimum customs values; or
 - (g) arbitrary or fictitious values.
- (3) Where the importer so requests, the importer shall be informed in writing of the customs value determined under this section and the method used to determine such value.

Provisional customs value by importer

67.(1) An importer may include a provisional customs value in an entry for imported goods where the customs value of the imported goods would have been determined under the transaction value method but for the fact that at the time the entry was made, any adjustments that were required to be made could not have been made because of a lack of sufficient information or under an approval given by the Comptroller in such circumstances as may be prescribed.

- (2) A provisional customs value shall be a reasonable estimate of the customs value of the imported goods based on the information that is available to the importer at the time the entry is made.
- (3) Until the final customs value is provided, the provisional customs value shall be treated as the customs value for the purposes of this Act.
- (4) An approval subject to any terms, conditions or restrictions by the Comptroller may be required.

Reasons to doubt the truth or accuracy of particulars or documents

68.(1) Where a customs declaration is presented and the Comptroller has reason to doubt the truth or accuracy of the particulars or documents produced in support of the declaration, the Comptroller may require the importer to provide further explanation, including documents or other evidence, that the declared value represents the total amount actually paid or payable for the imported goods, adjusted in accordance with section 60.

(2) Where, after receiving further information, or in the absence of a response, the Comptroller still has reasonable doubt about the truth or accuracy of the declared value, the Comptroller may presume that the customs value of the imported goods cannot be determined under section 59.

(3) The Comptroller shall, before taking a final decision, communicate to the importer, in writing if requested, the grounds for doubting the truth or accuracy of the particulars or documents produced; and the importer shall be given an opportunity to be heard.

(4) Where a final decision is made, the Comptroller shall communicate to the importer in writing his decision and the grounds therefor.

Revised customs value

69. Where the Comptroller is satisfied that the customs value of imported goods in an entry is incorrect, the Comptroller may revise the customs value and

- (a) the revised value shall be treated as the customs value for the purposes of this Act; and
- (b) the Comptroller shall notify the importer of the revised value and the basis for the calculation, including the findings of fact, and of the reasons for the decision and of the rights of the importer to review and appeal against the decision.

Value of goods for export

- 70.** The customs value of goods for export shall
- (a) be the value of the goods at the point of exit; and
 - (b) be determined by adding to the exporter's ex-warehouse price of the goods, the cost of transport and all incidental expenses up to the time of export, not including export duties, taxes, fees and charges for which the exporter has been granted a waiver in such circumstances as may be prescribed.

PART XII**ORIGIN OF GOODS AND TARIFF CLASSIFICATION****Interpretation of Part XII**

- 71.** For the purposes of this Part,
- “Community origin” has the meaning assigned to it in section 76;
 - “export duties” means any duties or charges with equivalent effect imposed on, or in connection with, the export of goods;
 - “Less Developed Country” means the Member States regarded as such in accordance with Article 4 of the Revised Treaty;
 - “materials” includes raw materials, intermediate products, parts and components used in the process of production, repair, renovation or improvement of goods;
 - “Member State” has the meaning assigned to it in the Revised Treaty;
 - “More Developed Country” means a Member State regarded as such in accordance with Article 4 of the Revised Treaty;

“remission” includes any exemption for materials brought into free ports and other places that have duty-free customs privileges.

Country of origin of goods

72.(1) For the purposes of this Act, the country of origin of goods is the country in which the goods were produced or manufactured, according to the criteria defined for the purpose of applying the customs tariff, quantitative restrictions, and other trade-related measures.

(2) The country of origin of goods shall be determined for the purpose of applying

- (a) such customs tariff rates as may be prescribed;
- (b) other non-tariff measures established under specific Community provisions on trade in goods; and
- (c) other Community measures in respect of the origin of goods.

Rules of origin

73. For the purposes of this Act, “rules of origin” means the specific provisions applied to determine the origin of goods and include

- (a) non-preferential rules of origin established by the Community, domestic law or international conventions of general application with the objective of attaining particular trade policy objectives;
- (b) preferential rules of origin established by the Community or in accordance with trade agreements to facilitate community trade with certain countries or Member States in the same community space.

Proof of origin

74.(1) Where a country of origin has been declared in a customs declaration, the Comptroller may require the declarant to prove the origin of the goods.

- (2) Documentary proof of origin may be required for the application of preferential customs duties, economic or commercial measures adopted unilaterally or in the framework of bilateral or multilateral agreements or pursuant to measures for public order or health.
- (3) Where proof of origin of goods is provided, the Comptroller may, in the event of reasonable doubt, require the submission of additional evidence.

Country of consignment of goods

75. The country of consignment is the country from where the goods are dispatched directly to Barbados.

Determination of Community origin

- 76.(1)** Goods shall be described as Community origin goods where the goods
- (a) were wholly produced within the Community; or
 - (b) were produced within the Community wholly or partly from materials imported from a state other than a Member State or from materials of undetermined origin by a process that results in a substantial transformation characterized
 - (i) by the goods being classified in a tariff heading different from that in which any of those materials are classified; or
 - (ii) in the case of the goods set out in the list in Schedule 1 of the Revised Treaty, only by satisfying the conditions specified for the goods.
- (2) Subject to subsection (3), Community origin goods exported from Barbados to another Member State for repair, renovation or improvement shall, on the return of the goods to Barbados, be treated as Community origin goods.
- (3) Subsection (2) applies only where the goods are returned directly to Barbados and the value of materials imported from a state other than a Member State or of undetermined origin and used in the process of repair, renovation or

improvement does not exceed, in the case of goods undergoing the process of repair, renovation or improvement in

- (a) a More Developed Country, 65 per cent of the cost of repair, renovation or improvement;
- (b) a Less Developed Country, 80 per cent of the cost of repair, renovation or improvement.

(4) Where an importer fails to furnish proof, to the satisfaction of the Comptroller, that goods are of Community origin, the determination of whether the goods are of Community origin may be made by the Comptroller without regard to any proof of statements made by the importer.

(5) The Comptroller shall, where he makes a determination under subsection (4), immediately inform in writing the competent authority which shall promptly inform the Council for Trade and Economic Development of any trading arrangements concluded and the Council for Trade and Economic Development may recommend to the Member States concerned, the adoption of alternative trading arrangements.

(6) Where a person furnishes or causes to be furnished any document that is untrue in a material particular in support of a claim in Barbados that goods are of Community origin and therefore eligible for preferential treatment the person is liable to pay an administrative penalty not exceeding \$10 000 and the goods are liable to forfeiture.

Import duty on Community origin goods

77.(1) Subject to subsection (2), customs duty otherwise imposed on goods of any description shall not apply to goods produced in a Member State.

(2) Subsection (1) shall not

- (a) prohibit the imposition of non-discriminatory internal charges of any type on any goods, including goods produced in a Member State; or

(b) apply to fees and similar charges commensurate with the cost of services rendered in relation to any goods including goods produced in a Member State.

(3) Where the Minister is satisfied that, pursuant to the Revised Treaty, a Member State has suspended the operation of the preferential treatment of Community origin goods in respect of any class of goods exported from Barbados to that Member State, the Minister may issue a notice in the *Official Gazette* to that effect and thereafter, notwithstanding subsection (1), any goods of that class exported from that Member State, where entered for use in Barbados, shall be liable to import duty.

Export duty on Community origin goods

78.(1) Export duty shall not apply to Community origin goods traded within the Community.

(2) Export duty applicable to goods exported to states other than Member States may be applied where goods are exported through a Member State, destined for export to a state other than a Member State.

(3) The Comptroller shall take any necessary action to prevent the evasion of the payment of export duty.

Drawback in relation to Community origin goods

79.(1) Notwithstanding section 78, Community origin goods that benefit from drawback where exported from another Member State may, upon importation into Barbados, be treated as if the goods are not of Community origin for the purposes of this Part.

(2) Where, upon importation, goods are treated as Community origin goods and, after importation, drawback is allowed, then notwithstanding section 76, the full amount of duty that would have been chargeable if the goods had not been treated as Community origin goods becomes payable upon demand by the Comptroller.

Quantitative restrictions

80.(1) Nothing in Part XXII authorizes the application of any quantitative restriction on

- (a) the importation of goods that are of Community origin; or
- (b) exports to a Member State.

(2) Nothing in subsection (1) prohibits the taking of measures necessary to prevent evasion of any prohibition or restriction under Part XXII.

Common External Tariff

81.(1) The rules of origin set out in the Common External Tariff shall apply to goods that do not qualify for Community origin treatment.

(2) The Minister may, in keeping with the relevant determination of the Council for Trade and Economic Development, amend the Common External Tariff with respect to any item.

(3) The Comptroller shall be the competent authority for the administration of the Common External Tariff.

Goods to be described according to tariff classification

82. All imported and exported goods shall be classified and described to a customs officer in accordance with such tariff classifications as may be prescribed.

PART XIII

CUSTOMS DUTIES

Imposition of customs duties on imported goods

83. There shall be raised, levied, collected and paid to the Government, upon all goods imported into Barbados or taken out of bond for consumption in Barbados, the several rates of customs duties set out opposite to each item respectively in the column of the tariff applicable to the items in Part I of the *Customs Tariff*, subject to such conditions as may be prescribed.

Exemption from customs duties on imported goods

84. The articles enumerated in Part II of the *Customs Tariff* may be imported without payment of customs duties, subject to such conditions as may be prescribed.

Imposition of customs duties on exported goods

85. There may be raised, levied, collected and paid to the Government, upon all goods exported from Barbados, such export duties of customs as may be levied in the manner provided by section 86.

Minister may amend Parts I and II of the Customs Tariff etc.

- 86.(1)** The Minister may by order subject to negative resolution
- (a) amend Part I or Part II of the *Customs Tariff*;
 - (b) impose export duties of customs or revoke, reduce or increase export duties of customs;
 - (c) exempt any article from export duties of customs.

(2) An order made under subsection (1) may, in addition to the matters set out in that subsection, specify the terms or conditions subject to which any article to which the order relates may be imported or exported

(a) free of customs duties; or

(b) at the rates of customs duties provided in the order,

and different terms and conditions may be specified in relation to the same article where imported or exported, for different purposes.

(3) Where during any period specified in subsection (6), a person, in compliance with the terms or conditions, if any, specified in an order made under subsection (1), enters goods in respect of which the customs duty is

(a) revoked by the order, the person shall deposit with the customs officer a sum equal to the duty payable prior to the date of publication of the order; or

(b) reduced by the order, the person shall

(i) pay to the customs officer the reduced duty; and

(ii) deposit with the customs officer, the difference between the duty payable prior to the date of publication of the order and the reduced duty.

(4) A sum deposited in consequence of an amendment made by an order made under subsection (1) together with the customs duty, if any, paid shall be

(a) equal to the customs duty that would be payable if the order is annulled;

(b) brought to account by the customs officer as duties of customs;

(c) returned to the person who deposited it, where the period for annulment of the order expires and the order is not annulled.

- (5) Where
- (a) the customs duty paid in consequence of an amendment made by an order made under subsection (1) exceeds the customs duty that would be payable if the order is annulled; and
 - (b) the order is annulled,

the excess of the customs duty paid shall be repaid to the person by whom it was paid.

- (6) The period referred to in subsection (3) is the period after the date of publication of the order and prior to
- (a) the date of expiration of the period in which the order may be annulled; or
 - (b) the date of annulment of the order, where the order is annulled.

Exemption for de minimis goods

87. Goods having a customs value equal to or less than such amount as may be prescribed shall be exempt from the payment of duties and taxes under this Act.

Determination of amount of duty payable

- 88.(1)** The amount of duty payable on goods shall be
- (a) determined in accordance with this Act; and
 - (b) calculated at the rate in effect on the date of submission of the customs declaration in respect of the goods..
- (2) Subject to this Act, duties shall be imposed on goods, and customs measures applied, in accordance with the results of an examination of the goods.
- (3) Notwithstanding subsection (2),
- (a) the Comptroller may accept a statement by a declarant as to the amount of duty payable; and

- (b) where the Comptroller does not examine the goods, duties shall be imposed on the goods, and customs measures applied, in accordance with the information provided on the declaration.

Date for payment of duty

89.(1) Unless otherwise provided in this Act, the date for the payment of duty assessed in accordance with this Act is 5 working days after the date on which the written notice of the assessment or re-assessment is given by the Comptroller, unless otherwise determined by the Comptroller.

- (2) Where all or part of any duty remains unpaid after the due date, interest shall be imposed at such rate as may be prescribed.

Customs debt at importation

90.(1) Unless otherwise provided in this Act, a customs debt at importation shall be incurred where goods liable to import duties are placed under a customs procedure.

- (2) The customs debt shall be incurred on acceptance of the customs declaration, and the importer of the goods shall be the debtor.

Customs debt incurred at importation through non-compliance

91.(1) Where goods are liable to import duties, a customs debt at importation shall be incurred through non-compliance with

- (a) any obligation under this Act or another enactment concerning
- (i) the admission of the goods, their removal from customs control, or the movement, processing, storage, temporary admission or disposal of the goods; or
 - (ii) the end-use of the goods in Barbados; or
- (b) a condition governing the placement of the goods under a customs procedure or the granting, by virtue of the end-use of the goods, of an exemption from duty or a reduced rate of duty.

- (2) The time at which the customs debt is incurred shall be the moment when
- (a) the obligation, the non-fulfillment of which gives rise to the customs debt, is not met or ceases to be met; or
 - (b) after a customs declaration is accepted for the placement of the goods under a customs procedure, it is established that a condition governing the placement of the goods under the procedure or the granting of an exemption from duty or a reduced rate of duty by virtue of the end-use of the goods, was not in fact fulfilled.

Customs debt at export

92.(1) A customs debt at exportation shall be incurred where goods liable to export duties are placed under the export procedure or the outward processing procedure.

- (2) The customs debt shall be incurred on acceptance of the customs declaration, and the exporter of the goods shall be the debtor.

Customs debt at export incurred through non-compliance

93.(1) Where goods are liable to export duties, a customs debt at exportation shall be incurred through non-compliance with

- (a) one of the obligations prescribed by or under this Act for the exit of the goods; or
 - (b) any condition under which the goods were allowed to leave Barbados with total or partial exemption from export duties.
- (2) The time at which the customs debt is incurred shall be
- (a) the moment at which the goods actually leave Barbados without a customs declaration;
 - (b) the moment at which the goods reach a destination other than that for which they were allowed to leave Barbados with total or partial exemption from export duties; or

- (c) where the Comptroller is unable to determine the moment referred in paragraph (b), the expiration of the time specified for the production of evidence that the conditions entitling the goods to such exemption have been fulfilled.
- (3) In the case referred to in subsection (1)(a), the debtor shall be any of the following:
 - (a) any person who was required to fulfil the obligation concerned;
 - (b) any person who was aware or should reasonably have been aware that the obligation concerned was not fulfilled and who acted on behalf of the person who was obligated to fulfil the obligation;
 - (c) any person who participated in the act which led to the non-fulfilment of the obligation and who was aware or should reasonably have been aware that a customs declaration had not been lodged but should have been lodged.
- (4) In the case referred to in subsection (1)(b), the debtor shall be any person who must satisfy the conditions which have allowed the goods to leave Barbados with total or partial exemption from export duties.

General provisions on customs debt at importation or export

94.(1) Where

- (a) there are two or more importers or exporters, as the case may be, the customs debt is owed jointly and severally by all of the importers or exporters;
- (b) there is an agent, the person on whose behalf the customs declaration is made shall also be a debtor;
- (c) a customs declaration in respect of a procedure is drawn up on the basis of information which leads to all or part of the import duties or export duties not being collected, the person who provided the information required to draw up the declaration and who knew, or who ought

reasonably to have known, that such information was false shall also be a debtor.

- (2) The right to recover duty as a debt due is not affected by the fact that
 - (a) the goods have ceased to be subject to customs control;
 - (b) a bond or other security has been given for the payment of the duty; or
 - (c) a final assessment of duty has not been made under this Act.
- (3) The obligation to pay and the right to receive and recover duty under this Act shall be fulfilled before the commencement of an appeal or other legal proceedings.
- (4) Except in such circumstances as may be prescribed, imported goods or exported goods shall not be delivered or removed on importation or exportation, as the case may be, unless the importer or exporter has paid the duties in respect of the goods.
- (5) The Comptroller may detain subsequent shipments of imported goods of an importer who has not paid duty in respect of a previous shipment.
- (6) All duties, taxes, fees and charges incurred shall be subject to the criteria for the determination, assessment, re-assessment, amendment, payment and collection prescribed by or under this Act.

Notification of a customs debt

- 95.(1)** A debtor shall be notified of his customs debt.
- (2) Where the amount of import or export duty payable is equal to the amount entered in the customs declaration, release of the goods by the Comptroller shall be equivalent to notifying the debtor of the customs debt.
 - (3) Where subsection (2) does not apply, the Comptroller shall notify the debtor of the customs debt where the Comptroller has assessed the duty payable on the goods.

PART XIV

REFUNDS, DRAWBACK AND ABATEMENT OF DUTY

Refunds

96.(1) Where an amount is paid as duty and such amount is found to be in excess of the duty due and payable, the Comptroller shall refund the excess, unless all or a portion of the refund is set off against other amounts owed to the Government.

(2) Where an appeal or any other proceeding results in a re-assessment in an amount less than the amount already paid in duties or given as security for payment, the excess duties paid shall be refunded to the appellant or the appellant shall be released from any security given for payment of the duties in excess of the amount properly payable.

(3) Where a refund referred to in subsection (1) or (2) is not paid within 6 months, interest shall apply at such rate as may be prescribed.

(4) Any obligation on the part of the Comptroller to refund duties under subsection (1) shall be suspended pending the outcome of any appeal filed by the Comptroller under this Act or any other enactment against the decision requiring that the duty be refunded.

Claims for drawback

97.(1) A claim for drawback shall

- (a) be made in such form and manner as the Comptroller determines; and
- (b) contain such particulars as the Comptroller directs.

(2) No drawback is payable unless

- (a) the Comptroller is satisfied that all duty due on the goods in respect of which the claim is made has been paid and not otherwise drawn back;

- (b) the person making the claim provides such information and produces such books of account and other documents relating to the goods, as the Comptroller requires; and
 - (c) the goods that are the subject of the claim have been exported.
- (3) The Minister may by order prescribe any class or description of goods in respect of which no drawback may be claimed.

Drawback of duty on certain goods

98.(1) Subject to this subsection (2) to (4), a drawback of duty may be allowed on goods at such rate, and subject to such conditions, as may be prescribed.

- (2) Where the Comptroller is satisfied that goods have been
 - (a) shipped for export;
 - (b) packed for export in a bulk cargo container in a customs controlled area and the container has been secured; or
 - (c) entered into an export warehouse and will be exported,

the Comptroller may, for the purposes of this section, treat the goods as having been exported.

- (3) Where a drawback has been allowed on goods treated as exported, the goods shall not, without the permission of the Comptroller, be unshipped, relanded or unpacked before export.
- (4) Where a drawback has been allowed or paid on goods treated as exported and the goods are unshipped, relanded or unpacked before export, the amount of drawback allowed in respect of the goods shall, immediately on their unshipment, relanding or unpacking, constitute a debt due to the Government and the debt shall immediately be payable by the owner of the goods at the time of their unshipment, relanding or unpacking.

(5) Where under this section drawback is allowed to any person, the Comptroller may, in his discretion apply the whole or any part of the amount allowed towards the payment of any duty that is owed by that person.

(6) Except as the Minister may by order prescribe, this section does not apply to duties imposed under the *Customs Duties (Dumping and Subsidies) Act*, Cap. 67.

Extent of drawback

99.(1) Subject to this section, where goods are entered for

(a) shipment for use as stores; or

(b) warehousing for subsequent exportation or shipment for use as stores,

drawback may be claimed in respect of any duty paid at the time of the original importation of the goods into Barbados.

(2) Unless otherwise prescribed, no drawback may be claimed in respect of goods

(a) of a customs value at the time of original importation of less than \$200 or such other amount as may be prescribed;

(b) that were imported into Barbados more than 12 months before the date of the claim for drawback;

(c) not in the packages in which they were originally imported into Barbados, or in the case of bulk goods, where the bulk has been broken; or

(d) that have been tampered with or used.

(3) Where imported goods are

(a) shipped in error;

(b) defective; or

(c) unfit or unsafe for use,

drawback may be claimed if the goods are exported or destroyed under customs supervision.

Drawback on goods destroyed or damaged after shipment

100. Where the Comptroller is satisfied that after being shipped for exportation or for use as stores, goods have been

- (a) destroyed by accident on board the exporting vessel or aircraft, drawback on the goods is payable as if they had been exported to their destination;
- (b) materially damaged by accident on board the exporting vessel or aircraft, the goods may, with the consent of the Comptroller and in accordance with such conditions and restrictions as the Comptroller may impose, be brought back into Barbados and reloaded or unloaded, and where re-entered for domestic use, are chargeable with the duty normally chargeable on the importation of the damaged goods.

Penalty in relation to drawback

101.(1) A person who

- (a) obtains; or
- (b) assists another person to obtain,

a drawback for which there is no lawful entitlement is liable to pay an administrative penalty not exceeding \$10 000 or 3 times the value of the goods, whichever is greater, and the goods are liable to forfeiture.

(2) A person who, with intent to defraud

- (a) obtains; or
- (b) assists another person to obtain,

a drawback for which there is no lawful entitlement is liable to pay an administrative penalty not exceeding \$20 000 or 3 times the value of the goods, whichever is greater, and the goods are liable to forfeiture.

PART XV

TEMPORARY IMPORTATIONS

Relief from duty on temporary importations

102.((1) Goods may be entered into Barbados without payment of customs duty where

- (a) the Comptroller, in accordance with such regulations as may be prescribed, permits the importation of the goods for temporary use;
 - (b) goods that are permitted to be warehoused on importation into Barbados are warehoused;
 - (c) the Comptroller permits goods entered for transshipment or transit to be removed for that purpose; or
 - (d) goods previously entered for domestic use in Barbados are exported to another country and then are re-imported into Barbados and it is shown to the satisfaction of the Comptroller that
 - (i) no duty was chargeable on those goods on any previous importation into Barbados, or if any duty was chargeable, it has been paid;
 - (ii) no drawback has been paid or duty refunded on the exportation of the goods or any drawback paid or duty refunded has been repaid; and
 - (e) the goods have not undergone any process outside Barbados since their exportation.
- (2) Where goods are exported for repairs and are re-imported, upon re-importation duty is payable only on the value of the repairs made abroad.
- (3) Subject to such conditions as the Comptroller may impose, duty is not payable on goods temporarily imported in accordance with any treaty, agreement

or arrangement concluded between the Government and the government of another country.

(4) On receipt of any required security the Comptroller may release goods that are subject to this section from customs control without payment of customs duty.

(5) Subject to such regulations as may be prescribed, the person giving security under subsection (4) shall be released from the conditions of the security if within 3 months from the date of the entry of the goods, or within such longer period as the Comptroller may allow in any particular case, the Comptroller is satisfied that the goods have been

- (a) exported;
- (b) packed for export into a bulk cargo container in a customs controlled area and the container is secured to the satisfaction of the Comptroller;
- (c) destroyed; or
- (d) dealt with in such manner as the Comptroller may allow.

(6) Where, at the expiration of the period prescribed by subsection (5), the goods have not been dealt with in accordance with that subsection

- (a) any sum secured by way of deposit of money shall be retained by the Government;
- (b) any sum otherwise secured shall be paid to the Government by the importer within 2 weeks after the expiration of that period or such longer period as the Comptroller allows; and
- (c) on such payment having been made, the security shall be released.

(7) Where under this Act goods are subject to a condition or restriction allowing them to be entered without payment of duty, and the condition or restriction is contravened, the duty becomes payable by the person who, but for that exemption, would have had to pay the duty, and the goods in respect of which the exemption was granted become liable to forfeiture.

(8) Goods allowed entry without payment of duty under this Act shall, upon a demand made by a customs officer, be produced or otherwise accounted for to the officer.

(9) A person who fails to produce or account for goods referred to in subsection (8) is liable to pay an administrative penalty not exceeding \$10 000 or 3 times the value of the goods, whichever is greater.

(10) Where goods referred to in subsection (8) are subsequently found, they are liable to forfeiture.

PART XVI

AUTHORIZED ECONOMIC OPERATORS AND TRUSTED TRADERS

Status of authorized economic operator or trusted trader

103.(1) A person ordinarily resident in Barbados may apply to the Comptroller, in such form as the Comptroller determines, for conferment of the status of authorized economic operator or trusted trader, and the Comptroller may grant the application where the Comptroller is satisfied that the applicant meets the requirements set out in section 104.

(2) The Comptroller shall consult with such other authorities the Comptroller considers appropriate before granting a person the status of authorized economic operator or trusted trader.

(3) An authorized economic operator and trusted trader shall be entitled to such benefits and be subject to such responsibilities as are prescribed in regulations.

Requirements for status of authorized economic operator or trusted trader

104.(1) The requirements for the conferment of the status of authorized economic operator or trusted trader are that the person

- (a) has a proven record of compliance with this Act or any laws on taxation;
- (b) has a satisfactory system of managing commercial records and, where appropriate, transport records, that allows for appropriate customs control;
- (c) has proven financial solvency;
- (d) has the requisite standard of competence and professional qualifications directly related to the activity concerned;
- (e) has appropriate security and safety standards; and
- (f) satisfies such other criteria as may be prescribed.

(2) The criteria in subsection (1)(e) shall be considered as fulfilled by an applicant for the status of authorized economic operator where the applicant demonstrates that he maintains appropriate measures to ensure the safety and security of the international supply chain including in the areas of physical security and access controls, logistical processes and the handling of specific types of goods, personnel and business partners.

(3) An authorized economic operator or a trusted trader shall inform the Comptroller of any occurrence arising after the grant of the status that is likely to affect the maintenance of his status.

Cancellation of authorization

105.(1) The Comptroller shall monitor every authorized economic operator or trusted trader to ensure that he continues to satisfy the criteria specified in section 104.

- (2) Where an authorized economic operator or a trusted trader ceases to meet the criteria, the Comptroller may suspend or revoke his status.
- (3) The Comptroller shall, prior to issuing a determination to suspend or revoke the status of a person, give the person 10 days' notice in writing of the intention to suspend or revoke the status and the reasons therefor and an opportunity to be heard.
- (4) Where the Comptroller suspends or revokes the status of a person, the Comptroller shall give the person notice in writing of the suspension or revocation and the reasons therefor.

Mutual recognition of authorized economic operator

106. The Comptroller may grant the benefits deriving from the status of authorized economic operator to persons established in

- (a) the Member States; and
- (b) countries or territories outside the Community on the basis of reciprocity, in accordance with any applicable agreements or in such circumstances as may be prescribed.

PART XVII

CUSTOMS BROKERS AND AGENTS

Authority to be produced

107.(1) Where a person makes an application to transact business on behalf of any other person, the customs officer may require the applicant to produce an authority, in writing, from the person on whose behalf the application is made, and in default of the production of such authority, the customs officer may refuse to transact business on behalf of the other person with the purported agent.

(2) A document required by this Act to be signed by a particular person, where signed by a person authorized on behalf of the person required to sign the same, shall be deemed for all purposes to be signed by the person required to sign the same.

(3) The Comptroller may, in his discretion, refuse to allow an application referred to in subsection (1), or revoke the acceptance of such an application.

Entities other than individuals

108.(1) A document produced under this Act by an entity other than an individual shall be signed by an individual authorized to do so by the governing body of that entity.

(2) Where the entity has elected or appointed officers, the president, vice president, secretary or treasurer shall be deemed to be authorized for the purposes of subsection (1) unless there is evidence to the contrary.

Gazetting of names of customs brokers

109.(1) The Comptroller shall cause to be published annually in the *Official Gazette* an alphabetical list of persons who are licensed customs brokers.

(2) For the purposes of subsection (1), “customs broker” means a person who is licensed to transact business with the Customs Department, including the submission of entries on behalf of other persons.

Transacting business on behalf of another without authority

110. A person who

- (a) transacts business
 - (i) as an agent without the authority of the principal; or
 - (ii) as a customs broker without holding a valid licence issued by the Comptroller; or

- (b) assists another person in the transaction of business as an agent pursuant to paragraph (a)(i) or as a customs broker pursuant to paragraph (a)(ii) in the transaction of business

is liable to pay an administrative penalty not exceeding \$5 000 or 3 times the value of any goods involved, whichever is greater.

Vessel agents

111. Where

- (a) under this Act a special procedure is prescribed with regard to a vessel; and

(b) the owner of the vessel is not resident or represented in Barbados, the commander of the vessel shall appoint an agent in Barbados to perform any act to be performed by the owner of the vessel under this Act.

PART XVIII

ADVANCE RULINGS

Issue and scope of advance rulings

112.(1) The Comptroller may, where a person so requests, issue a written advance ruling, prior to the importation of a good, on the basis of the facts and circumstances presented in respect of the good.

(2) An advance ruling shall set out the treatment that the good will receive upon importation with regard to

- (a) the tariff classification of the good;
- (b) the origin of the good; and
- (c) any other matter as may be prescribed.

- (3) The Comptroller may decline to issue an advance ruling where the facts and circumstances forming the basis of the advance ruling are the subject of a post-clearance audit or an administrative, judicial or quasi-judicial review or appeal.
- (4) Where the Comptroller declines to issue a ruling, the Comptroller shall notify in writing the person who requested the ruling of his decision.

Procedure for advance rulings

113.(1) In determining whether to issue, or in issuing an advance ruling, the Comptroller

- (a) shall take into account the facts and circumstances provided by the person requesting the ruling in respect of the good;
 - (b) may require from the person, additional information or a sample of the good;
 - (c) shall issue the ruling as expeditiously as possible, and in no case later than 120 days after obtaining all necessary information from the person; and
 - (d) shall provide the person with the rationale and legal basis for the ruling.
- (2) The Comptroller shall
- (a) in issuing advance rulings, provide the same treatment, including the same interpretation and application of any relevant provisions, where the facts and circumstances are identical in all material respects; and
 - (b) make available to the public any information on advance rulings that may be significant for the purpose of consistent interpretation, application or treatment of persons, having regard to the need to protect commercially confidential information.
- (3) An advance ruling shall take effect on the date that it is issued or on such later date as may be specified in the ruling and shall be valid for one year.

Modification or revocation of advance rulings

114.(1) The Comptroller may modify or revoke an advance ruling where

- (a) there is a change in the law, facts or circumstances on which the ruling was based;
- (b) the ruling was based on inaccurate or false information or on an error of fact; or
- (c) it is necessary to do so to conform with a judicial decision.

(2) A modification or revocation of an advance ruling shall take effect on the date on which the modification or revocation is issued or, on such later date as may be specified in the ruling, and shall not be applied to the importation of a good that occurred prior to that date, unless the person to whom the ruling was issued

- (a) misrepresented or omitted facts or circumstances material to the issuance of the ruling; or
- (b) failed to act in accordance with the terms and conditions of the ruling.

(3) Where the Comptroller determines that an advance ruling was based on incorrect information but the person to whom the ruling was issued demonstrates that he used reasonable care and acted in good faith in presenting the facts and circumstances on which the ruling was based, the person shall not be liable to pay an administrative penalty.

(4) A person to whom an advance ruling is issued who misrepresents or omits facts or circumstances material to the issuance of the ruling or fails to act in accordance with the terms and conditions of the ruling is liable to pay an administrative penalty not exceeding \$10 000.

PART XIX

EXPORT PROCESSING

Persons departing from Barbados to depart from a customs controlled area

115.(1) Every person shall depart Barbados from a port unless authorized otherwise by a customs officer.

(2) Every person preparing to board a vessel or an aircraft for departure from Barbados shall comply with every customs direction given with respect to embarkation and any accompanying baggage, which shall upon request be made available to a customs officer for examination.

(3) Any person who contravenes this section is guilty of an offence and is liable on summary conviction to a fine of \$100 000 or to imprisonment for 2 years or to both.

Certificate of clearance

116.(1) The commander of a vessel or an aircraft about to depart Barbados shall

- (a) submit to the customs officer within such time as may be prescribed, an outward report in such form as the Comptroller determines and containing such particulars verified by declarations as may be prescribed, and accompanied by such supporting documents as the customs officer may require;
- (b) answer any questions asked and produce any document requested by a customs officer relating to the vessel or aircraft and its passengers, crew, cargo, stores and intended voyage or flight;
- (c) submit to the customs officer an account of the cargo and ships' stores taken on or remaining on board the vessel or aircraft in Barbados; and

- (d) comply with all requirements of this or any other Act concerning the vessel or aircraft and its passengers, crew, cargo, stores and intended voyage or flight.
- (2) Where clearance is sought for a vessel or an aircraft that
 - (a) is in ballast;
 - (b) has on board only stores, passengers' baggage or empty containers upon which no freight or profit is earned the customs officer granting clearance shall clear the vessel or aircraft as in ballast.
- (3) A commander of a vessel or an aircraft or his agent who
 - (a) fails to comply with subsection (1)(a);
 - (b) refuses to answer any question put to him by the customs officer pursuant to subsection (1)(b) or gives a false answer to a question; or
 - (c) fails to produce any documents required by the customs officer; or
 - (d) submits an untrue, inaccurate or incomplete document,is liable to pay an administrative penalty not exceeding \$10 000.

Vessel or aircraft not to depart without clearance

117.(1) No vessel or aircraft shall depart Barbados unless a customs officer has issued a certificate of clearance to the commander of the vessel or aircraft.

(2) A commander of a vessel or an aircraft who departs Barbados without a certificate of clearance is guilty of an offence and is liable on summary conviction to a fine of \$100 000 or to imprisonment for 2 years or to both; and the vessel or aircraft may be detained and seized.

Production of certificate of clearance

118. The commander of a vessel or an aircraft or his agent shall where requested by a customs officer produce the certificate of clearance for examination and answer any question posed by a customs officer.

Power to refuse or revoke clearance

119. Where a customs officer has reasonable grounds to suspect a contravention of this Act, the officer may refuse to issue, or may revoke a clearance certificate by giving written or oral notice to the commander of a vessel or an aircraft.

Goods for export subject to customs control

120.(1) Goods to be exported are subject to customs control

- (a) where the goods are in a package to which a customs seal has been applied, from the time when a customs seal is first applied to the package until the exportation of the goods to a place outside Barbados whether or not any other paragraph of this subsection applies to the goods;
- (b) where the goods are to be exported under drawback, from the time of the claim for drawback or the time the goods are brought to a customs controlled area for exportation, if earlier, until the exportation of the goods to a place outside Barbados; and
- (c) where the goods are to be exported otherwise than under drawback, from the time the goods are brought to a customs controlled area for exportation, whether or not the goods are later transported from that area to any other location; and where the goods are transported to another location, during the transportation, until their exportation to a place outside Barbados.

(2) For the purposes of subsection (1), goods that are removed from one customs controlled area to another customs controlled area are not removed for domestic use.

PART XX

POST-CLEARANCE COMPLIANCE AND CONTROLS

Post-release controls

121.(1) Notwithstanding section 182, a customs officer may, after releasing goods, and in order to ascertain the accuracy of the particulars contained in a customs declaration, inspect any documents and information relating to operations in respect of the goods or to previous or subsequent commercial operations involving those goods.

(2) Inspections may be carried out at the premises of

- (a) the holder of the goods or his agent;
- (b) any other person directly or indirectly involved in the operations in a business capacity; or
- (c) any other person in possession of relevant documents and information for business purposes.

Record keeping

122.(1) Subject to this Act, any person who imports goods or exports goods from Barbados or otherwise conducts business under this Act shall maintain records and shall render such records for examination and inspection by the Comptroller upon request.

(2) Section 177 shall apply in relation to the production and examination of records maintained pursuant to subsection (1).

PART XXI

POSTAL AND COURIER PROCESSING

Application of Act to goods imported and exported by post and courier

123.(1) This Act applies to the importation and exportation of goods by post and courier.

(2) Where goods imported by post or courier do not correspond with any customs declaration of the contents made in respect of them, the goods are liable to forfeiture.

Time of importation and exportation of goods by post or courier

124.(1) The time of importation of goods by post or courier shall be deemed to be where the goods are brought

- (a) by sea, the time when the vessel carrying the goods comes within the territorial waters of Barbados; and
- (b) by air, the time when the aircraft carrying the goods arrives in Barbados.

(2) The time of exportation of goods by post or courier shall be deemed to be the time when the goods are put on board the vessel or aircraft with the intention that they be exported in the vessel or aircraft at the time of leaving Barbados.

Production of postal packet declaration

125.(1) Any form of label affixed to a postal packet completed by the sender in respect of the goods contained therein, giving the description and value of the goods shall be deemed to be a declaration of its contents for the purposes of this Act.

(2) The Comptroller may, for the purposes of examination and assessment of duty on goods imported or exported by post or courier, require any officer

designated by the courier service provider or the Postmaster General, as the case may be, to verify the label affixed to a postal packet,

- (a) at the port or place of arrival in Barbados; or
 - (b) at an examination station or such other port or place in Barbados, as the Comptroller directs.
- (3) For the purposes of subsection (2), the officer so designated
- (a) shall be deemed to be the agent of the importer or the exporter of the goods; and
 - (b) is authorized and empowered to open the postal packet for examination and assessment of duty.

Declaration respecting postal packets

126. Where a customs officer is of the opinion that the goods contained in a postal packet

- (a) are imported for commercial or trade purposes; or
- (b) are of a value that exceeds such value as may be prescribed,

the officer shall require the owner of the goods or his agent to complete a customs declaration in respect of the goods.

Goods contained in postal packet contrary to law

127.(1) An officer of the post office may detain any incoming postal packet which he suspects of containing any

- (a) letter;
- (b) printed matter;
- (c) document; or
- (d) other thing,

the carriage of which by post or courier is prohibited or restricted by law.

- (2) Without prejudice to the exercise of any powers that an officer of the post office may exercise under any other enactment, the officer may deliver a postal packet referred to in subsection (1) to a customs officer who may open and examine the packet in the presence of the person to whom it is addressed.
- (3) Notwithstanding subsection (2), a postal packet referred to in that subsection may be opened in the absence of the person to whom it is addressed, where, after 14 days' notice in writing from the customs officer, or such shorter time as the Comptroller determines, the person fails to attend.
- (4) Where a customs officer finds in a postal packet any
- (a) letter;
 - (b) printed matter;
 - (c) document; or
 - (d) other thing,

conveyed by post or imported contrary to any lawful prohibition or restriction, he may detain the packet and deal with the packet and its contents as goods imported contrary to this Act but where he finds no such goods, in the letters, printed matter, document or thing, he shall deliver the packet to the person to whom it is addressed or to the agent of the person, upon that person paying the postage or other sum, if any, chargeable thereon, or where he is absent, forward the packet by post to the person to whom it is to be delivered.

Unclaimed postal packets

- 128.(1)** Where
- (a) the addressee of any postal packet addressed to any place in Barbados neglects to claim the postal packet; and
 - (b) the postal packet is not delivered to an agent of the addressee or returned to the sender within such time as may be specified in any law governing the vessel or aircraft of postal packets by post,

the Postmaster General shall send the postal packet to the Comptroller for deposit in the Government warehouse.

(2) Where the addressee of a postal packet refuses to pay the duties payable under this Act in respect of the goods contained in the postal packet, the Postmaster General shall send the postal packet to the Comptroller for deposit in the Government warehouse.

(3) Where a postal packet is deposited in the Government warehouse, goods contained in the postal packet may be sold or otherwise dealt with, and any proceeds applied, as if they were goods which might be sold or otherwise dealt with under this Act.

Expedited services in respect of couriers

129.(1) The Comptroller shall

- (a) establish a program to expedite the process for declaration and clearance of goods by such couriers as may be approved; and
- (b) include in the program provision for
 - (i) documentation of imported goods on a consolidated cargo manifest to be presented prior to arrival of a shipment; and
 - (ii) exemption from the requirement to pay or secure duties and taxes, where appropriate.

(2) In this section “consolidated cargo manifest” means a combined declaration and clearance document that lists all the shipments for which an expedited declaration and expedited clearance is being requested.

PART XXII

PROHIBITED AND RESTRICTED GOODS

Prohibitions in respect of the protection of mark and indications of origin

130.(1) A non-community good, whether natural or manufactured, that bears on itself or its packing, manufacture or trademark, a name, a sign or any indication that is likely to make a person believe that it is of Community origin shall be prohibited from importation, warehousing and transit.

(2) A non-community good that does not comply with subsection (1) shall be prohibited from importation, warehousing and transit.

(3) In this section “packing” includes cases, packages, envelopes, bands or labels.

Prohibitions in respect of the protection of intellectual property

131. Goods presented under a counterfeit trademark, including when placed

- (a) under a suspensive regime;
- (b) in a free zone or any other special regime; or
- (c) in depots or customs clearance areas

shall not be imported, exported or re-exported.

Prohibited and restricted imports

132.(1) The Minister may by order subject to negative resolution, after consultation with the Comptroller, prohibit or restrict the importation of goods into Barbados.

- (2) A prohibition or restriction imposed by an order made under subsection (1) may
- (a) be general or limited or absolute or conditional;
 - (b) be limited to the importation of goods from a specified place or by or from a specified person or class of persons.

Prohibited and restricted exports

133.(1) The Minister may by order subject to negative resolution, after consultation with the Comptroller, prohibit or restrict the export of goods from Barbados.

- (2) A prohibition or restriction imposed by an order made under subsection (1) may
- (a) be general or limited or absolute or conditional;
 - (b) be limited to the export of goods from a specified place or by or from a specified person or class of persons.
- (3) Unless otherwise provided, an order made under subsection (1) applies to the shipment of goods for use as stores by vessels and aircraft.

Production of licence for restricted goods

134.(1) Where, under this Act or any other enactment the importation or exportation of goods of any class or description is restricted, unless imported or exported under the authority of a licence, the Comptroller may refuse to enter those goods or to clear them for export unless the importer or exporter produces the licence in respect of the goods.

- (2) A person who
- (a) imports or exports goods referred to in subsection (1) without the required licence; or
 - (b) fails to comply with a term or condition of the licence,

is liable to pay an administrative penalty not exceeding \$10 000 and the goods are liable to forfeiture.

Prohibition or restriction of goods

135. The Minister may by order subject to negative resolution prohibit or restrict

- (a) the exportation of any class or description of goods; and
- (b) the importation or exportation of any class or description of goods to or from any specified place in Barbados.

Goods imported in transit, in transshipment or as stores

136.(1) Subject to subsection (2), goods imported in transit, in transshipment or as stores shall not be treated as prohibited or restricted goods.

(2) Subsection (1) does not apply where the goods referred to in that subsection are expressly prohibited or restricted from being imported in transit, in transshipment or as stores under this Act or any other enactment prohibiting or restricting the importation or exportation of goods.

(3) Goods imported in accordance with subsection (1) shall be exported within such time as the Comptroller determines.

Penalty for prohibited goods

137.(1) A person who

- (a) imports into Barbados or unloads or lands in Barbados goods, the importation of which is prohibited under this Part;
- (b) exports or transports with intent to export goods from Barbados, the exportation of which is prohibited under this Part;
- (c) is knowingly concerned in any importation, exportation, transportation, unloading or landing of goods to which paragraph (a) or (b) applies;

- (d) without lawful justification or excuse, removes from a customs controlled area goods that are imported in contravention of this Part;
- (e) is knowingly concerned in or conspires in the removal of goods from a customs controlled area, the importation of which is prohibited under this Part,

is guilty of an offence and is liable on summary conviction to a fine of \$200 000 or to imprisonment for 2 years or to both.

(2) It is not a defence in a prosecution for an offence under subsection (1)(a), (b), (d) or (e) that the defendant had no knowledge or no reasonable cause to believe that the goods in respect of which the offence was committed were prohibited imports or prohibited exports.

Duty of oil, gas and petroleum product import and export licensees to keep records

138. A holder of a licence to import or export oil, gas or any other petroleum product shall keep the following records and, upon request of a customs officer, make these records available for examination:

- (a) the licence or permit number;
- (b) the total quantity of oil, gas or other petroleum product imported or exported;
- (c) the value or price of the oil, gas or other petroleum product imported or exported, expressed in Barbadian currency; and
- (d) the name of the domestic seller of the imported oil, gas or other petroleum product, or the name of the customer of the exported oil, gas or other petroleum product.

PART XXIII

DUTY FREE ZONES

Definition of duty free zone

139. For the purposes of this Act, “duty free zone” means any part of the customs territory of Barbados where any goods introduced are generally regarded, insofar as import duties and taxes are concerned, as being outside the territory.

Establishment of duty free zones

140.(1) The Minister may appoint any place as a duty free zone.

(2) The Comptroller shall determine the area of the zone referred to in subsection (1) and its access and exit points.

(3) A duty free zone shall be enclosed and the area and access and exit points of the zone shall be under customs supervision.

(4) Any person, goods or means of transport entering or exiting a duty free zone may be subjected to customs control.

(5) The Comptroller may prohibit any person who does not provide the necessary assurance of compliance with this Act from carrying on an activity in a duty free zone.

Activities in duty free zone

141.(1) No person shall conduct an activity in a duty free zone unless the Comptroller is satisfied that the premises on which the activity is to be conducted are fit for the purpose.

(2) The Comptroller may prohibit or restrict activities in a duty free zone having regard to the nature of goods in question and the requirements for supervision, security and safety.

(3) The Comptroller may prohibit a person from engaging in an activity in a duty free zone activity where the person does not satisfy any prescribed requirements.

Placement of goods under regime

142.(1) Except as otherwise provided in this Act, goods brought into a duty free zone may only be exported or re-exported.

(2) Non-Community goods admitted to a duty free zone may be placed in the inland procedures for clearance.

(3) Goods admitted to a duty free zone and subsequently exported are entitled to relief from duties.

Duty free stores

143.(1) Subject to this Act, the Comptroller may issue to any qualified person, a licence to operate any place as a duty free store for the sale of goods free of duties and taxes to

- (a) persons about to depart from Barbados; or
- (b) persons purchasing the goods with foreign currency,

and such licence may specify any restriction as to the classes of goods that may be received therein or the circumstances in which the goods may be received.

(2) A licence issued under subsection (1) may be amended, suspended, renewed, cancelled or reinstated in such circumstances as may be prescribed.

Procedures required for duty free goods

144.(1) Duty free goods subject to conditions and other goods such as domestic merchandise and merchandise previously entered or withdrawn for consumption and brought into a duty free store may be warehoused in a duty free store, provided that

- (a) the goods are physically segregated from one another;

- (b) the goods are identified or marked to enable the Comptroller to distinguish the duty free goods from other merchandise; or
 - (c) the owner has an electronic inventory system capable of immediately distinguishing the duty free goods from other merchandise.
 - (2) Duty free goods subject to conditions for exportation at airport or seaport exit points may be sold and delivered only to
 - (a) purchasers who display valid tickets or, in the case of chartered or for-hire flights that have not issued tickets, other proof of impending departure from Barbados; and
 - (b) crew members who have been engaged for a flight or voyage departing directly from Barbados with no intermediate stops in Barbados.
 - (3) Duty free store proprietors
 - (a) shall maintain, at the duty free store or at another location approved by the comptroller, a current inventory separately for each storage area, crib and sales area containing conditionally duty free goods by warehouse entry, or by unique identifier where permitted by the Comptroller;
 - (b) shall assure that the Comptroller has access to the records, and that the records are stored in such a way as to keep transactions of multiple facilities separated; and the inventory must be reconcilable with the accounting and inventory records; and
 - (c) are subject to any other record-keeping requirements in this Act.
 - (4) The proprietor or operator of a duty free store shall, where a customs officer so requests, afford the officer free access to the duty free store or any premises or place under his control that is attached to or forms part of the duty free store, and open any package or container of goods therein or remove any covering therefrom.

Liability of operator

145.(1) An operator of a duty free store is liable to pay any duties or taxes levied under this Act in respect of goods that have been received in the duty free store and to satisfy any other obligation under this Act in respect of the goods unless the operator proves that the goods

- (a) are still in the duty free store;
- (b) have been destroyed while in the duty free store;
- (c) have been taken as a sample or seized; or
- (d) have been cleared.

(2) The rates of duties or taxes payable shall be the rates applicable to the goods at the time they were received in the duty free store.

(3) No goods shall be removed from a duty free store by any person other than a customs officer or another person under any other enactment, unless the goods have been cleared by a customs officer or under any enactment.

Regulations on duty free zones

146. The Minister may make regulations to give effect to this Part.

PART XXIV

SPECIFIC POWERS AND OBLIGATIONS OF CUSTOMS OFFICERS

Patrol and surveillance

147.(1) Subject to subsection (2), a customs officer may, for the purposes of the detection of offences under this Act, at any time and in such manner as the officer considers appropriate, patrol and pass freely through any place in Barbados, whether or not the place is private property, and may remain in any such place for the purpose of carrying out investigations or surveillance.

(2) This section does not authorize the customs officer referred to in subsection (1) to enter a dwelling-house without first obtaining the permission of the occupant.

(3) An officer proceeding as authorized under subsection (1), shall not be liable to any criminal or civil proceeding for so doing.

Power to land or moor

148. A customs officer in command or in charge of any vessel or aircraft engaged in the prevention of smuggling, may anchor, moor or berth that vessel, land that aircraft or haul the vessel ashore at any place in Barbados, and the customs officer shall not be liable to any criminal or civil proceedings for so doing.

Power to board a vessel

149.(1) At any time while a vessel is within the territorial waters of Barbados, a customs officer may require that vessel to stop and may board it, and remain on board and search any part of it.

- (2) A customs officer on board any vessel referred to in subsection (1) may
- (a) cause goods to be marked before they are unloaded from that vessel;
 - (b) examine and take account of goods in the course of their being unloaded;
 - (c) lock up, seal, mark or otherwise secure goods or their containers carried in that vessel;
 - (d) break open an area or container that is locked and to which no keys are provided;
 - (e) require any document or book that should be on board that vessel to be produced to him for examination; and
 - (f) require answers to the officer's questions relating to the vessel, its cargo, stores, baggage, crew, passengers, voyage or flight.

- (3) Any person who
- (a) prevents a customs officer from performing any act;
 - (b) refuses to
 - (i) produce any documents; or
 - (ii) to answer any questions under that subsection

is guilty of an offence and is liable on summary conviction to a fine of \$100 000 or to imprisonment for 2 years or to both.

(4) Goods found concealed on board a vessel within the territorial waters of Barbados are liable to forfeiture.

(5) Where the commander of a vessel refuses to stop or permit a customs officer to board when required to do so pursuant to subsection (1), the commander or his agent is guilty of an offence and is liable on summary conviction to a fine of \$100 000 or to imprisonment for 3 years or to both.

(6) Where the crew of a vessel refuse to stop when required to do so pursuant to subsection (1), and a chase ensues and the identity of the commander of the vessel cannot be ascertained, every member of the crew of the vessel who is on board during the chase is guilty of an offence and is liable on summary conviction to a fine of \$200 000 or to imprisonment for 2 years or to both.

(7) Where the commander of a vessel or any crew member of that vessel moves or causes to be moved any vessel whilst the customs officer is on board, without the permission of the customs officer that person is guilty of an offence and is liable on summary conviction to a fine of \$100 000 or to imprisonment for 2 years or to both.

Power to station an officer on vessel or aircraft

150.(1) The Comptroller may station a customs officer on board a vessel or an aircraft at any time while it is in Barbados.

(2) The commander of a vessel or an aircraft on which a customs officer is stationed who neglects or refuses to provide

- (a) proper and sufficient food and water, together with reasonable accommodation for the officer; and
- (b) a means of safe access to and egress from the vessel or aircraft as required by the officer,

is guilty of an offence and is liable on summary conviction to a fine of \$100 000 or to imprisonment for 2 years or to both.

Power to access and search customs controlled area

151.(1) Without prejudice to any other power contained in this Act, a customs officer shall have a right of access to and a power to search any vessel, aircraft or vehicle in any part of a customs controlled area, and any goods found in the customs controlled area.

(2) The power of search referred to in subsection (1) includes the power to break into or open any locked building, vehicle, place or container; and such action by a customs officer shall not result in any prosecution or action at law for so doing.

Searching of vessel or aircraft

152.(1) A customs officer may search a vessel or an aircraft

- (a) that has arrived in Barbados;
- (b) that is departing Barbados for a place outside Barbados;
- (c) that is not a vessel or an aircraft to which paragraph (a) or (b) applies, if it is carrying any international cargo, while the vessel or aircraft remains within Barbados; or

- (d) that is not a vessel or an aircraft to which paragraph (a), (b) or (c) applies if it is within Barbados and that officer has reasonable cause to suspect
 - (i) is carrying dutiable uncustomed, prohibited, restricted or forfeited goods; or
 - (ii) has been, is being or is about to be involved in the commission of an offence under this Act.

(2) In pursuance of his duty under subsection (1), a customs officer may, using such force as is reasonable in the circumstances, enter every part of a vessel or an aircraft and open any package, locker or other place and examine all of the goods found in the vessel or aircraft.

(3) A person who prevents a customs officer from carrying out his duties under this section is guilty of an offence and is liable on summary conviction to a fine of \$100 000 or to imprisonment for 2 years or to both.

Power to search premises

153.(1) Subject to section 196, where a customs officer has reasonable grounds to believe that an article or goods that are not in compliance with this Act are being kept at or concealed in any building or other place, the customs officer may, on the authorization of the Comptroller in writing

- (a) enter the building or place at any time and search for, seize, detain or remove any article or goods that appear to him to be not in compliance with this Act;
- (b) so far as is reasonably necessary for the purpose of entry, search, detention or removal, break open any door, window or container, and force and remove any other impediment or obstruction; and
- (c) search for and remove any invoice, bill of lading, customs declaration, correspondence or other document relating to the importation and exportation of goods.

(2) Where in the case of entry, search, seizure, detention or removal, damage is caused, and the article or goods referred to in subsection (1) are not found, the owner of the damaged goods or the damaged building is entitled to recover from the Comptroller the cost of repairing the damage.

(3) A person who prevents an entry or search in accordance with this section is guilty of an offence and is liable on summary conviction to a fine of \$100 000 or to imprisonment for 2 years or to both.

(4) Notwithstanding subsection (1), a customs officer shall not enter a private dwelling house except with the consent of the occupant or owner or pursuant to a warrant issued in accordance with this Act.

Power to search vehicles

154.(1) A customs officer who has reasonable grounds to believe that there are

- (a) any dutiable, uncustomed, prohibited or forfeited goods in any vehicle that is within a customs controlled area; or
- (b) any goods that have been unlawfully imported or are in the process of being unlawfully exported in a vehicle which is not within a customs controlled area,

may stop the vehicle and search it and may detain the vehicle for such period as may be reasonably necessary for that purpose.

(2) Notwithstanding any other power provided under this Act, where a customs officer has reasonable grounds to believe that a vehicle is carrying any article that is liable to forfeiture, he may stop and search that vehicle.

(3) Where the person in charge of a vehicle fails to stop or refuses to permit the vehicle to be searched in accordance with subsection (1) or (2), that person is guilty of an offence and is liable on summary conviction to a fine of \$100 000 or to imprisonment for 2 years or to both and forfeiture of the goods.

Securing goods

155. For the purpose of performing any function or exercising any power that is required or authorized under this Act, a customs officer may, while boarding or searching any vessel or aircraft

- (a) secure goods on board the vessel or aircraft by the appropriate means;
or
- (b) remove goods on board a vessel or an aircraft to a secure place.

Search warrants - uncustomed or prohibited goods

156.(1) Where an officer has reasonable cause to suspect that any uncustomed or prohibited goods or any books or documents relating to uncustomed or prohibited goods are harboured, kept or concealed in any house or other place in the Island, and it is made so to appear by information on oath before any magistrate or justice of the peace in the Island, it shall be lawful for the magistrate or justice of the peace by special warrant under his hand

- (a) to authorize the officer to enter and search the house or other place by day or night; and
 - (b) to seize and carry away any uncustomed or prohibited goods or any books or documents relating to uncustomed or prohibited goods as may be found therein.
- (2) It shall be lawful for the officer referred to in subsection (1), in case of resistance, to break open any door and remove any impediment or obstruction to such entry or seizure as aforesaid.
- (3) A person who prevents an entry or search carried out in accordance with this section is guilty of an offence and is liable on summary conviction to a fine of \$100 000 or to imprisonment for 2 years or to both.

(4) Notwithstanding subsection (1), an officer shall not enter a private dwelling house except with the consent of the occupant or owner or pursuant to a warrant issued in accordance with this Act.

Determination of search

157.(1) Before a person referred to in section 160 or in section 161 is searched he must be informed of the intended search and he may request to be taken with all reasonable dispatch before a superior officer on duty for a determination to be made of the need for the search.

(2) Where a person is detained under this Act to be searched and there is no suitable person to conduct the search available at the place where the search is to take place, the person detained may be taken to a prescribed place to be searched.

(3) Where a search of a person is to be conducted

(a) a female shall not be searched except by a female customs officer and a male shall not be searched except by a male customs officer; and

(b) a minor, whether male or female, shall not be searched except in the presence of his parent or guardian.

(4) A customs officer is not liable to prosecution in respect of a search made in accordance with this section.

(5) A body cavity search of a person shall be conducted by a medical practitioner who is of the same gender as the person who is to be searched.

(6) For the purposes of subsection (5) "body cavity search" means an inspection, probing or examination of a person's anus or genitals.

Application of search provisions

158. Sections 159, 160 and 161 apply to

(a) a person on board a vessel or an aircraft that has arrived in or is departing from Barbados;

- (b) a person in the process of disembarking from or embarking onto a vessel or an aircraft mentioned in paragraph (a); or
- (c) a person who, having entered Barbados at a customs place remains in that customs place.

Preliminary search of persons by use of aids

159.(1) A customs officer may conduct a preliminary search of a person to whom section 157 applies and may detain that person for the purpose of conducting a preliminary search.

- (2) A preliminary search referred to in subsection (1) is a search that
 - (a) involves little or no physical contact between the person conducting the search and the person being searched; and
 - (b) is conducted by using any aid including
 - (i) a dog;
 - (ii) a chemical substance;
 - (iii) x-ray or imaging equipment; or
 - (iv) some other mechanical, electrical or electronic device or other similar aid, but not by any more invasive means.

Searching of person where reasonable cause to suspect goods are concealed

160.(1) A customs officer may search or cause a person to be searched where the customs officer has reasonable grounds to believe that the person

- (a) has concealed on or about his person
 - (i) any dutiable, uncustomed, restricted or prohibited goods or goods that are liable to forfeiture;
 - (ii) evidence relating to any goods referred to in sub-paragraph (i) or

- (iii) any article that is or might be evidence of a contravention of this Act; and
- (b) either the person
 - (i) is in a customs controlled area;
 - (ii) has, within the preceding 24 hours arrived in Barbados at a place other than a custom place; or
 - (iii) is about to depart from Barbados from any place other than a customs place.
- (2) A customs officer may use reasonable force where it is necessary to detain or search any person pursuant to subsection (1).
- (3) A customs officer who searches a person pursuant to subsection (1) may require any person that the customs officer thinks necessary to assist him.
- (4) A search of a person may be conducted whether or not that person has been the subject of a preliminary search under section 159.

Searching of person for dangerous items

- 161.(1)** A customs officer may immediately detain and search a person where the officer has reasonable grounds to believe that
- (a) the person has a dangerous item on or about his person; and
 - (b) the item poses a threat to the safety of the officer or any other person.
- (2) A customs officer who undertakes a search under this section shall, within 3 working days of the search, give a written report to the Comptroller of the search, the circumstances in which it was conducted, and the matters that gave rise to the reasonable belief that the person had a dangerous item on or about his person.
- (3) For the purposes of this section “dangerous item” means
- (a) any firearm or ammunition as defined in the *Firearms Act*, Cap. 179; or

- (b) any substance or device that could be used to endanger life or safety of any person.

Seizure of items found

162.(1) A customs officer may seize any article found when carrying out a search under section 160 that the officer has reasonable grounds to believe is an item referred to in that section.

(2) An officer may seize any article found on or about a person when carrying out a search under section 161 that the officer has reasonable grounds to believe is an item referred to in that section.

Questioning of persons in customs controlled area

163. A customs officer may question any person in a customs controlled area.

Firing on vessel

164.(1) A customs officer in charge of a properly identified vessel in the service of the Government shall, having hoisted or displayed the proper identification, within the territorial waters of Barbados, chase any vessel where the commander of the vessel

- (a) fails to comply with signals or instructions given by the customs officer; or
- (b) refuses to permit the vessel to be boarded by the customs officer,

and may, fire at or onto a vessel to compel the commander to bring the vessel to a stop.

(2) A customs officer may only fire at or onto a vessel where he is satisfied that

- (a) the commander or person in charge of the vessel is aware of the signal to stop; and

- (b)* a warning shot has first been fired.
- (3) Every officer or person acting on his direction shall be fully indemnified and discharged from every indictment, information, prosecution, penalty or other proceeding for acting under this section and from all of the consequences thereof.
- (4) Subsection (3) does not apply where the person has not acted in good faith or acted without reasonable care.

Detention of vessel

- 165.(1)** Where a customs officer has reasonable cause to believe that
- (a)* an offence under this Act has been or is being committed with the use of a vessel while it is in Barbados and the customs officer has reasonable cause to believe that there is on the vessel;
 - (b)* a person who was carried into Barbados on it in contravention of the Act, the customs officer may direct the vessel;
 - (i)* to proceed to the nearest customs controlled area or to any other place the officer considers appropriate; or
 - (ii)* to remain where it is, and the officer may detain the vessel for any period of time and for any purpose reasonably necessary to carry out an investigation into the commission of the offence.
- (2) Where the person in charge of a vessel without a certificate of insurance attempts or threatens to cause the vessel to depart from a place where the vessel has been directed to remain pursuant to subsection (1), the customs officer may, notwithstanding any other seizure power under this Act, seize and detain the vessel until a certificate of clearance has been obtained.

Power to examine and take account of goods

- 166.(1)** Notwithstanding any other provision of this Act, a customs officer may examine any goods
- (a)* that have been imported;

- (b) that are in a public or private warehouse;
- (c) that have been loaded into or unloaded from any vessel or aircraft at any place in Barbados;
- (d) that have been entered for exportation or for use as stores;
- (e) that have been brought to any place in Barbados for exportation or for use as stores or for shipment for exportation or for use as stores; or
- (f) in respect of which any claim for drawback, allowance, rebate, remission or repayment of duty has been made

and may for that purpose require any container to be opened or unstuffed.

(2) An examination of goods by a customs officer under subsection (1) shall be made at such time and place as the officer may direct.

(3) Where, under any other enactment, imported goods are also required to be examined by a person other than a customs officer, the customs officer shall, to the extent practicable, arrange for both examinations to be conducted simultaneously, at the same place, with a view to releasing the goods in a timely manner if all regulatory requirements are met.

(4) A declarant may be present or may be represented by another person at the examination of goods he declares.

(5) At any examination of goods, priority shall be given to live animals and perishable goods.

(6) Any transportation of goods to a place so directed under subsection (2) and any

- (a) unloading;
- (b) opening;
- (c) unstuffing;
- (d) weighing;
- (e) restuffing;

- (f) bulking;
- (g) sorting;
- (h) lotting;
- (i) marking;
- (j) numbering;
- (k) loading;
- (l) carrying; or
- (m) landing

of the goods, and any treatment applied to the containers in which the goods are kept, for the purposes of and incidental to the examination by the customs officer, their removal for exportation or for use as stores or warehousing, shall be done, and any facilities or assistance required for the examination shall be provided, by or at the expense of the owner of the goods.

(7) Where

- (a) imported goods that a customs officer has the power under this section to examine; or
- (b) goods other than imported goods that a customs officer has directed to be brought to a place for the purposes of examination,

are, without the authority of the customs officer, removed from customs control before they have been examined, those goods shall be liable to forfeiture.

(8) For the purposes of this section, whenever goods are removed to a bonded area for examination

- (a) the customs officer at the bonded area shall access a copy of the import entry for the goods free of duty;
- (b) the goods shall be removed directly from the place of importation to the bonded area and if not sealed, the goods shall be accompanied by a customs officer; and

- (c) the packages shall not be opened or otherwise dealt with except in the presence of or by the authority of the customs officer.

Examination of goods subject to customs control

167.(1) A customs officer may examine, weigh, analyse, test or cause to be examined, weighed, analysed or tested goods subject to the control of the Comptroller, and may, for that purpose, open or cause to be opened any packages in which the goods are contained or believed to be contained.

(2) All reasonable expenses incurred by the customs officer under subsection (1) are a debt due to the Government by the importer, exporter or the owner of the goods.

(3) The powers conferred by subsection (1) extend to the examination, weighing, analysing or testing of a suitcase, pallet, bulk cargo container or other package subject to customs control.

(4) The examination may include the physical or chemical testing of or the drilling into, or the dismantling of the goods.

(5) A customs officer shall, subject to section 196, be allowed free access to all lands, buildings and places and to all goods in or on any lands, buildings or places for the purpose of exercising powers under this section in respect of goods that are, or are believed to be subject to customs control.

Examination of goods no longer subject to customs control

168.(1) This section applies to goods that have ceased to be subject to customs control but that the Comptroller has reasonable grounds to suspect are

- (a) goods in respect of which an offence under this Act has been committed; or
- (b) goods that are liable to forfeiture under this Act.

- (2) The Comptroller may require a person who has or whom the Comptroller believes has possession or control of goods described in subsection (1) to produce them for inspection by a customs officer.
- (3) A customs officer may exercise all the powers provided under section 167 in respect of goods described in subsection (1).
- (4) A customs officer may take and retain possession of goods produced under subsection (2) for the purposes of exercising the powers given by subsection (3) and may retain possession of the goods until the completion of the investigation into the grounds for suspecting that the goods are goods
- (a) in respect of which an offence under this Act has been committed; or
 - (b) that are liable to forfeiture under this Act.
- (5) A person who fails or refuses to produce or account for any goods when required to do so under this section is guilty of an offence and is liable on summary conviction to a fine of \$50 000 or 3 times the value of the goods, whichever is greater.

Accounting for goods

- 169.(1)** The Comptroller may by notice in writing, require the person who is authorized to operate a customs controlled area to
- (a) account for goods that the Comptroller believes have been entered into the customs controlled area; and
 - (b) produce documents, books or records whether in electronic form or otherwise relating to the movement of goods into or out of the customs controlled area.
- (2) A person who fails or refuses to comply with subsection (1) is liable to pay an administrative penalty not exceeding \$100 000 or 3 times the value of the goods, whichever is greater.

Production of goods

170.(1) A customs officer may require the person who is authorized to operate a customs controlled area to produce to the officer goods that according to any record are within the area.

(2) A person who fails or refuses to produce or account for any goods when required to do so under this section is guilty of an offence and is liable to pay an administrative penalty not exceeding \$100 000 or 3 times the value of the goods, whichever is greater.

Verification of entries

171.(1) The Comptroller may require from a person making an entry of goods

(a) proof by declaration or the production of documents; and

(b) any other declaration or documents otherwise required by this Act,

of the correctness of the entry, and may refuse to deliver the goods or to accept the entry before the proof is provided.

(2) Where the Comptroller is not satisfied

(a) that the entry made pursuant to subsection (1) in relation to any goods is correct; or

(b) with any other aspects of the importation or exportation of goods,

the Comptroller may detain the goods for a period that is reasonably necessary to enable the goods to be examined, and where necessary, cause an investigation to be made, whether in Barbados or elsewhere, into the importation or exportation of those goods or the Comptroller may require a deposit to cover the duty liability for the goods.

Power to take samples

172.(1) A customs officer may take and use samples of goods for such purpose as the Comptroller may deem necessary, and such samples shall be disposed of and accounted for in such manner as the Comptroller may direct.

(2) A sample taken in accordance with subsection (1) shall be as small as possible for the purpose for which it is taken.

(3) Any sample taken by a customs officer under subsection (1) shall, unless it is liable to forfeiture or where it is impractical to do so, be returned upon payment of such duty as may be payable in respect of it to the person who was at the time of the taking of the sample, the owner of it.

Power of arrest

173.(1) Subject to subsection (2) a customs officer or a member of the Police Force may arrest a person who has committed, or who the officer has reasonable grounds to believe has committed or is about to commit an offence under this Act.

(2) A person may not be arrested for an offence by virtue of subsection (1) more than 7 years after the commission of the offence.

(3) Where a customs officer arrests a person in accordance with this section, the customs officer shall, as soon as practicable, deliver the arrested person into the custody of a member of the Police Force.

Escape from officer

174. Where

- (a) a person subject to arrest under section 173 escapes from a customs officer or a member of the Police Force attempting to arrest him; or
- (b) a customs officer or a member of the Police Force is for any reason unable or fails to arrest the person

the person may afterwards be arrested and detained by a customs officer or at any place in Barbados within 7 years from the time the offence was committed, and dealt with as if he had been arrested at the time of committing the offence.

Power to pay rewards

175.(1) The Comptroller may, with the approval of the Governor General, reward or give an award to any person excluding a customs officer for any service in relation to an assigned matter that appears to him to merit such reward or award.

(2) Notwithstanding subsection (1), approval need not be obtained for a reward that does not exceed \$1 000.

Power to require attendance

176.(1) Where under this Act, the commander of a vessel or an aircraft or his agent, is required to answer any question put to him by a customs officer, the customs officer may, at any time while the vessel or aircraft is within the territorial waters of Barbados, require the commander of the vessel or aircraft or his agent to appear before the customs officer for the purposes of this subsection.

(2) A person who fails to comply with subsection (1) is guilty of an offence and is liable on summary conviction to a fine of \$10 000 or to imprisonment for 3 months or to both.

Power to require information and the production of evidence

177.(1) The Comptroller may, at any time within 7 years of the importation or exportation of any goods, require any person concerned in

- (a) the importation, exportation or carriage coastwise; or
- (b) the carriage, unloading, landing or loading of the goods,

to furnish to him in such form and manner as the Comptroller may require, any information relating to the goods, and to produce and permit a customs officer to inspect, take extracts from, make copies of or remove for a reasonable period,

any invoice, bill of lading or other book or document relating to the goods in that person's control or possession.

(2) The Comptroller may require evidence to be produced to his satisfaction in support of any information provided in respect of goods imported or exported or in respect of which drawback, allowance, rebate, remission or repayment of duty is claimed.

(3) A person who fails to comply with this section is liable to pay administrative penalty not exceeding \$10 000.

Discretionary power to Comptroller in special circumstances

178. The Comptroller may permit the entry, unloading, removal and loading of goods, and the report and clearance of a vessel or an aircraft in such form and manner as he may direct to meet the exigencies of any case to which this Act cannot be conveniently applied.

Duty to conduct administrative proceedings without delay

179. The Comptroller shall hear, determine and conduct all administrative proceedings and related matters under this Act

(a) without delay; and

(b) in accordance with the principles of natural justice.

Power to require security

180.(1) Notwithstanding any security requirement provided for by this Act, the Comptroller may, where he thinks fit, require any person to give security by bond or otherwise for the observance of any condition or restriction in connection with an assigned matter.

(2) The Comptroller may, pending the giving of the required security, refuse to accept an entry or to perform any other act in relation to the matter with respect to which the security is required.

- (3) Security may be required by the Comptroller in relation
 - (a) to a particular transaction, transactions generally or to a class of transactions; and
 - (b) to a particular period and amount.
- (4) Where the Comptroller is satisfied that the obligations for which any security given in accordance with this section have been fulfilled, the person who gave the security shall be released from the conditions of the security as soon as possible, subject to any provisions of this Act prohibiting the release of the security.
- (5) Any bond taken on behalf of the Government may be cancelled at any time by order of the Comptroller and be valid in law and, upon breach of any of the conditions, may be sued and proceeded upon, and it shall not be necessary for the validity of such bonds that they be
 - (a) sealed or delivered in the presence of a witness;
 - (b) prepared by an attorney-at-law; or
 - (c) delivered as a specialty.
- (6) Where the Comptroller is dissatisfied with the sufficiency of any security, he may require that a new security be put in place in addition to the existing security.
- (7) Where a new security is not given, the Comptroller may refuse to accept an entry or to perform any other act in relation to any matter with respect to which the new security is required.
- (8) A person who is dissatisfied with a decision of the Comptroller under this section may, within 7 days after the date on which notice of the decision is given, request in writing that the Comptroller reconsider the decision.

Power to require provision of facilities

181.(1) A person who is required under this Act to provide a secure place to be used for the examination of goods by a customs officer shall

- (a) provide and maintain the equipment and facilities that are reasonably necessary to enable a customs officer to take account of or examine the goods and to conduct searches or perform any other duties the Comptroller may direct;
- (b) provide the officer with any assistance necessary for the performance of the officer's duties and allow and give access to their accounting system.

(2) The Comptroller may withhold the services of his Department where the proper facilities are not available.

(3) The person referred to in subsection (1) shall provide and maintain any fitting required for the purpose of affixing any lock or seal that the customs officer may need to affix to the premises or to any part of the premises of that person or to any vessel or aircraft or apparatus kept on the premises.

(4) Any person referred to in this section who

- (a) wilfully destroys or damages any fitting, lock or key provided for use with the lock, or any label or seal placed on such lock;
- (b) improperly retains access to any place or article secured by a lock put in place by a customs officer; or
- (c) has any fitting or article intended to be secured by means of a fitting constructed in a manner that defeats the intention of this section,

is guilty of an offence and is liable on summary conviction to a fine of \$20 000 or to imprisonment for 6 months or to both.

Audit or examination of records

- 182.**(1) Subject to section 196 a customs officer may, at all reasonable times
- (a) enter any premises or place where records are kept pursuant to this Act; and
 - (b) audit or examine the records either in relation to a specific transaction or to assess the adequacy and integrity of the manual or electronic system by which such records are created and stored.
- (2) A customs officer shall, pursuant to subsection (1), and subject to section 196, have full and free access to all lands, buildings and places and to all books, records and other documents, whether or not in electronic form and whether in the custody or under the control of a person licensed under this Act or an importer, exporter or other person, for the purpose of inspecting any books, records and other documents and any property, process or matter that the officer considers
- (a) necessary or relevant for the purpose of collecting any duties due under this Act for the purpose of carrying out any function lawfully performed by a customs officer; or
 - (b) likely to provide any information otherwise required for the purpose of enforcing this Act.
- (3) A customs officer referred to in subsection (1) or (2) may, without fee or reward, take extracts from, or make copies of, any books, records or other documents referred to in this section.
- (4) A customs officer shall not enter any private dwelling house, land, building or place except with the consent of the owner or occupier or pursuant to a warrant issued in accordance with this Act.

Requirement to produce documents**183.(1)** Where

- (a) a customs officer has reasonable cause to believe that
 - (i) goods have been unlawfully imported, exported, undervalued, entered, removed or otherwise unlawfully dealt with by any person in contravention of this Act; or
 - (ii) any person intends to unlawfully import, export, manufacture, undervalue, enter, remove or otherwise deal with any goods; or
- (b) goods have been seized under this Act,

the Comptroller may, by notice in writing require any person whom the customs officer believes to be or to have been the owner, importer or exporter of those goods, or the agent of the owner, importer or exporter of the goods or to have been involved in any way in the activities referred to in paragraph (a), to produce and deliver to that customs officer, all books of account, invoice books, other books, records or documents whether or not in electronic form, in which any entry or memorandum appears or may be supposed to appear concerning the purchase, importation, exportation or manufacture cost, valuation of or payment for the goods within a period of 7 years preceding the date of the notice.

(2) In addition to the requirements of subsection (1), the Comptroller may require the owner, importer or exporter of those goods, or an agent of the owner, importer or exporter to

- (a) allow the customs officer to make copies of or take extracts from any of the documents, books or records; and
- (b) answer any question concerning those documents, books or records.

(3) A person who fails to comply with a request under this section is liable to pay an administrative penalty not exceeding \$10 000.

Power to require copies of documents

184. Where a person is required to submit a report, entry or other form for the purposes of this Act, the Comptroller may require that person to submit as many copies of the report, entry or other form, as the Comptroller may deem necessary.

Further powers in relation to documents

185.(1) The Comptroller may, by written notice, require a person

- (a) to produce for inspection to a specified officer documents or records that the Comptroller considers necessary or relevant to
 - (i) an investigation under this Act;
 - (ii) an audit under this Act;
 - (iii) the recovery of a debt due and payable to the Government; or
- (b) to allow the specified officer to take extracts from, or make copies of documents or records of the kind referred to in paragraph (a); or
- (c) to appear before a specified officer and answer all questions put to the person concerning the goods, or transactions relating to those goods, that are the subject of the investigation or audit or that are relevant to the recovery of the debt referred to in paragraph (a).

(2) A person who fails to comply with a request made under this section is liable to pay an administrative penalty not exceeding \$10 000.

Copying of documents obtained during search

186.(1) Where a customs officer carries out a lawful search, inspection, audit or examination under this Act, and has reasonable cause to believe that documents coming into his possession during such search, inspection, audit or examination are evidence of the commission of an offence under this Act, the customs officer

may remove the documents for the purpose of making copies, including digital copies.

(2) Where documents have been removed in accordance with subsection (1), and the documents are copied on the instructions of the Comptroller, the documents shall be returned to the person entitled to possess them within 6 months of the date they were removed.

(3) A copy of any document certified under the seal of the Customs Department is admissible as evidence before any court or tribunal, as if the copy were the original.

Retention of documents and goods obtained during a search

187.(1) Where a customs officer carries out any lawful search, inspection, audit or examination under this Act, and has reasonable cause to suspect that any documents or goods coming into his possession during the search, inspection, audit or examination are

- (a) evidence of the commission of an offence under this Act; or
- (b) intended to be used for the purpose of committing an offence under this Act,
- (c) property obtained through unlawful conduct; or
- (d) intended to be used for money laundering or other unlawful conduct or activities related to terrorism

the officer may, subject to subsection (4), take possession of and retain the documents or goods.

(2) Where a customs officer takes possession of a document under subsection (1), he shall, at the request of the person otherwise entitled to the document, provide that person with a copy of the document certified under the seal of the Customs Department as a true copy.

(3) Notwithstanding any other law, a copy certified in accordance with subsection (2) is admissible in evidence in a court or before a tribunal as if the copy were the original document.

(4) Where a customs officer takes possession of and retains documents or goods under this section

(a) as a result of an offence being committed in respect of the documents or goods, the court or tribunal may order, either at the hearing or on a subsequent application, that the document or goods

(i) be delivered to the person appearing to the court or tribunal to be entitled to them; or

(ii) be otherwise disposed of in such manner and under such conditions as the court or tribunal thinks fit; and

(b) the customs officer may at any time, unless an order has been made under paragraph (a)

(i) return the documents or goods to the person from whom they were taken; or

(ii) apply to the magistrate for an order as to their disposal, and on any such application the magistrate may issue an order that a court or tribunal may issue under paragraph (a).

(5) Where proceedings for an offence relating to the goods or document retained under this section are not brought within a period of 6 months after the date on which the officer took possession of the document or goods, any person claiming to be entitled to the goods or document may, after the expiration of that period, apply to a magistrate for an order that they be delivered to that person, and on any such application the magistrate may

(a) refuse to issue the order; or

(b) make any order that a court or tribunal may make under subsection (4).

Detention of goods suspected to be illegally obtained

188.(1) A customs officer may, without warrant, seize and detain goods where

- (a) the goods are in Barbados and he is satisfied that they
 - (i) are being or are intended to be, exported from Barbados; or
 - (ii) are being, or have been imported into Barbados;
- (b) the goods came to his attention, or into his possession during a search, inspection, audit or examination under this Act or any Act that relates to the reporting of imports or exports of currency; and
- (c) he has reasonable grounds to suspect that the goods were obtained in contravention of any law.

(2) Reasonable force may be used by a customs officer where it is necessary to seize or detain goods under this section.

(3) Where the person from whom goods have been seized and detained is identified, but is not present when the seizure and detention occurs, the Comptroller shall notify that person in writing of the detention and seizure and issue a receipt.

(4) Subject to section 189 goods detained under this section shall be taken to a place of security as directed by the customs officer or other authorized person and detained.

Return of detained goods

189.(1) Goods seized and detained under section 188 shall be returned to the person from whom they were seized as soon as practicable after

- (a) the completion of all relevant investigations, where it is shown that the goods are not tainted property or uncustomed goods; or
- (b) the expiration of the investigation period, whichever is sooner.

(2) Notwithstanding subsection (1), the Comptroller may continue to detain the goods referred to in that subsection until the relevant proceedings or requests, including any resulting applications are determined, where on or before the expiration of the investigation period

- (a) an information is laid, in respect of an offence;
- (b) a foreign country makes a request to the Attorney General under any provision or Agreement relating to mutual legal assistance.

(3) For the purposes of subsection (1), “investigation period” means, in relation to goods seized and detained under section 188

- (a) the period of 6 months after the date on which the goods were seized and detained; and
- (b) includes any extension of that period granted by the court.

Extension of 6 month period

190.(1) The 6 month period referred to in section 189(3)(a) may be extended by order of the court for a further period of up to 90 days where the application for the extension is made before the expiration of the original 6 month period and the court is satisfied

- (a) on the balance of probabilities that there is reasonable cause to believe that the goods were obtained in contravention of any law, as referred to in section 188(1)(c); and
- (b) that it is necessary to grant the extension in order to complete the investigations in or outside Barbados.

(2) The application for an extension shall be made in writing and served on the person from whom the goods were seized where it is possible to identify and locate that person and the application shall include

- (a) a description of the goods detained;
- (b) the date on which the detention commenced;

- (c) a statement of the facts supporting the reasonable grounds required under section 188;
 - (d) a statement of the reasons why the extension is necessary to allow the completion of investigations in or outside Barbados in relation to the goods.
- (3) The person from whom the goods were seized is entitled to appear and be heard on the application and shall be notified at least 24 hours before the hearing of the application, of the time and place of that hearing.

Custody of certain detained goods

191.(1) Where a vessel, aircraft or animal is detained under section 188, a customs officer may leave that item in the custody of

- (a) the person from whom the goods have been detained; or
 - (b) any other person authorized by the customs officer who consents to having such custody.
- (2) A person who has the custody of goods under subsection (1) shall, until a final decision is made under section 189 as to whether or not the goods are to be returned, hold them in safe keeping without charge to the Government and in accordance with conditions imposed by the Comptroller.
- (3) A person to whom subsection (2) applies shall
- (a) make the goods available to the customs officer on request;
 - (b) not alter or dispose of the goods or remove them from Barbados, unless authorized to do so by the customs officer; and
 - (c) return the goods on demand to the custody of the Comptroller.

Search warrants

192.(1) A customs officer may make an application in writing on oath to a magistrate where he is satisfied that there is on the premises

- (a) evidence of
 - (i) the commission of an offence under this Act; or
 - (ii) the unlawful exportation or importation of goods;
- (b) any goods that is intended to be
 - (i) used for the purpose of committing an offence under this Act; or
 - (ii) unlawfully exported or imported; or
- (c) anything that is liable to seizure under this Act,

and a magistrate may where he is so satisfied issue a search warrant.

(2) Before applying for a warrant, the customs officer referred to in subsection (1), shall make reasonable enquiries and shall disclose in the application, details of any other applications that the officer knows have been made within the previous 20 workings days in respect of the premises or goods specified, including the offence or offences alleged in any other application and the result of any other application or applications.

(3) A search warrant referred to in subsection (1) shall be directed

- (a) to and executed by a designated customs officer; or
- (b) to customs officers generally and executed by any customs officer or officers designated by the Comptroller.

Entry and search under warrant

193.(1) Subject to section 157 in executing a warrant, a customs officer or a member of the Police Force may, in addition to searching the premises specified in the warrant, search or detain a person who is at the place while the warrant is

being executed and who the officer believes is connected to the matter referred to in the warrant.

(2) A customs officer shall not detain a person pursuant to subsection (1) for more than 48 hours.

(3) In executing a warrant referred to in subsection (1), a customs officer or a member of the Police Force may seize any item found on the premises being searched or on the person being searched where the customs officer or member of the Police Force has reasonable cause to believe that the item referred to in the warrant or any other item found, is liable to seizure.

(4) A person called upon to assist in executing the warrant, has, for that purpose, the powers referred to in this section.

(5) A person who fails or refuses to comply with a search or detention pursuant to this section is guilty of an offence and is liable on summary conviction to a fine of \$10 000 or to imprisonment for 3 months or to both.

Execution of search warrant

194.(1) A customs officer executing a search warrant shall produce the warrant for inspection upon initial entry into the premises, and in response to any reasonable request thereafter, and when requested by or on behalf of the owner or occupier of the premises shall provide a copy of the warrant no later than 7 days after the request is made.

(2) The person executing the warrant shall inform the owner or occupier of the premises of the date and time of the execution of the warrant and the name of the officer in charge of the search

- (a) by delivering to the owner or occupier of the premises a written notice containing the information;
- (b) by leaving a notice in a prominent place
 - (i) at the premises; or
 - (ii) attached to the goods searched;

- (c) by sending a notice to the owner or occupier of the premises by registered mail; or
- (d) in such other manner as the court may direct in any particular case.

Use of aids by a customs officer

195.(1) In exercising any power under this Act to board a vessel or an aircraft, enter a building or search any premises, a customs officer or a member of the Police Force may bring with him and use as an aid in exercising those powers

- (a) a dog;
- (b) a chemical substance;
- (c) an x-ray or other imaging equipment; or
- (d) some other mechanical, electrical or electronic device or other similar aids.

(2) This section does not apply to a search carried out on residential premises except pursuant to a warrant issued under section 192.

Conditions applying to entry of buildings

196. Every provision of the Act that confers on a customs officer the power to enter any building requires the authority of a warrant and is subject to

- (a) identification being produced by the customs officer on initial entry; and
- (b) the authority for the entry and the purpose of the entry being clearly stated to the owner or person occupying the building, if present.

Detention of dangerous goods concerning an aircraft

197.(1) A customs officer may detain goods found in the course of exercising any power of search or examination concerning an aircraft where the officer has a reasonable cause to believe that the goods

(a) are dangerous goods that may not be lawfully carried on an aircraft;
and

(b) are proposed to be carried by an operator of an aircraft.

(2) Where a customs officer detains goods under subsection (1) he shall as soon as practicable, deliver those goods into the custody of a member of the Police Force.

(3) Where goods have been delivered in accordance with subsection (2), responsibility for those goods passes from the Comptroller to the Commissioner of Police.

Protection of persons assisting customs officers

198.(1) A person assisting a customs officer in the execution of his duty under this Act, shall not be liable for the loss of or damage to any document, goods, vessel or aircraft caused by the action or inaction of that person lawfully exercising any power conferred under this Act.

(2) Subsection (1) does not apply where the person in question has not acted in good faith or has acted without reasonable care.

Witnessing of signatures

199. Where a document or declaration is required by this Act to be signed in the presence of the Comptroller or any particular officer and such document or declaration is signed in the presence of a witness whose signature is known to and who is approved by the Comptroller or the customs officer who receives the document or declaration, the document or declaration shall be as valid as if it had

been signed in the presence of the Comptroller or the customs officer in whose presence it is required to be signed.

Documents in foreign language

200. Where a document in a foreign language is presented to a customs officer carrying out his duty or exercising of any power under this Act, the officer shall require the person who presented the document to supply an English translation of the document prepared by a person approved by the Comptroller, at the expense of the person who presented the document.

PART XXV

ADMINISTRATIVE PENALTIES

Administrative penalties

201. A person who contravenes a provision of this Act or any regulations made under this Act in respect of which an administrative penalty is payable for the contravention, shall pay the administrative penalty to Comptroller.

Penalty notice

202.(1) A customs officer may issue an administrative penalty notice in such form as the Comptroller determines to a person described in section 201.

(2) An administrative penalty notice shall

(a) specify the nature of the act constituting the contravention and the penalty to be paid; and

(b) require the person to whom it is addressed to pay the penalty within 14 days of the date of the notice to the Comptroller.

(3) A person who is in receipt of an administrative penalty notice shall pay the amount of the penalty to the Comptroller and comply with any additional requirement contained in the notice on or before the date specified in the notice.

Procedure for challenging alleged contravention

203. Notwithstanding section 202(3), a person to whom an administrative penalty notice is addressed and who wishes to challenge the alleged contravention, may instead of paying the amount of the penalty, apply to the Comptroller for a reconsideration of the matter in accordance with section 247.

Penalty to constitute a debt to the Government

204. An administrative penalty may be recovered as a debt due to the Government.

PART XXVI

OFFENCES AND PUNISHMENT

Falsification of record in System

205. A person who falsifies or without the permission of the Comptroller, deletes, damages, alters or impairs any record, data message or information stored in or processed by the System or on any duplicate electronic storage medium respecting the System is guilty of an offence and is liable on summary conviction to a fine of \$50 000 or to imprisonment for 12 months or to both.

Unauthorized use of the System

206.(1) A person shall not transmit to or receive information from the System or otherwise make use of the System unless that person is registered by the Comptroller as an authorized user of the System.

(2) A person who contravenes subsection (1) is guilty of an offence and is liable on conviction on indictment to a fine of \$250 000 or to imprisonment for 5 years or to both.

Unauthorized modification of the System

207.(1) A person who unlawfully causes a modification of any programme or data held in the System and by so doing damages the System, is guilty of an offence and is liable on conviction on indictment to a fine of \$250 000 or to imprisonment for 5 years or to both.

(2) Without prejudice to the fine imposed in respect of an offence committed under subsection (1), where damage is caused to the System as a result of an offence committed under subsection (1), the person convicted of the offence is liable to an additional fine of \$250 000 or to imprisonment for 5 years or to both.

(3) For the purposes of this section

- (a) it is immaterial that the modification referred to in subsection (1) is not directed at
 - (i) any particular programme or data;
 - (ii) a programme or data of any kind; or
 - (iii) a programme or data held in the System;
- (b) it is immaterial whether an unauthorized modification is or is intended to be permanent or merely temporary;
- (c) a modification of any programme or data held in the System takes place if by reason of the operation of any function of the System
 - (i) any programme or data held in the System is altered or erased;
 - (ii) any programme or data is added to or removed from any programme or data held in the System; or
 - (iii) any act occurs which impairs the normal operation of the System; and
- (d) any act that contributes toward the causing of a modification referred to in paragraph (c) shall be regarded as causing the modification.

Unauthorized obstruction of the System

208.(1) A person who knowingly and without authority

- (a) interferes with, interrupts or obstructs the lawful use of the System; or
- (b) impedes, prevents access to or impairs the usefulness of any programme or data on the System

is guilty of an offence and is liable on conviction on indictment to a fine of \$250 000 or to imprisonment for 5 years or to both.

(2) Without prejudice to the fine imposed in respect of an offence committed under subsection (1), where damage is caused to the System as a result of an offence committed under subsection (1), the person convicted of the offence is liable to an additional fine of \$250 000 or imprisonment for 5 years or to both.

Unauthorized interruption of the System

209. A person who unlawfully engages in conduct which causes the System to cease to function whether temporarily or permanently is guilty of an offence and is liable on conviction on indictment to a fine of \$250 000 or to imprisonment for 5 years or to both.

Impersonating an officer

210.(1) A person who for the purpose of

- (a) obtaining admission to any building, vessel, aircraft or any other place; or
- (b) doing or procuring to be done, any act which he is not entitled to do or procure to be done of his own authority

falsely assumes the name, designation or character of the Comptroller, of a customs officer or of any person authorized by the Comptroller to discharge any duty relating to any assigned matter is guilty of an offence and in addition to any

other proceedings that may be taken against him is liable on summary conviction to a fine of \$100 000 and to imprisonment for 2 years or to both.

(2) Where a person by words, conduct or demeanour holds himself out to be the Comptroller or a customs officer or wears or uses the uniform, name, designation or description of the Comptroller or customs officer, that person is guilty of an offence under subsection (1).

Offences against officers

211.(1) A person who fires upon

- (a) a vessel in the service of the Customs Department; or
- (b) a customs officer in the execution of his duties under this Act,

whether or not he causes physical damage or injury, is guilty of an offence and is liable on conviction on indictment to a fine of \$250 000 or to imprisonment for 5 years or to both.

(2) A person who

- (a) obstructs, hinders, molests or assaults a customs officer in the execution of his duties under this Act;
- (b) does anything which impedes or is calculated to impede the carrying out of any search for anything liable to forfeiture under this Act, or the detention, seizure or removal of anything under this Act;
- (c) rescues, damages or destroys anything liable to forfeiture or does anything calculated to prevent the procuring or giving of evidence as to whether or not anything is liable to forfeiture;
- (d) interferes with any equipment, vessel, dog, communication system or other article used or intended for use by a customs officer;
- (e) acts with the intention of impairing the effectiveness of any equipment, vessel, dog, communication system or other article used or intended for use by a customs officer;

- (f) prevents the arrest of any person under this Act or rescues any person so detained,

is guilty of an offence and is liable on summary conviction to a fine of \$100 000 or to imprisonment for 2 years or to both.

- (3) Where an offence is committed under this section by a person who

- (a) is armed with a weapon at the time of the offence; or
- (b) behaves in a violent manner,

that person is guilty of an offence and is liable on conviction on indictment to imprisonment for 7 years.

- (4) A person who uses abusive, offensive or threatening language to a customs officer in the execution of his duties under this Act is guilty of an offence and is liable on summary conviction to a fine of \$5 000 or to imprisonment for one month or to both.

- (5) A person who staves, breaks or destroys goods

- (a) to prevent their detection or seizure by a customs officer or another person authorized to detain or seize the goods; or
- (b) to evade the payment of duty,

is guilty of an offence and is liable on summary conviction to a fine of \$100 000 or to imprisonment for 2 years or to both.

- (6) A person who

- (a) rescues any person apprehended for any offence punishable by a fine or imprisonment under this Act or prevents the apprehension of such a person; or
- (b) obstructs a customs officer in going, remaining or returning from on board a vessel or an aircraft within Barbados in searching the vessel or aircraft, or in detaining or seizing any goods liable to forfeiture or in otherwise acting in the execution of his duties,

is guilty of an offence and is liable on summary conviction to a fine of \$100 000 or to imprisonment for 2 years or to both.

Carrying away officers

212.(1) Where a vessel or an aircraft departs from Barbados carrying on board a customs officer without his consent, the commander of the vessel or aircraft or his agent is guilty of an offence and is liable on conviction on indictment to a fine of \$300 000 or to imprisonment for 5 years or to both.

(2) In addition to any other liability imposed under subsection (1), the amount of any expense incurred by the Comptroller or the Government caused by the carrying away of the customs officer may be recovered from the agent or owner of the vessel or aircraft.

Interfering with customs vessels, aircraft

213. A person who unless for just and sufficient cause interferes in any way with any vessel, aircraft, vehicle, buoy, anchor, chain, rope or mark that is being used by a customs officer in the performance of his duty, is guilty of an offence and is liable on summary conviction to a fine of \$100 000 or to imprisonment for 2 years or to both.

Signalling to smugglers

214.(1) In this section “prohibited signal” or “prohibited message” means a signal or message connected with the smuggling or intended smuggling of goods into or out of Barbados.

(2) A person who by any means sends a prohibited signal or transmits a prohibited message from any place in Barbados or from any vessel or aircraft to a person in another vessel or aircraft, is guilty of an offence and is liable on summary conviction to a fine of \$100 000 or to imprisonment for 2 years or to both.

(3) The equipment or apparatus used for the sending of the signal or message referred to in subsection (2) is liable to forfeiture.

(4) Subsections (2) and (3) apply whether or not the person for whom the signal or message is intended is in a position to receive it or is actually engaged at the time in smuggling.

(5) For the purposes of this section, where a vessel or an aircraft to which a signal described in subsection (1) is sent

- (a) changes its course;
- (b) weighs anchor, if it was at anchor; or
- (c) sends a signal in apparent response,

that vessel or aircraft, for the purposes of this section, shall be deemed to be engaged in smuggling, unless the contrary is proved.

(6) Where a customs officer or a member of the Police Force has reasonable grounds to believe that a prohibited signal or message is being or is about to be transmitted from any vessel, aircraft, building or other place in Barbados, he may without having obtained a warrant, board or enter the vessel, aircraft, building or place and take such steps as are reasonably necessary to prevent the sending of that signal or message.

Adapting vessel or aircraft for smuggling

215. Where a vessel or an aircraft arrives in Barbados or is in Barbados and has

- (a) any part adapted for the purpose of concealing goods or persons; or
- (b) any hole, pipe or device adapted for the purpose of concealing goods or persons,

the commander, owner or other person in charge of the vessel or aircraft are each guilty of an offence and are each liable on conviction on indictment to a fine of \$200 000 or to imprisonment for 3 years or to both and the vessel or aircraft is liable to forfeiture.

Communicating with arriving vessels and aircraft

216. A person who, other than in an official capacity, communicates with a vessel or an aircraft that is arriving in Barbados before that vessel has been cleared by a customs officer is guilty of an offence and is liable on conviction on indictment to a fine of \$100 000 or to imprisonment for 2 years or to both.

Offering smuggled goods for sale

217. Where a person offers goods for sale that have

- (a) been imported without payment of duty; or
- (b) been otherwise unlawfully imported

those goods, are liable to forfeiture and the person offering them for sale is guilty of an offence and is liable on summary conviction to a fine of \$5 000 or 3 times the value of the goods, whichever is greater or to imprisonment for one month or to both.

Special penalty where offender is armed or disguised

218. A person who is concerned in the movement or carriage of goods and who

- (a) performs any act contrary to the lawful importation or exportation of the goods; and
- (b) is armed with an offensive weapon or is disguised in any way; or
- (c) is armed with an offensive weapon or is disguised and is found in Barbados in possession of any goods that are liable to forfeiture under this Act,

is guilty of an offence and is liable on summary conviction to a fine of \$100 000 or to 3 times the value of the goods, whichever is greater, or to imprisonment for 2 years or to both, and the goods are liable to forfeiture.

False declarations

219.(1) Any person who, in any matter relating to customs or under the control or management of the Comptroller

- (a) makes and subscribes, or causes to be made and subscribed, any false declaration;
- (b) makes or signs or causes to be made or signed, any declaration, certificate or other instrument required to be verified by signature only, the same being false in any particular;
- (c) makes or signs any declaration made for the consideration of any officer on any application presented to him, the same being untrue in any particular;
- (d) when required by or under this Act to answer questions put to him by any officer, answers any such questions falsely;
- (e) counterfeits, falsifies, or wilfully uses when counterfeited or falsified, any document required by or under this Act or by or under the directions of any officer, or any instrument used in the transaction of any business or matter relating to customs;
- (f) alters any document or instrument after the same has been officially issued;
- (g) counterfeits the seal, signature, initials or other mark of or used by any officer for the verification of any such document or instrument, or for the security of goods or any other purpose in the conduct of business relating to customs or under the control or management of the Comptroller; or
- (h) on any document or instrument required for the purposes of this Act, counterfeits or imitates the seal, signature, initials or other marks of or made use of by any other person whatsoever, whether with or without the consent of such person,

shall, on conviction on indictment, be liable to a fine of \$150 000 or 3 times the value of the goods, whichever is greater, or to imprisonment for 2 years or to both.

(2) Where a false declaration is determined by the Comptroller to be a clerical error or mistake of fact, the person may submit a corrected entry and, in such a case, that person shall not be required to pay the penalty.

(3) Where by reason of an act described in subsection (1), the full amount of duty payable is not paid or any overpayment is made in respect of any drawback, allowance, rebate or repayment of duty, the amount of duty unpaid or the overpayment shall be payable immediately to the Comptroller and may be recovered accordingly.

Counterfeiting documents, seals, stamps, etc.

220.(1) A person who

- (a) with respect to a document that is required under this Act or that is used in the transaction of any business relating to an assigned matter
 - (i) counterfeits or falsifies the document;
 - (ii) knowingly accepts, receives or uses any document so counterfeited or falsified; or
 - (iii) alters any document after it has been officially issued; or
- (b) counterfeits any seal, stamp, signature, initials or other mark, of, or used by, a customs officer for the verification of a document, the security of goods or for any other purpose relating to an assigned matter,

is guilty of an offence and is liable on summary conviction to a fine of \$100 000 or 5 times the value of the goods, whichever is greater, or to imprisonment for 12 months or to both, and the goods are liable to forfeiture.

(2) Any goods to which a document referred to in subsection (1) relate shall be liable to forfeiture.

False scales

221.(1) A person who is required under this Act to provide scales, and who provides scales that do not give a true reading is liable to pay an administrative penalty not exceeding \$10 000.

(2) Where a person

- (a) referred to in subsection (1); or
- (b) by whom, or on whose behalf, an article is or is to be weighed, counted, gauged or measured,

for the purpose of taking account of the goods or the conduct of an examination by a customs officer, performs any act that may prevent or hinder the officer from taking a true account or making a proper examination, the person is liable to pay an administrative penalty not exceeding \$10 000.

(3) In this section “scales” include weights, measures and weighing or measuring machines or instruments.

Fraudulent evasion

222.(1) A person who

- (a) knowingly acquires possession of
 - (i) goods that have been unlawfully removed from a warehouse;
 - (ii) goods that are chargeable with any duty that has not been paid; or
 - (iii) goods with respect to the importation or exportation of which any prohibition or restriction is in force under any law; or
- (b) is in any way concerned with smuggling, unloading, landing, carrying, removing, depositing, harbouring, keeping or concealing goods described in paragraph (a),

is guilty of an offence and is liable on summary conviction to a fine of \$100 000 or 5 times the value of the goods, whichever is greater, or to imprisonment for 2 years or to both.

(2) A person who evades the payment of any duty chargeable on imported goods is guilty of an offence and is liable on summary conviction to a fine of \$100 000 or 3 times the value of the goods, whichever is greater, or to imprisonment for 2 years or to both.

(3) Goods referred to in subsections (1) and (2) are liable to forfeiture.

Vessels and vehicles

223.(1) Every person who,

- (a) without lawful authority, acquires possession or control of an uncustomed vehicle or vessel;
- (b) forges, alters or tampers with
 - (i) a vehicle's registration number, licence plate or other identification mark; or
 - (ii) the hull mark or other mark of a vessel with intent to conceal its true identity; or
- (c) knowingly acquires possession of a vehicle or vessel referred to in paragraph (a) or (b)

is guilty of an offence and is liable on summary conviction to a fine of \$100 000 or to 3 times the value of the goods, whichever is greater, or to imprisonment for 2 years or to both.

(2) The vehicle or vessel, referred to in subsection (1) is liable to forfeiture.

Removing locks, seals or marks

224.(1) Where under this Act, a lock, seal or mark is used to secure or identify any goods, place or container in which goods are kept, a person who, without the authority of a customs officer

- (a) removes or tampers with the lock, seal or mark; or
- (b) before the lock, seal or mark is lawfully removed, removes or adds any goods,

is guilty of an offence and is liable on summary conviction to a fine of \$100 000 or to 3 times the value of the goods, whichever is greater, or to imprisonment for 2 years or to both.

- (2) Goods referred to in subsection (1) are liable to forfeiture.
- (3) For the purposes of subsection (1), goods in a vessel or an aircraft are deemed to be in the charge of the commander of the vessel or aircraft.

Intermeddling with goods found floating in the sea

225.(1) A person who is not a customs officer and who

- (a) interferes with or picks up goods, including spirits, that are prohibited or restricted from being imported or exported, or are uncustomed goods and are found floating or sunk in the sea; and
- (b) fails to report the goods to a customs officer,

is guilty of an offence and is liable on summary conviction to a fine of \$100 000 or to imprisonment for 2 years or to both.

- (2) Goods referred to in subsection (1) are liable to forfeiture.

Penalty in cases of forfeiture

226. Where a vessel, aircraft or goods become liable to forfeiture under this Act, the person who was concerned in the act or omission that causes the

vessel, aircraft or goods to become liable to forfeiture is guilty of an offence and is liable on conviction on indictment to a fine of \$100 000 or 5 times the value of the vessel, aircraft or goods seized, whichever is greater.

Offences in relation to warehouses

227.(1) A person who does not have the authority of a customs officer and who without just cause

- (a) opens a door or lock of a customs warehouse; or
- (b) creates or obtains access to a customs warehouse or to goods in a customs warehouse,

is guilty of an offence and is liable on summary conviction to a fine of \$100 000 or 3 times the value of the goods, whichever is greater or to imprisonment for 2 years or to both.

(2) Goods are liable to forfeiture where they have been

- (a) entered for warehousing and are taken into a warehouse without the authority or direction of a customs officer;
- (b) entered for warehousing and are removed without being warehoused;
- (c) deposited in a customs warehouse and are unlawfully removed or are unlawfully loaded onto a vessel or an aircraft for removal or for exportation or for use as stores;
- (d) entered for warehousing and are concealed either before or after they have been warehoused; or
- (e) lawfully permitted to be removed from a customs warehouse without payment of duty for any purpose and are not delivered to the destination to which they should have been taken in accordance with that permission,

and such goods may be retained in the custody of the Police Force until the proceedings are completed or it is decided that no proceedings will be brought.

- (3) Where the goods seized or detained may be required for use in connection with proceedings that may be brought under another enactment
- (a) notice in writing of the seizure or detention and of the intention to retain the goods in question in the custody of the Police Force, together with full particulars of the goods shall be given to the Comptroller as soon as practicable; and
 - (b) a customs officer shall be permitted to examine the goods and take account of them while they remain in such custody.
- (4) A person who commits an act referred to in subsection (2) is guilty of an offence and is liable on summary conviction to a fine of \$100 000 or 3 times the value of the goods, whichever is greater or to imprisonment for 2 years or to both.
- (5) A person who is guilty of an offence under subsection (3) and who
- (a) defrauds the Government of any duty chargeable on the goods referred to in that subsection; or
 - (b) evades any prohibition or restriction in force with respect to any goods under this Act

is guilty of an offence and is liable on conviction on indictment to a fine of \$100 000 or 3 times the value of the goods, whichever is greater, or to imprisonment for 2 years or to both.

General provisions as to offences

228.(1) Where an offence under any enactment relating to an assigned matter has been committed by a body corporate and is proved to have been committed with the consent or connivance of, or be attributable to neglect on the part of any

- (a) director;
- (b) manager;
- (c) secretary;

- (d) other similar officer of the body corporate; or
- (e) person purporting to act in the capacity of a functionary mentioned in paragraph (a) to (d),

that person as well as the body corporate is guilty of the offence and is liable to be proceeded against and punished accordingly.

(2) Where in any proceeding for an offence under this Act a question arises as to the duty or the rate chargeable on any goods and it is not possible to ascertain the relevant time, the duty or rate shall be determined as if the goods had been imported or exported without entry at the time when the proceeding was commenced.

General penalty

229. A person who is guilty of an offence for which no specific penalty is provided is liable on summary conviction to a fine of \$100 000 or to imprisonment for 2 years or to both.

PART XXVII

FORFEITURE AND SALE OF GOODS

Forfeiture of goods

230.(1) Subject to subsection (3), and notwithstanding any other provision of this Act, goods shall be liable to forfeiture where the goods are

- (a) unloaded at any port, unloaded from an aircraft, removed from their place of importation or from a customs controlled area without payment of the duties due;
- (b) imported, landed or unloaded contrary to any prohibition or restriction in force with respect to the goods by virtue of any other enactment;

- (c) prohibited or restricted goods by or under any enactment and are found, whether before or after unloading, to have been concealed in any manner on board a vessel or an aircraft;
 - (d) chargeable with duty and are found, whether before or after unloading, to have been concealed in any manner on board a vessel or an aircraft;
 - (e) imported or concealed in a container holding goods of a different description;
 - (f) found, whether before or after delivery, not to correspond with the customs declaration made in respect of the goods; or
 - (g) concealed or packed in any manner appearing to be intended to deceive a customs officer.
- (2) Subsection (1)(a) does not apply where another enactment expressly provides otherwise.
- (3) A person who
- (a) imports goods or causes goods to be imported
 - (i) concealed in a container holding goods of a different description; or
 - (ii) packed in a manner appearing to be intended to deceive a customs officer; or
 - (b) directly or indirectly imports or causes to be imported or entered, goods found, whether before or after delivery, not to correspond with the entry made in respect of them,
- is liable to pay an administrative penalty not exceeding \$2 500 or 3 times the value of the goods, whichever is greater; and the goods are liable to forfeiture.
- (4) A person who staves, breaks or destroys goods to prevent their detention or seizure by a customs officer or by another person authorized to detain or seize the goods is liable to pay an administrative penalty not exceeding \$2 500 or 3 times the value of the goods, whichever is greater.

Detention, seizure of goods

231. Any goods that are liable to forfeiture under this Act may be detained or seized by a customs officer.

Special provisions as to forfeiture of large vessels

232.(1) Notwithstanding any other provision of this Act, a vessel of 250 or more tonnes burden shall not be liable to forfeiture unless the offence in respect of or in connection with which the forfeiture is sought

- (a) was the primary purpose of the voyage during which the offence was committed; or
- (b) was committed while the vessel was under chase after refusing to stop when ordered to do so.

(2) Where

- (a) a vessel of 250 or more tonnes burden would, but for subsection (1), be liable to forfeiture for or in connection with an offence under this Act; and
- (b) in the opinion of the Comptroller, a responsible officer, including the commander, a mate or engineer of the vessel carrying a passenger certificate, the purser or chief steward, is implicated by his own act or by neglect in the offence,

the Comptroller may impose an administrative penalty not exceeding \$15 000 on the vessel and until the penalty is paid, the Comptroller may withhold clearance of the vessel.

(3) No claim shall be brought against the Comptroller for damages in respect of the payment of any deposit or the detention of any vessel under this section.

(4) The exemption from forfeiture of any vessel under this section shall not affect the liability to forfeiture of any goods carried on board.

Disposal of forfeited goods

233.(1) The Government has the property right to forfeited goods or to the proceeds of the sale of goods under section 236.

- (2) Condemned goods may be
- (a) sold by public auction; or
 - (b) used, destroyed or otherwise disposed of after their condemnation, as the Comptroller may direct.

Sale of certain seized goods

234.(1) The Comptroller may, before condemnation, sell or destroy any article which has been seized as being liable to forfeiture and is or constitutes

- (a) a living creature;
 - (b) goods that are of a perishable nature; or
 - (c) goods that, in the opinion of the Comptroller,
 - (i) are likely to deteriorate or diminish in value during storage;
 - (ii) are desirable to sell immediately; or
 - (iii) are likely to create a health or safety risk if stored.
- (2) The net proceeds of a sale referred to in subsection (1) are deemed to be substituted for the goods sold and this Part, insofar as it is applicable, extends and applies to those proceeds.

Sale of goods condemned as forfeited

235. Any goods condemned as forfeited in accordance with this Act or deemed to have been condemned as forfeited in accordance with this Act, shall, unless they are prohibited goods, be sold by public auction.

Sale of goods not condemned

236. Where goods that are not condemned or deemed to be condemned as forfeited are sold under this Act, the goods shall, unless they are of a perishable nature, be sold at a public auction.

Notice of seizure

237.(1) Where goods have been seized, the customs officer shall within 5 working days, give

- (a) notice in writing of the seizure in such form as the Comptroller determines; and
- (b) the rationale for the seizure,

to any person known or believed to have an interest in the goods or, where that person is overseas, to his agent in Barbados.

(2) Notwithstanding subsection (1), a seizure is not invalidated or rendered illegal by reason of any failure to give such notice where reasonable steps were taken to give the notice.

Delivery of goods seized on deposit of value

238.(1) Where goods have been seized and are liable to forfeiture, unless the goods are prohibited goods, the Comptroller may, before their condemnation, deliver the goods to the owner or other person from whom they were seized, where the owner or person deposits with the Comptroller

- (a) a cash sum equal to the value of the goods; and
- (b) any duty to which the goods may be liable as determined by the Comptroller.

(2) The money deposited pursuant to subsection (1) shall be substituted for the goods seized and this Part, so far as it is applicable, applies to the money accordingly.

Application for order disallowing seizure

239. A person who claims an interest in goods that have been seized and are liable to forfeiture may, within 40 working days after the date on which a notice is given to the person under section 237, or within such further time as the court may allow, apply to the court for an order

- (a) disallowing the seizure, on the grounds that there is no reasonable cause for the seizure;
- (b) directing that the goods be returned to the applicant; and
- (c) directing that the Government pay the applicant a sum as compensation for
 - (i) any depreciation in the value of the goods resulting from the seizure or detention; and
 - (ii) any transportation and storage costs,

as the court thinks fit.

Court may disallow seizure

240.(1) Where an application is made under section 239, the court may dismiss the application or issue an order

- (a) disallowing the seizure in whole or in part; and
- (b) directing that the goods be returned to the applicant; and
- (c) directing that the Government pay the applicant a sum as compensation for
 - (i) any depreciation in the value of the goods resulting from the seizure or detention; and
 - (ii) any transportation and storage costs,

and the order may be issued on such terms and conditions as the court may determine.

- (2) Where the court issues an order dismissing an application under subsection (1), the order issued is for condemnation of the goods to the Government.
- (3) No order disallowing the seizure of goods shall be issued where the court is of the opinion that all or some of goods are required to be produced in evidence
 - (a) in any proceedings pending under this Act or another enactment; or
 - (b) where there are proceedings pending that may result in condemnation of the goods.
- (4) No order for the payment of compensation shall be made except
 - (a) in respect of goods that, in the opinion of the court, were seized or detained without reasonable cause; and
 - (b) to the extent that the court disallows the seizure.
- (5) Where the court issues an order for the payment of an amount as compensation to any person under this section, the amount so awarded is recoverable by the person as a debt due from the Government.

Application for order disallowing seizure where notice is not received

241.(1) Except where the goods have already been condemned to the Government, a person who claims an interest in goods seized as being liable to forfeiture under this Act who did not receive notice under section 237 may, within one month after the date on which the goods were seized, apply to the court for an order

- (a) of a kind specified in section 239 where the goods seized have not been sold, destroyed or otherwise disposed of; or
- (b) that compensation be paid by the Government for the whole or part of any loss suffered by the person where the goods seized have been sold, destroyed or otherwise disposed of.

- (2) The court may
- (a) dismiss an application made under subsection (1); or
 - (b) issue an order
 - (i) of a kind specified in section 240 where the goods seized have not been sold, destroyed or otherwise disposed of; or
 - (ii) that compensation of such amount as the court determines be paid by the Government for the whole or part of any loss suffered by the applicant where the goods seized have been sold, destroyed or otherwise disposed of.
- (3) No order for the payment of compensation referred to in subsection (2) shall be issued except in respect of goods that, in the opinion of the court, were seized or detained without reasonable cause, and except to the extent that the court disallows the seizure.
- (4) Where the court issues an order dismissing the application under subsection (1), that order is deemed to be an order for condemnation of the goods to the Government unless the goods have already been condemned under section 242.
- (5) Without limiting subsection (2), the court may dismiss an application under subsection (1) that is not made as soon as reasonably practicable after the applicant became aware of the seizure of the goods.

Condemnation if no appeal against seizure

242. Where no application is made under section 240 within the time specified in that section, the goods shall be condemned to the Government as if such an application had been made and dismissed.

Condemnation if application discontinued

243. Where an application under section 239 or section 241 is not completed, the goods shall be condemned to the Government as if the application had been dismissed.

Condemnation of seized goods on conviction

244.(1) Subject to subsection (2), where this Act provides that on the commission of an offence goods are liable to forfeiture, the conviction of a person for the offence has effect as a condemnation without suit or judgment, of any goods that have been seized in accordance with this Act and

- (a) in respect of which the offence was committed; or
- (b) which were otherwise liable to forfeiture.

(2) Where the court imposes a sentence on a person on the conviction of the person for an offence referred to in subsection (1), the court may order the restoration of the goods forfeited to the person from whom the goods were seized, and where such an order is issued, the conviction does not have effect as a condemnation of the goods.

(3) Where the court issues an order pursuant to subsection (2), the court may impose such conditions as it thinks fit.

(4) Subsection (2) does not apply where the goods have, before the conviction, been sold by public auction or restored to the person from whom they were seized or otherwise disposed of by the Comptroller under any other provision of this Act.

Disposal of forfeited goods

245.(1) Forfeited goods and the proceeds of sale of those goods are the property of the Government.

(2) Condemned goods may be sold by public auction, used, destroyed or otherwise disposed of after their condemnation as the Comptroller may direct.

Application of forfeiture provisions

246. The provisions of this Act with respect to the forfeiture of goods extend and apply to any vessel or other article forfeited under this Act, except where this Act provides otherwise.

PART XXVIII

ADMINISTRATIVE PROCEEDINGS BY THE COMPTROLLER

Application for reconsideration

- 247.(1)** Where a person to whom this subsection applies
- (a) is not satisfied with a decision of the Comptroller, that person may, within 14 days of the date of that decision, apply to the Comptroller for a reconsideration of the decision; or
 - (b) is aggrieved by the failure of the Comptroller to make a decision, that person may, within 30 days of the date of the application, apply to the Comptroller for consideration of the application.
- (2) Subsection (1) applies to
- (a) the importer or exporter of goods;
 - (b) a person expressly permitted under this Act to apply to the Comptroller for a reconsideration;
 - (c) a person who has made an application for permission or licence in respect of any benefit or matter under this Act;
 - (d) a person who is aggrieved by the manner in which any right or interest in any manner has been dealt with by any person under this Act;
 - (e) the agent or a person referred to in paragraph (a) or (c);

(f) a person in relation to an administrative penalty notice issued in accordance with section 203.

(3) An application for reconsideration of a decision through administrative proceedings made under subsection (1) shall be made in such form as the Comptroller determines and shall state the grounds on which the application is based and contain any documentation or other information relied upon in support of the request for reconsideration.

Powers of the Comptroller in administrative proceedings

248. Where a matter is dealt with administratively by the Comptroller, the Comptroller may

- (a) stay the proceedings for condemnation of anything forfeited under this Act;
- (b) restore anything seized under this Act, subject to conditions, if any;
- (c) impose, reinstate or revoke penalties or fines, as the case may be, in respect of a contravention dealt with administratively under this Act;
- (d) seize goods;
- (e) mitigate or remit any fine or penalty imposed or restore anything seized under this Act; or
- (f) in relation to any duty, assessment or claim, confirm the original assessment or decision or substitute a new assessment or decision for the original assessment or decision, resulting in an increase, a decrease or a confirmation of the amount of duty determined to be due.

Consideration of application by the Comptroller

249.(1) The Comptroller shall consider an application made under section 247 as soon after its receipt as may be practicable and, after taking into account any further submissions of the person making the application endeavour to make

a decision as soon as may be practicable but not later than under 45 days of the filing of the application for reconsideration.

(2) The Comptroller shall keep a minute book in which shall be recorded the proceedings of an administrative matter considered under this section.

(3) This section shall not affect any right conferred by any other law to claim goods in case of a service or to commence legal proceedings at any time prior to the payment of a fine or penalty.

PART XXIX

APPEALS

Establishment of Customs Appeal Tribunal

250.(1) There is established a Customs Appeal Tribunal which shall hear appeals from decisions of the Comptroller made pursuant to section 260.

(2) The *Schedule* shall have effect as to the constitution and procedure of the Tribunal and otherwise in relation thereto.

(3) The Tribunal shall have a separate existence apart from its members.

Appeals to the Tribunal

251.(1) A person who is aggrieved by a decision of the Comptroller made pursuant to section 247 or section 248 may, within 14 days of receipt of the decision, appeal to the Tribunal.

(2) Every hearing and determination by the Tribunal shall be in accordance with the principles of natural justice.

Hearing

252.(1) Subject to section 253, where the Tribunal considers that an appeal is ready to be heard, the Tribunal shall fix a date, time and place for hearing the

appeal and shall notify the appellant and the Comptroller of the date, time and place of the appeal.

(2) A notice to the appellant under subsection (1) shall

(a) in addition to the matters referred to in subsection (1), inform the appellant of the provisions of subsections (5) and (6); and

(b) be served on the appellant by personal service or by post in accordance with this Act.

(3) At the hearing of an appeal before the Tribunal the appellant and the Comptroller may provide evidence and shall be given an opportunity to be heard either in person or by a person authorized by the appellant or the Comptroller to appear on his behalf, without regard to whether that person is an attorney-at-law or a layman.

(4) Where the appellant or the Comptroller or both, fail to appear before the Tribunal at the time and place appointed without notice or reasonable excuse, the Tribunal may upon proof of service of the notice of the hearing, proceed to determine the appeal.

(5) Subject to subsection (6), the hearing of an appeal before the Tribunal shall be in public.

(6) The Tribunal may hold a hearing or any part of a hearing in private where the Tribunal is of the opinion that it is proper to do so, having regard to the interests of any party and to the public interest.

(7) The Tribunal may order that any part of any evidence given or the name of any witness not be published and the order may be subject to such conditions as the Tribunal thinks fit.

Tribunal may decide appeal without oral hearing if both parties consent

253.(1) Notwithstanding section 252, the Tribunal may, where both parties consent, decide an appeal without holding a hearing.

(2) Where the Tribunal, at any time during its consideration of an appeal in accordance with subsection (1), decides that an oral hearing should be held, the Tribunal shall fix a date, time and place for the hearing of the appeal in accordance with section 252.

Tribunal's powers and immunity

254. For the purpose of a hearing and deciding any appeal before it, the Tribunal shall have

- (a) all the powers, duties, functions and discretions of the Comptroller in making its decision; and
- (b) all the powers of the High Court in the exercise of its civil jurisdiction, in respect of citing parties and conducting and maintaining order at the hearing of the Tribunal.

Evidence

255.(1) The Tribunal may receive as evidence any statement, document, information or matter that, in the opinion of the Tribunal, may assist the Tribunal to deal with the proceedings.

(2) The Tribunal may take evidence on oath.

(3) The Tribunal may permit a person appearing as a witness before it, to give evidence by tendering a written statement and verifying it by oath.

Powers of investigation

256.(1) For the purpose of hearing and deciding a matter on appeal the Tribunal or any person authorized by the Tribunal in writing to do so may

- (a) inspect and examine any papers, documents, records or articles;
- (b) require any person to produce for examination any papers, documents, records or articles in that person's possession or under that person's control and to allow copies of or extracts from any such papers, documents or records to be made; and

- (c) require any person to furnish, in a form approved by or acceptable to the Tribunal, any information or particulars that may be required by it.
- (2) The Tribunal may require that any written information or particulars or any copies or extracts furnished under this section be verified by statutory declaration or otherwise.
- (3) For the purpose of dealing with the matters before it the Tribunal may, of its own motion or on application, make an order that
 - (a) any information or particulars produced to it; or
 - (b) a copy of the whole or any part of any paper, document or record, furnished or produced to it,

be supplied to any person appearing before the Tribunal, and in the order impose such terms and conditions as it thinks fit in respect of the production of and use that is to be made of the information.

- (4) Every person shall have the same privileges and immunities in relation to the
 - (a) giving of information to the Tribunal;
 - (b) answering of questions put by the Tribunal; and
 - (c) production of papers, documents, records and articles

to the Tribunal as witnesses have in courts of law.

Power to summons witnesses

257.(1) The Tribunal may of its own motion or on an application, issue a summons requiring any person

- (a) to attend at the time and place specified in the summons; and
- (b) to give evidence and to produce any papers, documents, records or articles in that person's possession or under that person's control that are relevant to the matters before the Tribunal.

- (2) The summons shall be
 - (a) in such form as the Tribunal determines; and
 - (b) signed by the Chairman of the Tribunal.
- (3) The summons shall be served by
 - (a) delivering it to the person summoned at least 24 hours before his attendance is required; or
 - (b) sending it by registered post addressed to the person summoned at that person's usual place of residence or business at least 10 days before the date on which the attendance of the person is required.
- (4) Where the summons is delivered by registered post it shall be deemed for the purposes of subsection (3)(b) to have been served at the time when the letter would be delivered in the ordinary course of post.

Protection of persons appearing before the Tribunal

258. Every witness giving evidence and every counsel, agent or other person appearing before the Tribunal shall have the same privileges and immunities as witnesses and counsel in a court.

Grounds of appeal and burden of proof

259.(1) Subject to subsection (2), the appellant is limited to the grounds stated in the appellant's notice of appeal and the burden of proof is on the appellant.

(2) The Tribunal may, either on the application of the appellant or of its own motion, amend the grounds stated in the notice of appeal.

PART XXX

COURT PROCEEDINGS

Appeal to the High Court

260.(1) An appeal lies to the High Court in respect of any disputed matter under this Act where all proceedings before the Comptroller and the Tribunal have been exhausted.

(2) Subject to the powers of the Director of Public Prosecutions and to subsection (3), proceedings for an offence

(a) under this Act; or

(b) for condemnation,

shall not be commenced except by order of the Comptroller in writing and in the name of customs officer concerned in the matter.

(3) Notwithstanding any right of appeal, the decision of the High Court on any customs dispute shall be final.

Place where cause of action deemed to arise

261. Every cause of action under this Act shall be deemed to have arisen either in the place in which it actually arose, if it arose at sea, or in any place on land where the person prosecuted is found or may be brought.

Place of trial

262. Proceedings in respect of an offence committed under this Act may be commenced

(a) in any court having jurisdiction in the place

(i) where the offence was committed;

(ii) where the person charged with the offence resides or is found; or

- (iii) in the case of a body corporate charged with the offence, where that body corporate has its registered or principal office; or
- (b) where anything was detained, seized or found in connection with the offence, in any court having jurisdiction in the place where the thing was detained, seized, found or condemned as forfeited.

Time limit on proceedings

263. Unless otherwise provided in this Act and notwithstanding any other enactment, proceedings for an offence may be commenced at any time within 7 years after the date of the commission of the offence.

Limitation as to pleading

264. The fact that any customs duties have been secured by bond or otherwise shall not be pleaded or made use of in answer to or in stay of any civil proceedings under this Act.

Officer may prosecute

265.(1) Any customs officer or other person authorized by the Comptroller although not an attorney-at-law, may prosecute and conduct any information or other proceedings under this Act in respect of any offence or penalty.

(2) Where any proceedings under this Act are brought in the name of the Comptroller, an officer or the Commissioner of Police, no such proceedings shall be dismissed by reason only of the failure of the Comptroller or officer or Commissioner of Police to appear in person or by counsel, provided that the proceedings, where brought in the name of the Comptroller or an officer, are conducted by an officer authorized in that behalf by the Comptroller and, where brought in the name of the Commissioner of Police, are conducted by a constable for the time being present in court.

Incidental provisions as to legal proceedings for offences

266.(1) In proceedings for an offence under this Act, a court in which the matter is considered may mitigate any penalty as it sees fit.

(2) It is not a defence in any proceeding for an offence or for the condemnation of an article as being forfeited under this Act, that security has been given by bond or otherwise for the payment of any duty or compliance with any condition.

Onus of proof on defendant in certain cases

267. In any prosecution under this Act the onus is on the defendant to prove that

- (a) the duties assessed have been paid; and
- (b) the goods were lawfully
 - (i) loaded into or unloaded from any vessel or aircraft;
 - (ii) transferred from a vessel or an aircraft to another vessel or aircraft; and
 - (iii) imported or exported.

Averment in proceedings

268.(1) The averment that

- (a) the Comptroller has elected that a particular penalty should be sued for or recovered;
- (b) goods thrown overboard, staved or destroyed were so dealt with to prevent or avoid their seizure;
- (c) a person is or was appointed or authorized by the Comptroller to discharge or was engaged by the order or with the concurrence of the Comptroller in the discharge of any duty;
- (d) a person is or was the Minister, the Comptroller or a customs officer;

- (e) an offence was committed or an act was performed within the limits of a customs controlled area or within the territorial waters of Barbados;
- (f) the Comptroller is or is not satisfied as to the matter as to which he is required under this Act to be satisfied; or
- (g) the proceedings were instituted by an order of the Comptroller,

is sufficient evidence of the matter in question, until the contrary is proved.

(2) Where in proceedings brought by or against the Comptroller, the Attorney-General, a customs officer or against any other person in respect of anything purporting to have been done in pursuance of a power or duty conferred or imposed on him under this Act, a question arises as to the place from which goods have been brought or as to whether or not

- (a) duty has been paid or secured in respect of the goods;
- (b) the goods are of the description or nature alleged in the information, writ or other process;
- (c) the goods were lawfully brought to any place for the purpose of being loaded into a vessel or an aircraft or were exported; or
- (d) the goods are or were subject to any prohibition or restriction on their importation or exportation,

the burden of proof lies on the other party to the proceedings.

Evidence of officers

269. Where at any trial a question arises as to whether a person is a customs officer, his own evidence shall be deemed sufficient and any customs officer shall be deemed a competent witness.

Proof of certain documents

270.(1) A document purporting to be signed by the Minister, the Comptroller or by a person with their authority, shall until the contrary is proved, be deemed to have been so signed, and the matters contained in that document may, in

proceedings under this Act, be proved by the production of that document or any document purporting to be a copy of that document.

(2) Where a book or other document is required to be kept under this Act, the production of the book or other document or a copy of it certified as a true copy by a customs officer in proceedings under this Act is *prima facie* evidence of the matters stated in it.

(3) In any proceedings under this Act, the production of a certificate purporting to be signed by the competent authority shall be sufficient evidence of all matters stated in the certificate, unless the contrary is proved.

Presumption of authenticity of documents

271. All documents purporting to be sealed with a seal of the Customs Department, including a digital seal, are in all courts and tribunals, and in all proceedings under this Act, deemed to have been sealed with due authority, unless the contrary is proved.

Valuation of goods for penalty or fine

272.(1) Where a penalty or fine for a contravention of this Act is an amount that is to be determined by the value of goods, such value shall be determined in accordance with Part X.

(2) A certificate signed by the customs officer attesting to the value of the goods shall be accepted by the Court as *prima facie* evidence of the value of the goods.

Certificate of condemnation

273. Condemnation of goods by a court under this Act may be proved in any court, or before the Tribunal, by the production of a certificate of condemnation purporting to be signed by the officer of the court.

PART XXXI

GENERAL

Recovery of debt etc.

274.(1) Any duty, tax, fee, penalty or other amount owing or payable under this Act is a debt due the Government from and after the time such amount should have been paid and is recoverable in civil proceedings before a magistrate's court, notwithstanding that the amount exceeds the normal limit on the jurisdiction of the magistrate's court.

(2) The Minister may prescribe the rate of interest to be paid on any amount owing or payable under this Act.

Unpaid tax certificate

275.(1) Where an amount payable or remittable under this Act by a person, has not been paid or remitted as required by this Act, the Comptroller may certify, in a certificate called an "unpaid tax certificate", that the amount is an amount payable by that person under this Act.

(2) An unpaid tax certificate may be filed by the Comptroller in the Magistrate's Court for District "A" and shall be registered and after the expiry of 14 days after it is filed and registered has the same force and effect as a judgment in favour of the Government against the person for the amount specified in the certificate, plus the reasonable costs and charges attendant upon the registration of the certificate; and all proceedings may be taken upon the certificate, and it may be enforced, as if it were a judgment of the court.

Certificate of Comptroller

276. In any proceedings in which the Comptroller issues a certificate indicating that a person has paid or has not paid the charges or duties in respect of goods, the certificate shall, in the absence of evidence to the contrary, be conclusive of the facts stated in the certificate.

Garnishment

277.(1) Where the Comptroller knows or suspects that a person, in this section referred to as the “third party”, is indebted to or is liable to make a payment to a person who is liable to pay or remit an amount under this Act, the Comptroller may, deliver to the third party a demand for payment stating the name of that person and the amount payable or remittable by that person, and requiring the third party to make the payment forthwith if the payment is then due and owing and, if the payment from the third party to that person is not then due and owing, as it becomes due and owing.

(2) Where the Comptroller delivers a demand to a third party under subsection (1), the third party shall pay to the Comptroller, on account of that person’s liability under this Act, moneys otherwise payable by the third party to that person as interest, rent, dividends, annuity, salary, wages, or other payment until that person’s liability under this Act is satisfied or such amount as is due from the third party to the person whichever is sooner.

(3) Where the Comptroller delivers a demand to a third party under subsection (1), the third party shall pay to the Comptroller, on account of the liability under this Act of a person who is an officer or an employee of the third party, moneys otherwise payable by the third party to that person as salary, wages or other remuneration, and the third party shall continue to do so until the amount due to that person is satisfied or until the amount demanded by the Comptroller is satisfied, whichever is lesser.

(4) A receipt issued by the Comptroller for moneys paid as required under this section is a good and sufficient discharge of the third party’s original liability to a person to the extent of the payment.

(5) A third party who fails to comply with a requirement under subsection (1), (2) or (3) is liable to pay to the comptroller an amount equal to the amount that the third party was required to pay to the Comptroller under subsection (1).

(6) Where an amount that would otherwise have been payable by a third party to a person is paid by the third party to the Comptroller pursuant to a letter served

on the person under subsection (1) or pursuant to an assessment of an amount payable by the third party under subsection (5), the person shall be deemed for all purposes to have paid the amount to the Comptroller on behalf of that person.

(7) The application of this section is subject to the *Protection of Wages Act*, Cap. 351.

Notice for immediate payment

278.(1) Where the Comptroller suspects that a person is about to leave Barbados or in any other circumstances considers it appropriate for the protection of the revenue to do so, the Comptroller may, before the day otherwise fixed for payment, deliver to that person a notice for immediate payment stating the amount that the Comptroller believes that person is liable to pay as taxes or penalties under this Act or would be liable to pay if the time for payment had arrived; and that person shall forthwith pay the amount specified in the notice for immediate payment.

(2) Where a person who has received a notice for immediate payment fails, within 24 hours after the notice was served on him under subsection (1), to pay forthwith the amount specified in the notice, the Comptroller may certify the amount in an unpaid tax certificate and require its registration in the Magistrate's Court for District "A" and section 275(2) thereupon applies with such adaptations or modifications as the circumstances require.

Joint and several liability

279.(1) Where liability for any offence under this Act is incurred by 2 or more persons jointly, each person is liable for the full amount of any fine or penalty and may be proceeded against jointly or severally.

(2) In any proceeding for an offence under this Act, any court by whom the matter is considered may mitigate any fine or penalty as it sees fit.

(3) In any proceedings for an offence or for the condemnation of anything as being forfeited under this Act, the fact that security has been given by bond or

otherwise for the payment of any duty or for compliance with any condition in respect of the non-payment of which or non-compliance with which the proceedings are instituted shall not be a defence.

Directors or managers of corporations

280.(1) Where a corporation fails to pay the duty required to be paid by this Act, the directors or manager of the corporation at the time the corporation was required to pay the duty are jointly and severally liable, together with the corporation, to pay the duty and any penalties relating thereto.

(2) A director or manager of a corporation is not liable under subsection (1) unless

- (a) a certificate for the amount of the corporation's liability referred to in that subsection has been registered and execution for that amount has been returned unsatisfied in whole or in part;
- (b) the corporation has commenced liquidation or dissolution proceedings or has been dissolved and a claim for the amount of the corporation's liability referred to in subsection (1) has been proved; or
- (c) the corporation has made an assignment or a receiving order has been made against it under the *Bankruptcy and Insolvency Act*, Cap. 303 and a claim for the amount of the corporation's liability referred to in subsection (1) has been proved.

(3) A director or manager of a corporation is not liable for a failure to pay duty under subsection (1) where the director or manager exercised the degree of care, diligence and skill to prevent the failure that a reasonably prudent person would have exercised in comparable circumstances.

(4) A director or manager of a corporation shall not be assessed for an amount payable by him under this section more than 7 years after the duty becomes due and payable.

Officials of unincorporated bodies

281.(1) Where any liability or obligation is imposed by or under this Act or by any regulations made under this Act on an unincorporated body, the body and each of the persons who are officials of the body at the time the liability or obligation is imposed are jointly and severally liable and responsible to satisfy the liability or obligation.

(2) For the purposes of this section “official” of an unincorporated body means in the case of

- (a) a partnership, a partner of the partnership other than a limited partner within the meaning of the *Limited Partnership Act*, Cap. 312;
- (b) a joint venture, a participant in the joint venture, other than a participant who contributes to the capital of the joint venture but who is not otherwise concerned in the management and daily operations of the joint venture;
- (c) a trust, a trustee of the trust;
- (d) an unincorporated body other than a body referred to in paragraph (a), (b) or (c)
 - (i) a person who holds office as chairman, president, treasurer or secretary of the body or any similar office;
 - (ii) where there is no such official of the body referred to in subparagraph (i), a member of any committee that has management of the affairs of the body; or
 - (iii) where there is no such official referred to in subparagraph (i) or (ii) or committee referred to in sub-paragraph (ii), a member of the body.

Executors and administrators

282.(1) For the purposes of this Act, where an individual dies

- (a) the individual's estate shall be deemed to be the same person as the individual and not to be a trust;
- (b) where any liability or obligation is imposed by this Act on the individual or his estate, the executors or administrators are subject to this section, responsible to satisfy the obligation; and
- (c) the estate and the executors or administrators are jointly and severally liable for the payment of all amounts that are payable by the estate under this Act, except that the executors or administrators are liable for the payment of amounts that became payable before the individual died only to the extent of the assets of the estate after satisfying the claims of creditors whose claims rank in priority to the claim of the Government.

(2) When an individual has died the Comptroller may, where it is considered appropriate to do so, waive in writing the requirement that the individual's executor or administrator pays the duty owed.

Trustees in bankruptcy

283. For the purposes of this Act, where a person is adjudged a bankrupt,

- (a) the person's estate shall be deemed not to be an estate or trust;
- (b) the property held by the person immediately before he was adjudged a bankrupt shall be deemed not to pass to and be vested in the trustee in bankruptcy upon the receiving order being made or the assignment in bankruptcy being filed but to remain vested in the person;
- (c) the property held by the trustee in bankruptcy for the person on the day the person is discharged from bankruptcy shall be deemed not to pass to the person on the order of discharge being granted but to have been

held by and vested in the person continuously since the day it was acquired by the person or the trustee;

- (d) where any liability or obligation is imposed by this Act on the person in relation to assets to which the bankruptcy relates, the trustee in bankruptcy is, subject to this section, responsible to satisfy the liability or obligations; and
- (e) the trustee in bankruptcy, and not the person, is liable for the payment of all amounts that become payable by the person under this Act before the person is discharged from bankruptcy, except that
 - (i) the trustee is liable for the payment of amounts that became payable by the person before the person became a bankrupt only to the extent of the person's property in the possession of the trustee that is available to satisfy the liability; and
 - (ii) the trustee is not liable for the payment of any amount which a receiver, within the meaning of section 284, is liable to pay or any amount that relates to activities which the person engages in, on or after the day the person is adjudged a bankrupt and to which the bankruptcy does not relate.

Receivers

284.(1) In this section,

“asset” includes any property;

“receiver” includes

- (a) a person who is appointed to manage or operate an asset of another person under the authority of a court order, an Act or a bond, debenture or other debt security;
- (b) a liquidator appointed to liquidate the assets or wind up the affairs of a corporation;

- (c) a committee, guardian or curator who has authority to manage and care for the affairs and other assets of an individual who is incapable of managing his own affairs and assets.
- (2) For the purposes of this Act, where a receiver is vested with authority to manage, operate, liquidate, or wind up any assets of a person or to manage and care for the affairs and other assets of a person,
- (a) the receiver shall be deemed to be an agent of the person in the course or furtherance of any of the person's activities over which the receiver has authority and any act performed by the receiver in relation to the person's assets over which the receiver has authority shall be deemed to have been performed by the receiver as agent on behalf of the person;
 - (b) the receiver shall be deemed not to be trustee of the estate of the person or any part thereof;
 - (c) where the assets of a person over which the receiver has authority are not all of the person's assets, throughout the period during which the receiver acts as receiver of the person, the assets over which the receiver has authority shall be deemed to be separate from the other assets of the person as if they were assets of a separate person;
 - (d) where any liability or obligation is imposed by this Act on the person in relation to assets over which the receiver has authority the receiver is subject to this section, responsible to satisfy the obligation;
 - (e) the person and the receiver are jointly and severally liable for the payment of all amounts that become payable by the person under this Act before the receiver was appointed, except that the receiver's is liable for the payment of those amounts only to the extent of the person's assets under the control and management of the receiver after satisfying the claims of the Government and those claims that rank in priority to the claim of the Government and after paying any amounts that the receiver is required to pay to a trustee in bankruptcy of the person;

- (f) the receiver, and not the person, is liable for the payment of all amounts that become payable by the person under this Act during the period which the receiver acts as receiver of the person to the extent that the amounts can reasonably be considered to relate to that person's assets over which the receiver has authority;
- (g) the Comptroller may, where a refund for a taxable period is payable to the person, apply the refund payable against any outstanding tax, penalty, interest or other amount payable under this Act by the person and pay the balance, if any, to the receiver on behalf of the person.

Receipts

285. The Comptroller shall provide an official receipt in writing for any money collected by him.

Requirements for security by bond

286.(1) The Comptroller may determine the requirements for providing security by bond to secure any obligation under this Act or any regulations made under this Act.

(2) The Comptroller may issue such guidelines as he thinks necessary in relation to the requirements under subsection (1).

Duties and drawback to be proportionate to quantity or value

287. All duties, rates, charges and drawbacks imposed and allowed according to any specified quantity or any specified value or any particular description of container shall be deemed to apply in the same proportion to any greater or less quantity or value or any other description of container.

Mode of calculating weights and measures

288. All duties, rates, charges and drawbacks imposed and allowed under this Act shall be paid and received according to the weights and measures

established by the *Weights and Measures Act*, Cap. 331, and, shall be paid and received in any currency being legal tender in Barbados.

Non-application of Cap. 114 to sales under this Act

289. The *District Auctioneers Act*, Cap. 114 shall not apply to sales under this Act when conducted by a customs officer authorized under this Act.

PART XXXII

MISCELLANEOUS

Regulations

290.(1) The Minister may make regulations

- (a) setting the hours and places of customs services;
- (b) prescribing the procedures for the reporting and processing of advance passenger information and advance cargo information;
- (c) relating to risk management policies and procedures;
- (d) prescribing the fees and charges to be paid under this Act including for customs services;
- (e) providing for the sharing of information regarding imports and exports for purpose of
 - (i) safeguarding public health and safety;
 - (ii) enforcing the relevant sanitary and phytosanitary measures regarding plants;
 - (iii) enforcing standards and technical regulation; and
 - (iv) trade facilitation and business
- (f) for the warehousing of goods and the operation of warehouses;

- (g) relating to transit sheds and examination stations;
 - (h) providing for circumstances in which entry on the face of customs declaration with respect to the description, value or classification of goods may be corrected after submission and the procedures for so doing;
 - (i) relating to coasting trade;
 - (j) relating to postal and courier processes;
 - (k) relating to authorized economic operators, trusted traders, customs brokers and agents;
 - (l) prescribing any matter required to be prescribed under this Act; and
 - (m) generally for the proper administration of this Act.
- (2) Regulations made under this section are subject to negative resolution.
- (3) Regulations made under this Act may provide that a person who breaches or contravenes any regulation is liable to pay an administrative penalty not exceeding \$10 000.

Amendment of Schedule

291. The Minister may by order subject to negative resolution amend the *Schedule*.

Comptroller to determine forms

292. Subject to this Act, the Comptroller may determine the forms to be used for the purposes of this Act and in particular, may provide electronic forms.

Power to make guidelines

293.(1) The Comptroller may make guidelines in relation to any matter for the purposes of this Act.

(2) Where guidelines are made under subsection (1) or subsequently amended, the guidelines shall be published in the *Official Gazette*.

Non application of Act to the Defence Force

294. This Act does not apply to

- (a) any vessel or aircraft when used for the purposes of the Barbados Defence Force; or
- (b) the importation or exportation by or on behalf of the Barbados Defence Force of arms, ammunition, vessels, vehicles, aircraft, uniforms and other military stores certified as such by the Prime Minister or a member of the Defence Board authorized in writing by the Prime Minister.

Minister may grant exemptions

295. The Minister may by order waive, exempt or remit any duty, charge or fee payable under this Act.

Exemption for government agencies

296. The Minister may by order exempt any government department or agency from any requirement in this Act or any regulations made under this Act.

Non-application of Act to fishing

297. This Act does not apply to fishermen plying their trade.

Payment into Consolidated Fund

298. All amounts collected under this Act shall, as soon as practicable, be paid by the Comptroller into the Consolidated Fund.

Transitional

299. Where at the commencement of this Act, any proceedings under the former Act, relating to appeals or otherwise, are in the process of being heard, the proceedings shall continue to be heard and determined under the former Act.

Savings

300.(1) The following shall continue in force as if made under this Act in so far as it is not inconsistent with this Act, until revoked:

- (a) any statutory instrument made under the former Act;
- (b) the Customs Tariff,

in force at the commencement of this Act.

(2) Any licence, authorization, permit, directive or ruling issued under the former Act shall continue in force until it expires or is sooner revoked.

(3) All ports, warehouses, airports, wharves and boarding stations approved as such under the former Act, shall continue to be ports, warehouses, airports, wharves and boarding stations and all duly appointed wharves and airports shall be deemed to be approved places of loading and unloading until the appointment of them is revoked or varied under this Act.

Repeal

301. The *Customs Act*, Cap. 66 is repealed.

Commencement

302. This Act shall come into operation on a date to be fixed by proclamation.

SCHEDULE

(Section 250)

*Customs Appeal Tribunal***Appointment of members**

1.(1) The Minister shall by instrument in writing, subject to sub-paragraph (2), appoint as members of the Tribunal, such number of persons, being not less than 5, who appear to the Minister to be qualified and experienced in law, tax, accounts, public administration or such other area as, in the opinion of the Minister, is required for the discharge of the functions of the Tribunal.

(2) The Minister shall appoint as Chairman of the Tribunal a member who has been a judge as is described in section 7(1)(b) or (c) of the *Supreme Court of Judicature Act, Cap. 117A*.

(3) Notwithstanding sub-paragraph (2), where the Minister is satisfied that there is no suitable person who has been such a judge as is mentioned in that sub-paragraph available and willing to be appointed, the Minister shall appoint as Chairman a person who is qualified for appointment as a judge pursuant to section 7(1)(a) of the *Supreme Court of Judicature Act, Cap. 117A* but who is not in active practice in Barbados as an attorney-at-Law.

(4) A member shall

- (a) hold office for a term not exceeding 3 years; and
- (b) be eligible for reappointment.

Resignation

2.(1) The Chairman may resign his office by instrument in writing addressed to the Minister.

(2) A member, other than the Chairman, may resign his office by instrument in writing addressed to the Chairman, who shall forthwith forward the instrument to the Minister.

(3) A resignation takes effect from the date on which the Minister receives the instrument.

Temporary Leave of absence

3. The Minister may, in writing, grant leave of absence to a member.

Temporary appointment

4. Where a member is, or likely to be, unable to perform the functions of his office for more than 30 days, whether as a result of absence from Barbados, illness or other cause, the Minister may appoint a person to act in the place of the member.

Revocation of appointment

5. The Minister shall revoke the appointment of a member who

- (a) fails to carry out any of his functions under this Act;
- (b) becomes of unsound mind or becomes permanently unable to perform his functions by reason of ill health;
- (c) is convicted of an offence involving fraud or dishonesty or, in the case of any other offence, is sentenced to a term of imprisonment;
- (d) is guilty of serious misconduct in relation to his functions;
- (e) is bankrupt or compounds with or suspends payment to his creditors;
or
- (f) fails to declare his interest in a matter before the Tribunal.

Vacancies

- 6.(1)** A vacancy in the membership of the Tribunal arises on
- (a) the death or resignation of a member;
 - (b) the revocation of the appointment of a member; or
 - (c) the absence of a member from 4 consecutive meetings of the Tribunal without the approval of the Minister.
- (2) A person who is appointed to fill a vacancy referred to in sub-paragraph (1) shall hold office for the unexpired portion of the term of the former member concerned.

Disqualification

- 7.** A person who
- (a) is a member of Parliament;
 - (b) other than a person specified in paragraph 1(b)(ii) or (iii), is a public officer within the meaning of the *Public Service Act*, Cap. 29;
 - (c) were he a member, would have to be removed from office pursuant to paragraph 6, is not eligible to be a member.

Gazetting of appointments

- 8.** The appointment, resignation, death or removal from office of a director shall be notified in the *Official Gazette*.

Institution of appeal

- 9.(1)** An appeal to the Tribunal shall be instituted by filing with the Tribunal, within such time as may be stipulated in the relevant enactment, a notice of appeal together with such copies thereof as the Tribunal may require, and such notice shall state the precise grounds of appeal.

(2) The Chairman of the Tribunal shall set the place, date and time for the hearing of the appeal and shall notify the parties of the place, date and time at least 7 days before the date set for the hearing.

Procedure on appeal

10.(1) An appeal shall be heard and determined by the Chairman and not less than 2 members selected by the Chairman, and the Chairman and the members so selected shall have all the powers of the Tribunal in relation to the appeal.

(2) The appeal shall be held in camera and

(a) the parties may appear in person or may be represented by an attorney-at-law or an agent; and

(b) the onus of proof is on the appellant.

(3) An appeal may be heard in the absence of a party who has been given reasonable notice in writing to attend.

(4) In determining the appeal, the Tribunal may review the whole case in respect of law and fact, and the exercise of any discretion, and shall determine the case in accordance with its own judgment.

(5) In the case of a difference of opinion among the members sitting together, the opinion of the majority shall prevail, and in case of an equality of numbers, the opinion of the Chairman shall prevail.

(6) Notwithstanding sub-paragraph (5), where the question to be determined is one of law, account shall not be taken of the opinion of a member who is not an attorney-at-law

Powers of Tribunal

11.(1) The Tribunal

(a) may issue subpoenas, make orders and give directions to such persons and in such manner as it thinks fit for the purpose of summoning witnesses, requiring the disclosure of documents, and for the purpose

of requiring parties or witnesses to answer questions, and for the purpose of conducting its proceedings in a proper and orderly manner;

- (b) may, where it determines it to be necessary in any particular case, consult any person having experience in any relevant field to assist it in dealing with a matter; and
- (c) shall, with respect to the attendance and examination of witnesses, the production and inspection of documents and all other matters necessary for the exercise of its jurisdiction, have all such powers as are vested in a magistrate's court in an action before that court.

(2) In hearing and determination of any matter before it, the Tribunal may act without regard to the technicalities and legal form and shall not be bound to follow the rules of evidence stipulated in the *Evidence Act*, Cap. 121; but the Tribunal may inform itself on any matter in such manner as it thinks just and may take into account opinion evidence and such facts as it considers relevant and material, but in any such case, the parties to the proceedings shall be given the opportunity, if they so desire, of adducing evidence.

(3) Subject to this *Schedule*, the Tribunal may regulate its own procedure and may make rules for the purpose.

Decisions of Tribunal

12.(1) The decision of the Tribunal shall be in writing and shall include reasons for the decision, a statement of its findings on material questions of fact and a reference to the evidence or other material on which the findings are based.

(2) The Tribunal shall ensure that the decision is served on each party to the proceedings.

Read three times and passed the House of Assembly this
day of _____, 2021.

Speaker

Read three times and passed the Senate this _____ day of
_____, 2021.

President