

COMMONWEALTH OF DOMINICA

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COMMONWEALTH OF DOMINICA

ACT NO. 20 OF 2010

I assent**NICHOLAS J.O. LIVERPOOL***President*20th October, 2010

**AN ACT TO REVISE AND AMEND THE LAW
RELATING TO THE OPERATIONS OF THE
CUSTOMS DEPARTMENT AND TO PROVIDE
FOR RELATED AND CONSEQUENTIAL
MATTERS.**

(Gazetted 28th October, 2010)

BE IT ENACTED by the Parliament of the Commonwealth of
Dominica as follows:

PART I**PRELIMINARY**

- 1. (1) This Act may be cited as the –
CUSTOMS ACT, 2010.**

Short title and
commencement.

(2) This Act shall come into operation on a date to be appointed by the Minister by order published in the *Gazette*.

Interpretation.

2. (1) In this Act -

“agent” means a person who is authorised in writing by a person required to perform any act under this Act to act as his agent for the purpose of conducting customs business under this Act;

“aircraft” means any machine which can derive support in the atmosphere from the reactions of the air other than the reactions of the air against the earth’s surface;

“airport” means an area of land or water designed, equipped, set apart or commonly used for affording facilities for the landing and departure of aircraft;

“approved wharf” has the meaning assigned to it in section 14;

“assessment of duties and taxes” means the determination of the amount of duties and taxes due;

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

“audit” means the measures used by the Comptroller to satisfy the requirements of the Comptroller concerning the accuracy and authenticity of declarations;

“authorised person” means a person authorised by the Comptroller under section 5;

“boarding station” means any place appointed as such under section 14;

“burden” means the net registered tonnage, or tonnage calculated in the manner prescribed by law for ascertaining net registered tonnage;

“Cabinet” means the Cabinet of Ministers established by section 60 of the Constitution;

“cargo” means goods, other than mail, stores, crew member’s effects and passenger’s accompanied baggage, carried on board a vessel or an aircraft for consideration;

“clearance” is the completion of customs formalities required for goods or conveyances to enter home use, to be exported, or to be placed under another customs procedure applicable to imported or exported goods;

“clearance for home use”, in relation to imported goods, means that the goods -

- (a) have completed the required customs clearance formalities;
- (b) are no longer subject to customs control; and
- (c) are available for free circulation in Dominica;

“coasting aircraft” has the meaning assigned to it in section 57(1)(b);

“coasting trade” has the meaning assigned to it in section 57;

“coasting vessel” has the meaning assigned to it in section 57(1)(b);

“commander,” in relation to an aircraft, includes a person having or taking charge or command of the aircraft;

“Commission” means the Customs Appeal Commission established under section 213;

“Common External Tariff” means the Common External Tariff established in accordance with Article 82 of the Revised Treaty;

“Comptroller” means the Comptroller of Customs appointed under section 86 of the Constitution;

“container” includes any bundle or package and any box, cask or other receptacle, however constructed;

“conveyance” includes a vehicle, aircraft, vessel or other machine used or capable of being used for the carriage or transportation of persons or goods by land, air or water or over or above water;

“copy” when used as a verb in relation to information, includes save a copy of the information in an electronic storage device;

“crew” means a person employed on board any vessel or aircraft during a voyage or flight, whether or not such a person is on any crew list;

“customs airport” means a place appointed as such under section 15;

“customs controlled area” means a place appointed or approved under Part III or VII;

“Customs department” means the Customs and Excise Division of the Ministry of Finance;

“customs direction” includes—

(a) a lawful request, order, command, or instruction given by a proper officer to a person to perform or to refrain from performing an act or to submit to a procedure for the purposes of this Act;

(b) any notice, poster, or sign publicly displayed in a customs controlled area; and

(c) a direction contained in a form prescribed under this Act;

“customs duty” means duty imposed on imports or exports and does not include value added tax;

“customs enactment” includes—

(a) this Act and any subsidiary legislation made under this Act; and

(b) any other enactment which relates to an assigned matter;

“customs officer” means the Comptroller, the Deputy Comptroller or any other person employed in the Customs department including any person authorised in writing by the Comptroller to act as a customs officer or any person acting in the aid of a customs officer;

“customs warehouse” means a warehouse appointed as such under section 76;

“declaration” means a statement, in verbal, written or electronic form, made by an importer or exporter providing information required by the Comptroller;

“Deputy Comptroller” means the Deputy Comptroller of Customs appointed under section 86 of the Constitution;

“disciplined force” means -

- (a) the Commonwealth of Dominica Police Force;
- (b) the Commonwealth of Dominica Prison Service;
or
- (c) the Commonwealth of Dominica Fire and Ambulance Service;

“document” means -

- (a) a map, plan, drawing or photograph;
- (b) any written information; or
- (c) a record generated in any manner, including electronically;

“Dominica Air and Sea Ports Authority” means the Dominica Air and Sea Ports Authority established by section 3 of the Dominica Air and Sea Ports Authority Act;

Act No. 8 of 2006

“drawback” means a refund on exportation of goods of any customs duty, wholly or in part, paid on their importation;

“dutiable goods” means goods of a class or description subject to duty, whether or not -

(a) such goods are in fact chargeable with duty; and

(b) the duty has been paid;

“duty” includes any tax or surtax imposed on imports and exports;

“entry”, in relation to—

(a) the importation or exportation of goods, means the submission of a declaration required under section 38 or 50;

(b) a vessel or an aircraft, means a document delivered to the proper officer in accordance with section 25 or 52;

“entry by bill of sight” means an entry made in accordance with section 39;

“examination station” means any place approved as such under section 16;

“export” means -

(a) to take goods, or cause goods to be taken, outside the territorial waters of Dominica; or

(b) to load goods, or cause goods to be loaded, on a vessel or an aircraft for use as stores;

“exporter”, in relation to goods, means -

(a) the owner or other person beneficially interested in the goods which are exported or supplied for use as stores; or

(b) an agent acting on behalf of a person referred to in paragraph (a);

“goods” includes any personal property including livestock, conveyance, stores, baggage, and currency;

“goods in free circulation” means goods which may be disposed of without customs restrictions;

“Government” means Government of Dominica;

“import” means to bring goods or cause goods to be brought within the territorial waters of Dominica;

“importer”, in relation to the importation of goods, means the person, including the owner or consignee, or other person beneficially interested in the goods, or an agent acting on behalf of that person;

“land,” in relation to the arrival of aircraft, includes alighting on water;

“lethal weapon” means any weapon which, when used, is capable of causing injury from which death may result, whether or not the weapon was designed to cause injury;

“master,” in relation to a vessel, includes any person having or taking charge or command of the vessel;

“Minister” means the Minister responsible for Finance;

“name” includes the registration mark of a vessel or an aircraft;

“nautical mile” means a distance of one thousand eight hundred and fifty-two metres;

“occupier”, in relation to a warehouse, means the person who has given security to the Comptroller in respect of the warehouse;

“offensive weapon” means any article made or adapted for use for causing injury to a person or intended by the person having such article with him for use by him or by some other person;

“owner”, in relation to -

(a) an aircraft, includes the commander of the aircraft;

(b) a vessel, includes the master of the vessel; and

(c) goods, includes any importer, exporter, shipper and other person possessed of or beneficially interested in the goods;

“passenger” means a person other than a crew member travelling on, arriving from or departing on a vessel or an aircraft;

“passenger’s accompanied baggage” means property, including currency, carried for a passenger on a vessel or an aircraft, whether or not in the passenger’s personal possession;

“perfect entry” means an entry made in accordance with section 38;

“pleasure craft” means a vessel which-

(a) at the time of its arrival at a place in Dominica, is being used for private recreational purposes only;
or

(b) the proper officer, after application is made to him in writing, permits to be treated, used or operated as a pleasure craft;

“police officer” means a member of the Police Service;

“Police Service” means the Commonwealth of Dominica Police Force;

“port” means a place appointed as such under section 14;

“prohibited goods” includes goods of a class or description of which the importation, exportation or carriage coastwise is prohibited under or by virtue of any enactment;

“proper officer”, in relation to the person by or with whom, or the place at which any thing is to be done, means the customs officer or person appointed or authorised by the Comptroller in that behalf;

“proprietor,” in relation to goods, includes any owner, importer, exporter, shipper and other person possessed of or beneficially interested in those goods;

“residential premises” means a building or part of a building lawfully used as, or for the purposes of, a private residence or commercial dwelling, including the cartilage of the building or, where the boundaries of the cartilage are not ascertainable, the land within a distance of 75 feet from the building;

“restricted goods” includes goods of a class or description of which the importation, exportation or carriage coastwise is restricted under or virtue of any enactment;

“Revised Treaty” means the Treaty of Chaguaramas establishing the Caribbean Community, including the CARICOM Single Market and Economy, signed at Nassau, The Bahamas, on 5 July, 2001;

“spirits” includes all liquors mixed with spirits and all mixtures, compounds and preparations made with spirits, but does not include perfumed spirits, methylated spirits and medicated spirits;

“stores” means goods, including fuel and spare parts and other articles or equipment whether or not for immediate fitting, for use in a vessel or an aircraft;

“tainted” in relation to any goods, article, item or other property, means liable to forfeiture under this Act or any other customs enactment;

“territorial waters of Dominica” means the contiguous zone of sea over which the Commonwealth of Dominica may exercise sovereign rights by virtue of section 4 of the Territorial Sea, Contiguous Zone, Exclusive Economic and Fishery Zones Act;

Chap. 1:11.

“transhipment” means the customs procedure under which goods are transferred under customs control from the importing means of transport to the exporting means of transport within one customs area, which is the area of both importation and exportation;

“transit” means the customs procedure under which imported goods are transferred under customs control from the port of entry to another customs controlled area;

“transit shed” means a building or place approved as such by the Comptroller under section 17 for the temporary deposit of goods that are imported or are to be exported;

“uncustomed goods” includes any goods—

- (a) liable to duty on which the full duties due have not been paid or secured; and
- (b) whether liable to duty or not, which are imported or exported or in any way dealt with contrary to any customs enactment;

“vehicle” means any method of carriage or conveyance for use on land, whether it is also capable of being used on or over water, and includes any cart and wagon and any trailer attached to any such carriage or conveyance;

“vessel” includes any ship, hovercraft and boat;

“warehouse”, except in the expression “customs warehouse”, means any place of security approved by the Comptroller under section 66;

“warehoused” means deposited in a warehouse in accordance with Part VIII;

“waters of Dominica”, except in the expression “territorial waters of Dominica”, means any waters within a space contained within an imaginary line drawn parallel to the shores and outer reefs of Dominica which appear above the surface at low water mark at ordinary spring tides and a distance of three nautical miles from those places.

Application of Act.

3. (1) This Act and every other customs enactment apply in relation to –

- (a) the control of coasting trade;
- (b) the importation and exportation of goods;
- (c) the arrival of persons from outside the territorial waters of Dominica; and
- (d) the departure of persons to a destination outside the territorial waters of Dominica.

(2) The requirements imposed by Parts V, VI and VII do not apply—

- (a) to a vessel or an aircraft owned by or in the service of the Government, when being used for the purpose of customs, police or coastguard; and
- (b) where the Comptroller so directs and for such periods and subject to such conditions and restrictions as he sees fit to impose, to any vessel or aircraft owned by or in the service of the government of any other country.

(3) Subject to subsection (4) -

- (a) sections 29 to 36 do not apply to any member of any disciplined force or any conveyance under the control of any disciplined force during such time as that person or conveyance is required to respond to an emergency; and
- (b) sections 21 to 22 and 24 to 28 do not apply to any member of any disciplined force or any conveyance under the control of any disciplined force during such time as that person or conveyance is involved in an emergency described in subsection (7)(a) or (c).

(4) Where a vessel or an aircraft under the control of any disciplined force which is involved in, or is required to respond to, an emergency departs from or returns to Dominica, the disciplined force shall, within a period of 24 hours or such longer period as the Comptroller may allow -

- (a) notify the Comptroller of the departure of the vessel or aircraft from Dominica or the arrival of the vessel or aircraft in Dominica; and
- (b) provide to the Comptroller such details relating to goods and persons on the vessel or aircraft as the Comptroller specifies.

(5) The power of the Comptroller under subsection (4) to determine a period or to specify details required may be exercised generally or in respect of any particular case.

(6) The Minister may make regulations prescribing the circumstances in which and the conditions under which the powers conferred under Part XIII may be exercised in relation to -

- (a) a member of a disciplined force;
- (b) any vessel under the control of the Police Service; or
- (c) access to any security area for the purpose of the defence and security of the State.

(7) For the purposes of this section, “emergency” means -

- (a) a national emergency within the meaning of the Emergency Powers Act or the Emergency Powers (Disaster) Act;
- (b) a search and rescue event at any place outside Dominica involving a serious and imminent threat to the safety of persons or any vessel or aircraft; or
- (c) a state of war or other similar emergency in a place outside Dominica.

(8) Nothing in this Act shall be construed as limiting the immunities of-

- (a) any foreign warship or other vessel of the government of any other country operated for non-commercial purposes;
- (b) any foreign military aircraft; or
- (c) members of the crew of any vessel or aircraft to which paragraph (a) or (b) applies.

PART II

ADMINISTRATION

4. (1) The Comptroller is responsible for -

Comptroller of Customs.

(a) the general management and administration of this Act; and

(b) any other matter concerning which a duty is conferred on the Comptroller by or under any other law.

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

(3) Any act or duty required or authorised by this Act or any other law to be performed by the Comptroller, may be performed by any customs officer or suitably qualified person authorised by the Comptroller to perform the act or duty.

(4) For the purposes of this Act, the Comptroller may give the authorisation under subsection (3) before or after the performance or execution of the act or duty.

5. (1) The Comptroller may, in writing, authorise a suitably qualified person who is not a customs officer to perform or exercise any function or power which may be performed or exercised by a customs officer under this Act.

Authorised persons.

(2) The authorisation under subsection (1) shall specify—

(a) the function or power which the authorised person may perform or exercise; and

(b) the term of the authorisation, which shall be for a period, not exceeding six months, as the Comptroller thinks fit.

(3) The Comptroller may renew any authorisation given under this section for a further period, not exceeding six months, as the Comptroller thinks fit.

(4) For the purposes of this Act and any other customs enactment, an authorised person has the powers, authorities and immunities of a customs officer.

(5) The Comptroller may revoke an authorisation given under this section -

- (a) for incapacity, misconduct or neglect of duty;
- (b) where the authorised person gives written notice to the Comptroller that the authorised person wishes the authorisation to be revoked; or
- (c) in any other circumstance where, in the opinion of the Comptroller, the authorisation is no longer necessary.

(6) Where a person ceases to be an authorised person for the purposes of this section, the person shall surrender to the Comptroller all articles and documents received by the person in relation to the authorisation.

(7) Nothing in this section prevents an authorised person from performing the functions or exercising the powers of a proper officer.

Delegation.

6. The Comptroller may delegate to any customs officer, any power or duty imposed on the Comptroller by this Act or any other enactment, but not his power of delegation.

Identification of officers.

7. (1) The Comptroller shall give to every customs officer an identity card or other means of identification.

(2) Whenever a customs officer exercises any power under this Act, the customs officer shall, on request, produce the identity card or other means of identification for inspection.

8. Where an act is required by this Act or any other law to be performed in or at a particular place within a customs controlled area, the act is deemed to be performed in or at the place if performed in or at a place authorised by the Comptroller for that purpose.

Deeming of place of acts.

9. (1) Every person who has an official duty under, or is employed in the administration of, this Act shall regard and deal with as secret and confidential all documents and information relating to -

Confidentiality.

(a) the valuation or assessment of customs duties in respect of imported goods; or

(b) the mitigation of any penalty.

(2) Subject to subsections (4), (5) and (6), a person who exercises any power under this Act or in relation to an assigned matter shall not communicate to any unauthorised person, directly or indirectly, any information or document obtained in the exercise of any power under this Act or in relation to the assigned matter.

(3) Where a person who exercises any power under this Act or in relation to an assigned matter -

(a) contravenes subsection (2); or

(b) permits an unauthorised person to have access to the documents or information described in subsection (2),

the person commits an offence and is liable on summary conviction to a fine of \$25,000 or to imprisonment for a term not exceeding 2 years, or to both such fine and imprisonment.

(4) Nothing in subsection (2) prevents the disclosure of any document or information where that disclosure is authorised by the Comptroller in accordance with subsection (5).

(5) The Comptroller may disclose or authorise the disclosure of any document or information in accordance with any law, treaty, agreement or arrangement concluded by Dominica.

(6) The information which may be disclosed under subsection (4) includes, but is not limited to, information about -

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

Police powers of customs officers.

10. For the purpose of carrying out the provisions of this Act or any other customs enactment, every customs officer has the same powers, authorities and privileges as are given by law to a police officer.

Duty of police officers to render assistance.

11. Every police officer has a duty to assist in the enforcement of this Act and any other customs enactment in relation to an assigned matter.

Hours of general attendance.

12. The Minister may make regulations respecting the hours and places of customs services.

Power to impose customs charges.

13. The Minister may, by Regulations, prescribe charges which he considers necessary for the delivery of customs services and the administration of the Customs department.

PART III

CUSTOMS CONTROLLED AREAS

Appointment of customs ports, wharves, etc.

14. (1) The Minister may, by Order published in the *Gazette*, appoint any place as a “customs port” subject to such conditions or restrictions as the Minister thinks fit.

(2) The Comptroller may, in such manner as the Comptroller thinks fit, designate any place as an “approved wharf” for -

- (a) the loading or unloading of any goods or any class or description of goods; or
- (b) the embarkation and disembarkation of passengers.

(3) The Comptroller may, for the purpose of the boarding of or disembarkation from vessels by customs officers, designate as a boarding station any place within a customs port.

(4) A person in control of a customs port shall-

- (a) permit a proper officer at any time to enter upon and inspect the customs port and all buildings and goods in it; and
- (b) if required by the Comptroller -
 - (i) keep, in the form and manner and containing such particulars as the Comptroller may direct, a record of any vessel arriving at or departing from the customs port,
 - (ii) keep such record available and produce it on demand to any proper officer, together with all other documents kept at the customs port relating to the movement of that vessel, and
 - (iii) permit a proper officer to make copies of, take extracts from or remove, for a reasonable period, any record or document.

(5) A person who contravenes subsection (4) commits an offence and is liable on summary conviction to a fine of \$25,000.

Customs airport.

15. (1) The Minister may, by Order published in the *Gazette* -

- (a) designate any area in Dominica as a customs airport;
- (b) alter the name or limits of any customs airport;
- (c) revoke the designation of any customs airport; or
- (d) impose any condition or restriction, or vary or revoke any condition or restriction imposed on the use of any area in Dominica as a customs airport.

(2) A person in control of a customs airport shall -

- (a) permit a proper officer at any time to enter upon and inspect the customs airport and all buildings and goods in it; and
- (b) if required by the Comptroller –
 - (i) keep a record, in the form and manner and containing such particulars as the Comptroller may direct, of any aircraft arriving at or departing from that customs airport,
 - (ii) keep such record available and produce it on demand to any proper officer, together with all other documents kept at the customs airport relating to the movement of that aircraft, and
 - (iii) permit a proper officer to make copies of, take extracts from or remove, for a reasonable period, any record or document.

(3) A person who contravenes subsection (2) commits an offence and is liable on summary conviction to a fine of \$25,000.

Examination stations.

16. (1) The Comptroller may, in such manner as the Comptroller thinks fit, approve as an “examination station”, a part

of or a place at a customs port or a customs airport for the loading and unloading of goods and for the embarkation and disembarkation of passengers.

(2) An approval under subsection (1) may be for such period and subject to such conditions or restrictions as the Comptroller thinks fit.

(3) The Comptroller may at any time -

(a) in such manner as the Comptroller thinks fit; and

(b) for reasonable cause,

revoke or vary the terms of any approval given under this section.

(4) A person who contravenes any condition or restriction imposed under this section commits an offence and is liable on summary conviction to a fine of \$10,000.

17. (1) The Comptroller may, in such manner as the Comptroller thinks fit, approve as a “transit shed” any place in any customs controlled area, for the deposit of goods imported or to be exported. Transit sheds.

(2) An approval under subsection (1) may be for such period and subject to such conditions and restrictions as the Comptroller thinks fit.

(3) The Comptroller may at any time -

(a) in such manner as the Comptroller thinks fit; and

(b) for reasonable cause,

revoke or vary the terms of any approval given under this section.

(4) A person who contravenes a condition or restriction imposed under this section commits an offence and is liable on summary conviction to a fine of \$10,000.

PART IV

ARRIVAL AND DEPARTURE

Prior notification of arrival.

18. (1) Subject to subsection (3), unless exempted by the Comptroller by reason of proximity, the master or commander of a vessel or an aircraft or the relevant agent shall file a declaration with the proper officer in the form and manner prescribed—

- (a) in the case of the vessel, at any time but not less than 24 hours before the arrival of the vessel; and
- (b) in the case of the aircraft, at any time but not less than 15 minutes after departure of the aircraft from the foreign airport.

(2) The declaration shall contain the following information -

- (a) the estimated time of arrival of the vessel or aircraft;
- (b) the customs place at which the vessel or aircraft is scheduled to arrive;
- (c) a list of the cargo on board the vessel or aircraft for discharge within Dominica, whether commercial or non-commercial;
- (d) a list of the commercial cargo on board the vessel or aircraft, if any, not intended for discharge within Dominica; and
- (e) a list of all passengers and crew on board the vessel or aircraft.

(3) On the arrival of a vessel or an aircraft within Dominica or the waters of Dominica, the master or commander of the vessel or aircraft or the relevant agent shall proceed directly to the customs place notified in accordance with subsection (2)(b), unless directed elsewhere by the proper officer.

(4) An agent of the master or commander referred to in subsection (1) may perform the duties referred to in that subsection on behalf of the master or commander.

(5) A master or commander of a vessel or an aircraft or the relevant agent who fails to comply with subsection (1) or any direction given by the proper officer under subsection (3), commits an offence and is liable on summary conviction to a fine of \$10,000.

19. (1) This section applies to -

Requirement to answer questions.

- (a) a vessel or an aircraft which has arrived in Dominica from a place outside Dominica;
- (b) a vessel or an aircraft departing from Dominica for a place outside Dominica;
- (c) a vessel or an aircraft, within Dominica or the waters of Dominica, which is carrying international cargo or an international crew or any international passenger, whether or not the vessel or aircraft is also carrying domestic cargo; and
- (d) any other vessel or aircraft within Dominica or the waters of Dominica 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 or forfeited goods.

(2) A specified person shall -

- (a) answer any question put to him by the proper officer; and
- (b) at the request of the proper officer, produce any documents within that person's possession or control,

relating to the vessel or aircraft and its voyage and any persons or goods which are or have been carried by the vessel or aircraft.

(3) A specified person who—

- (a) refuses to answer any question put to him under subsection (2);
- (b) knowingly gives a false answer to any such question; or
- (c) fails to comply with any request made under subsection (2),

commits an offence and is liable on summary conviction to a fine of \$10,000.

(4) For the purposes of this section, “specified person” means -

- (a) the master, the commander, the owner, the operator or any member of the crew of a vessel or an aircraft to which this section applies;
- (b) the agent of the master, commander or owner of a vessel or an aircraft to which this section applies; or
- (c) any passenger on a vessel or an aircraft to which this section applies.

Request to stop vessel.

20. (1) The master of a vessel arriving within the territorial waters of Dominica shall, on being directed by the proper officer to do so –

- (a) stop and bring the vessel to for boarding; and
- (b) ensure that the vessel remains stopped until the proper officer directs that the vessel may proceed.

(2) A vessel carrying a customs officer must be clearly identified as being a vessel in the service of the State.

(3) The master of the vessel referred to in subsection (1) shall -

- (a) by all reasonable means, facilitate the boarding of the vessel by the proper officer; or
- (b) if so directed by the proper officer, cause that vessel to leave Dominica immediately.

(4) An officer who proposes to give a direction under subsection (3)(b) shall first obtain the approval of the Comptroller to do so.

(5) A master of a vessel who fails to comply with any provision of this section commits an offence and is liable on summary conviction to a fine of \$25,000.

21. (1) Subject to section 22, where a vessel or an aircraft -

- (a) arrives in Dominica; and
- (b) is carrying persons or goods subject to the control of the Customs department, brought in the vessel or aircraft or any other vessel or aircraft from a place outside Dominica,

Vessels and aircraft to arrive at notified place only.

the master, the commander of the vessel or aircraft or the relevant agent shall ensure that the vessel or aircraft lands, anchors or otherwise arrives only at the place notified by that person in the declaration filed under section 18.

(2) No person shall leave or board a vessel or an aircraft on its arrival at the notified place or the place directed to by the proper officer or a customs controlled area within that place, unless -

- (a) the relevant inward report required under section 25 is submitted to the Comptroller; or
- (b) the person is authorised by the proper officer to leave or board the vessel or aircraft.

(3) A person who contravenes subsection (1) or (2) commits an offence and is liable on summary conviction to a fine of \$25,000.

Vessels and aircraft
arriving at place other
than notified place.

22. (1) Section 21 does not apply to a vessel or an aircraft that berths, lands, anchors, or otherwise arrives at a place other than the place notified in accordance with section 18(2)(b) or at the place directed to by the proper officer under section 18(3), if the arrival is –

- (a) required by any statutory or other requirement relating to navigation;
- (b) compelled by reason of accident, stress of weather or other necessity; or
- (c) authorised by the Comptroller.

(2) Where by reason of subsection (1)(a), (b) or (c) a vessel or an aircraft arrives at a place other than the place notified in accordance with section 18(2)(b) or directed to by the proper officer under section 18(3), the master or commander of the vessel or aircraft -

- (a) shall immediately report the arrival of the vessel or aircraft to the proper officer or to a police officer;
- (b) shall not, without the consent of the proper officer, permit -
 - (i) any goods carried in or on the vessel or aircraft to be unloaded from it, or
 - (ii) any of the crew or passengers on board the vessel or aircraft to depart from its vicinity; and
- (c) shall comply with any customs directions given by the proper officer in respect of any goods, crew or passengers carried in or on the vessel or aircraft.

(3) Subject to any authorisation granted by the Comptroller -

(a) no member of the crew and no passenger on board the vessel or aircraft shall, without the consent of the proper officer -

(i) unload goods from the vessel or aircraft, or

(ii) depart from the vicinity of the vessel or aircraft; and

(b) every member of the crew and every passenger on board the vessel or aircraft shall comply with any customs directions given by the proper officer.

(4) When a vessel or an aircraft is directed by the proper officer under section 18(3) to arrive at a place other than the place notified in accordance with section 18(2)(b), no person shall depart from or board the vessel or aircraft unless authorised to do so by the proper officer.

(5) A person who contravenes subsection (2), (3) or (4) commits an offence and is liable on summary conviction to a fine of \$25,000.

(6) Notwithstanding subsection (5) –

(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,

does not constitute an offence if such departure or removal is necessary for reasons of health, safety or the preservation of life or property.

23. (1) The Minister may make regulations with respect to the arrival, report and departure of pleasure craft.

Control of pleasure craft

(2) Regulations under subsection (1) may -

(a) allow the Comptroller to give directions as he thinks fit;

- (b) provide for the imposition of a fine not exceeding \$10,000 for any contravention of, or failure to comply with, the regulations or any direction given under the regulations; and
- (c) provide for the forfeiture of any vessel, goods or equipment involved in any such contravention or failure.

Small craft.

24. (1) The Minister may make regulations in respect of vessels not exceeding 100 tons burden prescribing, with reference to the tonnage, build or general description of such vessels—

- (a) the limits and manner within which any such vessel may be used or employed;
- (b) the mode of navigation;
- (c) the number and description of arms and the quantity of ammunition which any such vessel may carry; and
- (d) such other terms, particulars, conditions and restrictions as the Minister may think fit.

(2) A vessel which is used or employed contrary to any regulation made under subsection (1) is liable to forfeiture unless it was specially licensed by the Comptroller to be so used or employed as provided in subsection (3).

(3) Notwithstanding any regulations made under subsection (1), the Comptroller may, if he thinks fit, grant licences in respect of any vessel not exceeding 100 tons burden upon such terms and conditions, and subject to such restrictions and stipulations as may be imposed in respect of such licences.

Report of arrival of vessels and aircraft.

25. (1) Where a vessel arrives at a customs port—

- (a) from a place outside Dominica; and
- (b) carrying goods brought in it from a place outside Dominica and not yet cleared on importation,

the master of the vessel shall, within 24 hours of the arrival of the vessel, submit to the Comptroller a report in such form and manner and containing such particulars as the Comptroller may direct.

(2) Where an aircraft arrives at a customs airport -

- (a) from a place outside Dominica; and
- (b) carrying goods or passengers taken on board at a place outside Dominica, being goods or passengers bound for a destination –
 - (i) in Dominica and not yet cleared at a port; or
 - (ii) outside Dominica,

the commander of the aircraft shall, on the arrival of the aircraft, but before its departure, submit to the Comptroller a report in such form and manner and containing such particulars as the Comptroller may direct.

(3) A person who is required to submit a report under this section shall -

- (a) answer all questions relating to the vessel or aircraft, its cargo, stores, baggage, crew, passengers, voyage or flight as may be put to him by the proper officer; and
- (b) produce all books and documents in his custody or control relating to the vessel or aircraft, its cargo, stores, baggage, crew, passengers, voyage or flight as the proper officer may require.

(4) Where a master or a commander of a vessel or an aircraft -

- (a) fails to submit a report as required by this section; or
- (b) contravenes subsection (3),

the master or commander commits an offence and is liable on summary conviction to a fine of \$10,000.

(5) Subject to subsection (6), when goods appear on any clearance or manifest required to be produced but such goods do not appear in the written account filed under this section, the master or commander of the vessel or aircraft or the relevant agent -

- (a) commits an offence and is liable on summary conviction to a fine of \$25,000 or equivalent to three times the value of the goods, whichever is greater; and
- (b) without prejudice to any penalty imposed under paragraph (a), shall pay the duty on such goods.

(6) Subsection (5) does not apply if the master or commander of the vessel or aircraft or the relevant agent amends the clearance or manifest in accordance with subsection (7).

(7) When a report submitted under this section is inaccurate, the person submitting the report shall be permitted to amend the report within 14 days of the submission of the report or such longer period as the Comptroller may allow.

(8) Notwithstanding any other provision of any customs enactment, when a report submitted under this section is inaccurate-

- (a) the person submitting the inaccurate report does not commit an offence if the person satisfies the Comptroller that the error was not made knowingly or recklessly; and
- (b) any goods in respect of which the error is made are not liable to forfeiture if the error consisted of the omission or incorrect reporting of such goods.

(9) Subject to subsection (10), where, at any time after a vessel or an aircraft carrying goods from a place outside Dominica arrives in Dominica, but before a report is submitted in accordance with this section -

-
- (a) bulk is broken;
 - (b) goods are unloaded from or taken on board that vessel or aircraft;
 - (c) any alteration is made in the stowage of any goods carried so as to facilitate the unloading of any part before the required report has been made;
 - (d) goods are staved, destroyed or thrown overboard; or
 - (e) any container holding goods is opened,

the master or commander of the vessel or aircraft commits an offence and is liable on summary conviction to a fine of \$25,000 and any goods in respect of which the offence is committed are liable to forfeiture.

(10) No proceedings shall be instituted under subsection (9) against a master or commander of the vessel or aircraft if the master or commander explains any matter referred to in that subsection to the satisfaction of the Comptroller.

(11) The Comptroller may require goods reported as stores on board any vessel or aircraft, or any portion of the goods, to be entered for warehousing and, for the purposes of this subsection, the master or commander of the vessel or aircraft or the relevant agent is deemed to be the importer of such goods.

(12) Where -

- (a) a report submitted under this section is erroneous, misleading or defective in any material particular; or
- (b) a document submitted in support of the report is not genuine or is erroneous or misleading,

the master or commander of the vessel or aircraft commits an offence and is liable on summary conviction to a fine of \$10,000.

(13) Every report submitted under this section by the master of a vessel shall -

- (a) subject to paragraph (b), bear stamps to the value of \$30; and
- (b) bear stamps to the value of \$15, if the vessel is less than 100 tons burden.

Vessels and aircraft
commissioned by State.

26. (1) Notwithstanding any other provisions of this Act, the master or commander of a vessel or an aircraft or the relevant agent having a commission from Dominica or from any other country, who has on board the vessel or aircraft any goods other than stores, laden at any port or place outside Dominica shall comply with the requirements of subsection (2).

(2) The master, commander or agent referred to in subsection (1) shall, on the arrival of the vessel or aircraft in Dominica or when called upon to do so by a proper officer, before any of the goods are unloaded -

- (a) provide, to the best of his knowledge and to the satisfaction of the proper officer, a written report respecting -
 - (i) the goods,
 - (ii) the quality and quantity of every package or parcel of the goods,
 - (iii) the marks and numbers on the goods, and
 - (iv) the names of the respective consignors and consignees;
- (b) make a declaration at the foot of the written report to the effect that the information provided is accurate to the best of his knowledge; and
- (c) truthfully answer questions concerning the goods asked by a proper officer.

(3) The master or commander of a vessel or an aircraft or the relevant agent who contravenes subsection (1) or (2) commits an offence and is liable on summary conviction to a fine of \$10,000.

(4) Subject to regulations prescribed in respect of vessels or aircraft of war belonging to Dominica -

- (a) the Comptroller may search or cause to be searched any vessel or aircraft to which subsection (1) applies as if it were a non-commissioned vessel or aircraft; and
- (b) for the purposes of paragraph (a), the Comptroller or a proper officer may -
 - (i) freely enter and go on board any such vessel or aircraft, and
 - (ii) bring from such vessel or aircraft into the warehouse any goods found on board the vessel or aircraft.

(5) Subject to subsection (6), when goods appear on any clearance or manifest required to be produced, but do not appear in the written report filed under this section, the master or commander of the vessel or aircraft or the relevant agent -

- (a) commits an offence and is liable on summary conviction to a fine of \$10,000; and
- (b) shall, without prejudice to any penalty imposed under paragraph (a), pay the duty payable on the goods.

(6) Subsection (5) does not apply if the master or commander or the agent amends the clearance or manifest under subsection (7).

(7) When a report provided under this section is inaccurate the maker of the report shall be allowed to amend such report

within 14 days of the making of the report or such longer period as the Comptroller may permit,

(8) Notwithstanding any other provision of this Act or any other customs enactment, when the maker of the inaccurate report satisfies the Comptroller that the inaccuracy or error was not made knowingly or recklessly-

(a) that person does not commit an offence; and

(b) if the error consisted of the omission or incorrect reporting of any goods, such goods are not liable to forfeiture.

(9) A person who is required to provide a written report under subsection (2) shall -

(a) answer all questions relating to the vessel or aircraft, its cargo, stores, baggage, crew, passengers, voyage or flight as may be put to him by the proper officer; and

(b) produce all books and documents in his custody or control relating to the vessel or aircraft, its cargo, stores, baggage, crew, passengers, voyage or flight as the proper officer may require.

(10) Notwithstanding any fine imposed under subsection (5), a person who contravenes subsection (10) commits an offence and is liable on summary conviction to a fine of \$10,000.

(11) Subject to subsection (15), if, at any time, after a vessel or an aircraft carrying goods from a place outside Dominica arrives in Dominica, but before a report has been made in accordance with this section -

(a) bulk is broken;

(b) such goods are unloaded from or taken on board the vessel or aircraft;

(c) any alteration is made in the stowage of any such goods so as to facilitate the unloading of any part of the stowage;

(d) such goods are staved, destroyed or thrown overboard; or

(e) any container containing any such goods is opened,

the master or commander of the vessel or aircraft or the relevant agent commits an offence and is liable on summary conviction to a fine of \$10,000.

(12) The Comptroller may require -

(a) goods reported as stores on board any vessel or aircraft; or

(b) any portion of such goods,

to be entered for warehousing and, for the purposes of this subsection, the master or commander of the vessel or aircraft or the relevant agent is deemed to be the importer of the goods.

(13) Where -

(a) a report submitted under this section is erroneous, misleading or defective in any material particular; or

(b) a document submitted in support of such report is not genuine or is erroneous or misleading,

the master or commander of the vessel or aircraft or the relevant agent commits an offence and is liable on summary conviction to a fine of \$10,000.

(14) Every report submitted under this section by the master of a vessel shall -

(a) subject to paragraph (b), bear stamps to the value of \$30; and

(b) bear stamps to the value of \$15, if the vessel is less than 100 tons burden.

(15) No proceedings shall be instituted against a master or commander of a vessel or an aircraft under subsection (11) if the master or commander explains any matter referred to in that subsection to the satisfaction of the Comptroller.

Disembarkation.

27. (1) Subject to subsection (3) and such exemptions as may be prescribed, a person who is on board a vessel or an aircraft which arrives in Dominica shall comply with every customs direction respecting disembarkation.

(2) Subject to subsections (1) and (3) and such exemptions as may be prescribed, a person who disembarks from a vessel or an aircraft to which this section applies shall, unless otherwise directed by the proper officer -

(a) go to the designated customs controlled area; and

(b) remain in such area for such reasonable time as the proper officer may require,

for the purposes of enabling the proper officer to exercise, in relation to that person, any power under this Act.

(3) A proper officer may exempt a person generally or specifically from the application of subsection (1) or (2).

(4) A person, other than a person exempted under subsection (3), who knowingly fails to comply with any requirement imposed by this section commits an offence and is liable on summary conviction to a fine of \$25,000.

(5) Notwithstanding subsection (4), the departure of any person from the designated customs controlled area does not constitute an offence where the departure is necessary for reasons of health, safety or the preservation of life.

(6) For the purposes of this section, a “customs direction” in respect of disembarkation includes a direction given by the person in charge of the vessel or aircraft or by a crew member at the direction of the proper officer.

28. (1) Subject to any exemptions as may be prescribed, a person who disembarks from a vessel or an aircraft which arrives in Dominica from a place outside Dominica shall -

Baggage to be presented.

- (a) present to the proper officer his accompanying baggage for examination by the proper officer;
- (b) comply with any customs direction relating to the movement of such baggage -
 - (i) within the customs controlled area, or
 - (ii) from the vessel or aircraft to a customs controlled area; and
- (c) answer all questions put to him by the proper officer relating to matters covered by this Act.

(2) A person moving or handling any baggage referred to in subsection (1) shall comply with every customs direction relating to the movement of the baggage-

- (a) within the customs controlled area; or
- (b) from any conveyance to a customs controlled area.

(3) A person who knowingly fails to comply with any requirement imposed by this section commits an offence and is liable on summary conviction to a fine of \$25,000.

29. (1) Subject to such exemptions as may be prescribed or unless otherwise authorised by the proper officer, no person shall depart from Dominica from a place other than a customs controlled area.

Persons departing from Dominica to depart from customs controlled area.

(2) A person who knowingly fails to comply with subsection (1) commits an offence and is liable on summary conviction to a fine of \$25,000.

30. (1) A person preparing to board a vessel or an aircraft for departure from Dominica shall comply with every customs direction respecting embarkation.

Embarkation.

(2) A person who knowingly fails to comply with subsection (1) commits an offence and is liable on summary conviction to a fine of \$25,000.

(3) For the purposes of this section, a “customs direction” in respect of embarkation includes a direction given by the person in charge of the vessel or aircraft or by a crew member at the direction of the proper officer.

Outgoing baggage to be presented.

31. (1) Subject to such exemptions as may be prescribed, every person who arrives at a customs controlled area for embarkation on to a vessel or an aircraft which has, as its destination, a place outside Dominica shall -

- (a) answer any question put to him by the proper officer with respect to his accompanying baggage and anything contained in such baggage or carried with him;
- (b) comply with any customs direction relating to the movement of the baggage within the customs controlled area or from a customs controlled area to the vessel or aircraft; and
- (c) upon request by the proper officer, make his accompanying baggage and any such thing available for examination by the proper officer.

(2) A person moving or handling the baggage referred to in subsection (1) shall comply with every customs direction relating to the movement of the baggage within the customs controlled area or from a customs controlled area to a vessel or an aircraft.

(3) A person who knowingly fails to comply with subsection (1) or (2) commits an offence and is liable on summary conviction to a fine of \$25,000 or three times the value of the thing not declared or produced or the baggage not produced.

(4) Without prejudice to any proceedings which may be instituted -

- (a) anything chargeable with any tax which is found concealed or is not declared; and
- (b) anything which is being taken into Dominica contrary to any prohibition or restriction goods were not declared and are found in the accompanying baggage are liable to forfeiture.

32. (1) Unless otherwise approved by the Comptroller, before a certificate of clearance is granted to the master or commander of a vessel or an aircraft which has, as its destination, a place outside Dominica, the master or commander shall -

Certificate of clearance.

- (a) submit to the proper officer within the time or times as may be prescribed, an outward report in the form and manner, and containing such particulars verified by declaration, as may be prescribed, and accompanied by any supporting documents required by the proper officer;
- (b) answer any question put to him by the proper officer relating to the vessel or aircraft and its passengers, crew, cargo, stores and its intended voyage or flight;
- (c) submit to the proper officer an account of the cargo and stores taken on or remaining on board the vessel or aircraft in Dominica;
- (d) produce all books and documents in the custody or control of the master or commander which relate to -
 - (i) the vessel or aircraft,
 - (ii) the cargo, stores, baggage, crew or passengers of the vessel or aircraft, or
 - (iii) the voyage or flight of the vessel or aircraft;

(e) produce such other documents as may be required by the proper officer relating to the vessel or aircraft and its passengers, crew, cargo, stores, and its intended voyage or flight; and

(f) comply with all requirements of this Act or any other enactment concerning the vessel or aircraft and its passengers, crew, cargo, stores, and its intended voyage or flight.

(2) Where clearance is sought for a vessel or an aircraft which-

(a) is in ballast; or

(b) has on board only stores, passengers' baggage or empty containers on which no freight or profit is earned,

the proper officer granting clearance shall clear the vessel or aircraft as in ballast.

(3) A master or commander of a vessel or an aircraft commits an offence and is liable on summary conviction to a fine of \$10,000 if the master or commander -

(a) fails to comply with subsection (1)(a);

(b) refuses to answer, or knowingly gives a false answer to, any question put to that person by the proper officer under subsection (1)(b); or

(c) fails to produce any documents required by the proper officer.

(4) Where -

(a) an outward report submitted under subsection (1) is erroneous, misleading or defective in any material particular; or

-
- (b) any document submitted in support of the report filed in accordance with subsection (1)(a) is not genuine or is erroneous or misleading,

the master or commander commits an offence and is liable on summary conviction to a fine of \$10,000.

33. (1) Unless otherwise approved by the Comptroller, where a vessel or an aircraft has, as its destination, a place outside Dominica, the master, commander of the vessel or aircraft or the relevant agent shall not cause that vessel or aircraft to depart from Dominica unless that person has received a certificate of clearance in the prescribed form.

Clearance of vessels and aircraft.

(2) Subject to such exemptions as may be prescribed, the master or commander of the vessel or aircraft or the relevant agent, shall not cause that vessel or aircraft to depart from –

- (a) the place in Dominica where it first arrived; or
(b) any subsequent place of call within Dominica,

without the permission of the proper officer and subject to the production to the proper officer of any documents which the proper officer requires and to any conditions imposed by the Comptroller.

(3) Where it appears to a customs officer that a vessel or an aircraft is likely to depart for a destination outside Dominica without clearance, the officer may give instructions and take, in accordance with section 134, such steps to detain the vessel or aircraft as appear to him necessary to prevent its departure.

(4) Where a vessel or an aircraft required to be cleared under this section –

- (a) departs from a customs place for a destination outside Dominica without a valid certificate of clearance; or

(b) after clearance, calls at a customs place without the permission of the proper officer,

the master or commander of the vessel or aircraft or the relevant agent commits an offence and is liable on summary conviction to a fine of \$25,000.

(5) Notwithstanding subsection (4), the master or commander of the vessel or aircraft or the relevant agent does not commit an offence if, by reason of accident, stress of weather or other unavoidable cause, the vessel or aircraft -

(a) departs from a customs place for a destination outside Dominica without a valid certificate of clearance; or

(b) after clearance, calls at a customs place without the permission of the proper officer.

(6) A clearance granted in respect of a vessel or an aircraft becomes void if after 24 hours the granting of the clearance -

(a) the vessel has not left the waters of Dominica; or

(b) the aircraft has not departed for a destination outside Dominica.

Production of certificate of clearance.

34. (1) The master or commander of a vessel or an aircraft or the relevant agent to whom a certificate of clearance has been granted shall—

(a) on demand by a proper officer, produce the certificate of clearance for examination by the proper officer; and

(b) answer any question which the proper officer may put to him concerning the vessel or aircraft, its passengers, crew, cargo, stores, and its intended voyage or flight.

(2) For the purposes of subsection (1), a proper officer may go on board a vessel or an aircraft which has been cleared outwards and demand the production of the certificate of clearance of the vessel or aircraft –

- (a) in the case of a vessel, at any time while the vessel is within the territorial waters of Dominica; or
- (b) in the case of an aircraft, at any time while the aircraft is at a customs airport.

(3) The master, commander or owner of a vessel or an aircraft or the relevant agent commits an offence and is liable on summary conviction to a fine of \$25,000 if he –

- (a) fails to comply with a demand made by the proper officer under this section;
- (b) refuses to answer any question put to him under this section; or
- (c) knowingly gives a false answer to a question put to him under this section.

35. (1) For the purpose of securing -

- (a) the detention of a vessel or an aircraft under any power or duty conferred or imposed by or under this Act or any other customs enactment; or
- (b) compliance with any provision of a customs enactment,

Power to refuse and revoke clearance.

the proper officer may -

- (c) at any time, refuse clearance of any vessel or aircraft; and
- (d) revoke any clearance granted, at any time while -
 - (i) the vessel is within the territorial waters of Dominica; or
 - (ii) the aircraft is at a customs airport.

(2) The revocation of the certificate of clearance may be made orally or in writing to the master or commander of the vessel or aircraft or a relevant agent.

(3) Where the revocation of the certificate of clearance is made in writing, it may be served by-

- (a) delivering it to the master or commander of the vessel or aircraft or the relevant agent personally;
- (b) leaving it at the last known place of abode or business in Dominica of the master or commander of the vessel or aircraft; or
- (c) by leaving it on board the vessel or aircraft with the person appearing to be in charge or in command of the vessel or aircraft.

(4) A certificate of clearance becomes void upon its revocation under subsection (2).

(5) Where a certificate of clearance is revoked under subsection (2), the master or commander of the vessel or aircraft or the relevant agent who fails, within 3 hours of the revocation, to return the revoked certificate of clearance commits an offence and is liable on summary conviction to a fine of \$25,000.

Departure to be from customs controlled area only.

36. (1) Subject to subsection (3) and such exemptions as may be prescribed, a master or commander of a vessel or an aircraft or the relevant agent shall not, except with the prior permission of the Comptroller -

- (a) cause the vessel or aircraft to depart for a place outside Dominica from a place in Dominica other than from a customs controlled area; or
- (b) having obtained a certificate of clearance from a customs controlled area in Dominica to depart for any point outside Dominica, cause the vessel or aircraft to -

-
- (i) fail to depart immediately from such area; or
 - (ii) go to any other place in Dominica.

(2) A master or commander of a vessel or an aircraft or the relevant agent who contravenes subsection (1) commits an offence and is liable on summary conviction to a fine of \$25,000.

(3) Subsection (1) does not apply if a vessel or an aircraft is compelled by reason of accident, stress of weather, or other necessity to return to a place in Dominica, and in any of these cases, section 22 applies, subject to such modification as may be necessary.

PART V

IMPORTATION

37. (1) Goods are subject to the control of the Customs department from the time of importation until the time the goods are lawfully removed from a customs controlled area –

Imported goods subject to customs control.

- (a) for home use;
- (b) for exportation from Dominica; or
- (c) under a customs procedure allowed under this Act when the Comptroller is satisfied that the conditions of any permit issued under such procedures have been met.

(2) For the purposes of subsection (1), goods which are removed from a customs controlled area to another customs controlled area are not removed for home use.

(3) The Minister may by regulations prescribe -

- (a) requirements for measuring and weighing goods; and
- (b) such other special requirements respecting the handling or processing of goods.

Entry of goods on importation.

38. (1) The importer of goods, other than goods which are exempt under subsection (2) from the requirements of this section, shall submit to the proper officer a truthful declaration or entry of the goods in such form and manner and within the relevant period or such other time period as may be prescribed.

(2) The following goods are exempt from the requirements of this section -

- (a) fresh fish taken by any person legally entitled to fish in Dominica and brought by the person in his vessel; and
- (b) passenger baggage in accordance with regulations made under this Act.

(3) Subject to subsection (5), goods may be entered under subsection (1) –

- (a) for warehousing, if so eligible;
- (b) for home use, if so eligible;
- (c) for transit or transshipment; or
- (d) in such other case as the Comptroller may permit, for temporary retention with a view to subsequent exportation.

(4) Nothing in this section prevents, subject to any conditions as may be prescribed, the processing of an entry of goods before the importation of the goods into Dominica.

(5) When an entry made under subsection (1) in relation to non-dutiable goods is inaccurate in any particular, the importer shall, within 48 days of the submission of the entry or such longer period as the Comptroller may allow, submit to the proper officer a full and accurate account of the goods.

(6) Notwithstanding any other provision of any customs enactment, when an inaccurate entry is submitted and the

Comptroller is satisfied that the inaccuracy was inadvertent and immaterial except for statistical purposes -

- (a) the importer does not commit an offence by reason only of the submission of the inaccurate entry; and
- (b) the goods in respect of which the inaccurate entry is submitted are not liable to forfeiture by reason only of such inaccuracy.

(7) Notwithstanding the failure to submit a declaration or entry under subsection (1), the Comptroller may permit the delivery, to the importer, of any bullion, currency, notes or coins imported into Dominica, but the importer incurs a fixed penalty of \$10,000 if he fails, within 48 hours after the delivery of the bullion, currency, notes or coins, to submit to the proper officer a full and true account, including weight and value of such bullion, currency, notes or coins.

(8) If, by the time prescribed under subsection (1) for the submission of a declaration or entry –

- (a) the owner of the goods or his agent has not submitted the declaration or entry; or
- (b) the goods have not been unloaded or produced for examination and clearance,

the master or commander of the vessel or aircraft in which the goods were imported or the relevant agent may enter, unload or produce the goods for examination and clearance.

(9) Where the importer enters goods subsequent to the filing of a declaration or entry under subsection (8), that entry made by the importer of the goods shall be substituted for the entry made under subsection (8).

(10) A person entering goods may, in accordance with such conditions as the proper officer may impose –

- (a) inspect the goods; or
- (b) draw samples from the goods.

(11) A person entering goods under this section shall –

- (a) answer any question put to him by a proper officer with respect to the goods; and
- (b) on the request of a proper officer -
 - (i) present the goods to the officer, which the officer wishes to examine,
 - (ii) remove any covering from the goods, which the officer wishes to examine,
 - (iii) unload any conveyance or open any part of it, which the officer wishes to examine, or
 - (iv) open and unpack any package which the officer wishes to examine.

(12) Subject to subsections (6) and (7), a person who contravenes any provision of this section commits an offence and is liable on summary conviction to a fine of \$25,000.

(13) In this section “the relevant period” means -

- (a) subject to paragraph (b) a period of 14 days from importation;
- (b) a period of 14 days from importation; and
- (c) in the case of goods imported by air, a period of 7 days from importation.

Entry by bill of sight.

39. (1) Where an importer is unable for want of full information to make a perfect entry in accordance with this Act, the importer may –

-
- (a) sign a declaration to that effect before the proper officer; and
 - (b) submit to the proper officer an entry of the goods by bill of sight.

(2) Where the Comptroller is satisfied that an importer is unable to obtain the required documents or information concerning goods to be entered and a declaration under subsection (1) has been made, the Comptroller shall permit -

- (a) the importer to examine the goods; and
- (b) the entry and delivery of the goods if—
 - (i) the importer submits to the proper officer an entry, in such form and manner and containing such particulars as the Comptroller may direct;
 - (ii) the description of the goods is correct for tariff and statistical purposes,
 - (iii) in the case of goods liable to *ad valorem* duty, the value of the goods declared on the entry is approximately correct, and
 - (iv) in the case of goods liable to duty according to weight or measurement, the weight or measurement of the goods declared on the entry is correct.

40. (1) Where, by reason of the failure of the importer to produce satisfactory documentary evidence of the value of the imported goods, the Comptroller is unable to make a proper assessment of the value of such goods for the purpose of entry, the Comptroller may direct that—

Provisional assessment.

- (a) the goods be examined;
- (b) the proper officer makes a provisional assessment of the value of the goods and the duty payable on the goods;

- (c) subject to this section, the goods are provisionally entered based on the payment of the amount of duty calculated by the importer; and
- (d) the amount paid by the importer under paragraph (c) must be brought to account as revenue.

(2) Pending final entry of the goods, where the duty provisionally assessed under subsection (1)(b) is greater than the duty calculated by the importer, the importer shall, in addition to the amount payable under subsection (1)(c), pay as a deposit to the Comptroller, an amount equal to the difference between the duty provisionally assessed and the duty calculated by the importer.

(3) Subject to the approval of the Comptroller, the importer may secure the deposit payable under subsection (2) by means of a bond, a deposit by money or otherwise to the satisfaction of the Comptroller.

(4) When goods are provisionally entered in accordance with subsection (2), the Comptroller shall, in writing, give to the importer a notice in such form as the Comptroller thinks fit, specifying –

- (a) the provisional assessment under subsection (1)(a);
- (b) the basis for the assessment; and
- (c) the documents or other information relating to the value of the goods which the importer is required to produce within 3 months of the provisional entry.

(5) Where, upon the production of the additional documents or other information required under subsection (4)(c) to the satisfaction of the Comptroller, the duty assessed by the Comptroller is more than or less than the duty provisionally assessed -

- (a) the difference in duty shall be refunded to, or paid by, the importer; and

(b) any bond, money or deposit secured for the payment of the additional duties or charges shall be cancelled.

(6) Unless an importer commences proceedings before the Customs Appeal Commission -

(a) the amount of duty which was provisionally assessed under subsection (1)(b) shall be treated as the final assessment; and

(b) the deposit paid must be brought to account as revenue if -

(i) any document or other information required under subsection (4)(c) is not produced within the specified time, or

(ii) 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.

(7) The Comptroller shall notify the importer of a final assessment determined under subsection (5) or (6) within 10 working days of the date of the determination of the final assessment.

41. (1) A person shall not deliver or remove imported goods from a customs controlled area except -

Removal of goods from customs controlled area.

(a) with the permission of the proper officer after entry of the goods is made in the prescribed form and manner and is accepted;

(b) under a permit or other authorisation granted by the Comptroller in respect of such goods, subject to the conditions that the Comptroller may determine;

(c) by a proper officer in the performance of his duties; or

(d) as otherwise provided by any other provision of this Act.

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

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

(4) A person who is dissatisfied with a decision of the Comptroller under subsection (2) or (3) may, within 7 working 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 customs warehouse.

42. (1) Subject to subsection (2), when –

(a) entry in respect of imported goods has not been made by the expiration of the relevant period;

(b) entry in respect of imported goods has been made, but the goods have not been unloaded from the importing vessel or aircraft by the expiration of 21 days from the relevant date; or

(c) the imported goods are contained in a small package or consignment,

the proper officer may, at any time after the relevant period or date, cause such goods to be deposited in a customs warehouse in accordance with Part VIII.

(2) The goods shall not be deposited in a customs warehouse -

(a) if the goods are of a type set out in Schedule 1; or

(b) if, in the opinion of the Comptroller, the goods are of a perishable nature.

(3) Subject to subsection (4), the Comptroller may sell or otherwise dispose of any goods to which subsection (2) applies.

(4) The Comptroller shall, within 7 days of the decision to sell the goods under subsection (3), give notice of the decision to the importer or the agent of the importer.

(5) In this section -

“the relevant date” means-

- (a) subject to paragraphs (b) and (c), in relation to goods whose unloading from a vessel or an aircraft is restricted under an enactment relating to the prevention of an epidemic or infectious disease, the date of the removal of the restriction,
- (b) subject to paragraph (c), the date of the making of the report of the importing vessel or aircraft under section 25; or
- (c) where a report of the importing vessel or aircraft was not made under section 25, the date when such report should properly have been made;

“the relevant period” means-

- (a) subject to sub-paragraph (b), a period of 14 days; and
- (b) in the case of goods imported by air, a period of 7 days.

43. (1) This section applies to -

- (a) goods chargeable with duty which has not been paid;
- (b) goods on which drawback has been paid; and
- (c) any other goods which have not been cleared by the Customs department.

Control of movement of uncleared goods.

(2) The Minister may make regulations respecting the manner in which, and the conditions under which, goods to which this section applies may be moved -

- (a) within any customs controlled area;
- (b) between customs controlled areas; or
- (c) between a customs controlled area and any other place.

(3) Without prejudice to the generality of subsection (2), the regulations may require that the goods only be moved-

- (a) by a person licensed by the Comptroller for that purpose; or
- (b) in the vessel or aircraft or by such other means as the Comptroller may approve for that purpose.

(4) A licence or approval for the purposes of subsection (3) may -

- (a) be granted for such periods; and
- (b) be subject to such conditions and restrictions,

as the Comptroller thinks fit.

(5) The Comptroller may, at any time -

- (a) in such manner as he thinks fit; and
- (b) for reasonable cause,

revoke or vary the terms of any licence or approval granted under this section.

(6) A person who contravenes any-

- (a) regulation made;
- (b) condition imposed; or
- (c) term of any licence or approval granted,

under this section commits an offence and is liable on summary conviction to a fine of \$10,000.

44. (1) The Comptroller may, by direction, impose conditions and restrictions with respect to the movement of imported goods -

Control of movement of goods to and from inland clearance depots, etc.

(a) between the place of importation and a place designated by the Comptroller for the entry and clearance of such goods; or

(b) between the place of importation and the place of exportation of such goods.

(2) Subject to subsection (3), a document required to be created or produced as a result of a direction under subsection (1) shall -

(a) be created or produced in such form and manner; and

(b) contain such particulars,

as the Comptroller may direct.

(3) The Comptroller may relax any requirement respecting the creation or production of any specific document if he imposes substituted requirements.

(4) A person who contravenes any direction under subsection (1) commits an offence.

(5) Where an offence is committed under this section -

(a) the person who committed the offence is liable on summary conviction to a fine of \$25,000; and

(b) any goods in respect of which the offence is committed is liable to forfeiture.

45. (1) Subject to subsection (2) and notwithstanding any other provision of this Act or any other customs enactment, goods are liable to forfeiture where the goods are -

Treatment of improperly imported goods.

- (a) unloaded at any port, unloaded from an aircraft, removed from their place of importation or from any customs controlled area without payment of duties due;
- (b) imported, landed or unloaded contrary to any prohibition or restriction in force with respect to them by or under virtue of any 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 concealed in a container holding goods of a different description;
- (f) found, whether before or after delivery, not to correspond with the entry made in respect of them; or
- (g) concealed or packed in any manner intended or appearing to be intended to deceive a customs officer.

(2) Subsection (1)(a) does not apply where an enactment expressly provides otherwise.

(3) A person who –

- (a) imports or causes to be imported goods-
 - (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,

commits an offence and is liable on summary conviction to a fine of \$100,000 or equivalent to three times the value of the goods, whichever is greater.

(4) Without prejudice to any penalty imposed under subsection (3), the consignment of goods in respect of which the offence is committed under this section is liable to forfeiture.

46. (1) This Act applies to the importation of postal packets in the same manner, so far as is reasonable, as it applies to the importation of any other goods.

Importation by post.

(2) Without prejudice to subsection (1), in the application of this Act to the importation of postal packets—

- (a) goods contained in any postal packet may be examined and seized;
- (b) persons may be punished for offences against this Act or any other customs enactment; and
- (c) legal action may be instituted or taken, in relation to any matter mentioned in paragraph (a) or (b).

(3) Notwithstanding this Act, a proper officer may require an addressee of a letter or other postal packet to open, in the presence of the proper officer -

- (a) any letter arriving in Dominica from abroad which, in the opinion of a customs officer, is suspected of containing materials other than written or printed materials; and
- (b) any postal packet from abroad consigned to a place in Dominica.

(4) Where goods contained in a postal packet do not correspond with any declaration of contents made in respect of the postal packet, such goods are liable to forfeiture.

(5) Unless otherwise provided by law, a postal packet arriving in Dominica from abroad shall not be removed from customs control until the duty and taxes chargeable on the goods contained in the postal packet have been paid.

(6) The Postmaster General has the right of recovery for any amount which the Postmaster General would have been entitled to as postage from any sum paid under any customs enactment or otherwise under customs regulations in respect of any postal packet.

Time of importation.

47. Where imported goods are brought -

(a) by sea, the time of importation of such goods is deemed to be the time when the vessel carrying the goods comes within the territorial waters of Dominica; or

(b) by air, the time of importation of such goods is deemed to be the time when the aircraft carrying the goods lands in Dominica.

Appointment of entities to collect duties and taxes.

48. The Minister may -

(a) appoint any entity to collect duties assessed by the Customs department; and

(b) make regulations respecting such appointment.

PART VI**EXPORTATION AND LOADING**

49. (1) Goods to be exported are subject to the customs control -

Goods for export subject to customs control.

- (a) subject to paragraph (b), from the time such 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, if the goods are transported to another location, during the transportation until their exportation to a place outside Dominica;
- (b) where such 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 Dominica; and
- (c) without prejudice to paragraphs (a) and (b), where such goods are in a package to which a customs seal has been affixed, from the time when the customs seal is first affixed to the package until the exportation of the goods to a place outside Dominica.

(2) For the purposes of this Act, goods which are removed under subsection (1) from a customs controlled area to another customs controlled area are not to be construed as having been removed for home use.

50. (1) Subject to section 51, the exporter of goods, other than passengers, accompanied baggage, shall submit to the proper officer an export declaration in respect of such goods –

Entry of goods for exportation.

- (a) in such form and manner and containing such particulars as may be prescribed; and

(b) within such time as may be prescribed or such further time as the Comptroller may allow.

(2) A person who submits a declaration under this section shall -

(a) answer any question put to him by the proper officer with respect to the goods; and

(b) at the request of the proper officer -

(i) present the goods to the officer,

(ii) remove any covering from the goods,

(iii) unload any conveyance or open any part of any conveyance, or

(iv) open or unpack any package,

which the proper officer wishes to examine.

(3) Where an export declaration submitted under subsection (1) is incorrect, the exporter shall, within 14 days after the submission of the declaration or such longer period as the Comptroller may allow, be permitted to submit to the Comptroller a full and accurate export declaration respecting the goods.

(4) Notwithstanding anything contained in any other provision of any customs enactment to the contrary, where the Comptroller is satisfied that the error referred to in subsection (3) was not made knowingly or recklessly -

(a) the person submitting the declaration does not commit an offence by reason only of the error; and

(b) the goods in respect of which the error was made are not liable to forfeiture by reason only of such error.

(5) Where goods which have been declared for exportation or for use as stores are not -

(a) loaded on to the vessel or aircraft for which they are cleared; or

(b) exported according to the export declaration,

such goods are liable to forfeiture, unless within 24 hours of the departure of the vessel or aircraft the person who made the declaration notifies the proper officer of the failure to load or export such goods and the reasons for such failure.

(6) Where the Comptroller receives notice in accordance with subsection (5), he -

(a) shall cancel or amend the relevant export declaration; and

(b) may, where applicable, allow the goods to be released from customs control.

(7) Except as otherwise permitted by the Comptroller, where goods are loaded on board a vessel or an aircraft for exportation or for use as stores before the export declaration in respect of such goods has been submitted, the goods are liable to forfeiture.

(8) Where the loading on board referred to in subsection (7) was done with intent to evade this Act or any other customs enactment, the person concerned in that act commits an offence and is liable on summary conviction to a fine of \$25,000 or equivalent to three times the value of the goods, whichever is greater or to imprisonment for 2 years.

51. (1) The Comptroller may in exceptional circumstances waive any of the requirements imposed by section 50(1) in relation to any goods, class or description of goods, subject to any conditions and restrictions that he considers fit to impose.

Comptroller may waive conditions of shipment.

(2) The Comptroller may give any direction respecting the goods which need not be declared for export by the exporter until after the departure of the vessel or aircraft by which the goods are exported.

(3) Goods permitted to be declared for export after the departure of the vessel or aircraft by which they are exported shall be declared within 24 hours of the clearance of the vessel or aircraft or such further period as the Comptroller may allow.

(4) Where goods are permitted to be declared for export after the departure of the vessel or aircraft by which they are exported, the Comptroller shall require the exporter to give security for the payment of any export duties on any goods liable to export duties on such conditions as the Comptroller thinks fit.

(5) Where goods are not declared for export within the time provided by subsection (3), the exporter commits an offence and is liable on summary conviction to a fine of \$10,000.

Entry outwards of
vessels and aircraft.

52. (1) Unless the Comptroller otherwise permits –

- (a) before goods for exportation or use as stores are loaded on to a vessel or an aircraft; or
- (b) where a vessel or an aircraft carrying goods arrives at a port but it is intended that such vessel or aircraft will proceed to a destination outside Dominica,

the master or commander of the vessel or aircraft or the relevant agent shall submit to the proper officer a declaration of departure for the vessel or aircraft, in such form and containing such particulars as the Comptroller may direct.

(2) Where a declaration submitted under subsection (1) is incorrect, the person who made it shall, within 7 days of the submission of the declaration or such longer period as the Comptroller may allow, be permitted to amend it.

(3) Notwithstanding anything contained in any other provision of any customs enactment to the contrary, where the Comptroller is satisfied that the error was not made knowingly or recklessly -

- (a) the person submitting the declaration does not commit an offence; and
- (b) the goods which were the subject of the error are not liable to forfeiture, by reason only of the error.

(4) Where -

- (a) a person who is required by subsection (1) to submit a declaration fails to do so, the person commits an offence and is liable on summary conviction to a fine of \$10,000; and
- (b) goods are loaded on board a vessel or an aircraft in contravention of subsection (1), the master or commander of the vessel or aircraft or the relevant agent commits an offence and is liable on summary conviction to a fine of \$10,000.

(5) Where an offence is committed under subsection (4)(b), the goods in respect of which the offence is committed are liable to forfeiture.

53. (1) Where goods subject to drawback or warehoused goods are to be exported, the Comptroller may require the exporter to give security in the amount of the duty which would have been chargeable on the goods if such goods had been imported into Dominica for home use.

Security for exportation
of goods.

(2) The security under subsection (1) shall be forfeited if within one month of the exportation of the goods or such longer period as the Comptroller may permit, the exporter does not -

- (a) produce to the Comptroller a certificate, signed by an authorised officer in the country to which the goods were exported, certifying that the goods have been imported into that country; or

(b) otherwise account for such goods to the satisfaction of the Comptroller.

Exportation by post.

54. (1) This Act applies to the exportation of postal packets in the same manner, so far as is reasonable, as it applies to the exportation of any other goods.

(2) Without prejudice to subsection (1), in the application of this Act to the exportation of postal packets—

(a) a person may be punished for offences against this Act and other customs enactments;

(b) the goods may be examined, seized and forfeited; and

(c) legal action may be instituted or taken in relation to any matter mentioned in paragraph (a) or (b).

(3) Where a postal packet is consigned to a place outside Dominica -

(a) the proper officer may require the consignor to open the postal packet in the presence of the proper officer; and

(b) the goods contained in the postal packet are liable to forfeiture if such goods do not correspond with the declaration of contents made with respect to the postal packet.

Time of exportation.

55. The time of exportation of goods is deemed to be the time when the goods are put on board a vessel or an aircraft with the intention that such goods should be exported in that vessel or aircraft.

Offences in relation to exportation.

56. (1) Subject to subsection (2), where goods which have been loaded or retained on board a vessel or an aircraft for exportation or for use as stores -

-
- (a) are not exported and discharged at a place outside Dominica or are not used as stores; and
 - (b) are unloaded in Dominica,

the master or commander of the vessel or aircraft or any other person concerned in the unloading of the goods from the vessel or aircraft commits an offence and is liable to a fine in accordance with subsection (8)(a).

(2) Subsection (1) does not apply where -

- (a) the proper officer authorises or otherwise permits the unloading of the goods; and
- (b) with the permission of the proper officer -
 - (i) duty chargeable on the goods is paid, or
 - (ii) drawback or other allowance made in respect of the goods is repaid.

(3) The Comptroller may impose such conditions and restrictions as he thinks fit with respect to goods to which this section applies.

(4) Any person who fails to comply with the conditions and restrictions imposed under subsection (3) when required so to do commits an offence and is liable to a fine in accordance with subsection (8)(a).

(5) Subject to subsection (6), where, after a vessel or an aircraft obtains clearance, but before the vessel or aircraft leaves Dominica, it is discovered that goods cleared for exportation or for use as stores are no longer on board the vessel or aircraft, the master or commander of the vessel or aircraft or the relevant agent commits an offence and is liable, in addition to any fine which may be imposed under subsection (8)(a), to pay the duty which would have been paid on the goods if such goods were entered for home use.

(6) Subsection (5) does not apply where the goods -

- (a) have been unloaded with the permission of the proper officer; or
- (b) are stores which could reasonably have been consumed since the granting of the clearance.

(7) A person commits an offence if that person exports or causes to be exported -

- (a) goods concealed in a container holding goods of a different description;
- (b) goods packed in a manner intended, or appearing to be intended, to deceive a customs officer;
- (c) goods found not to correspond with the export declaration made in respect of them;
- (d) warehoused goods;
- (e) goods chargeable with duty which have been transferred from an importing vessel or aircraft; or
- (f) goods entitled to drawback on exportation, in a vessel of less than 5 tons burden.

(8) Where an offence is committed under this section -

- (a) the person who commits the offence is liable on summary conviction to a fine of \$25,000, or equivalent to three times the value of the goods, whichever is greater; and
- (b) the goods in respect of which the offence is committed are liable to forfeiture.

PART VII
COASTING TRADE

57. (1) Subject to this Part –

Definition of coasting trade.

- (a) the carriage of goods by sea or by air from one part of Dominica to another part of Dominica is deemed to be coasting trade; and
- (b) any vessel or aircraft which is employed in the carriage of goods referred to in paragraph (a) is deemed to be a coasting vessel or coasting aircraft.

(2) If any doubt arises as to what constitutes carriage by sea, the Minister may determine and direct in what cases the trade by water from one port or place in Dominica to another in Dominica is deemed a carriage by sea for the purposes of this Act or any other customs enactment.

58. (1) Notwithstanding any provision in any customs enactment to the contrary, where a vessel or an aircraft arrives in Dominica from a place outside Dominica –

Provisions relating to vessels and aircraft from places outside Dominica.

- (a) having on board cargo intended to be delivered at more than one customs place in Dominica; or
- (b) intending to load cargo for a foreign place at more than one customs place in Dominica,

the proper officer may permit the vessel or aircraft to convey goods from any customs place at which the vessel or aircraft partially discharges its cargo or loads cargo for a foreign place, to its place or places of destination within Dominica without being treated as a coasting vessel or aircraft.

(2) Goods referred to in subsection (1) shall be completely separated from the inward cargo still on board the vessel or aircraft, to the satisfaction of the proper officer.

(3) A vessel or an aircraft engaged in conveying goods only from one customs controlled area within Dominica to another customs controlled area within Dominica is not, by reason of such conveyance, deemed a coasting vessel or coasting aircraft.

Limits on coasting trade.

59. (1) The master of a coasting vessel or commander of a coasting aircraft shall not carry any goods on board the coasting vessel or aircraft except goods which are loaded to be carried coastwise at some port or place in Dominica.

(2) Subject to subsection (3) –

(a) goods not yet entered on importation; and

(b) goods for exportation,

shall not be carried by way of coasting trade on board any coasting vessel or coasting aircraft.

(3) The Comptroller may, subject to such conditions and restrictions as he thinks fit, permit -

(a) a coasting vessel or coasting aircraft to carry goods by way of coasting trade notwithstanding that the vessel or aircraft is also carrying goods-

(i) brought in it from a place outside Dominica and not yet entered in Dominica without being treated as a coasting vessel or a coasting aircraft,

(ii) brought by another vessel or aircraft to a place in Dominica from a place outside Dominica and which are consigned to and intended to be delivered to another place in Dominica, or

(iii) brought by another vessel or aircraft to a place in Dominica from a place outside Dominica and which are to be transferred, before entry of the goods has been made, to another place in Dominica; or

(b) a vessel or an aircraft, which has begun to load goods for exportation or for use as stores on a voyage to a destination outside Dominica, to carry goods by way of coasting trade until that loading has been completed.

(4) Where goods are -

(a) carried by way of coasting trade on board any vessel or aircraft in contravention of subsection (1) or (2); or

(b) loaded, unloaded, carried or otherwise dealt with contrary to any condition or restriction imposed by the Comptroller under subsection (3),

the master or commander of the vessel or aircraft commits an offence and is liable on summary conviction to a fine of \$10,000.

60. (1) Subject to this section and unless the Comptroller otherwise permits, the master, commander or owner of a coasting vessel or aircraft shall not cause such vessel or aircraft to depart from a customs place in Dominica before the master or commander or relevant agent has submitted to the proper officer a declaration giving an account of the goods carried in that coasting vessel or aircraft.

Clearance of coasting vessels and aircraft.

(2) The declaration required to be submitted to the proper officer under subsection (1) -

(a) shall be in such form and manner and shall contain such particulars as the Comptroller may direct; and

(b) when signed by the proper officer, shall serve as the clearance of the coasting vessel or aircraft to which it relates.

(3) Where no customs officer is stationed at the place where a declaration is required to be submitted or produced under subsection (1) -

(a) the coasting vessel or aircraft may depart from that place; and

(b) the master or commander shall produce the declaration to a proper officer at the first customs place at which the vessel or aircraft arrives where a customs officer is stationed.

(4) On the application of the master or commander of a coasting vessel or aircraft or the relevant agent, the Comptroller may, subject to such conditions and restrictions as he thinks fit to impose, grant a general clearance for the coasting vessel or aircraft, and any goods carried in such vessel or aircraft.

(5) The Comptroller may, at any time, revoke a general clearance granted under subsection (4) by notice, in writing, delivered to -

(a) the master or owner of the coasting vessel;

(b) the commander or owner of the coasting aircraft;
or

(c) any member of the crew on board the coasting vessel or aircraft.

(6) Except as provided by this section, where a coasting vessel or aircraft carrying goods departs from a place in Dominica -

(a) without clearance; or

(b) in contravention of any condition or restriction imposed by the Comptroller upon a general clearance of the coasting vessel or aircraft under subsection (4),

the master or commander of the coasting vessel or aircraft commits an offence and is liable to a fine in accordance with subsection (7)(a).

(7) Where an offence is committed under subsection (6)-

- (a) the person who commits the offence is liable on summary conviction to a fine of \$25,000 or equivalent to three times the value of the goods, whichever is greater; and
- (b) the goods in respect of which the offence is committed are liable to forfeiture.

61. Notwithstanding anything to the contrary in this Part, the Comptroller may, under such conditions as he, in any particular case, thinks fit, permit -

Comptroller may vary procedure.

- (a) the loading and clearance for export of a coasting vessel or aircraft and goods; and
- (b) the entry and unloading of a coasting vessel or aircraft and goods.

62. The Minister may make regulations respecting the carriage of passengers, customs officers and crew coastwise, whether or not in a coasting vessel or aircraft.

Coastwise passengers.

63. (1) The master of every coasting vessel and the commander of every coasting aircraft -

Cargo book.

- (a) shall keep and maintain a cargo book in the prescribed form and manner and containing the prescribed particulars; and
- (b) shall, on demand made by the proper officer, produce such cargo book for inspection.

(2) Subject to subsection (3), where -

- (a) goods have been loaded on or unloaded from a coasting vessel or aircraft at a place in Dominica, the master or commander of the coasting vessel or aircraft or the relevant agent shall, before the coasting vessel or aircraft departs from the place; or

(b) a coasting vessel or aircraft arrives at a place in Dominica at which goods are to be unloaded, the master or commander of the coasting vessel or aircraft or the relevant agent shall, before any goods are unloaded,

produce to the proper officer the cargo book of such vessel or aircraft.

(3) Where no customs officer is stationed at the place referred to in subsection (2) -

(a) the coasting vessel or aircraft may depart from such place or the goods may be unloaded at such place; and

(b) the cargo book of such vessel or aircraft shall be produced to a proper officer at the first place the coasting vessel or coasting aircraft arrives at which an officer is stationed.

(4) The master or commander of a coasting vessel or coasting aircraft who fails to keep or produce a cargo book as required by this section commits an offence and is liable on summary conviction to a fine of \$10,000 or equivalent to three times the value of the goods, whichever is greater.

(5) Where an offence is committed under subsection (4), the goods in respect of which the offence is committed are liable to forfeiture.

Examination of goods in coasting vessels.

64. (1) The proper officer may examine goods—

(a) carried or intended to be carried in a coasting vessel at any time while such goods are on board the vessel; or

(b) at any place in Dominica where the goods have been brought for shipment in a coasting vessel or unloaded from a coasting vessel.

(2) For the purposes of subsection (1), a proper officer may require any container holding goods to be opened or unpacked by, or at the expense of, the owner of the goods.

(3) The proper officer may -

- (a) board and search a coasting vessel at any time during its voyage; and
- (b) at any time require any document which should properly be on board a coasting vessel to be produced or brought to the proper officer for examination.

(4) A master of a coasting vessel or any agent of a master of a coasting vessel commits an offence and is liable on summary conviction to a fine of \$10,000 if the master or the agent, when required so to do -

- (a) does not allow boarding under subsection (3)(a); or
- (b) fails to produce to the proper officer any document which is required to be kept on board the coasting vessel.

65. (1) The master, commander or owner of a coasting vessel or coasting aircraft commits an offence and is liable on summary conviction to a fine of \$10,000 if -

- (a) with respect to the coasting vessel or coasting aircraft -
 - (i) goods are taken on board the vessel or aircraft,
 - (ii) goods are unloaded at a place outside Dominica,
 - (iii) the vessel or aircraft touches at some place outside Dominica, or
 - (iv) the vessel or aircraft deviates from its voyage or flight; and

Offences in relation to carriage of goods coastwise.

(b) the master or commander of the coasting vessel or coasting aircraft fails to promptly report, in writing, the happening of an event mentioned in paragraph (a) to a proper officer at the first place in Dominica at which the coasting vessel or aircraft arrives and the officer is stationed,

(2) A person commits an offence and is liable on summary conviction to a fine of \$10,000 or equivalent to three times the value of the goods in respect of which the offence is committed, whichever is greater, if the person causes goods to be—

(a) carried by way of coasting trade or to be shipped for use as stores on a coasting vessel or a coasting aircraft contrary to any requirement in force in respect of such goods under or by virtue of any enactment; or

(b) brought to any place in Dominica for the purpose of being carried or shipped contrary to any requirement in force in respect of such goods.

(3) Without prejudice to any fine which may be imposed, where any offence is committed under this section, the goods in respect of which the offence is committed are liable to forfeiture.

PART VIII

WAREHOUSING

Approval of warehouses.

66. (1) The Comptroller may approve as a warehouse any secure place in Dominica for the deposit, keeping and security of -

(a) goods chargeable with customs duties; or

(b) goods for exportation or for use as stores.

(2) Without prejudice to the generality of subsection (1), warehouses may be approved under subsection (1) for the following purposes:

-
- (a) short-term storage;
 - (b) long-term storage under bond;
 - (c) storage of unclaimed or abandoned goods;
 - (d) storage of vessels' stores; or
 - (e) storage of goods for duty-free shops.

(3) An approval under subsection (1) may be for such periods and subject to such conditions and restrictions as the Comptroller thinks fit.

(4) The Comptroller may –

- (a) restrict the goods which may be permitted to be warehoused in a particular warehouse to goods owned by the occupier of that warehouse; and
- (b) make the approval of any warehouse conditional upon the warehousing of a minimum amount of goods during a specified period, but different amounts may be required in respect of warehouses restricted under paragraph (a) and warehouses not so restricted.

(5) The occupier of the warehouse -

- (a) is strictly liable for the contravention of any condition or restriction imposed under subsection (3) or (4); and
- (b) shall post a bond, as may be prescribed in regulations made under this Act, as security for the liability imposed under paragraph (a).

(6) When, after the approval of a secure place as a warehouse under subsection (1), the occupier of that warehouse contravenes any condition or restriction imposed by the Comptroller under subsection (2)-

- (a) the occupier commits an offence and is liable on summary conviction to a fine of \$10,000; and
- (b) the goods which are warehoused in contravention of the condition or restriction are liable to be sold at auction.

(7) The Comptroller may, at any time for reasonable cause, revoke or vary the terms of an approval granted under subsection (1).

(8) Where -

- (a) the Comptroller intends to revoke, or not to renew, any approval of a warehouse given under subsection (1), he shall, not later than three months before the date on which -
 - (i) the revocation is due to take effect, or
 - (ii) the approval is due to expire,

give notice of such intention, in writing, to the occupier of the warehouse; and

- (b) a notice is addressed to the occupier of, and left at, the warehouse, the notice is deemed to have been served on all persons having an interest in any goods -
 - (i) deposited in that warehouse, or
 - (ii) permitted by or under this Act to be deposited in that warehouse,

between the date of the giving of the notice and the date of cessation.

(9) If, after the date of cessation or such later date as the Comptroller may permit, uncleared goods remain in a place no longer approved as a warehouse under subsection (1), such goods—

(a) may be taken by a proper officer to a customs controlled area and;

(b) without prejudice to any other power or an earlier sale provided by this Act, may be sold if they are not cleared within one month.

(10) For the purposes of subsections (8) and (9), “date of cessation” means the date on which—

(a) the revocation of the approval of a warehouse given under subsection (1) is due to take effect, or

(b) the approval of a warehouse given under subsection (1) is due to expire,

67. (1) The occupier of a warehouse shall ensure that goods deposited in the warehouse are arranged, stowed and maintained in a manner which permits easy access to the goods.

Maintenance of goods.

(2) The Comptroller may give directions respecting the arrangement, stowage or maintenance of goods as he thinks fit.

(3) An occupier who fails to arrange, stow or maintain goods in a warehouse in accordance with this section commits an offence and is liable on summary conviction to a fine of \$10,000.

68. (1) Subject to subsection (2), the goods, classes of goods or description of goods specified in Schedule 1 shall not be warehoused.

Prohibited goods.

(2) Subsection (1) does not apply to goods constructively warehoused for short-term storage under section 66.

(3) The Minister may, by Regulations, amend or vary Schedule I by deleting from or adding to the list of goods, classes or descriptions of goods specified in that Schedule.

Limits on duration of warehousing.

69. (1) Unless the Comptroller otherwise permits and subject to such conditions and restrictions as he thinks fit to impose, warehoused goods—

(a) shall not remain warehoused for a period in excess of 2 years; and

(b) which remain warehoused for a period in excess of 2 years may be sold or otherwise disposed of.

(2) The Minister may, by Regulations, prescribe any class or description of goods which must not remain warehoused for a period longer than 12 months.

(3) The occupier of a warehouse shall, on request, produce to a customs officer any goods deposited in the warehouse which are not lawfully authorised to be deposited in the warehouse.

(4) An occupier of a warehouse who fails to produce the goods in accordance with subsection (3) commits an offence and is liable on summary conviction to a fine of \$100,000 or equivalent to three times the value of the goods, whichever is greater.

Goods warehoused contrary to sections 68 and 69.

70. Where goods are warehoused contrary to section 68 or 69, such goods are liable to forfeiture.

Re-entry.

71. (1) Goods permitted to be removed from a warehouse for transport to another warehouse may, at any time before such goods have been physically placed in the other warehouse –

(a) be entered by their owner—

(i) for home use, if eligible, or

(ii) for exportation or use as stores; or

(b) be removed for transport to any other warehouse approved for warehousing of such goods.

(2) Where—

- (a) goods have been entered in accordance with subsection (1)(a), such goods shall be dealt with as if they had been entered or withdrawn from the warehouse; or
- (b) goods have been removed in accordance with subsection (1)(b), such goods shall be dealt with as if they had been warehoused and removed for transport.

(3) Where the owner of warehoused goods, with the concurrence of the occupier of the warehouse, desires to re-warehouse goods according to the account taken at the time of the original entry of the goods into the warehouse, without re-examination, the re-examination may be dispensed with, if the proper officer is satisfied that—

- (a) the goods are still in the warehouse; and
- (b) there is no reason to suspect that there is any discrepancy in the quantity of the goods.

(4) Where goods have remained in a warehouse for a period in excess of 2 years, such goods shall not be re-warehoused under this section.

(5) Where goods are held in containers, no part of such goods shall be entered or removed under subsection (1) unless that part consists of one complete container or more.

72. (1) A proper officer may examine goods upon the removal of the goods from a warehouse for entry—

Removal from
warehouses.

- (a) for home use;
- (b) for use as stores; or
- (c) for export.

(2) The occupier of a warehouse shall be liable for the duty due on any discrepancy not otherwise allowed by law—

- (a) discovered in the quantity of goods at the time of delivery for entry under subsection (1); or
- (b) at any time earlier than the time of delivery, when the discrepancy is discovered.

(3) Subject to such allowances as are permitted by law, the duties 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 quantity of goods is otherwise permitted by law.

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

Loss and deterioration of goods.

73. (1) Where, at the time, goods lawfully removed from the warehouse are found to be missing, wholly or in part, the occupier of the warehouse commits an offence and is liable on summary conviction to a fine of \$100,000 or equivalent to three times the value of the goods, whichever is greater.

(2) Notwithstanding any other fine or any liability to forfeiture incurred under this Act, where the occupier of a warehouse commits an offence under subsection (1), the occupier of the warehouse shall, in addition to any restitution owed to the owner of the goods, pay to the Comptroller—

- (a) subject to paragraph (b), the duty which such goods would have borne if they had been entered for home use on the date of the discovery of the deficiency; or
- (b) if the goods are not eligible for home use, an amount which is, in the opinion of the Comptroller, the value of the goods.

(3) Where—

- (a) goods have, without payment of duty, been lawfully removed from a warehouse for transport to another warehouse or to some other place; and
- (b) such goods fail to reach that other warehouse or place,

the owner of the goods commits an offence and is liable on summary conviction to a fine of \$100,000 or three times the value of the goods, whichever is greater.

(4) Notwithstanding any other fine or liability to forfeiture incurred under this Act, the owner of the goods who commits an offence under subsection (3) shall pay to the Comptroller—

- (a) subject to paragraph (b), the duty which such goods would have borne if they had been entered for home use on the date of their removal from the warehouse; or
- (b) if the goods are not eligible for home use, an amount which is, in the opinion of the Comptroller, equal to the value of the goods.

(5) Where—

- (a) within 2 years from the date of entry of goods in a warehouse, the warehoused goods are damaged, destroyed or unlawfully removed by or with the assistance of a customs officer; and
- (b) the customs officer is convicted of an offence in relation to such damage, destruction or removal,

the Comptroller shall pay compensation for any loss caused by reason of the damage, destruction or removal, except where the occupier of the warehouse or the owner of the goods was a party to the offence.

(6) Notwithstanding anything contained in any other provision of any customs enactment to the contrary, where the Comptroller is required to pay compensation under subsection (5)-

- (a) the occupier of the warehouse or the owner of the goods is not liable to pay any duty on the goods; and
- (b) the Comptroller shall refund any sum paid by way of duty before the conviction of the customs officer.

Payment of duties.

74. (1) Unless otherwise permitted under this Act, a person shall not remove goods from a warehouse until-

- (a) the duty chargeable on such goods and any charges payable in respect of the removal of the goods from the warehouse have been paid; and
- (b) entry of such goods has been made, if the goods requiring entry had not yet been entered.

(2) The amount payable in duties in respect of the goods shall be calculated in accordance with the value of the goods determined when they were first warehoused.

(3) The rates of duty chargeable on warehoused goods are the rates which are in force with respect to the goods of that class or description at the time of the removal of the warehoused goods from the warehouse for consumption, export or use as vessels' stores.

(4) Where goods being spirits, wine or tobacco are removed from a warehouse within one year of the date of entry into the warehouse, the calculation in respect of the duty chargeable shall be in accordance with—

- (a) subject to paragraph (b), the quantity of the goods ascertained by weight, measure or strength at the time of removal of the goods; or

(b) the account made at the time of entry into the warehouse, if the Comptroller determines that the difference between the account made at the time of entry into the warehouse and the account made at the time of removal is not explained by natural evaporation or any other legitimate cause.

(5) Subject to subsection (6), where, within 2 years from the date of entry in a warehouse, warehoused goods have deteriorated or have been changed to such a degree that the Comptroller is satisfied that they have become worthless, the Comptroller may allow such abatement of the duty chargeable on such goods as, in his opinion, the amount of the deterioration or damage bears to the original value of the goods.

(6) The abatement shall only be allowed where the deterioration or change—

- (a) occurred within one year of the entry into warehouse or such longer period as is otherwise allowed under this Act; and
- (b) is not attributable to any fault or negligence of the occupier of the warehouse or the owner of the goods or any other person having an interest in the goods.

75. (1) Notwithstanding any other provision of this Act authorizing the removal of goods from a warehouse without payment of duty, the Comptroller may, subject to such conditions and restrictions as he thinks fit, permit warehoused goods entered for removal for any purpose other than home use to be removed for that purpose without payment of duty.

Removal of warehoused goods without payment of duty.

(2) Where any condition or restriction imposed under subsection (1) in respect of the removal of any goods is contravened, the goods are liable to forfeiture.

Customs warehouses.

76. (1) The Comptroller may appoint any place as a “customs warehouse”—

(a) for the deposit of goods; and

(b) for the security of goods and any duty chargeable on goods.

(2) Where, in respect of any goods which may or are required to be warehoused, the Comptroller is of the opinion that it would be undesirable or inconvenient to deposit such goods in a customs warehouse, this section applies to the goods as if they were deposited in a customs warehouse.

(3) The Minister may, by Regulations, prescribe the rent payable in respect of goods deposited in a customs warehouse.

(4) The Cabinet may remit or authorise the refund of any rent payable or paid in respect of any goods deposited in a customs warehouse.

(5) Where any goods are deposited in a customs warehouse—

(a) the Comptroller may, in respect of any such goods, do all acts which he regards as necessary for the custody and preservation of the goods; and

(b) the owner of such goods is, in addition to any other charges payable in respect of such goods, liable to pay the expenses incurred by the Comptroller under paragraph (a).

(6) If any goods deposited in a customs warehouse are in the opinion of the Comptroller of such a character as to require special care or treatment—

(a) the goods shall, in addition to any other charges payable on them, be chargeable with such expenses for securing, watching and guarding them as the Comptroller may consider necessary;

-
- (b) the Comptroller shall not be liable to make good any damage which the goods may sustain; and
- (c) the Comptroller may sell the goods if the proprietor of the goods does not clear the goods within fourteen days from the date of their deposit.
- (7) Save as the Comptroller may otherwise permit—
- (a) any goods deposited in a customs warehouse shall be removed from that warehouse within two months from the date of the deposit of that goods in the warehouse; and
- (b) any goods not removed within the time specified in paragraph (a) may be sold.
- (8) Save as permitted by or under this Act, no goods shall be removed from a customs warehouse—
- (a) subject to paragraph (b), until all duty chargeable on the goods, and any charges in respect of the removal of the goods to the customs warehouse under subsections (3), (6) and (7), have been paid; and
- (b) if such goods require entry but have not yet been entered, until entry of the goods has been made.
- (9) Any customs officer having custody of goods in a customs warehouse may refuse to permit the goods to be removed until it is shown to his satisfaction that all freight charges due on the goods have been paid.

77. (1) The Minister may make regulations—

Regulations.

- (a) for the proper control and management of goods in a warehouse; and
- (b) allowing for private sector management and control of any warehouse.

PART IX**DUTIES, REFUNDS AND DRAWBACK**

Power to impose duties.

78. (1) Parliament may, by resolution—

- (a) impose import and export duties on any goods imported or exported; and
- (b) revoke, reduce, increase or alter any of the duties chargeable.

(2) Without prejudice to subsection (1), the Minister may, by regulations not inconsistent with this Act, exempt imported or exported goods from payment of customs duty for the purposes and in the circumstances specified in the List of Conditional Duty Exemptions set out in the Common External Tariff.

(3) All import or export customs duties and all exemptions from customs duties shall continue in force until revoked, reduced, increased or altered in the manner provided under this Act or regulations made under this Act.

(4) Notwithstanding subsections (1), (2) and (3), the Minister may, by Regulations -

- (a) revoke, reduce or increase any import or export customs duties;
- (b) make additions to or deletions from the list of goods exempted from customs duties; or
- (c) subject to subsection (5), impose new import or export customs duties.

(5) The duties imposed under subsection (4)(c) apply from the date of publication of the Regulations in the *Gazette* until the expiration of the Regulations, but in no case shall any such duty apply for a period in excess of 6 months.

79. (1) Unless otherwise provided by or under this Act, duty is payable on goods of a class or description at the rate in force with respect to such goods-

Rate of duty.

- (a) when an entry for home use is submitted, whether in electronic form or any other form;
- (b) when the entry in respect of the imported goods is delivered to a proper officer;
- (c) when an export declaration in respect of the goods is submitted, whether in electronic form or other form;
- (d) when the declaration in respect of the goods to be exported is delivered to a proper officer;
- (e) where the goods are removed from a vessel or an aircraft under any bond or other security, at the time of the delivery of the goods;
- (f) where the goods are removed from a warehouse for home use, at the time of the removal of the goods from warehouse;
- (g) where the goods are exported, at the time of release for export; or
- (h) in any other case, at the time of the importation or exportation of the goods.

(2) A person making an entry of goods shall, on making the entry, specify the classification of the goods and the rate of duty applicable to the goods.

80. (1) Goods shall be valued in accordance with Schedule 2.

Valuation

(2) A person making an entry of goods shall, on making the entry, specify the customs value of the goods, determined in accordance with Schedule 2.

(3) The currency exchange rate in effect on the date of submission of the entry applies in determining the value of goods, unless otherwise provided for by regulations made under this Act.

Deemed assessment of duty.

81. Unless otherwise provided in this Act, an entry with respect to the importation of goods or a declaration with respect to the exportation of goods made under this Act is deemed to be an assessment by the importer or exporter in relation to—

- (a) the value of the goods;
- (b) the rate of duty applicable to the goods; and
- (c) any other determination required before the importation or exportation of the goods.

Assessment and reassessment of duty by Comptroller.

82. (1) Where the Comptroller has reasonable cause to suspect that duty or any other charge is payable on goods for which no entry or declaration has been submitted, the Comptroller may determine the duty due at such amount as the Comptroller thinks proper, based on the provisions of this Act.

(2) The Comptroller shall, by notice in writing, advise the importer or exporter of the assessment under subsection (1).

(3) Subject to subsection (5), the Comptroller may make such amendments to an assessment of duty due under section 81 or subsection (1) as the Comptroller thinks necessary to ensure the correctness of the assessment notwithstanding that—

- (a) the goods to which the duty relates are no longer subject to customs control; or
- (b) the duty originally assessed has been paid.

(4) Where—

- (a) a re-assessment is made under this section; and
- (b) such re-assessment has the effect of imposing a new liability or altering an existing liability,

the Comptroller shall give to the importer or exporter written notice to that effect.

(5) The Comptroller is not entitled to make amendments to any duty assessment after the expiration of 3 years from the date on which the original assessment was made.

(6) An importer or exporter who is dissatisfied with a decision of the Comptroller under this section, may, within 14 working days after the date on which notice of the decision is given, appeal to the Commission against that decision.

83. (1) A person who makes an assessment under section 80 shall –

Requirement to keep documents, records and information.

(a) keep the documents, records and information in respect of that entry in such manner and for such period as required under this Act; and

(b) when required by a customs officer, produce those documents, records and information for the purpose of establishing the accuracy of the assessment.

(2) A person who fails to produce any document, record or information required by a customs officer under subsection (1) commits an offence and is liable on summary conviction to a fine of \$100,000.

84. (1) The duty or any other charge on imported goods –

Payment of duty on imports

(a) shall be based on the Common External Tariff; and

(b) immediately on the submission of an entry in respect of such goods, constitutes a debt due to the State.

(2) The duty and any other charges payable under subsection (1) are –

(a) owed by the importer of the goods, and, if more than one, jointly and severally by all the importers of the goods; and

(b) recoverable by action at the suit of the Comptroller on behalf of the State.

(3) The right to recover duty as a debt due to the State is not affected by any or all of the following -

(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;

(c) a proper assessment of the duty has not been made under this Act.

(4) Unless expressly permitted by a customs enactment, imported goods shall not be delivered or removed on importation until the importer has paid to a proper officer the duty chargeable on those goods and any other charges which apply to the goods.

(5) Where an importer of goods fails to settle a debt due under this Act, the Comptroller may detain subsequent shipments of the importer until such debt is settled.

(6) The Comptroller may, where appropriate security is provided in accordance with the Regulations, approve any person or any class of persons as persons who may defer the payment of duty due under this section.

(7) Where—

(a) the payment of any duty has been deferred in accordance with subsection (6); and

(b) such duty remains unpaid by the due date for payment,

the duty shall bear interest at a rate of one per cent per month or part of a month during which it remains unpaid.

(8) The obligation to pay and the right to receive and recover duty under this Act are not suspended by the commencement of any appeal or other legal proceedings.

(9) The Minister may make regulations respecting the importation of goods.

85. (1) The duty on every exported goods constitutes, immediately on the submission of the entry, a debt due to the State.

Payment of duty on exports.

(2) The duty payable under subsection (1) is –

(a) owed by the exporter of the goods, and, if more than one, jointly and severally by all the exporters of the goods; and

(b) recoverable by action at the suit of the Comptroller on behalf of the State.

(3) The right to recover duty as a debt due to the State is not affected by any or all of the following-

(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;

(c) a proper assessment of the duty has not been made under this Act.

(4) The Comptroller may, where appropriate security is provided in accordance with the Regulations, approve any person or any class of persons as persons who may defer the payment of duty due under this section.

(5) Where any duty, the payment of which has been deferred in accordance with subsection (4), remains unpaid by the due date for payment, it shall bear interest at a rate of one per cent per month or part of a month during which it remains unpaid.

(6) The obligation to pay duty under this Act and the right to receive and recover duty under this Act are not suspended by any appeal or other legal proceedings.

Date for payment of deemed assessed duty.

86. Where an entry is required on the importation or exportation of goods, the duty deemed to have been assessed under section 81 is due and payable immediately on submission of the entry to a proper officer.

Date for payment of assessed and reassessed duties.

87. (1) Unless otherwise specified in this Act, the due date for the payment of duty assessed or reassessed by the Comptroller under section 82 is 21 working days commencing from the date of service of the notice of assessment or reassessment on the importer or exporter.

(2) Where the whole or part of any assessed or reassessed duty remains unpaid after the period specified in subsection (1), the amount of duty which remains unpaid shall bear interest at a rate of one per cent per month or part of a month during which such amount remains unpaid.

Payment of additional duties.

88. (1) Where an appeal or other proceeding results in a reassessment in an amount which is in excess of the duties paid in respect of the goods, the additional amount due must be paid to the Comptroller within 30 days of the re-assessment.

(2) Where the additional duties, wholly or in part, specified in subsection (1) are not paid by the due date, the amount of the duty which is unpaid shall bear interest at a rate of one per cent per month or part of a month during which it remains unpaid.

Refunds.

89. (1) Where—

(a) an amount is paid as duty; and

(b) the Comptroller finds that such amount is in excess of the duty due and payable,

the Comptroller shall refund the excess duty paid, unless the whole or a part of the excess duty is set off against other debts.

(2) Where an appeal or any other proceeding results in a reassessment in an amount which is less than the amount which has been paid in duties or given as security for payment of duty, the Comptroller shall—

- (a) refund the excess duties paid to the appellant; or
- (b) release the appellant from any security given for payment of the duties in excess of the amount properly payable.

(3) Subject to subsection (4), where a person has paid duty in an amount which is in excess of the amount of duty payable—

- (a) the person may file, with the Comptroller, a claim for a refund of the excess amount paid; and
- (b) the claim must be in the prescribed form accompanied by the prescribed documentary evidence of the payment of the excess amount.

(4) A claim for a refund cannot be made after 3 years from the date on which the overpayment is alleged to have been made.

(5) Where a claim for refund of the excess amount of duty paid is filed with the Comptroller—

- (a) the Comptroller shall, within 30 days of the filing of the claim, serve on the claimant a notice in writing of the decision or determination of the Comptroller; and
- (b) if the Comptroller determines that the claimant is entitled to the refund, the Comptroller shall, within

30 days of the date of the decision or determination, refund the excess amount paid as duty.

(6) Where the refund required by or under –

(a) subsection (1) is not paid within 30 days;

(b) subsection (5) is not paid within the thirty-day period specified in that subsection,

the amount of the refund which remains unpaid shall bear interest at a rate of one per cent per month or part of a month during which it remains unpaid.

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

General relief from duty.

90. (1) Subject to section 80, goods may be entered into Dominica without payment of customs duties where –

(a) the Comptroller permits goods to be imported for temporary use for such periods as the Comptroller sees fit;

(b) goods permitted to be warehoused on importation are warehoused;

(c) the Comptroller permits goods entered for transshipment to be removed for that purpose; or

(d) goods previously entered for home use in Dominica are exported and are subsequently re-imported into Dominica and it is shown to the satisfaction of the Comptroller that–

(i) no duty was chargeable on such goods on any previous importation into Dominica;

(ii) if any duty was chargeable on such goods, the duty has been paid;

(iii) 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

(iv) the goods have not undergone any process outside Dominica since their exportation.

(2) Where—

(a) goods are exempted from duty by or under any provision of this Act or any other customs enactment; and

(b) a customs officer makes a demand to the owner of such goods to produce the goods or otherwise account for the goods,

the owner of such goods shall comply with the demand made by the customs officer.

(3) Where, under any provision of any customs enactment, goods are subject to a condition or restriction exempting the goods from the payment of duty, and the condition or restriction is contravened—

(a) the duty becomes payable by the person who, but for that exemption, would have had to pay the duty; and

(b) the goods in respect of which the exemption was granted become liable to forfeiture.

(4) A person who fails to produce or account for goods referred to in subsection (2) commits an offence and is liable on summary conviction to a fine of \$25,000 or equivalent to three times the value of the goods, whichever is greater.

(5) If the goods referred to in subsection (2) are subsequently found, such goods are liable to forfeiture.

Abatement of duty.

91. (1) Subject to subsection (2), where the Comptroller is satisfied in respect of any imported goods that –

- (a) before or upon the importation of the goods, such goods, in whole or in part, have deteriorated or have been damaged, lost or destroyed;
- (b) goods lost, before or upon their importation, have not entered or will not enter into home use in Dominica; and
- (c) the carrier or insurer of such goods has made an allowance to the importer of the goods in respect of the deterioration, damage, loss or destruction,

the Comptroller shall allow such abatement of the duty chargeable on such goods to the extent which, in the opinion of the Comptroller, the amount of the deterioration, damage, loss or destruction bears to the original value of the goods.

(2) Where duty has already been paid on goods in respect of which an abatement would be allowable under subsection (1), no repayment of the amount of the abatement shall be made unless the claim is made within twelve months of the date of the payment of the duty.

Power of Cabinet to refund duty.

92. (1) Cabinet may remit or authorise the refund of the whole or part of any duty paid or payable by any person in respect of any goods.

(2) Any remission or refund made or authorised to be made under this subsection may apply either to specific instances or generally or in respect of specified persons or to persons of a specific class and may be subject to such conditions and restrictions as Cabinet may see fit to impose.

Goods temporarily imported

93. (1) Where the Comptroller is satisfied that goods have been temporarily imported, the Comptroller may—

- (a) require security of a sum equal to the amount of the duty payable on the goods had they been entered for home use; and

(b) on receipt of the security, release the goods from customs control without payment of duty.

(2) Subject to regulations which may be prescribed, the person giving the security under subsection (1) shall be released from the conditions of the security if, within 12 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.

(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 by the Government.

(4) If, at the expiration of the twelve-month period specified in subsection (2), 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 State; or

(b) any sum otherwise secured shall be paid to the State by the importer within 10 working days after the expiration of the twelve-month period or such longer period as the Comptroller may allow, but the security shall be released upon such payment being made.

(5) Except as the Minister may permit, this section does not apply to duties imposed under the Customs Duties (Dumping

and Subsidies) or any other enactment respecting the imposition of countervailing duties.

(6) This section does not apply to any goods which are listed in the Common External Tariff as goods which cannot be treated as temporarily imported goods.

Claims for drawback.

94. (1) A claim for drawback shall be made in such form and manner and shall contain such particulars as the Comptroller directs.

(2) No drawback is payable -

(a) unless it is shown to the satisfaction of the Comptroller that all duty due on the goods in respect of which the claim for drawback is made has been paid and not otherwise drawn back;

(b) until the person making the claim for drawback has furnished the Comptroller with the information and produced to the Comptroller any books of account or other documents relating to the goods which the Comptroller may demand; and

(c) until the goods which are the subject of the claim have been exported.

(3) The Minister may make regulations prescribing any goods, class or description of goods in respect of which no drawback can be claimed.

Drawback of duty on certain goods.

95. (1) Subject to this section, drawback of duty may be allowed on goods, at such amounts and subject to such conditions as may be prescribed.

(2) Where -

(a) the Comptroller is satisfied that goods have been shipped for export;

(b) goods have been packed for export into a bulk cargo container in a customs controlled area and

the container has been secured to the satisfaction of the Comptroller; or

- (c) goods have been entered into an export warehouse and the Comptroller is satisfied that such goods will be exported,

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

(3) Where drawback has been allowed on any goods treated as having been 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
- (b) such goods are unshipped or re-landed or unpacked before export,

the amount of drawback allowed in respect of such goods, immediately on their un-shipment, re-landing or unpacking, constitutes a civil debt due to the State.

(5) A civil debt due under subsection (4)—

- (a) is immediately payable by the owner of the goods at the time of the un-shipment, re-landing or unpacking of the goods; and
- (b) is recoverable by legal action brought at the suit of the Comptroller on behalf of the State.

(6) Where under this section drawback is allowed to any person, the Comptroller may apply the whole or any part of the sum allowed towards the payment of any duty which is owed by that person.

(7) Except as the Minister may permit, this section does not apply to duties imposed under the Customs Duties (Dumping and Subsidies) Act or any other Act respecting the imposition of countervailing duties.

Extent of drawback

96. (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 those goods.

(2) Subject to subsection (3) and any regulation made under this Act, no drawback may be claimed in respect of—

- (a) goods of a value, at the time of original importation, of less than \$500;
- (b) goods which were imported more than 12 months before the date of submission of the claim for drawback;
- (c) subject to paragraph (d)—
 - (i) goods not in the packages in which they were originally imported, or
 - (ii) bulk goods if the bulk has been broken; or
- (d) goods which have been tampered with or used.

(3) Subsection (2) does not apply to imported goods which -

- (a) are exported, within 6 months of their importation, by the importer back to the country and to the person or firm from which the goods were originally imported; or
- (b) are entered for shipment for use as stores.

97. (1) Where it is proved to the satisfaction of the Comptroller that goods, after being shipped for exportation or for use as stores, have been—

Drawback on goods destroyed and damaged after shipment.

- (a) destroyed by reason of accident on board the exporting vessel or aircraft, drawback on such goods is payable as if the goods were exported to their destination; or
- (b) materially damaged by reason of accident on board the exporting vessel or aircraft, such goods may be brought back into Dominica and re-landed or unloaded—
 - (i) with the consent of the Comptroller, and
 - (ii) in accordance with such conditions and restrictions as the Comptroller may impose.

(2) Where any goods brought into Dominica under subsection (1)(b) are re-entered for home use, such goods are chargeable with the duty normally chargeable on the importation of damaged goods.

98. (1) A person commits an offence if the person, with or without intent to defraud the revenue of the Customs department—

Offences in relation to drawback.

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

drawback for which there is no lawful entitlement.

(2) Where an offence is committed under this section—

- (a) the person who commits the offence is liable on summary conviction—
 - (i) subject to sub-paragraph (ii), to a fine of \$25,000 or equivalent to three times the amount obtained or attempted to be obtained, whichever is greater, or

- (ii) if the offence is committed with the intent to defraud the revenue of the Customs department, to a fine of \$100,000 or equivalent to three times the amount obtained or attempted to be obtained, whichever is greater, or to imprisonment for 2 years; and
- (b) the goods in respect of which the offence is committed are liable to forfeiture.

PART X

RECORD KEEPING

Keeping of records.

99. (1) Every relevant person shall keep or cause to be kept in Dominica, whether in electronic form or otherwise, all documents, books, records and any other information relating to the transaction of his business under this Act, in such form and manner as the Comptroller may require, for a period of time not less than 7 years from the date of the transaction.

(2) A relevant person who fails to keep any documents, books, records or other information required by or under this section commits an offence and is liable on summary conviction to a fine of \$250,000.

- (3) For the purposes of this section “relevant person” means—
- (a) any importer, exporter or carrier of goods;
 - (b) any occupier of a warehouse,
 - (c) any operator of a customs controlled area,
 - (d) any airport manager or port manager;
 - (e) any ship agent or other agent to whom this Act applies;
 - (f) any person concerned with coasting trade; or
 - (g) any broker or other person who conducts business under this Act.

100. (1) A person to whom section 99(1) applies shall, when required by a proper officer - Access to records.

- (a) make available and give access to the documents, books, records or any other information which the person is required to keep under section 99(1);
- (b) give access to such documents, books, records or any other information in the form and manner prescribed;
- (c) ensure that the proper officer has access to the documents, books, records or other information at all reasonable times;
- (d) answer any question relevant to matters arising under this Act put to him by a proper officer in respect of such documents, books, records or other information; and
- (e) provide to the proper officer copies of such documents, books, records or other information.

(2) Where information is recorded or stored by means of an electronic or other device, the person referred to in subsection (1), or the agent of that person, shall, at the request of a proper officer, operate the device, or cause the device to be operated, in order to make the information available to the proper officer.

(3) A person who fails, without sufficient cause, to give a proper officer access to information required under this section in the form and manner prescribed commits an offence and is liable on conviction on indictment to a fine of \$250,000.

101. (1) The Comptroller may take possession of and retain any document, book, record or other information presented in connection with any entry or required to be produced under this Act. Retention of records by Comptroller.

(2) Where the Comptroller takes possession of a document, book, record or other information under subsection (1), the Comptroller shall, at the request of the person otherwise

entitled to the document, book, record or other information provide that person with a copy of the document certified under the seal of the Customs department as a true copy.

(3) Where a copy of a document, book, record or other information is certified under subsection (2), the certified copy of the document, book, record or other information is admissible as evidence in all courts or tribunals as if such copy were the original document, book, record or other information.

(4) Notwithstanding subsection (2), where the Comptroller requires the original of any invoice or certificate of origin, or both, to be produced for goods imported or exported, he may -

- (a) require such invoice or certificate of origin, or both, to be submitted in duplicate and may retain the duplicates; or
- (b) retain the original of the invoice or certificate of origin, if such invoice or certificate is not submitted in duplicate.

Regulations.

102. The Minister may make Regulations respecting the form and manner in which documents, books, records and any other information required to be kept under this Act must be kept.

PART XI

PROHIBITED AND RESTRICTED GOODS

Prohibited and restricted imports.

103. (1) No person shall import—

- (a) any goods or any class or description of goods specified in Part 1 of Schedule 3; or
- (b) any goods specified in Part 2 of Schedule 3, except in accordance with the conditions and restrictions imposed in that Part.

(2) The Minister may, by Regulations, amend Part 1 or 2 of Schedule 3.

(3) A prohibition or restriction imposed by Regulations made under subsection (2) may –

- (a) be general;
- (b) be limited to the importation of goods from a specified place or by or from a specified person or class of persons; or
- (c) whether general or limited, be absolute or conditional.

104. (1) No person shall export any good specified—

Prohibited and restricted exports.

- (a) in Part 3 of Schedule 3; or
- (b) in Part 4 of Schedule 3, except in accordance with the conditions and restrictions imposed in that Part.

(2) The Minister may, by Regulations, amend Part 3 or 4 of Schedule 3.

(3) A prohibition or restriction imposed by Regulations made under subsection (2) may—

- (a) be general;
- (b) be limited to the exportation of goods from a specified place or by or from a specified person or class of persons; or
- (c) whether general or limited, be absolute or conditional.

(4) Unless otherwise specified in the Regulations, the Regulations made under this section prohibiting or restricting the exportation of goods extend to and apply to the shipment of the goods for use as stores by vessels and aircraft.

105. Where the importation or exportation of goods of any class or description is restricted under this Act or any other

Production of licence and permit for goods.

enactment, the Comptroller shall refuse to enter such goods or to clear such goods for export unless—

- (a) such goods are imported or exported under the authority of a licence or permit; and
- (b) the importer or exporter produces the licence or permit in respect of the goods.

Additional prohibitions and restrictions.

106. The Minister may, by Regulations, prohibit or restrict the importation, exportation or carriage coastwise of any class or description of goods to or from any specified place in Dominica.

Goods imported in transit, transshipment and as stores.

107. (1) Subject to subsection (2), goods imported in transit or in transshipment, or as *bona fide* stores of any vessel or aircraft, are deemed not to be prohibited or restricted goods.

(2) Subsection (1) does not apply where goods referred to in that subsection are expressly prohibited from or restricted from being imported in transit or transshipment, or as stores, in any regulations or other subsidiary legislation, made under any customs enactment 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 may allow.

Penalty.

108. (1) A person commits an offence and is liable on summary conviction to fine of \$25,000 if the person—

- (a) imports, unloads, unships or lands in Dominica goods, the importation of which is prohibited under this Part;
- (b) exports, or transports with intent to export, from Dominica goods, the exportation of which is prohibited under this Part;
- (c) is knowingly concerned in the commission of an offence under paragraph (a) or (b);

-
- (d) without lawful justification or excuse, removes from a customs controlled area imported goods the importation of which is prohibited under this Part;
 - (e) is knowingly concerned, or conspires, in the removal from a customs controlled area of goods, the importation of which is prohibited under this Part;
 - (f) commits a breach of, or fails to comply with, a term or condition of a licence or permit or consent which has been granted under this Part; or
 - (g) is knowingly concerned in the commission of an offence under paragraph (f).

(2) It is not a defence in a prosecution for an offence referred to in subsection (1)(a), (b), (d) or (f) 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.

PART XII

GOODS OF COMMUNITY ORIGIN

109. In this Part -

Definitions

“Community” means the Caribbean Community established by Article 2 of the Revised Treaty and includes the CSME established by the Revised Treaty;

“Community origin” has the meaning assigned to it in section 114;

“COTED” means the Council for Trade and Economic Development the Organ of the Community so named in paragraph 2(b) of Article 10 of the Revised Treaty;

“CSME” means the regime established by the Revised Treaty replacing Chapters Three through Seven of the Annex to

the Treaty Establishing the Caribbean Community and Common Market signed at Chaguaramas on 4 July 1973;

“export duties” means any duties or charges with equivalent effect imposed on or in connection with the export of goods;

“Less Developed Country” means a Member State regarded as such in accordance with Article 4 of the Revised Treaty;

“list” means the list comprising goods set out in Part (a) of Schedule I to 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 exemption for materials brought into free ports and other places that have duty-free customs privileges; and

“Rules of Origin” means the Rules regarding Community origin set out in Part (b) of Schedule I to the Revised Treaty.

Import duty on goods of Community origin.

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

(2) Subsection (1) does 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 applied to any goods, including goods produced in a Member State.

(3) Where the Minister is satisfied that a Member State has, in accordance with the Revised Treaty, suspended the operation of the preferential treatment of goods of Community origin in respect of any class of goods exported to that Member State from Dominica—

(a) the Minister may issue a notification in the *Gazette* to that effect; and

(b) notwithstanding subsection (1), any goods of the class described in such notification and exported from that Member State, if entered for use in Dominica during the continuance in force of the notification, are liable to import duty and entry tax.

111. (1) Export duties do not apply to goods of Community origin traded within the Community.

Prohibition of export duty.

(2) Where goods destined for export to a non-Member State are exported through a Member State, export duties applicable to goods exported to non-Member States may be applied to such goods.

(3) The Comptroller is authorised to take any necessary action to prevent the evasion of the payment of export duties.

112. (1) Notwithstanding section 110—

Drawback.

(a) goods of Community origin which benefit from drawback when exported from another Member State may be treated upon importation as if such goods were not of Community origin for the purposes of this Part; and

(b) where, after importation, drawback is allowed in respect of goods which on importation were

treated as goods of Community origin, the full amount of duty which would have been chargeable if the goods were not treated as goods of Community origin is payable on demand being made by the Comptroller.

(2) The duty which would have been chargeable on the goods constitutes a civil debt owed to the State immediately upon demand being made by the Comptroller.

(3) The debt referred to in subsection (2) is recoverable by action at the suit of the Comptroller on behalf of the State.

Quantitative restrictions.

113. (1) Nothing in Part XI authorises the application of any quantitative restriction on -

(a) the importation of goods which 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 XI.

Determination of
Community origin.

114. (1) Subject to this Part, imported goods shall be treated as being of Community origin where the goods are -

(a) wholly produced within the Community; or

(b) produced within the Community, wholly or in part, from materials imported from a non-Member State or from materials of undetermined origin by a process which results in a substantial transformation characterised -

(i) by the goods being classified in a tariff heading different from the tariff heading in which any of the materials is classified; or

(ii) in the case of the goods set out in the list, only by satisfying the conditions specified for those goods.

(2) Subject to subsection (3), goods of Community origin exported from Dominica to another Member State for repair, renovation or improvement shall, on the return of the goods to Dominica, be treated as goods of Community origin.

(3) Subsection (2) applies only where the goods are returned directly to Dominica and the value of materials imported from a non-Member State or of undetermined origin used in the process of repair, renovation or improvement does not exceed -

- (a) in the case of goods undergoing the process of repair, renovation or improvement in a More Developed Country, 65% of the cost of repair, renovation or improvement; and
- (b) in the case of goods undergoing the process of repair, renovation or improvement in a Less Developed Country, 80% of the cost of repair, renovation or improvement.

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

(5) Where a person, in support of a claim in Dominica that goods are of Community origin and are eligible for preferential treatment, furnishes or causes to be furnished any document which is untrue in a material particular—

- (a) the person commits an offence and is liable on summary conviction to a fine of \$25,000; and
- (b) the goods in respect of which the offence is committed are liable to forfeiture.

(6) The Rules of Origin shall be applied in determining the origin of goods under this Part.

Common External Tariff.

115. (1) The Common External Tariff shall be applied to goods that do not qualify for Community origin treatment.

(2) The Minister—

(a) is the competent authority for the administration of the Common External Tariff; and

(b) may, in keeping with relevant determinations of COTED, alter or suspend the Common External Tariff with respect to any goods.

Cooperation in customs service.

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

PART XIII

POWERS

Patrol and surveillance.

117. (1) Subject to subsection (3), a proper officer may, for the purposes of detecting offences committed against this Act or any other customs enactment—

(a) at any time and in such manner as the officer considers appropriate, patrol upon and pass freely along and over any part of Dominica, whether or not such part is private property; and

(b) subject to subsection (2), remain in any such part for the purpose of carrying out investigations or surveillance respecting the offence.

(2) Where the proper officer has reasons to believe that he is likely to remain on any private property, for the purpose of any patrol or surveillance under this section—

(a) the proper officer shall, as soon as practicable, obtain the permission of the owner to remain on such property; and

(b) the owner of such property shall not unreasonably refuse to give such permission.

(3) This section does not authorise the entry into any dwelling-house or other residential premises, the offices of any private business or such other private property without—

(a) the permission of the occupant; or

(b) a warrant issued by a Magistrate for that purpose.

(4) An officer proceeding as authorised under subsection (1) is not liable to any criminal or civil proceedings for so doing.

118. (1) A proper officer in command or in charge of a vessel or an aircraft engaged in the prevention of smuggling may, at any place in Dominica—

Power to land, moor, etc vessels and aircraft.

(a) anchor, moor or berth that vessel;

(b) haul that vessel ashore; or

(c) land that aircraft.

(2) A proper officer who carries out any act referred to in subsection (1) is not liable to any criminal or civil proceedings for carrying out any such act in good faith.

119. (1) At any time while a vessel is within the territorial waters of Dominica, or an aircraft is at any customs airport, a proper officer may—

Power to board vessels and aircraft.

(a) require the vessel or aircraft to stop;

(b) board and remain on board the vessel or aircraft; or

(c) search any part of the vessel or aircraft.

(2) A proper officer on board a vessel or an aircraft in accordance with subsection (1) may-

- (a) cause goods to be marked before they are unloaded or unshipped from that vessel or aircraft;
- (b) examine goods in the course of their being unloaded or unshipped from that vessel or aircraft;
- (c) lock up, seal, mark or otherwise secure goods or their containers carried in or on that vessel or aircraft;
- (d) break open any area or container which is locked if keys in respect of the area or container are not provided;
- (e) require any document or book which is required to be kept and maintained on board that vessel or aircraft to be produced to him for examination; or
- (f) require a specified person to answer questions put to the person by the officer in relation to the vessel or aircraft including its cargo, stores, baggage, crew, passengers and voyage or flight.

(3) A person commits an offence and is liable on summary conviction to a fine of \$10,000 if the person -

- (a) prevents a proper officer from performing any acts referred to in subsection (2);
- (b) obstructs a proper officer in the exercise of any duties under subsection (2); or
- (c) refuses to produce any documents requested, or to answer any questions put to him under subsection (2).

(4) Any goods -

- (a) in respect of which an offence is committed under subsection (3) are liable to forfeiture; or

(b) found concealed on board a vessel or an aircraft at any customs port or airport are liable to forfeiture.

(5) Where the master or commander of a vessel or an aircraft refuses to stop or permit a proper officer to board the vessel or aircraft when required to do so under subsection (1)—

(a) the master or the commander commits an offence and is liable on summary conviction to a fine of \$100,000 or to imprisonment for 5 years; and

(b) the vessel or the aircraft is liable to forfeiture.

(6) Where -

(a) the crew of a vessel refuses to stop the vessel when required to do so under subsection (1) and chase is given; and

(b) the identity of the master of the vessel cannot be ascertained,

each person who is a member of the crew on that vessel during the chase commits an offence and is liable on summary conviction to a fine of \$25,000.

(7) For the purposes of subsection (2)(f), “specified person” means -

(a) the master, the commander, the owner, the operator and any member of the crew of a vessel or an aircraft to which this section applies;

(b) the agent of the master, commander or owner of a vessel or an aircraft to which this section applies; or

(c) any passenger on a vessel or an aircraft to which this section applies.

Power to station officer on vessels.

120. (1) The Comptroller may station a proper officer on board a vessel at any time while the vessel is within Dominica.

(2) Where a proper officer is stationed under subsection (1) on board a vessel, the master of the vessel shall provide -

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

(3) The master of a vessel on which a proper officer is stationed under subsection (1) who neglects or refuses to provide the food, water and safe means of access to and egress from the vessel under subsection (2) commits an offence and is liable on summary conviction to a fine of \$10,000.

Right of access.

121. (1) Without prejudice to any other power contained in this Act, a proper officer has a right of access to and a power of search of -

- (a) any part of a customs controlled area; and
- (b) any vehicle or goods found at a customs controlled area.

(2) The power of search under subsection (1) includes the power to break into or open any locked building, vehicle, place or container which is required to be searched.

Searching of vessels and aircraft.

122. (1) A proper officer may search any vessel or aircraft which-

- (a) has arrived in or within Dominica;
- (b) is departing from Dominica to a place outside Dominica and at all times while the vessel or aircraft is travelling within Dominica en route to a point outside Dominica;
- (c) not being a vessel or an aircraft to which paragraph (a) or (b) applies, is carrying any international

cargo, while the vessel or aircraft remains within Dominica; or

- (d) not being a vessel or an aircraft to which paragraph (a), (b) or (c) applies, a proper officer has reasonable cause to suspect, while the vessel or aircraft is in Dominica—
 - (i) is carrying dutiable, uncustomed, prohibited, restricted or forfeited goods, or
 - (ii) has been, is being, or is about to be otherwise concerned in the commission of an offence against this Act.

(2) In the exercise of the power of search under subsection (1), a proper officer may—

- (a) using such force as is reasonably necessary in the circumstances—
 - (i) enter every part of the vessel or aircraft, or
 - (ii) open any package, locker or other place on or in the vessel or aircraft; or
- (b) examine all goods found on the vessel or aircraft.

(3) A person who prevents or obstructs a proper officer from exercising a power under this section commits an offence and is liable on summary conviction to a fine of \$25, 000.

123. (1) Subject to section 169, where a proper officer has reasonable grounds to believe that an article liable to forfeiture under any customs enactment is kept at or concealed in any vessel, aircraft, vehicle, building or other place, the proper officer may, after being authorised in writing by the Comptroller to do so—

- (a) enter that vessel, aircraft, vehicle, building or place at any time, and search for, seize, detain or remove anything that appears to him to be liable to forfeiture;

Power to search premises.

(b) so far as is reasonably necessary for the purpose of the entry, search, detention or removal, break open any lock, seal, shutter, door, window or container and force out and remove any obstruction, obstacle or other impediment; and

(c) search for and remove any invoice, bill of lading, books, ledger, paper or other document or record relating to any matter in relation to which the Comptroller is for the time being required by or under any enactment to perform any duty.

(2) Where, in the case of any entry, search, seizure, detention or removal under this section—

(a) damage is caused to any property including goods; and

(b) goods liable to forfeiture are not found,

the owner of the damaged property is entitled to recover from the Comptroller the costs of repairing that damage.

(3) A person who prevents or obstructs an entry on any property or any search, seizure, detention or removal under this section commits an offence and is liable on summary conviction to a fine of \$25,000.

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

Power to search vehicles.

124. (1) Where a proper officer has reasonable grounds to believe that -

(a) there are in or on any vehicle, within a customs controlled area, any dutiable, uncustomed, prohibited or forfeited goods; or

(b) there are in or on any vehicle, outside a customs controlled area, any goods which have been unlawfully imported or are in the process of being unlawfully exported,

the proper officer may—

- (c) stop and search the vehicle; and
- (d) detain the vehicle for such period as is reasonably necessary for that purpose.

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

(3) Where the person in charge of a vehicle fails to stop or refuses to permit the vehicle to be searched when requested to do so under subsection (1) or (2), the person commits an offence and is liable on summary conviction to a fine of \$25,000.

125. For the purpose of performing any function or exercising any power which is required or authorised under this Act, a proper officer may, while boarding or searching any vessel or aircraft-

Securing goods.

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

126. Where a customs officer or a police officer has reasonable grounds to believe that a person has in his possession any thing which is liable to forfeiture, the officer may stop and, subject to section 127, search that person and any thing which that person has with him or has in his possession.

Power to search persons.

127.(1) Where a search of any person is to be conducted under this Act –

Procedure on exercising power to search persons.

- (a) a female person shall not be searched except by a female person;
- (b) a male person shall not be searched except by a male person; and

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

(2) A person, before he is searched, may request to be taken with all reasonable dispatch before the superior officer on duty for a review of the need for the search.

(3) Where—

(a) a person is detained under this Act to be searched; and

(b) there is no suitable person, available at the place where the search is to be conducted, to conduct the search,

the person detained may be taken to another place to be searched.

(4) A proper officer is not liable to any prosecution or action at law by reason of any search made in accordance with this section.

(5) Where an intimate search of a person is to be conducted, such a search shall only be conducted by a medical practitioner or registered nurse.

(6) In this section—

“intimate search” means any search which involves a physical examination (that is, an examination which is more than simply a visual examination) of a person’s body orifices;

“parent”, in relation to a minor, includes—

(a) a guardian of the minor ;

(b) every person who is liable to maintain or who has the custody of the minor;

-
- (c) a person living as husband with the mother of the minor, whether or not he is the father; and
 - (d) a person living as wife with the father of the minor, whether or not she is the mother;

128. Sections 129, 130 and 131 apply to -

Application of sections 129, 130 and 131.

- (a) a person on board a vessel or an aircraft which has arrived in, or is departing from, Dominica;
- (b) a person in the process of disembarking from, or embarking on to, a vessel or an aircraft described in paragraph (a); and
- (c) a person who, having entered into Dominica at a customs place, remains in that customs place.

129. (1) A proper officer may—

Preliminary search of persons by use of aids.

- (a) conduct a preliminary search of a person to whom section 128 applies; and
- (b) for the purposes of conducting the preliminary search, detain such a person.

(2) For the purposes of this section, a preliminary search is a search which -

- (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 a dog, a chemical substance, or an x-ray or imaging equipment, or some other mechanical, electrical or electronic device or other similar aid, but not by any more invasive means.

130. (1) This section applies to any person who-

Searching persons suspected of having concealed items.

- (a) is in a customs controlled area;

(b) has, within the preceding 24 hours, arrived in Dominica at a place other than a customs port or airport; or

(c) is about to depart from Dominica from any place other than a customs port or airport.

(2) A proper officer may cause a person to whom this section applies to be searched if the proper officer has reasonable grounds to suspect that the person has concealed on or about his person -

(a) any dutiable, uncustomed or prohibited goods under this Act or any other enactment;

(b) any goods liable to forfeiture under this Act or any other enactment;

(c) evidence relating to any goods referred to in paragraph (a) or (b); or

(d) any article which is or is likely to be evidence of the contravention of this Act.

(3) A proper officer may—

(a) use such force as is reasonably necessary in the circumstances to detain or search any person to whom this section applies; and

(b) for the purpose of such search, require such other person as the officer thinks necessary to assist him.

(4) A search of a person may be conducted under this section whether or not the person has earlier been the subject of a preliminary search under section 129.

Searching of persons for dangerous items.

131. (1) A customs officer or police officer may immediately detain and search a person if 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 or police officer who undertakes a search under this section shall, within 7 working days of the search, give a written report to the Comptroller of—

- (a) the search;
- (b) the circumstances in which the search was conducted; and
- (c) the matters which gave rise to the reasonable belief that the person searched had a dangerous item on or about his person.

(3) For the purposes of this section, “dangerous item” includes -

- (a) any firearm and ammunition as defined in section 2 of the Firearms Act or an Act replacing it; and
- (b) any substance, item, article or device which could be used to endanger the safety of a person.

132. (1) A proper officer may seize any article or item found when carrying out a search under section 130 which the officer has reasonable grounds to believe is an item or article referred to in that section.

Seizure of items and articles found.

(2) A proper officer may seize any substance, item, article or device found on or about a person when carrying out a search under section 131 which the officer has reasonable grounds to believe is a substance, an item, an article or a device referred to in that section.

133. (1) A proper officer may, in relation to any international cargo or domestic cargo, question -

Questioning of persons in customs controlled areas.

- (a) any person who, as an employee of an airline or shipping company, manages or carries out the receipt, handling, custody or dispatch of international cargo or domestic cargo by that airline or shipping company;
 - (b) any person employed by the operator of a customs controlled area licensed for -
 - (i) the processing of vessels or aircraft arriving in or departing from Dominica,
 - (ii) the loading or unloading or unshipping of goods on or from vessels or aircraft arriving in or departing from Dominica, or
 - (iii) the temporary holding of imported goods for the purposes of the examination of those goods, including the holding of any goods awaiting examination; or
 - (c) any person who is in a customs controlled area licensed for a purpose described in paragraph (b).
- (2) A proper officer may question any person, or all of the following persons, about any cargo destined to be exported -
- (a) a person who is the owner or operator of a vehicle which a proper officer has reasonable cause to suspect has in or on the vehicle, or has within the immediately preceding 96 hours had in or on the vehicle, goods subject to customs control;
 - (b) a person who is the owner, occupier or operator of premises which a proper officer has reasonable cause to suspect has in or on the premises, or has within the immediately preceding 96 hours had in or on the premises, goods subject to customs control;
 - (c) a person employed by a person described in paragraph (a) or (b).

134. (1) The Comptroller may authorise a customs officer to carry a firearm if the Comptroller is satisfied that it is necessary for the protection of any customs officer engaged in the performance of any duty.

Power to carry and use firearms.

(2) A customs officer may use the firearm authorised to be carried under subsection (1) if the use is necessary for the preservation of life.

135. (1) The proper officer in charge of any properly identified vessel in the service of the State shall, having hoisted or displayed the proper identification within the territorial waters of Dominica, chase any vessel if the master of the vessel -

Firing on vessels.

- (a) fails to comply with any signal or instruction given by the proper officer; or
- (b) refuses to permit the vessel to be boarded by the proper officer.

(2) Subject to subsection (3), where the master of a vessel fails to stop the vessel or comply with any signal or instruction given under subsection (1)(a), the proper officer in charge of any properly identified vessel in the service of the State may, as a last resort after having fired a warning shot, fire at or onto the vessel to compel it to bring-to or stop.

(3) The proper officer may only fire at or onto a vessel if he is satisfied that -

- (a) the master or person in charge of the vessel—
 - (i) is aware of the signal or instruction given under subsection (1), or
 - (ii) fails or refuses to stop; and
- (b) a warning shot has been fired.

136. (1) This section applies where a proper officer has reasonable cause to believe that—

Detention of vessels and aircraft.

- (a) an offence against this Act or any other enactment has been, is being or is about to be committed on or with the use of a vessel or an aircraft while the vessel or aircraft was or is within Dominica; or
- (b) there is on board or in a vessel or an aircraft within Dominica a person who was carried on the vessel or aircraft into Dominica in contravention of this Act or any other enactment.

(2) Where subsection (1) applies, the proper officer may—

- (a) direct the vessel or aircraft—
 - (i) to proceed to the nearest customs controlled area or such other place as the proper officer considers appropriate, or
 - (ii) to remain in or at the place where it is; and
- (b) detain the vessel or aircraft for such time and for such purposes reasonably necessary to carry out an investigation respecting the commission of the offence.

(3) Notwithstanding any other power of seizure under this Act, where the person in charge of a vessel or an aircraft to which this section applies attempts to or threatens to cause the vessel or aircraft to depart, without a certificate of clearance, from a place—

- (a) to which the vessel or aircraft has been directed to proceed under subsection (1); or
- (b) in or at which the vessel or aircraft has been directed to remain under subsection (2),

the proper officer may seize and detain the vessel or aircraft until a certificate of clearance in respect of the vessel or aircraft has been obtained.

137. (1) Notwithstanding anything contained in any customs enactment to the contrary, a proper officer may—

Power to examine and take account of goods.

- (a) examine any goods—
 - (i) which have been imported,
 - (ii) which are in a warehouse or customs warehouse,
 - (iii) which have been loaded on or unloaded or unshipped from any vessel or aircraft at any place in Dominica,
 - (iv) which have been entered for exportation or for use as stores,
 - (v) which have been brought to any place in Dominica for exportation or for use as stores, or
 - (vi) in respect of which any claim for drawback, allowance, rebate, remission or repayment of duty has been made; and
- (b) for the purpose of such examination, require any container in which goods are kept to be opened or unpacked.

(2) A proper officer shall examine the goods under subsection (1) at such time and place as the officer may direct.

(3) The owner of goods to which this section applies shall –

- (a) bear the expense of -
 - (i) transporting the goods to a place directed under subsection (2),
 - (ii) unloading, opening, unpacking, weighing, repacking, bulking, sorting, lotting, marking, numbering, loading, carrying or landing the goods,
 - (iii) the application of any treatment to the containers in which the goods are kept, for the

purposes of or incidental to the examination by the proper officer, and

(iv) removing the goods for exportation or for use as stores or warehousing; and

(b) provide, or bear the expense of providing, any facilities or assistance required for the examination of the goods.

(4) Where, without the authority of a proper officer—

(a) imported goods which the proper officer has the power under this section to examine; or

(b) goods, other than imported goods, which a proper officer has directed to be brought to a place for the purposes of an examination,

are removed from customs control before the goods have been examined, such goods are liable to forfeiture.

Examination of goods subject to customs control.

138. (1) A proper officer may—

(a) examine, weigh, analyse or test, or cause to be examined, weighed, analysed or tested—

(i) goods subject to customs control, or

(ii) goods which the officer has reasonable cause to believe are subject to customs control; and

(b) for any purpose specified in paragraph (a), open or cause to be opened any packages in which such goods are contained or believed to be contained.

(2) Any reasonable expense incurred by the proper officer under subsection (1)—

(a) is a civil debt owed to the State by the importer, exporter or owner of the goods; and

(b) is recoverable by legal action brought at the suit of the Comptroller on behalf of the State.

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

(4) The examination of the goods under this section may involve—

- (a) the physical or chemical testing of the goods; and
- (b) the drilling into, or the dismantling of, the goods.

(5) Subject to section 169, for the purpose of exercising the powers under this section in respect of goods which are, or are believed to be, subject to customs control, a proper officer shall be allowed free access—

- (a) to any land, building or place; and
- (b) to any goods in or on any land, building or place.

139. (1) Subject to subsection (2), the High Court may, on an application by the Comptroller, issue a writ of assistance. Writ of assistance

(2) A writ of assistance issued under subsection (1) shall automatically expire on the day six months next following the date of its issue if not earlier cancelled by the High Court on an application by the Comptroller.

(3) An officer in possession of a writ of assistance issued under subsection (1) may—

- (a) at any time, enter into and search any house, shop, cellar, warehouse, room or any other place including any place where documents relating to uncustomed or prohibited goods can be reasonably expected to be found; and
- (b) in the case of resistance, use such force as is reasonably necessary to break open any door,

chest, trunk and other package for the purpose of seizing and taking away any uncustomed or prohibited goods or any books or documents relating to such goods.

(4) Where the proper officer seizes any goods, books or documents under this section, the officer shall ensure that such goods, books or documents are adequately secured.

Examination of goods no longer subject to customs control.

140. (1) This section applies to goods which have ceased to be subject to customs control, but which the Comptroller has reasonable grounds to suspect are goods –

(a) in respect of which an offence against this Act has been committed; or

(b) which 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—

(a) produce such goods for inspection by a proper officer; or

(b) otherwise account for such goods.

(3) For the purposes of this section, a proper officer may, in respect of goods described in subsection (1), exercise all the powers under sections 122 and 123.

(4) A proper officer may—

(a) take and retain possession of goods produced under subsection (2) for the purposes of exercising the powers under subsection (3); and

(b) retain possession of such goods until the completion of the investigation into the grounds for suspecting that the goods are goods to which subsection (1) applies.

(5) A person who fails or refuses to produce or account for any goods when required to do so under this section commits an offence and is liable on summary conviction to a fine of \$25,000.

141. (1) The Comptroller may, by notice in writing, require the operator of a customs controlled area to -

Accounting for goods.

- (a) account for goods which the Comptroller believes have been entered into the customs controlled area; and
- (b) produce any documents, books or records, whether in electronic form or any other form, relating to the movement of goods into or out of the customs controlled area.

(2) An operator of a customs controlled area who fails or refuses to comply with subsection (1) commits an offence and is liable on summary conviction to a fine of \$25,000.

142. (1) A proper officer may require the operator of a customs controlled area to produce to the officer goods which, according to any record, are within the customs controlled area.

Production of goods.

(2) An operator of a customs controlled area who fails or refuses to produce, or account for, any goods when required to do so under this section commits an offence and is liable on summary conviction to a fine of \$25,000.

143. (1) The Comptroller may—

Verification of entries.

- (a) require, from a person making entry of goods, proof by declaration or the production of documents of the correctness of the entry, in addition to any declaration or documents otherwise required by this Act; and
- (b) refuse to deliver such goods or to accept such entry before the required proof is provided.

(2) Where the Comptroller is not satisfied with—

- (a) the correctness of an entry in relation to any goods; or
- (b) any other aspect of the importation or exportation of any goods to which an entry relates,

the Comptroller may detain the goods for such period as is reasonably necessary—

- (c) to enable the goods to be examined; and
- (d) if necessary, to cause an investigation to be made, whether in Dominica or elsewhere, respecting the importation or exportation of the goods.

Power to take samples.

144. (1) A proper officer—

- (a) may, for the purposes of an examination, take and use samples of goods subject to customs control or believed to be subject to customs control; and
- (b) shall dispose of such samples in such manner as may be prescribed.

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

(3) Where a sample of goods is taken under this section upon receipt of payment of the duty payable in respect of such sample, the proper officer shall return the sample or cause the sample to be returned to the person who was, at the time of the taking of the sample, the owner unless—

- (a) such sample is liable to forfeiture; or
- (b) it is impractical to return such sample to the person.

145. (1) Subject to subsection (2), a customs officer or a police officer may arrest a person who has committed, or who that officer has reasonable grounds to believe has committed or is about to commit, an offence under any customs enactment.

Power of arrest.

(2) A person shall not arrest another person for an offence by virtue of subsection (1) more than three years after the commission of the offence.

(3) Where a customs officer arrests a person under subsection (1), the customs officer shall, as soon as practicable, deliver the arrested person into the custody of a police officer.

146. (1) Where a person subject to arrest under section 145 or any other customs enactment escapes from a customs or police officer attempting to arrest the person—

Escape from officer.

(a) any customs or police officer may, within 7 years from the time of the commission of the offence, arrest and detain the person at any place in Dominica; and

(b) the arrested person shall be dealt with as if he were arrested at the time of the commission of the offence.

(2) Where a customs or police officer is, for any reason, unable or fails to arrest a person subject to arrest under section 145 or any other customs enactment—

(a) any customs or police officer may, within 7 years from the time of the commission of the offence, arrest and detain the person at any place in Dominica; and

(b) the arrested person shall be dealt with as if he were arrested at the time of the commission of the offence.

Power to pay rewards.

147. Subject to the approval of the Minister, the Comptroller may, in accordance with regulations made under this Act, reward or give an award to a customs officer or any other person for any service in relation to an assigned matter which appears to the Comptroller to merit a reward or an award.

Power to require attendance.

148. (1) Where under any customs enactment the master or the commander of a vessel or an aircraft is required to answer any question put to him by the Comptroller or a proper officer, the Comptroller or the officer may, at any time while –

(a) the vessel is within the waters of Dominica; or

(b) the aircraft is at any airport,

require the master or commander or relevant agent or, with the consent of the Comptroller or the proper officer, a senior officer of the vessel or aircraft, to appear in the office of the Comptroller or the proper officer.

(2) The master, commander or senior officer of a vessel or an aircraft or the relevant agent who fails to comply with subsection (1) commits an offence and is liable on summary conviction to a fine of \$10,000.

Power to require information and the production of evidence.

149. (1) A proper officer may, at any time within 3 years from the date of the importation, exportation or carriage coastwise of any goods, require a concerned person—

(a) to furnish to the proper officer, in such form and manner as the proper officer requires, any information relating to the goods;

(b) to produce any invoice, bill of lading or other book or document relating to the goods in the control or possession of the concerned person; and

(c) to permit the proper officer to inspect, take extracts from, make copies of or remove for a reasonable period any bill of lading, book or document referred to in paragraph (b).

(2) The Comptroller may require evidence to be produced to his satisfaction in support of any information provided in respect of -

- (a) goods imported, exported or carried coastwise; or
- (b) goods for which drawback, allowance, rebate, remission or repayment of duty is claimed.

(3) A person who fails to comply with any provision of this section commits an offence and is liable on summary conviction to a fine of \$25,000.

(4) For the purposes of this section “concerned person” means a person concerned in –

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

150. For the purpose of meeting the exigencies of any case to which a customs enactment cannot be conveniently applied, the Comptroller may permit—

Power of Comptroller in special circumstances.

- (a) the entry, unloading, removal and loading of goods; and
- (b) the report and clearance of vessels and aircraft,

in such form and manner as the Comptroller may direct.

151. (1) Subject to this section and the powers of the Director of Public Prosecutions under the Constitution, the Comptroller may, on a written application, direct that any offence committed by a person under this Act or any other customs enactment be compounded.

Power to compound offences.

(2) The Minister may make regulations respecting the conditions and restrictions which the Comptroller may impose in the exercise of the power under subsection (1).

(3) Without prejudice to subsection (2), the regulations respecting the conditions and restrictions made under that subsection may require a person to pay a sum equivalent to four times the value of the duty payable on the goods in respect of which an offence is compounded.

(4) This section does not affect any right conferred by any enactment—

(a) to claim goods which have been seized under this Act; or

(b) to commence, or require the commencement of, legal proceedings,

at any time before the payment of any sum respecting the compounding of the offence.

Power to require security.

152. (1) Without prejudice to any express security requirement provided for by this Act or any other customs enactment, the Comptroller may, if he sees 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—

(a) in relation to a particular transaction, transactions generally or a class of transactions;

(b) for such period and amount as the Comptroller may direct; or

(c) on such conditions respecting any penalty or otherwise, as the Comptroller may direct.

(4) Subject to any provision of this Act prohibiting release of security, where the Comptroller is satisfied that the obligations for which any security given in accordance with this section have been fulfilled, he shall release the person who gave the security from the conditions of the security, as soon as reasonably practicable.

(5) Any bond taken for the purposes of an assigned matter—

(a) is taken on behalf of the Government; and

(b) may be cancelled at any time by order of the Comptroller.

(6) Where, at any time, the Comptroller is dissatisfied with the sufficiency of any security, the Comptroller may require a new security in place of, or in addition to, the existing security.

(7) If the new security required under subsection (6) 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 21 working days after the date on which notice of the decision is given, request the Comptroller to reconsider the decision.

153. (1) A person required by or under this Act to provide a place to be used for the examination of goods by a proper officer shall –

Power to require provision of facilities.

(a) provide and maintain such equipment and facilities as are reasonably necessary to enable a proper officer—

(i) to take account of or examine the goods, and

(ii) to conduct searches or perform such other duties as the Comptroller may direct;

- (b) keep any equipment in a convenient place approved by the proper officer for that purpose;
- (c) allow the proper officer to use the equipment at any reasonable time; and
- (d) provide the proper officer with any assistance necessary for the performance of the officer's duties.

(2) Subject to subsection (7), a person who contravenes subsection (1) commits an offence and is liable on summary conviction to a fine of \$10,000.

(3) A person required by or under this Act to provide a place to be used for the examination of goods by a proper officer shall provide and maintain any fitting required for the purpose of affixing any lock or seal which the proper officer needs or is likely to need to affix to—

- (a) the premises, or any part of the premises, of the person; or
- (b) any conveyance or apparatus kept on such premises.

(4) Where there is default in providing or maintaining any fitting in accordance with subsection (3)—

- (a) the Comptroller may remedy the default by—
 - (i) providing or causing to be provided the fitting; or
 - (ii) carrying out or causing to be carried out any work necessary for the maintenance of the fittings; and
- (b) any expenses incurred in remedying the default shall be paid, on demand of the Comptroller, by the person in default.

(5) The expenses incurred under subsection (4) constitute, immediately on demand being made by the Comptroller, a debt owed to the State recoverable in accordance with this Act.

(6) Subject to subsection (7), a person who fails to pay the expenses on demand is, in addition to any other penalty liable on summary conviction to a fine of \$10,000.

(7) Subject to regulations made for the resolution of disputes arising under this Act between the public body and the Customs department, where a person required under this Act to provide a place to be used for the examination of goods by a proper officer is a public body—

- (a) subsections (2), (5) and (6) do not apply; and
- (b) if any dispute in respect of the obligation of the public body under subsection (1) arises between the Customs department and that public body, the Comptroller shall, in writing, submit the matter to the Minister for a determination.

(8) A person required under this Act to provide a place to be used for the examination of goods by a proper officer commits an offence and is liable on summary conviction to a fine of \$10,000 if the person—

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

Audit and examination of records.

154. (1) Subject to this section and to section 169, a proper officer may, at all reasonable times—

- (a) enter any premises or place where records are kept under section 99; and
- (b) audit or examine the records—
 - (i) in relation to any specific transaction, or
 - (ii) to assess the adequacy and integrity of the manual or electronic system by which the records are created and kept.

(2) For the purposes of subsection (1), a proper officer is entitled, subject to section 101 and subsection (5), to full and free access to—

- (a) all lands, buildings and places; and
- (b) all books, records, and documents,

whether in the custody or under the control of the licensee, importer, or exporter, or any other person.

(3) The full and free access referred to in subsection (2) shall be for the purpose of inspecting any books, records, documents, any property, process or matter which the officer considers—

- (a) necessary or relevant for the purpose of collecting any duties due under any customs enactment;
- (b) necessary or relevant for the purpose of carrying out any function lawfully performed by a proper officer; or
- (c) likely to provide any information otherwise required for the purposes of enforcing any customs enactment.

(4) The proper officer may, without fee or reward, take extracts from or make copies of any books, records or documents to which this section applies.

(5) A customs officer shall not enter any private dwelling except with the consent of the occupant or owner or under a warrant issued in accordance with this Act.

155. (1) Where—

Requirement to produce documents

- (a) goods have been seized under this Act; or
- (b) a proper officer has reasonable cause to believe that goods have been or are likely to be unlawfully imported, exported, undervalued, entered, removed, or otherwise have been unlawfully dealt with by any person in contravention of this Act,

the Comptroller may, by written notice, require any person to comply with the requirements specified in subsection (2) if the proper officer believes that the person—

- (c) is or has been the owner, importer or exporter of such goods;
- (d) is or has been an agent of the owner, importer or exporter of the goods; or
- (e) has been concerned in the unlawful activities specified in paragraph (b).

(2) Without prejudice to sections 100 and 101, the Comptroller may require the owner, importer or exporter of the goods, or an agent of the owner, importer or exporter of the goods referred to in subsection (1) to -

- (a) produce and deliver to the proper officer or any other specified officer all books of account, invoice books, or other books, records or documents, whether or not in electronic form, in which any entry or memorandum appears or is likely to appear concerning the purchase, importation, exportation, manufacture, cost, valuation of, or payment for the goods within a period of 7 years preceding the date of the notice;

(b) allow the proper officer to make copies of, or take extracts from any of, the documents, books or records; and

(c) answer any question concerning the documents, books, or records.

(3) A person who fails to comply with a request under this section commits an offence and is liable on summary conviction to a fine of \$10,000.

Power to require copies of documents.

156. Where a person is required to submit a report, entry or other form for the purpose of any customs enactment, the Comptroller may require that person to submit as many copies of the report, entry or other form as the Comptroller considers necessary.

Further powers in relation to documents.

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

(a) to produce for inspection by a proper officer documents or records which the Comptroller considers necessary or relevant to –

(i) an investigation under this Act,

(ii) an audit under this Act, or

(iii) the recovery of a debt due and payable to the State under this Act;

(b) to allow a proper 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 proper officer and answer all questions put to the person concerning the goods, or transactions relating to the goods, which are—

(i) the subject of an investigation or audit under this Act, or

(ii) relevant to the recovery of the debt referred to in sub-paragraph (a)(iii).

(2) A person who fails to comply with a request made under subsection (1) commits an offence and is liable on summary conviction to a fine of \$100,000.

(3) Where—

(a) the Comptroller has reasonable cause to believe that documents or records referred to in subsection (1) are stored on a computer or other electronic device; and

(b) a readable copy of the documents or records is not made available to the Comptroller,

the Comptroller may apply to a Magistrate for a warrant to allow the Comptroller to seize and retain the computer or other electronic device on which the documents or records are believed to be stored for as long as is reasonably necessary to copy such documents or records or obtain a readable copy of such documents or records.

158. (1) Where a proper officer—

(a) carries out any lawful search, inspection, audit or examination under this Act or any other customs enactment; and

(b) has reasonable cause to believe that any document coming into his possession during such search, inspection, audit or examination is evidence of the commission of an offence against this Act or any other customs enactment,

the proper officer may remove the document for the purpose of making the necessary copies.

(2) Where any document is removed under subsection (1), the proper officer shall, as soon as practicable after the necessary copies of the document have been made, return the document to the person entitled to have possession of it.

Copying of documents
obtained during search.

(3) Without prejudice to subsection (1), where a proper officer—

- (a) carries out a lawful search, inspection, audit or examination under any customs enactment; and
- (b) has reasonable cause to believe that—
 - (i) an offence under a customs enactment has been committed or is about to be committed, or
 - (ii) evidence of an offence is to be found in information stored on a computer or other electronic device,

the proper officer may, subject to subsection (4), make a hard copy of the information or save a copy of the information in an electronic form.

(4) Where it is not possible for the proper officer to make a hard copy or to save a copy of the information in an electronic form, the proper officer may apply to a Magistrate for a warrant to allow the proper officer to seize and retain the computer or other electronic device on which the information is believed to be stored for as long as is reasonable to copy the information required.

(5) A copy of any document certified under the seal of the Customs department is admissible in evidence in all courts or tribunals as if it were the original.

Retention of documents and goods obtained during search.

159. (1) Where a proper officer—

- (a) carries out any lawful search, inspection, audit or examination under this Act; and
- (b) has reasonable cause to believe that any documents or goods coming into his possession during the search, inspection, audit or examination—
 - (i) are evidence of the commission of an offence against this Act, or

(ii) are intended to be used for the purpose of committing any offence against this Act,

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

(2) Where a proper officer takes possession of and retains—

- (a) 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; or
- (b) any goods under this Act, he shall, as soon as reasonably practicable, supply the person otherwise entitled to the goods with a list of the goods which have been taken possession of and retained.

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

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

- (a) a court or tribunal may, in any proceedings for an offence relating to the documents or goods, order, at the hearing or on a subsequent application, that the documents or goods be –
 - (i) delivered to the person appearing to the court or tribunal to be entitled to them; or
 - (ii) otherwise disposed of in such manner and under such conditions as the court or tribunal thinks fit; and

(b) the proper officer or an authorised person may—

- (i) at any time, unless an order has been made under paragraph (a), return the documents or goods to the person from whom they were taken, or
- (ii) apply to a Magistrate for an order respecting the disposal of the documents or goods.

(5) Where the proper officer or an authorised person makes an application under subsection (4)(b)(ii), the Magistrate may issue such order as a court or tribunal may issue under subsection(4)(a).

(6) If proceedings for an offence relating to the documents or goods retained under this section are not brought within a period of 6 months after the date on which the proper officer took possession of the document or goods, any person claiming to be entitled to such documents or goods may, after the expiration of that period, apply to a Magistrate for an order for the delivery of the documents or goods.

(7) The Magistrate may, on any application under subsection (6)—

- (a) refuse to issue the order; or
- (b) make such order as a court or tribunal may make under subsection (4)(a).

Detention of goods
suspected to be illegally
obtained.

160. (1) Where a customs officer or an authorised person has reasonable grounds to believe that goods were obtained in contravention of any law, the customs officer or authorised person may, without warrant, seize and detain such goods if the goods-

- (a) are in Dominica and the customs officer or authorised person is satisfied that the goods-

-
- (i) are being exported or are intended to be exported, or
 - (ii) are being imported or have been imported; or
- (b) come to the attention or into the possession of the customs officer or authorised person, during a search, inspection, audit or examination under this Act or any enactment which relates to the reporting of imports or exports of currency.

(2) A proper officer may use reasonable force if it is necessary to seize or detain goods under this section.

(3) If the person from whom goods have been seized and detained under this section is identified but is not present when such seizure and detention occur, the Comptroller shall, as soon as practicable—

- (a) notify that person of the detention and seizure of the goods; and
- (b) issue to that person a receipt in respect of the seized and detained goods.

(4) Subject to section 163, the proper officer or authorised person shall—

- (a) take any goods detained under this section; or
- (b) cause any goods detained under this section to be taken,

to a secure place for safekeeping as directed by the proper officer or authorised person.

161. (1) The Comptroller shall return goods seized and detained under section 160, or cause such goods to be returned, to the person from whom the goods were seized and detained as soon as practicable after –

Return of goods detained
under section 1:60

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

(2) Notwithstanding subsection (1), where, on or before the expiration of an investigation period—

- (a) an information relating to goods which were seized and detained under subsection (1) is laid before a Magistrate; or
- (b) any other country makes a request to the Attorney-General under any agreement relating to mutual legal assistance in relation to such goods,

the Comptroller may continue to detain such goods until the determination of the relevant proceedings or request, including any resulting applications.

(3) In this section, “investigation period”, in relation to goods seized and detained under section 160, means the period of 3 months after the date on which the goods were seized and detained including any extension of that period granted by the court.

Extension of three-month period in section 161.

162. (1) Subject to subsection (2), where the Comptroller is of the opinion that an extension of three-month period is necessary to allow for the completion of investigations in or outside Dominica in relation to the goods, the Comptroller may, in writing before the expiration of the three-month period referred to in section 161(1)(a), apply to the court for an extension of time.

(2) The application for an extension of time—

- (a) shall include—
 - (i) a description of the goods seized and detained,
 - (ii) the date on which the detention commenced,

-
- (iii) a statement of the facts supporting the reasonable grounds required under section 160, and
 - (iv) the reasons for the extension of time; and
 - (b) shall be served on the person from whom the goods were seized, if that person can be identified and located.

(3) The person from whom the goods were seized is entitled to appear and be heard on the application for extension of time.

(4) The Comptroller shall make all reasonable efforts to notify the person from whom the goods were seized, at least 24 hours before the hearing of the application, of the time and place of that hearing.

(5) Where the court is satisfied that -

- (a) there is reasonable cause to believe that the goods were obtained in contravention of any law; and
- (b) the extension of time is necessary,

the court may, by order, extend the three-month period for a reasonable period of not more than 30 days, but the court shall only make one such extension in respect of the same investigation.

163. (1) Where an item seized and detained under section 160 is a vessel, an aircraft, a vehicle, or an animal, a proper officer may leave the item in the custody of -

- (a) the person from whom the item has been seized and detained; or
- (b) any other person authorised by the proper officer who consents to having custody of such item.

(2) A person who has the custody of an item under subsection (1) shall, until a final decision is made under section 161 respecting the return of the item, hold such item—

Custody of certain things detained under section 159.

- (a) in safekeeping, without charge to the State; and
- (b) in accordance with such reasonable conditions as the Comptroller may impose.

(3) A person to whom subsection (2) applies -

- (a) shall make the item available to the proper officer on request;
- (b) shall not alter or dispose of the item or remove the item from Dominica, unless authorised to do so by the proper officer; and
- (c) shall, on demand, return the item to the custody of the Comptroller.

(4) Any person who contravenes subsection (2) or (3) commits an offence and is liable on summary conviction to a fine of \$100,000 or equivalent to three times the value of the goods whichever is greater.

Search warrants.

164. (1) Where a Magistrate is satisfied on a written application, made by a proper officer, on oath that there is a reasonable ground for suspecting that—

- (a) an offence has been committed against this Act and that there is to be found in or on any place or article evidence of -
 - (i) the commission of the offence, or
 - (ii) the unlawful exportation or importation of goods;
- (b) there is to be found, in or on any place or article anything—
 - (i) intended to be used for the purpose of committing an offence against this Act,
 - (ii) intended to be used for the purpose of unlawfully exporting or importing goods; or

(iii) which is liable to seizure under this Act,
the Magistrate shall issue a search warrant authorising a person named in the warrant to perform the acts specified in section 165.

(2) The proper officer shall—

(a) before applying for a warrant, make such reasonable enquiries respecting the subject matter of the application; and

(b) disclose on the application details of—

(i) any other application, within the knowledge of the officer, which has been made within the twenty successive working days immediately preceding the date of the application in respect of the place or article specified in that application,

(ii) any offence alleged in any other application, and

(iii) the result of any other application.

(3) A search warrant must be—

(a) directed to and executed by a proper officer designated in the search warrant; or

(b) directed to customs officers generally and executed by any customs officer.

(4) The Magistrate may issue a search warrant subject to such reasonable conditions as may be specified in the warrant.

165. (1) In executing a search warrant, a proper officer or a police officer may, in addition to searching the place specified in the warrant, search or detain a person who—

(a) is at the place while the warrant is being executed; or

Entry and search under
warrant.

(b) the officer believes is connected to, or concerned in, the matter referred to in the warrant.

(2) A proper officer or a police officer—

(a) may, without warrant, arrest a person who refuses to be searched or detained under subsection (1); and

(b) shall not detain a person under subsection (1) for an unreasonable period of time.

(3) In executing a warrant referred to in subsection (1), a proper officer or a police officer may—

(a) seize any item found in or on the place or person being searched, if the proper officer or police officer has reasonable cause to believe that the item is referred to in the warrant; and

(b) call upon any other person to assist the proper officer or a police officer in executing the warrant.

(4) A person called upon to assist the proper officer or a police officer in executing the warrant, has, for that purpose, the powers of a proper officer or police officer referred to in this section.

(5) A person who fails or refuses to comply with a search or detention under this section commits an offence and is liable on summary conviction to a fine of \$25,000.

Execution of search warrants.

166. A proper officer executing a warrant shall—

(a) inform the owner or occupier of the place of the date and time of the execution of the warrant and the name of the officer in charge of the search—

(i) by delivering to the owner or occupier a written notice containing the information;

(ii) by leaving a notice in a prominent position at the place searched or attached to the article searched;

-
- (iii)* by sending to the owner or occupier, by registered mail, a notice containing the information; or
 - (iv)* in any other manner which the court may direct in any particular case;
 - (b)* produce it for inspection upon initial entry into a place and in response to any reasonable request after such entry;
 - (c)* when requested by or on behalf of the owner or occupier of the place, provide a copy of the warrant no later than 7 days after the request is made; and
 - (d)* supply the owner or occupier of the place with a list of the documents or other articles which have been seized or removed from that place.

167. (1) Subject to this section, where the Comptroller is satisfied, on an application made by a proper officer, that— Emergency warrants.

- (a)* circumstances exist which would justify the grant of a search warrant under section 165; and
- (b)* the urgency of the situation requires that a search should begin before a search warrant could, with all practicable diligence, be obtained under section 165,

the Comptroller may, orally or in writing, grant an emergency warrant to the proper officer.

(2) An application for an emergency warrant may be made orally, but otherwise every application for an emergency warrant must comply with the requirements of section 165.

(3) Where the Comptroller grants the application for an emergency warrant—

- (a) the proper officer shall, where practicable, before executing the warrant, file a written statement containing the particulars of the application at a Magistrate's Court nearest to the place from which the application is made; and
 - (b) the written statement shall, for the purposes of section 165, be deemed to be an application under that section.
- (4) A proper officer executing an emergency warrant shall—
 - (a) produce the statement made in accordance with subsection (3) for inspection upon initial entry and in response to any reasonable request after such entry; and
 - (b) when requested by or on behalf of the owner or occupier of the place, provide a copy of the written statement no later than 7 days after the request is made.
- (5) Sections 165 and 166, so far as they are applicable and with the necessary modifications, shall apply to emergency warrants in the same manner as those sections apply to other search warrants.
- (6) An emergency warrant is valid for 24 hours from the time the authorisation is given.
- (7) As soon as practicable after an emergency warrant has expired, the proper officer who applied for the emergency warrant, or, if that officer is not able to do so, another proper officer, shall provide to the Comptroller and Magistrate a written report, in the prescribed form, setting out—
 - (a) the manner in which the emergency warrant has been executed; and
 - (b) the results obtained by the execution of the warrant.

168. (1) In exercising any power under this Act to board a conveyance, enter a building or search any premises, a proper officer or a police officer may bring with him and use as an aid -

Use of aids by customs officers

- (a) a dog or a chemical substance; or
- (b) an x-ray or imaging equipment, or any other mechanical, electrical or electronic device.

(2) This section does not apply to a search carried out on residential premises except in the execution of a warrant issued under section 164 or 167.

169. Every provision of this Act which confers on a customs officer the power to enter any building, whether under the authority of a warrant or otherwise, is subject to -

Conditions applying to entry of buildings

- (a) reasonable notice of the intention to enter being given, except where such notice is likely to frustrate the purpose of the entry;
- (b) entry being made at a time which is reasonable, taking into account the circumstances so as to avoid frustrating the purpose of the entry;
- (c) identification being produced on initial entry and, if requested, at any subsequent time; and
- (d) the authority for the entry and the purpose of the entry being clearly stated to the owner or occupier of the building, if present.

170. (1) A proper officer may detain goods found in the course of exercising any power of search or examination concerning aircraft if the officer has a reasonable belief that the goods are-

Detention of dangerous goods

- (a) dangerous goods which may not be lawfully carried on an aircraft; and
- (b) intended to be carried on the aircraft.

(2) Where a customs officer detains any goods under subsection (1), he shall, as soon as practicable, deliver such goods into the custody of—

- (a) the Dominica Air and Sea Ports Authority; or
- (b) the operator of the aircraft.

(3) Where goods have been delivered under subsection (2), responsibility for such goods passes from the Comptroller to the person having custody of the goods.

Protection of persons acting under authority of Act.

171. (1) Subject to subsection (2)—

- (a) a proper officer or a member of the disciplined force; or
- (b) a person assisting a proper officer or a member of the disciplined force,

shall not be liable for the loss of or damage to any document, goods, vehicle, vessel or aircraft caused by the action or omission of such officer, member or 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.

Comptroller may prescribe forms.

172. (1) Subject to this Act, the Comptroller—

- (a) may, by regulations, prescribe forms required to be used for the purposes of implementing this Act any other customs enactment; and
- (b) shall cause forms prescribed under paragraph (a) to be published in the *Gazette* one month before the forms are required to be used.

(2) Importers and exporters shall use the appropriate forms.

(3) Every document submitted to the Comptroller or a proper officer for the purposes of this Act or any other customs enactment—

- (a) shall be in the prescribed form; and
- (b) shall contain such particulars as the Comptroller may prescribe.

(4) Unless otherwise required by the Comptroller, any document submitted under this section may be in written or electronic form and that document shall serve as a legal document.

173. (1) A person who submits a document to the Comptroller under section 38 or 50 shall ensure that the information given in that document is correct.

Errors in documents.

- (2) Where in relation to—
- (a) the classification of goods;
 - (b) the description of goods;
 - (c) the value of goods;
 - (d) the customs procedure code; or
 - (e) any other material respect,

a proper officer discovers that an error has been made in a document submitted in accordance with section 38 or 50, the Comptroller may, subject to subsection (3), impose on the person submitting the inaccurate document such fixed penalty as the Minister may prescribe in regulations.

(3) Where the Comptroller determines that an error in a document is a clerical error or a mistake of fact or negligence not constituting a pattern of negligence, the Comptroller shall not impose any penalty.

Witnessing of signatures.

174. Where—

- (a) a document or declaration, whether in electronic form or otherwise, is required by a customs enactment to be signed in the presence of the Comptroller or any particular officer; and
- (b) the 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 officer who receives such document or declaration,

the document or declaration is valid as if it had been signed in the presence of the Comptroller or the officer in whose presence it is required to be signed.

Documents in foreign language.

175. Where a person presents to a proper officer a document, in a foreign language, in relation to the carrying out of any duty or the exercise of any power under this Act or any other enactment, the proper officer may require the presenter of the document to supply to the proper officer, at the presenter's own expense, a translation of the document in the English language prepared by a person approved by the proper officer.

PART XIV

OFFENCES

Impersonation of officers.

176. (1) Without prejudice to any other proceedings which may be instituted against a person, a person commits an offence and is liable on summary conviction to a fine of \$25,000 if the person—

- (a) for the purpose of—
 - (i) obtaining admission to any building, vessel, aircraft or other place,

(ii) performing any act which he is not entitled to perform, or

(iii) procuring the performance of any act which he is not entitled to procure; or

(b) for any other unlawful purpose,

falsely assumes the name, designation or character of the Comptroller, a customs officer or any authorised person.

(2) Without limiting the generality of subsection (1), a person commits an offence under that subsection if the person—

(a) by words, conduct or demeanour, holds himself out to be the Comptroller, a customs officer or an authorised person; or

(b) unlawfully wears or uses the uniform, name, designation or description of the Comptroller, a customs officer or an authorised person.

177. (1) A person commits an offence and is liable on conviction on indictment to imprisonment for 5 years if the person— Offences against officers.

(a) maliciously shoots at vessel or an aircraft in the service of the Customs department;

(b) maliciously shoots at a customs officer executing his duty, whether or not he causes physical damage to the officer or his personal effects;

(c) with violence, commits any offence specified in subsection (4); or

(d) aids, abets or assists in the commission any act or offence referred to in paragraph (a), (b) or (c).

(2) Subject to subsection (3), a person commits an offence and is liable on summary conviction to a fine of \$25,000 or to imprisonment for 2 years if the person—

- (a) intentionally obstructs or hinders a proper officer in the performance of a duty or the exercise of a power imposed or conferred on the proper officer by this Act or any other customs enactment;
- (b) does anything which impedes or is calculated to impede—
 - (i) the carrying out of a search for anything liable to forfeiture under this Act or any other customs enactment, or
 - (ii) the detention, seizure or removal of anything or any other person under this Act or any other customs enactment;
- (c) intentionally rescues, damages or destroys anything liable to forfeiture under this Act;
- (d) intentionally does anything calculated to prevent the procurement or giving of evidence respecting the forfeiture of anything under this Act;
- (e) intentionally interferes with any equipment, vehicle, vessel, aircraft, dog, communication system or other article used or intended for use by a customs officer;
- (f) acts with the intention of impairing the effectiveness of any equipment, vehicle, vessel, aircraft, dog, communication system, or any other aid used, or intended for use, by a customs officer;
- (g) prevents the arrest of a person under this Act or any other customs enactment; or
- (h) rescues any person arrested under this Act or any other customs enactment.

(3) Where any offence referred to in subsection (2) is committed by a person—

- (a) armed with a lethal weapon, a stick, a stone or other similar article; or
- (b) in any violent manner,

the person is liable on conviction on indictment to imprisonment for 5 years.

(4) Subject to subsection (1)(c), a person commits an offence and is liable on summary conviction to a fine of \$10,000 if the person uses abusive, offensive or threatening language to a customs officer engaged in the performance of a duty or the exercise of a power imposed or conferred on him by this Act or any other customs enactment.

(5) A person commits an offence and is liable on summary conviction to a fine of \$10,000 if the person—

- (a) staves, breaks or destroys goods to prevent the seizure or detention of the goods by a proper officer or another person authorised to detain or seize the goods;
- (b) rescues any person apprehended for any offence punishable by a pecuniary penalty or imprisonment under this Act or any other customs enactment;
- (c) in relation to any offence punishable by a pecuniary penalty or imprisonment under this Act or any other customs enactment, prevents the apprehension of the another person;
- (d) obstructs a customs officer from—
 - (i) going on board, remaining on board or returning from a vessel or an aircraft within Dominica,
 - (ii) searching a vessel or an aircraft within Dominica,

- (iii)* seizing and detaining any goods liable to forfeiture under this Act, or
- (iv)* otherwise acting in the execution of his duty;
- (e)* attempts to commit any act referred to in paragraph (a), (b), (c) or (d); or
- (f)* aids, abets or assists in the commission of any act referred to in paragraph (a), (b), (c) or (d).

Bribery and collusion

178. (1) The Comptroller, a proper officer or an authorised person commits an offence and is liable on summary conviction to a fine of \$100,000 and to imprisonment for 5 years if the Comptroller, proper officer or authorised person—

- (a)* directly or indirectly, asks for or takes in connection with any of his duties any payment or other reward, or any promise or security for any payment or reward, not being a payment or reward that he is lawfully entitled to claim or receive; or
- (b)* enters into or acquiesces in any agreement to perform, abstain from performing any act related to an assigned matter whereby the Government is or may be defrauded or that is otherwise unlawful.

(2) A person commits an offence and is liable on summary conviction to a fine of \$100,000 or to imprisonment for 5 years, if, for the purpose of inducing the Comptroller, a proper officer or an authorised person to perform or abstain from performing any act related to an assigned matter whereby the Government is or may be defrauded or that is otherwise unlawful, or otherwise in contravention of the duty of the Comptroller, the proper officer or authorised person, the person =

-
- (a) directly or indirectly, offers or gives to the Comptroller, the proper officer or authorised person—
 - (i) any payment or other reward, whether pecuniary or otherwise, or
 - (ii) any promise or security for a payment or reward; or
 - (b) proposes or enters into any agreement with the Comptroller, the proper officer or authorised person respecting—
 - (i) any payment or other reward, whether pecuniary or otherwise, or
 - (ii) any promise or security for a payment or reward.

179. Where a vessel or an aircraft departs from Dominica carrying on board a customs officer without his consent— Carrying away officers.

- (a) the master or commander of the vessel or aircraft or the relevant agent commits an offence and is liable on summary conviction to a fine of \$100,000 or to imprisonment for 5 years; and
- (b) in addition to any liability imposed on a person under paragraph (a)—
 - (i) in the case of a vessel, the master and owner of the vessel and the agent of the master are severally and jointly liable, and
 - (ii) in the case of an aircraft, the commander and owner of the aircraft and the agent of the commander are severally and jointly liable,

for any expenses incurred by the Comptroller or the Government by reason of the carrying away of the customs officer.

Interfering with customs
vessels, aircraft, etc.

180. (1) A person commits an offence and is liable on summary conviction to a fine of \$25,000 or to imprisonment for 2 years if the person, without just and sufficient cause, interferes in any way with a vessel, aircraft, vehicle, buoy, anchor, chain, rope or mark which is being used by a proper officer in the performance of his duty.

(2) A person commits an offence and is liable on conviction on indictment to imprisonment for 5 years if the person fires upon a vessel, aircraft or vehicle being used by a proper officer in the performance of his duty,.

Signalling to smugglers.

181. (1) In this section, references to “prohibited signal” or “prohibited message” shall be construed as references to any signal or message connected with the smuggling or intended smuggling of goods into or out of Dominica.

(2) Where a person, by any means, transmits a prohibited signal or a prohibited message from any place in Dominica or from any vessel or aircraft, to a person in any other vessel or aircraft—

(a) the person commits an offence and is liable on summary conviction to a fine of \$10,000 or imprisonment for one year; and

(b) any equipment or apparatus used by such person for the transmission of the prohibited signal or the prohibited message is liable to forfeiture.

(3) Subsection (2) applies whether or not the person for whom the prohibited signal or message is intended is in a position to receive it or is actually engaged at that time in smuggling.

(4) For the purposes of this section, where a vessel to which a prohibited signal is sent or transmitted—

(a) changes its course;

(b) if at anchor, weighs anchor; or

(c) sends a signal in apparent response,
the vessel is deemed to be a smuggling vessel, unless the contrary is proved.

(5) Where a proper officer or a police officer has reasonable grounds to believe that a prohibited signal or a prohibited message is being transmitted or is about to be transmitted from any vessel, aircraft, vehicle, building or other place in Dominica, the officer may—

- (a) board or enter that vessel, aircraft, vehicle, building or place; and
- (b) take such steps as are reasonably necessary to prevent the transmission of such signal or message.

182. Where a vessel or an aircraft comes to or is found within Dominica having –

Adapting vessels and aircraft for smuggling.

- (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 master, commander or person in charge of the vessel or aircraft and the owner of the vessel or aircraft commit an offence and each is liable on summary conviction to a fine of \$25,000.

183. Unless the Comptroller otherwise permits, a person on board a vessel, including a small boat, who without lawful justification, authority or cause, communicates with another vessel arriving from a place outside Dominica before the arriving vessel is cleared by the proper officer commits an offence and is liable on summary conviction to a fine of \$25,000 or to imprisonment for one year.

Communicating with arriving vessels.

Offering smuggled goods for sale.

184. (1) A person commits an offence and is liable on summary conviction to a fine of \$25,000 or equivalent to three times the value of the goods, whichever is greater, if the person offers for sale goods purported to be—

- (a) imported without payment of duty, whether or not such goods were in fact chargeable with duty; or
- (b) otherwise unlawfully imported, whether or not such goods were in fact so imported.

(2) The goods in respect of which the offence is committed under subsection (1) are liable to forfeiture.

Special penalty where offender armed and disguised.

185. (1) A person commits an offence and is liable on conviction on indictment to imprisonment for 5 years if the person concerned in the movement or carriage of goods—

- (a) performs any act contrary to or for the purpose of contravening any prohibition or restriction in force under any enactment with respect to the importation, exportation or carriage coastwise of goods; and
- (b) is armed with any offensive weapon or is disguised in any way, during the commission of such act.

(2) A person commits an offence and is liable on conviction on indictment to imprisonment for 5 years if the person—

- (a) is found in Dominica in possession of any goods or article liable to forfeiture under any customs enactment; and
- (b) is armed with any offensive weapon or is disguised in any way.

False declaration.

186. (1) Notwithstanding anything contained in any enactment to the contrary, where a person, in connection with an assigned matter, knowingly or recklessly -

-
- (a) makes or signs, or causes to be made or signed, any declaration, notice, certificate or other document which is false in a material particular;
 - (b) submits, or causes to be submitted, to the Comptroller or a proper officer, any declaration, notice, certificate or other document which is false in a material particular; or
 - (c) makes any statement, in an answer to any question put to him by a proper officer which the person is required under any written law to answer, which is false in a material particular,

the person commits an offence and is liable on summary conviction to a fine of \$100,000 or equivalent to three times the value of the goods in relation to which the document or statement was made, signed or submitted, whichever is greater or to imprisonment for 5 years.

(2) The goods in relation to which the document or statement referred to in subsection (1) was made, signed or submitted are liable to forfeiture.

(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 of the overpayment—

- (a) is payable immediately to the Comptroller; and
- (b) is recoverable by the Comptroller as a civil debt to the State.

187. A person commits an offence and is liable on conviction on indictment to a fine of \$100,000 or to imprisonment for 5 years, or to both such fine and imprisonment if the person—

Counterfeiting
documents.

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

False scales.

188. (1) Where a person who is required by or under any customs enactment to provide scales knowingly provides scales which do not give a true reading, the person commits an offence and is liable on summary conviction to a fine of \$25,000.

(2) When in connection with the weighing, counting, gauging or measuring of an article for the purpose of taking account of the goods or conducting an examination by a proper officer—

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

performs an act which prevents or hinders, or is likely to prevent or hinder, the officer from taking a true account or making a proper examination, that person commits an offence and is liable on summary conviction to a fine of \$10,000.

(3) For the purposes of this section, “scales” includes weights, measures and weighing or measuring machines or instruments.

189. (1) Without prejudice to any other customs enactment, a person commits an offence and is liable on conviction on indictment to a fine of \$100,000 or a fine equivalent to three times the value of the goods, whichever is greater or to imprisonment for 5 years if the person, with intent to defraud the revenue of the Customs department—

Fraudulent evasion of duty, etc.

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

(2) Without prejudice to any other customs enactment, a person commits an offence and is liable on conviction on indictment to a fine of \$100,000 or equivalent to three times the value of the goods, whichever is greater

or to imprisonment for 5 years if the person is, in relation to any goods, in any way knowingly concerned in a fraudulent evasion of, or any attempt at evasion of—

(a) any duty chargeable on such goods; or

(b) any prohibition or restriction in force with respect to the importation, exportation or carriage coastwise of such goods by or under virtue of any written law,

(3) Where the offence referred to in subsection (1) or (2) is committed by 2 or more persons having assembled for that purpose—

(4) Any goods in respect of which an offence is committed under this section are liable to forfeiture.

Removing locks, seals
and marks.

190. (1) A person shall not, without the authority of the proper officer –

(a) remove or tamper with any lock, seal or mark which is used, in accordance with a power conferred by or under a customs enactment, to secure or identify any goods or a place or container in which goods are kept; or

(b) wilfully remove such secured or identified goods, or insert in any such place or container additional goods, at any time before such lock, seal or mark is lawfully removed.

(2) Any person who contravenes any provision of subsection (1) commits an offence and is liable on summary conviction to a fine of \$100,000 or equivalent to three times the value of the goods, whichever is greater.

(3) Where an offence is committed under subsection (2)—

(a) the person in charge of the goods at the time of the commission of the offence also commits an offence

and is liable on summary conviction to a fine of \$100,000 or equivalent to three times the value of the goods, whichever is greater; and

(b) the goods in respect of which the offence is committed are liable to forfeiture.

(4) For the purposes of this section, where goods are in a vessel or an aircraft, the goods are deemed to be in the charge of the master of the vessel or the commander of the aircraft.

191. (1) A person commits an offence and is liable on summary conviction to a fine of \$10,000 if the person not being a proper officer—

Intermeddling with goods found floating, etc.

(a) finds, floating upon the sea or sunk into the sea, goods or spirits which are prohibited or restricted from being imported into or exported from Dominica; and

(b) interferes with or picks up such goods or spirits.

(2) Any goods or spirits in respect of which an offence is committed under this section are liable to forfeiture.

(3) For the purposes of this section, the reference to “proper officer” includes a reference to a person otherwise authorised by law to interfere with or pick up any goods or spirits which are prohibited or restricted from being imported into or exported from Dominica.

Penalty in cases of forfeiture.

192. Where any vessel, aircraft or goods is liable to forfeiture under a customs enactment, a person who is knowingly concerned in the act or omission which causes the vessel, aircraft or goods to be liable to forfeiture commits an offence and is liable on summary conviction to a fine of \$25,000 or equivalent to three times the value of such vessel, aircraft or goods.

Offences in relation to warehouses.

193. (1) A person commits an offence and is liable on summary conviction to a fine of \$25,000 and to imprisonment for 2 years if the person —

(a) without the authority of a proper officer; and

(b) without just and sufficient cause,

opens any door or lock of a customs warehouse or creates or obtains access to any warehouse or to goods in a warehouse.

(2) Goods are liable to forfeiture if goods having been —

(a) entered for warehousing, such goods are taken into a warehouse without the authority of, or otherwise than in accordance with any direction given by, the proper officer;

(b) entered for warehousing, such goods are removed without being warehoused or are otherwise not warehoused, unless otherwise permitted under this Act;

(c) deposited in a warehouse, such goods are unlawfully removed or are unlawfully loaded into a vessel or an aircraft for removal or for exportation or for use as stores;

(d) entered for warehousing, such goods are concealed, either before or after they have been warehoused; or

(e) lawfully permitted to be removed from a warehouse without payment of duty for any purpose, such goods are not delivered to the destination to which they should have been taken in accordance with that permission.

(3) Subject to subsection (4), a person commits an offence and is liable on summary conviction to a fine of \$25,000 if the person is in any way concerned in any contravention of subsection (1).

(4) Where, in respect of any goods liable to forfeiture under this section, a person is in any way concerned in any action described in subsection (2), with the intent to—

(a) defraud the State of any duty chargeable on such goods;

(b) evade any duty chargeable on such goods; or

(c) evade any prohibition or restriction, under any enactment, in force with respect to such goods,

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

194. A person who commits an offence against any customs enactment for which no specific penalty is provided is liable on summary conviction to a fine of \$25,000.

General penalty and
limit of penalty.

PART XV

FORFEITURE AND SALE OF GOODS

Detention, seizure and
condemnation of goods.

195. (1) A proper officer or a police officer may seize and detain any goods liable to forfeiture under this Act or any other customs enactment.

(2) Subject to subsection (3), where a proper officer or a police officer seizes or detains, in any place, any goods liable to forfeiture, the officer shall, immediately, deliver the goods to the Comptroller.

(3) Where -

- (a) a police officer seizes or detains any goods liable to forfeiture under a customs enactment; and
- (b) the goods are required for use in connection with proceedings which may be brought under a law other than a customs enactment,

the police officer may, subject to subsection (4), retain the article in the custody of the police until the proceedings are completed or it is decided that proceedings are not to be brought.

(4) Where any goods are retained in the custody of the police under subsection (3)—

- (a) the police officer shall immediately give the Comptroller a notice, in writing, containing full particulars of the seizure or detention of the goods; and
- (b) a customs officer is authorised to examine the seized goods and take account of the goods while such goods remain in the custody of the police.

196. (1) Where an article is a tainted article—

Forfeiture of vessels, etc.
used in connection with
goods liable to forfeiture.

- (a) any vessel, aircraft, vehicle, animal, container or any other article which has been used for the carriage, handling, deposit or concealment of the tainted article is liable to forfeiture; and
- (b) any other article mixed, packaged or found with the tainted article is liable to forfeiture.

(2) Where—

- (a) an illegally fitted vessel is or has been within the territorial waters of Dominica; or
- (b) an illegally fitted aircraft is or has been at any airport in Dominica,

the illegally fitted vessel or aircraft is liable to forfeiture.

(3) If, at any time while a vessel is within the waters of Dominica, any part of its cargo or any article carried on board is thrown overboard or is staved or destroyed to prevent seizure, that vessel is liable to forfeiture.

(4) Where—

- (a) any vessel or aircraft in Dominica has imported cargo on board and a substantial part of that cargo is afterwards found to be missing; and
- (b) the master or commander of the vessel or aircraft or the relevant agent is unable to account for that missing cargo to the satisfaction of the Comptroller,

the vessel or aircraft is liable to forfeiture.

(5) Where a vessel or an aircraft is liable to forfeiture, the tackle, apparel or furniture of the vessel or aircraft is liable to forfeiture.

(6) For the purposes of this section—

(a) the reference in subsection (1)(a) to “container” shall be construed to include a reference to any article of the passenger’s baggage;

(b) the reference in subsection (2) to “illegally fitted” shall be construed to mean a reference to constructed, adapted, altered or fitted in any manner for the purpose of concealing goods; and

(c) the time of use of a vessel, aircraft, vehicle, animal, container under subsection (1)(a), in relation to a tainted article, includes the time of the commission of the offence for which the article later became liable to forfeiture or after it became liable to forfeiture.

Special provisions
respecting forfeiture of
larger vessels.

197. (1) Notwithstanding any other customs enactment, a vessel of two hundred and fifty tons burden or more is not liable to forfeiture by reason of the commission of an offence unless the offence in respect of or in connection with which the forfeiture is sought—

(a) was the primary purpose of the voyage of the vessel during which the offence was committed; or

(b) was committed while the vessel was under chase after refusing to stop when required to do so.

(2) Where -

(a) any vessel of two hundred and fifty tons burden or more would, but for subsection (1), be liable to forfeiture for or in connection with an offence under a customs enactment; and

(b) in the opinion of the Comptroller, a responsible officer of the vessel, including the master, mate or engineer of the vessel or, in the case of a vessel carrying a passenger certificate, the purser or chief steward, is implicated by his own act or by neglect in the commission of the offence,

the Comptroller may, subject to subsections (3) and (4), impose on that vessel a fixed penalty of \$100,000 or such larger amount as may be prescribed.

(3) Where—

(a) a vessel is liable to a fixed penalty under subsection (2); and

(b) the Comptroller is not satisfied that the penalty is adequate in relation to the offence committed,

the Comptroller may bring proceedings in accordance with the forfeiture rules set out in Schedule 4 for the condemnation as forfeited of that vessel in a sum not exceeding \$250,000 or such larger amount as may be prescribed.

(4) Where condemnation proceedings are instituted under subsection (3), the Comptroller may require the master or any other responsible officer of the vessel to deposit with the Comptroller a sum equal to the amount claimed in the condemnation proceedings.

(5) Where, in respect of a vessel, the Comptroller requires the payment of—

(a) a fixed penalty under subsection (2); or

(b) a deposit under subsection (4),

the Comptroller may withhold clearance of the vessel until payment of the fixed penalty or the deposit.

(6) 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.

(7) The exemption from forfeiture of any vessel under this section does not affect the liability to forfeiture of any goods carried on board that vessel.

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

- (a) the proper officer at the place of importation shall immediately send a copy of the import entry for goods free of duty to the proper officer at the bonded area or bonded factory;
- (b) the goods shall be removed directly from the place of importation to the bonded area and, if not sealed, shall be accompanied by a customs guard; and
- (c) the packages containing goods shall not be opened or otherwise dealt with except in the presence of, or by the authority of, the proper officer at the bonded area or factory.

Sale of certain seized goods.

198. (1) This section applies to–

- (a) a living creature;
- (b) anything which is of a perishable nature;
- (c) anything which, in the opinion of the Comptroller, is likely to deteriorate or diminish in value during storage;
- (d) anything which, in the opinion of the Comptroller, it is desirable to sell immediately; or

(e) anything which, in the opinion of the Comptroller, is likely to create a health or safety risk if stored in or on the premises by the Customs department.

(2) Where a living creature or any other article to which this section applies has been seized as being liable to forfeiture—

(a) the Comptroller may sell or destroy the living creature or other article seized before its condemnation; and

(b) the net proceeds of sale are deemed substituted for the article sold, and this Part, so far as it is applicable, extends and applies to such proceeds.

199. (1) The Comptroller shall sell by public auction any goods—

Sale of goods condemned as forfeited.

(a) condemned as forfeited; or

(b) deemed to have been condemned as forfeited,

in accordance with the forfeiture rules set out in Schedule 4 unless the goods are prohibited or restricted goods.

(2) An auction under this section shall be advertised, not less than 7 days before the auction is due to take place, in the *Gazette* or in such other manner as the Comptroller thinks fit.

(3) The Comptroller shall, in writing, authorise a person to act as auctioneer at an auction under this section.

(4) A person is disqualified from bidding for anything at an auction under this section, if the person—

(a) is a customs officer; or

(b) has or had an interest in the article being auctioned.

(5) A person who makes a bid in contravention of subsection (4) commits an offence and is liable on summary conviction to a fine of \$10,000.

(6) The proceeds of the sale of any goods at an auction under this section shall be applied as follows—

- (a) first, to pay any duty payable in respect of the goods;
- (b) secondly, to pay all the charges incidental to the sale, warehousing and carriage of the goods;
- (c) thirdly, to pay all the charges incidental to the seizure of the goods or to any condemnation proceedings respecting the goods; and
- (d) lastly, if any excess remains after the payments referred to in paragraphs (a), (b) and (c) have been made, such excess shall be paid by the Comptroller into the Consolidated Fund.

(7) The value for duty of any goods sold at auction under this section is the price realised less the included duty, if any.

(8) The Comptroller shall destroy or otherwise dispose of or cause to be destroyed—

- (a) any goods not sold at an auction under this section; and
- (b) all prohibited or restricted goods condemned or deemed to be condemned as forfeited.

(9) Nothing in this section prevents the Comptroller from authorising -

- (a) the withholding from sale of any goods condemned or deemed to be condemned as forfeited; and

-
- (b) the use by a proper officer of any goods withheld under paragraph (a),

where such retention or use is likely to assist the proper officer in the performance of his duty.

200. (1) Where any article which is not condemned or deemed not to be condemned as forfeited is required by or under this Act or any other customs enactment to be sold, the article shall, unless it is of a perishable nature, be sold at a public auction.

Sale of articles not condemned as forfeited.

(2) An auction under this section shall be advertised in the *Gazette* not less than 7 days before the auction is due to take place.

(3) The Comptroller shall appoint a person, who may be a customs officer, to act as auctioneer at any auction under this section.

(4) The proceeds of the sale of any article at an auction under this section shall be applied as follows-

- (a) first, to pay any duty payable on the article; and
- (b) secondly, to pay all the charges incidental to the sale, warehousing and carriage of the article; and
- (c) lastly, if any excess remains after the payments in paragraphs (a) and (b) have been made, such excess shall, where an application is made within 6 months of the sale, be paid over to any person who satisfies the Comptroller that he was the owner of the article at the time of its sale.

(5) The value for duty of any article sold under this section is the price realised less the included duty.

(6) The Comptroller shall sell any article which is of a perishable nature in such manner as appears to him most likely to realise the largest sum.

(7) Where an article or item to which this section applies cannot be sold—

(a) at an auction under this section; or

(b) by the Comptroller under subsection (6),

the article or item may be destroyed or otherwise disposed of in such manner as the Comptroller directs.

(8) A sale under this section may be held at the same time and place as a sale under section 199.

Notice of seizure.

201. (1) Where any goods have been seized, the proper officer shall, as soon as practicable but not later than 2 working days from the date of seizure, give notice in writing of the seizure and the reasons for the seizure, in the prescribed form—

(a) subject to paragraph (b), to any person known or believed to have an interest in the goods; or

(b) where the person referred to in paragraph (a) is overseas, to his agent in Dominica.

(2) Notwithstanding subsection (1), a seizure is not invalidated or rendered illegal by reason of any failure to give the notice if the proper officer proves that reasonable steps were taken to give the notice.

Delivery of goods seized on deposit of value.

202. (1) Subject to subsection (2), where any goods have been seized as being liable to forfeiture—

(a) the Comptroller may, at any time before condemnation of the goods, deliver the goods to

the owner or other person from whom they were seized, on the deposit with the Comptroller of a sum of money equal to the aggregate value of the goods and the duty payable;

- (b) the sum of money deposited is deemed substituted for the goods seized; and
- (c) this Part, so far as it is applicable, applies to the money accordingly.

(2) Subsection (1) does not apply to goods which have been seized as being liable to forfeiture if such goods are prohibited goods.

203. (1) Where, in any proceedings against the State or the Comptroller for the condemnation of any goods seized as being liable to forfeiture under this Act or any other customs enactment, judgment is given for the claimant, the court may, if it sees fit, certify that there were reasonable grounds for the seizure of the goods.

Protection of officers
seizing and detaining
goods.

(2) Where, in any proceedings described in subsection (1), judgment is given for the claimant or prosecutor—

- (a) the claimant or prosecutor is not entitled to recover any damages or costs; and
- (b) the defendant is not liable to any punishment,

if a certificate relating to the seizure has been granted under subsection (1) or the court is satisfied that there were reasonable grounds for the seizure or detention of the goods.

(3) Nothing in subsection (2) affects the right of any person—

- (a) to the return of the goods seized or detained; or

(b) to compensation for any damage to the goods during the detention or destruction of such goods.

(4) A certificate under subsection (1) may be proved by the production of the original certificate or a certified copy of the certificate, purporting to be signed by an officer of the court by which it was granted.

Application for order disallowing seizure.

204. A person claiming an interest in goods seized as being liable to forfeiture may, within 20 working days after the date on which a notice is given to that person under section 201 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 no reasonable cause for the seizure or the continued detention of the goods exists under this Act;
- (b) for the return of the goods or for the return of the goods otherwise to be made available to the claimant; and
- (c) for payment of compensation by the State to the claimant such sum as the court thinks fit—
 - (i) for any depreciation in the value of the goods resulting from the seizure or detention, or
 - (ii) for any transport and storage costs respecting the seized or detained article.

Court may disallow seizure.

205. (1) Subject to this section, where an application is made under section 204, the court may issue an order dismissing the application or disallowing the seizure.

(2) Where the court issues an order disallowing the seizure, the court may, upon and subject to such terms and conditions as the court thinks fit, order that—

-
- (a) the seizure is disallowed, in whole or in part;
 - (b) the goods are to be returned, in whole or in part;
and
 - (c) the State pays to the applicant such sum as compensation, as the court thinks fit—
 - (i) for any depreciation in the value of the goods resulting from the seizure or detention, and
 - (ii) for any transport and storage costs.

(3) Where the court issues an order dismissing the application, that order is deemed to be an order for condemnation of the goods to the State unless the goods have already been condemned in proceedings brought under section 197(3).

(4) The court shall not issue an order disallowing the seizure of the goods if the court is of the opinion that—

- (a) the goods are required, in whole or in part, to be produced in evidence in any proceedings pending under this Act; or
- (b) there are proceedings pending which may result in condemnation of the goods.

(5) The court shall not issue an order for the payment of compensation except—

- (a) in respect of goods which, in the opinion of the court, were seized or detained without reasonable cause; and
- (b) to the extent that the court disallows the seizure or detention.

(6) Where the court issues an order for the payment of any sum as compensation to any person under this section, the sum awarded is recoverable by that person as a civil debt due from the State.

Application for order disallowing seizure where notice not received.

206. (1) Except where the goods have already been condemned to the State, a person claiming an interest in goods seized as being liable to forfeiture under this Act who did not receive a notice under section 201, may, within 2 months after the date on which the goods were seized, apply to the court for an order –

(a) for the return of the goods, if the goods seized have not been sold, destroyed or otherwise disposed of; or

(b) for payment of compensation by the State for the whole or part of any loss suffered by the applicant by reason of the sale, destruction or disposal otherwise of the goods seized.

(2) The court may—

(a) dismiss the application made under subsection (1); or

(b) issue an order directing—

(i) the goods to be returned, if the goods seized have not been sold, destroyed or otherwise disposed of, or

(ii) the State to pay to the applicant such sum of money, as the court thinks fit, as compensation for the whole or any part of any loss suffered by the applicant by reason of the sale, destruction or disposal otherwise of the goods seized.

(3) The court shall not issue an order respecting the payment of compensation except—

- (a) in respect of goods which, in the opinion of the court, were seized or detained without reasonable cause; and
- (b) to the extent that the court disallows the seizure or detention.

(4) Where the court issues an order dismissing the application, that order is deemed to be an order for condemnation of the goods to the State unless the goods have already been condemned in proceedings brought under section 197(3).

(5) Without limiting the generality of subsection (2)(a), the Court may dismiss an application under subsection (1) if the application was not made as soon as reasonably practicable after the applicant became aware of the seizure of the goods.

207. Where no application is made under section 203 within the time specified in that section, the goods are deemed condemned to the State as if an application were made and dismissed.

Condemnation if no appeal against seizure.

208. Where an application under section 204 or 205 is not completed, the goods are condemned to the State as if the application were dismissed.

Condemnation if application discontinued.

209. (1) Subject to subsection (2), where this Act provides that on the commission of any offence any goods are liable to forfeiture, the conviction of any person for that offence has effect as a condemnation, without suit or judgment, of any goods which—

Condemnation of seized goods on conviction.

- (a) have been seized in accordance with this Act and in respect of which the offence was committed; or
- (b) were otherwise liable to forfeiture under this Act.

(2) Subject to subsection (4), where the court imposes a sentence on any person on the conviction of that person for an offence to which subsection (1) applies—

(a) the court may, if it thinks fit, order the restoration of the goods forfeited to the person from whom the goods were seized; and

(b) where such an order is issued, the conviction does not have effect as a condemnation of such goods.

(3) The Court may, in issuing an order under subsection (2), impose such conditions as it thinks fit.

(4) Subsection (2) does not apply if, before the conviction of the person for the offence, the goods have been—

(a) sold at public auction;

(b) restored to the person from whom they were seized; or

(c) otherwise disposed of by the Comptroller under any other provision of this Act.

Disposal of forfeited goods.

210. (1) The State has the property rights to forfeited goods or to the proceeds of sale under section 198, 199 or 200.

(2) Where goods have been condemned, such goods may be sold by public auction, used, destroyed, or otherwise disposed of in such manner as the Comptroller may direct.

Application of forfeiture provisions.

211. Except where this Act expressly provides otherwise, the provisions of this Act with respect to the forfeiture of goods extend and apply to any vessel, aircraft or other article forfeited under this Act.

PART XVI**ADMINISTRATIVE (CUSTOMS) PROCEEDINGS**

212. (1) Where, in respect of an entry, an importer disputes the amount of duty assessed or any decision of the Comptroller under this Act, the importer—

Appeals to Comptroller.

- (a) shall pay the amount in dispute under protest; and
- (b) may, within 3 months from the date of payment, file a written protest in respect of that entry requesting the Comptroller to reconsider the disputed decision.

(2) A request made under subsection (1) must –

- (a) state the grounds for disputing the amount of duty demanded; and
- (b) specify any further documentation or information on which the request is based.

(3) The Comptroller may, after—

- (a) investigating the matter within 90 days of the date of the original assessment; and
- (b) taking into account any further submissions of the importer or his agent,

confirm the original assessment or substitute a new assessment for the original assessment.

213. (1) There is hereby established a body to be known as the Customs Appeal Commission for the purpose of hearing appeals under this Part.

Customs Appeal
Commission.

(2) The Minister shall, by notice in the *Gazette*, appoint as commissioners persons who –

(a) have experience in customs matters; or

(b) in the opinion of the Minister, by reason of their profession and training are qualified to be commissioners.

(3) Schedule 5 has effect in respect to the constitution of the Commission and other matters relating to the Commission.

Appeals to Commission.

214. A person who is dissatisfied with a decision of the Comptroller under section 213 has a right of appeal against that decision to the Commission within 30 days of the date of the decision.

Procedure.

215. (1) Subject to this Act, the Commission shall conduct its proceedings in such manner as it considers appropriate.

(2) Proceedings before the Commission shall be commenced by the lodging of a notice of appeal in the prescribed form, together with the prescribed fee, if any, with the Commission.

Nature of appeal.

216. Every appeal to the Commission shall be by way of a hearing *de novo*.

Commission may extend time for appeal.

217. Where under this Act a person is entitled to appeal to the Commission within a specified time, the Commission may, on an application made within the specified time, extend the time within which the appeal may be brought.

Hearing.

218. (1) Subject to section 220, as soon as the Commission considers that an appeal is ready to be heard, the Commission shall—

(a) fix a date, time and place for the hearing of the appeal; and

(b) notify the appellant and the Comptroller of the date, time and place fixed.

(2) A notice to the appellant under subsection (1) –

(a) shall, in addition to specifying the matters referred to in subsection (1), inform the appellant of the provisions of subsections (5) and (6); and

(b) shall 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 Commission, the appellant and the Comptroller—

(a) may provide evidence; and

(b) shall be given an opportunity to be heard in person or by a person authorised by the appellant or the Comptroller to appear on his behalf, without regard to whether that person is an attorney-at-law.

(4) Where the appellant or the Comptroller fails to appear before the Commission at the time and place appointed, the Commission may, notwithstanding such failure, 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 shall be held in public.

(6) The Commission may hold a hearing or any part of a hearing in private if the Commission 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 Commission may, subject to such conditions as the Commission thinks fit, order that any part of any evidence given or the name of any witness not be published.

Commission may decide appeal without oral hearing if both parties consent.

219. (1) Notwithstanding section 218, the Commission may, if—

- (a) the Commission thinks fit; and
- (b) both parties consent,

decide an appeal without holding an oral hearing.

(2) Where the Commission, at any time during its consideration of an appeal in accordance with subsection (1), decides that an oral hearing should be held, the Commission shall fix a date, time and place for the hearing of the appeal in accordance with section 218.

Powers of commission.

220. For the purpose of hearing and deciding any appeal before it, the Commission has –

- (a) all the powers, duties, functions, and discretions of the Comptroller in making the assessment, decision, ruling, determination or direction;
- (b) all the powers of the Magistrates' Court, in the exercise of its civil jurisdiction, in respect of citing parties and conducting and maintaining order at the hearings of the Commission; and
- (c) such other powers assigned to it under this Part.

Evidence.

221. The Commission may, in respect of its proceedings—

- (a) take evidence on oath;
- (b) permit a person appearing as a witness before it to give evidence by tendering a written statement and verifying such statement by oath; and

-
- (c) receive as evidence any statement, document, information or matter which, in the opinion of the Commission, may assist the Commission to deal effectually with the appeal or any other matter before it.

222. (1) For the purposes of dealing with the matters before it, the Commission or a person authorised in that regard by the Commission in writing may –

Powers of investigation.

- (a) inspect and examine any papers, documents, records or articles;
- (b) require any person -
- (i) to produce for examination any papers, documents, records or articles in the possession or under the control of that person, and
- (ii) to allow the making of copies of, or the taking of extracts from, such papers, documents, records or article; or
- (c) require any person to furnish, in a form approved by or acceptable to the Commission, such information or particulars as the Commission may require.

(2) The Commission may, if it thinks fit, 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 purposes of dealing with any matter before it, the Commission may -

- (a) of its own motion or on an application, order that any information or particulars, or 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 Commission; and

- (b) impose such terms and conditions, as it thinks fit, in respect of the production and use of such information, particulars, paper, document or record.

Power to summon witness.

223. For the purposes of dealing with any matter before it, the Commission may of its own motion, or on an application, issue in writing a summons requiring any person—

- (a) to attend and give evidence at the time and place specified in the summons; and
- (b) to produce any papers, documents, records or articles in that person's possession or under that person's control which are relevant to the matter before the Commission.

Service of summons by Commission.

224. (1) A summons by the Commission to a witness shall be served by –

- (a) delivering it to the person summoned at least 24 hours before the attendance of the witness 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 7 days before the date on which the attendance of the witness is required.

(2) Where the summons is delivered by registered post, it is deemed for the purposes of subsection (1)(b) to have been served at the time when the letter would be delivered in the ordinary course of post.

225. (1) Every witness giving evidence before the Commission has the same privileges and immunities as witnesses have in a court of law.

Protection of persons appearing before the Commission.

(2) Every counsel or agent or other person appearing before the Commission has the same privilege and immunities as a counsel has in a court of law.

(3) Without prejudice to the generality of subsections (1) and (2), every person appearing before the Commission has in relation to—

(a) the giving of information to the Commission,

(b) answering questions put to that person by the Commission; and

(c) the production of papers, documents, records and articles to the Commission,

the same privileges as witnesses have in courts of law in relation to the matters specified in paragraphs (a), (b) and (c).

226. (1) Subject to subsection (2), in an appeal, the appellant is limited to the grounds of appeal stated in the appellant's notice of appeal, and the burden of proof is on the appellant.

Grounds of appeal and burden of proof.

(2) The Commission may, on the application of the appellant or of its own motion, amend the grounds of appeal stated in the notice of appeal.

227. (1) The Commission may sit at such times and places as the Commission determines.

Sittings of Commission.

(2) The Commission may, before the time of a sitting or at a sitting, adjourn a sitting or modify the place of the sitting.

228. The Commission may, at any time, dismiss an appeal if it is satisfied that the appeal is frivolous or vexatious.

Commission may dismiss frivolous and vexatious appeals.

Decisions of
Commission.

229. (1) Every decision of the Commission shall be given in writing, with a statement of the reasons for the decision.

(2) The Commission shall give a copy of the decision to the parties to the appeal.

PART XVII

COURT PROCEEDINGS

Appeals to High Court.

230. (1) A party who is dissatisfied with a decision of the Commission under this Act, may appeal to the High Court against any decision of the Commission which involves a question of law, including a question of mixed fact and law.

(2) Every appeal under this section shall be made by filing a notice of appeal within 30 working days after the date of the decision appealed against or within such further time as the High Court may allow.

(3) Where a notice of appeal is filed in accordance with subsection (2), the appellant shall -

- (a) within the time specified in that subsection, serve a copy of the notice on the Commission; and
- (b) except in the case of an appeal by the Comptroller, give security for the costs of the appeal of the amount and in the form fixed by the High Court.

Stating case for High
Court.

231. (1) The Commission may, on the application of the appellant or the Comptroller or of its own motion, state a case for the opinion of the High Court on any question of law arising in respect of any appeal which was heard before the Commission.

(2) The Commission shall give notice to the Comptroller and the appellant of the Commission's intention to state a case under this section.

232. A party who is dissatisfied with a decision of the High Court under this Part may appeal to the Court of Appeal on a question of law, including a question of mixed fact and law.

Appeals to Court of Appeal.

233. (1) Where the Commission or the High Court determines that the amount of duty should be –

Payment of duty after appeal.

(a) increased, the appellant shall pay the amount of the increase to the Comptroller; or

(b) decreased, the Comptroller shall pay the amount of the decrease to the appellant,

within 30 days of the decision unless the decision has been further appealed.

(2) Where the amount due under subsection (1) is not paid within 30 days of the decision, it shall bear interest at a rate of one per cent per month or part of a month during which it remains unpaid.

234. (1) After exhaustion of all appeal proceedings available before the Comptroller and Commission, and subject to any express provisions to the contrary in any customs enactment, a disputed matter involving a customs enactment may be prosecuted in the High Court.

Prosecution for customs offences.

(2) Subject to the powers of the Director of Public Prosecutions under the Constitution and to subsection (4), proceedings for an offence under any customs enactment, or for condemnation, shall not be commenced except –

(a) by order of the Comptroller in writing; and

(b) in the name of a proper officer.

(3) In the case of the death, removal, discharge or absence of the officer in whose name any proceedings were commenced by virtue of subsection (2)(b), those proceedings may be continued by any officer authorised to act on his behalf by the Comptroller.

(4) Where a person has been arrested for an offence under any customs enactment, any court before which he is brought may deal preliminarily with the case against the person.

Place of offence.

235. (1) An offence under this Act or any other customs enactment shall be regarded as having been committed—

(a) in the place in which the offence arose or was actually committed; or

(b) in any place on land where the offender or person prosecuted may be or may be brought.

(2) Every cause of complaint in respect of an offence under this Act or any other customs enactment shall be regarded as having arisen—

(a) in the place in which it actually was committed or arose; or

(b) in any place on land where the offender or person prosecuted may be or may be brought.

Place of trial.

236. Proceedings for an offence under any customs enactment may be commenced –

(a) in any court having jurisdiction in the place –

(i) where the offence was committed,

(ii) subject to subparagraph (iii), where the person charged with the offence resides or is found, or

-
- (iii) if the person charged with the offence is a corporate body, where that corporate body has its registered or principal office; or
- (b) if any goods were—
- (i) detained or seized or found in connection with the offence, or
- (ii) condemned as forfeited,
- in any court having jurisdiction in the place where the goods were detained, seized, found or condemned as forfeited.

237. Unless otherwise provided in this Act and notwithstanding any other enactment, proceedings in respect of an offence committed under this Act or any other customs enactment may be commenced at any time within 3 years after the date of commission of the offence.

Time limit on proceedings.

238. The fact that customs duties have been secured by a bond or otherwise shall not be pleaded or made use of in answer to or in stay of proceedings under this Act or any other customs enactment.

Limitation as to pleadings.

239. An officer or other person authorized by the Comptroller, although not an attorney, may conduct proceedings before a magistrate's Court in relation to an assigned matter.

Officers may prosecute.

240. Notwithstanding anything contained in any other enactment to the contrary, where a fine imposed by a court in respect of an offence against this Act or any other customs enactment is not paid within one month of the date of its imposition, the court may order the defendant in default who was convicted of the offence to be imprisoned for -

Alternative prison sentence.

(a) a term not exceeding 3 years; if such fine is \$50,000 or less; or

(b) a term of 5 years, if such fine exceeds \$50,000.

Imprisonment for second and subsequent offence.

241. Subject to this Act and any other enactment imposing a sentence of imprisonment for an offence, where—

(a) a defendant is liable on summary conviction to a fine of \$25,000 or more for an offence under this Act or any other customs enactment; and

(b) such defendant has previously incurred a fine or forfeiture under this Act or any other customs enactment which has been enforced in any court,

the court may, if it thinks fit, in lieu of ordering payment of the fine referred to in paragraph (a), order the defendant to be imprisoned for a period not exceeding 5 years.

Incidental provisions as to legal proceedings for offences.

242. (1) In proceedings for an offence under this Act or any other customs enactment, the court in which the matter is considered may mitigate any pecuniary penalty as it sees fit.

(2) It is not a defence, in any proceedings for an offence or for the condemnation of an article as being forfeited under this Act or any other customs enactment, that security has been given by a bond or otherwise for the payment of any duty or compliance with any condition.

Institution of civil proceedings.
Chap. 7:80

243. (1) Notwithstanding anything to the contrary in the State Proceedings Act, proceedings for the recovery of rents, charges, expenses, duties, penalties and all other sums of money payable under a customs enactment may be instituted, determined, enforced and recovered by suit or other appropriate civil proceedings in a Magistrate's Court, in the name of the Comptroller as nominal plaintiff.

(2) The Magistrate's Court is vested with the necessary jurisdiction for the purpose of subsection (1), and, except as provided in this Act, the ordinary civil procedure of the Magistrate's Courts applies to proceedings under that subsection.

(3) For the avoidance of doubt—

- (a) civil proceedings brought in the name of the Comptroller are not invalidated or do not lapse by reason of any change in the person holding the office of Comptroller; and
- (b) where any such change occurs, the civil proceedings may be continued in the name of the person who, for the time being, is the holder of or is acting in the office of Comptroller.

(4) Nothing in this section shall be construed so as to prejudice or affect the right of the Attorney-General to institute civil proceedings on behalf of the State.

244. (1) A summons or other process issued for the purpose of proceedings under a customs enactment is deemed to have been duly served if it was –

Service of process.

- (a) delivered personally to the person to whom it is addressed;
- (b) subject to paragraph (c), left at the last known place of abode or business of the person to whom it is addressed; or
- (c) in the case of a corporate body, left at its registered or principal office.

(2) A summons, notice, order or other document issued for the purposes of—

- (a) any proceedings under this Act or any other customs enactment; or

(b) an appeal from the decision of the court in the proceedings,

may be served by a proper officer.

(3) For the purposes of this section, the expression “appeal” includes an appeal by way of case stated.

Costs.

245. In proceedings under this Act or any other customs enactment, the same rules as to costs shall be observed as in proceedings between private persons.

PART XVIII

PROOF IN PROCEEDINGS

Burden of proof.

246. (1) Subject to subsection (4), this section applies to proceedings respecting the intent to defraud the revenue of the Customs department.

(2) Subject to subsection (4), in any proceedings under this Act instituted by or on behalf of or against the State, other than a prosecution of an individual for an indictable offence, every allegation made on behalf of the State in any statement of claim, statement of defence, plea or information which relates to –

- (a) the identity or nature of any goods;
- (b) the value of any goods liable to duty;
- (c) the country or time of exportation of any goods;
- (d) the fact or time of the importation of any goods;
- (e) the place of manufacture, production or origin of any goods; or
- (f) the payment of any duty on any goods,

is presumed to be true unless the contrary is proved.

(3) Subject to subsection (4), the presumption in subsection (2) shall not be countered by the fact that evidence is produced on behalf of the State in support of any such allegation.

(4) Subject to this Act, where it is alleged, in any proceedings for an offence against this Act, that a defendant intended to commit the offence, the prosecution has the burden of proving that intent beyond a reasonable doubt.

(5) In any prosecution under this Act or any other customs enactment, the onus is on the defendant to prove, on a balance of probability, that—

(a) the duties assessed have been paid; and

(b) the goods were, where applicable –

(i) lawfully transferred from a vessel or an aircraft to another vessel or aircraft,

(ii) lawfully loaded into or unloaded from any vessel or aircraft, and

(iii) lawfully imported or exported.

247. (1) The averment that -

Averment in proceedings.

(a) goods thrown overboard, staved or destroyed were so dealt with to prevent or avoid their seizure;

(b) a person is or was appointed or authorised by the Comptroller to discharge any duty;

(c) a person was engaged by order, or with the concurrence, of the Comptroller in the discharge of any duty;

- (d) a person is or was the Minister, the Comptroller, a customs officer or a police officer;
- (e) any place is within -
 - (i) the limits of a customs port, approved wharf, customs airport or other customs controlled area; or
 - (ii) the territorial waters of Dominica;
- (f) the Comptroller is or is not satisfied with any matter which he is required to be satisfied with by reason of this Act or any other customs enactment; or
- (g) proceedings were instituted by 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 a competent person or against any other person in respect of anything purporting to have been done in the exercise of a power or duty under this Act or any other customs enactment, a question arises respecting any or all of the following—

- (a) the place from which goods have been brought;
- (b) whether or not customs duty has been paid or secured in respect of goods;
- (c) whether or not goods are of the description or nature alleged in the information, writ or other process;
- (d) whether or not goods were lawfully brought to any place for the purpose of being loaded into a vessel or an aircraft or exported;

(e) whether or not goods were exported; or

(f) whether or not goods are or were subject to any prohibition or restriction on their importation, exportation or carriage coastwise,

the burden of proof lies on the other party to the proceedings.

(3) For the purposes of this section, “competent person” means—

(a) the Comptroller;

(b) the Director of Public Prosecutions;

(c) the Attorney-General;

(d) a customs officer;

(e) an authorised person; or

(e) a police officer.

248. (1) Where in any proceedings instituted under this Act a question arises as to whether a person is a proper officer, evidence or certification of the Comptroller is sufficient evidence of the matter.

Evidence of officers.

(2) Any proper officer is deemed a competent witness upon the trial of any suit or information regarding any seizure of goods or penalty under this Act, regardless of whether the officer is entitled or is likely to be entitled to a reward upon the conviction of the party charged in the suit or information.

249. (1) A document which is purported to be signed by—

Proof of certain documents.

(a) the Minister or any other member of the Cabinet;

(b) the Comptroller; or

(c) a person with the authority or order of the Minister or other member of the Cabinet or the Comptroller,

is deemed to have been so signed, until the contrary is proved.

(2) The matters contained in any document referred to in subsection (1) may, in any proceedings under this Act or any other customs enactment, be proved by the production of that document or any document purporting to be a copy of that document.

(3) Where a book or other document is required to be kept by or under this Act or any other customs enactment, the production of that document or a copy of that document certified as a true copy by a proper officer in proceedings under this Act or other customs enactment is *prima facie* evidence of the matters stated in it.

(4) In any proceeding under this Act or any other customs enactment, the production of a certificate purporting to be signed by the competent authority is sufficient evidence of all matters stated in the certificate, unless the contrary is proved.

Presumption of authenticity of documents.

250. All documents purporting to be sealed with the seal of the Customs department, are, in every court and in all proceedings under this Act and any other Act, deemed to have been sealed with due authority, unless the contrary is proved.

Valuation of goods for penalty.

251. (1) Where the fine for an offence under a customs enactment is an amount which is to be determined by the value of goods, such value shall be determined in accordance with Schedule 2.

(2) A certificate signed by the proper officer attesting to the value of the goods is *prima facie* evidence of the value of the goods.

Certificate of condemnation.

252. Condemnation by a court under any customs enactment may be proved in any court, or before any competent tribunal, by the production of a certificate of condemnation purporting to be signed by a Magistrate.

PART XIX

AGENTS, CUSTOMS BROKERS, ETC.

253. (1) When a person makes an application to transact business on behalf of any other person, the proper officer may—

Authority to be produced.

- (a) require the person to produce a written authority from the other person on whose behalf the application is made; and
- (b) in default of the production of such authority, refuse to transact business with the purported agent on behalf of the other person.

(2) Where a document is required by this Act or any other customs enactment to be signed by a person—

- (a) the document may, with the approval of the Comptroller, be signed by an agent of that person; and
- (b) the signed document is deemed for all purposes to be signed by the person required to sign.

(3) The Comptroller may, in his own discretion, refuse to allow an application referred to in subsection (1).

254. (1) A document produced under this Act by a person other than an individual shall be signed by an individual authorised to do so by the governing body of the person.

Persons other than individuals.

(2) Where the person in subsection (1) has elected or appointed officers, the president, vice-president, secretary, treasurer or any other equivalent officer of the person is deemed to be authorised to sign a document referred to in subsection (1), unless there is evidence to the contrary.

Customs brokers and
tariff clerks.

255. (1) The Comptroller may licence persons as customs brokers—

- (a) to transact business with the Customs department on behalf of other persons; and
- (b) to submit, on behalf of other persons, entries required to be submitted to the Customs department.

(2) An importer or exporter of goods may, in accordance with regulations, designate a fit and proper employee as his tariff clerk for the purposes of—

- (a) transacting business with the Customs department on behalf of the importer or exporter; and
- (b) to submit, on behalf of the importer or exporter, declarations or entries required to be submitted to the Customs department.

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

(4) The Minister may make regulations respecting customs brokers and tariff clerks.

(5) Regulations made under subsection (4) may make provision respecting persons who on the date immediately before the commencement of this Act were conducting business as customs brokers or tariff clerks.

Penalties.

256. (1) A person who transacts or attempts to transact business as an agent without the authority of the principal commits an offence and is liable on summary conviction to a fine of \$10,000 or equivalent to three times the value of the goods which occasioned the offence, whichever is greater.

(2) Any person who assists or attempts to assist a person in the commission of an offence under subsection (1) commits an offence and is liable on summary conviction to a fine of \$10,000 or equivalent to three times the value of the goods in respect of which the offence is committed, whichever is greater.

257. Where –

Ship agents.

- (a) under a customs enactment a special procedure is prescribed in regard to a vessel; and
- (b) the owner of the vessel is not resident or represented in Dominica,

it is the duty of the master of the vessel to appoint an agent in Dominica for the purpose of performing any act which, under any customs enactment, must be performed by the owner of a vessel.

PART XX

MISCELLANEOUS

258. (1) Where liability for an offence under this Act or any other customs enactment is incurred by two or more persons jointly -

Joint and Several liability.

- (a) each person is liable for the full amount of any fine or penalty prescribed; and
- (b) the persons committing the offence may be proceeded against jointly or severally.

(2) Where a corporate body fails to pay any duty required to be paid by or under this Act—

- (a) the corporate body commits an offence;
- (b) a director of the corporate body at the time the corporate body was required to pay the duty who

is proved to have consented to or connived at the failure to pay the duty commits an offence.

(3) A corporate body and a director under subsection (2) are jointly and severally liable for the payment of the duty and any related penalties.

Officials of
unincorporated bodies.

259. (1) In this section, “official”, in relation to an unincorporated body, means –

- (a) in the case of a partnership, a partner of the partnership;
- (b) in the case of 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 with the management and day-to-day operations of the joint venture; or
- (c) in the case of an unincorporated body other than a body referred to in paragraph (a) or (b) -
 - (i) a person who holds office as chairman, president, treasurer, secretary or any other similar office of that unincorporated body,
 - (ii) where there is no official of the body as referred to in subsection (i), a member of any committee which has management of the affairs of that unincorporated body, or
 - (iii) where there is no official or committee referred to in sub-paragraph (i) or (ii), a member of the unincorporated body.

(2) Where any liability or obligation is imposed by or under this Act or the Regulations on an unincorporated body, the unincorporated body and every official of the unincorporated body at the time such liability or obligation is imposed are jointly and severally liable and responsible to satisfy the liability or obligation.

(3) Notwithstanding subsection (2), an official of an unincorporated body is not liable under that subsection unless –

- (a) a certificate for the amount of the body's liability referred to in subsection (2) has been registered in the High Court under this Act and execution for that amount has been returned unsatisfied, wholly or in part;
- (b) the body has commenced liquidation or dissolution proceedings or has been dissolved and a claim for the amount of the body's liability referred to in subsection (1) has been proved;
- (c) a receiving order has been made against the body under the Bankruptcy Act and a claim for the amount of the body's liability referred to in subsection (1) has been proved; or
- (d) the body has made an assignment under the Bankruptcy Act and a claim for the amount of the body's liability referred to in subsection (1) has been proved.

Chap 9:90

(4) A person who ceases to be an official of an unincorporated body is deemed, for the purposes of this Act, not to cease being an official of the body until the Comptroller receives notification in writing of the cessation.

(5) Where a document is served on an unincorporated body under this Act or regulations made under this Act, the

document is deemed to have also been served on the officials of the body.

Executors and administrators.

260. (1) For the purposes of this Act, where an individual dies—

- (a) the individual's estate is deemed to be the same person as the individual and is not deemed to be a trust;
- (b) subject to this section, the executor or administrator of the deceased individual is responsible to satisfy any liability or obligation imposed by this Act on the individual or his estate; and
- (c) subject to subsection (2), the estate and executor, or, as the case may be, the estate and administrator, of the deceased individual are jointly and severally liable for the payment of all amounts payable by the estate under this Act.

(2) The executor or administrator of the deceased individual is liable for the payment of such amounts which 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 State.

(3) When an individual dies, the Cabinet may waive, in writing, the requirement that the executor or administrator of the deceased individual pays the duty owed if the Cabinet considers it appropriate to waive payment of such duty.

Trustees on bankruptcy.

261. For the purposes of this Act, where a person is adjudged a bankrupt -

- (a) the person's estate is deemed not to be an estate or trust;

-
- (b) property held by the person immediately before he was adjudged a bankrupt is deemed not to pass to or be vested in the trustee in bankruptcy upon the receiving order being made or the assignment in bankruptcy being filed, but is deemed 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 is 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 such property was acquired by the person or the trustee;
- (d) where any liability or obligation is imposed by or under 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 obligation; and
- (e) subject to paragraphs (f) and (g), the trustee in bankruptcy, and not the person, is liable for the payment of all amounts which become payable by the person under this Act before the person is discharged from bankruptcy;
- (f) the trustee in bankruptcy is liable for the payment of amounts which became payable by the person before the person became a bankrupt only to the extent that the person's property in the possession of the trustee is available to satisfy such liability; and
- (g) the trustee in bankruptcy is not liable for the payment of any amount which—

(i) a receiver is liable to pay, or

(ii) 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.

262. (1) In this section –

“asset” includes any property; and

“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 corporate body; or
- (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 assets of a person or to manage and care for the affairs and other assets of a person—

- (a) the receiver is 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;

-
- (b) any act performed by the receiver in relation to the person's assets over which the receiver has authority is deemed to have been performed by the receiver as agent on behalf of the person;
 - (c) the receiver is deemed not to be a trustee of the estate of the person or any part of such estate;
 - (d) where the assets of a person over which the receiver has authority do not represent the whole of the person's assets through the period during which the receiver acts as receiver of the person, the assets over which the receiver has authority is deemed to be separate from the other assets of the person as if such other assets were assets of a separate person;
 - (e) 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 such liability or obligation;
 - (f) subject to paragraph (g), the person and the receiver are jointly and severally liable for the payment of all amounts which became payable by the person under this Act before the receiver was appointed;
 - (g) the receiver is liable for the payment of the amounts only to the extent of the person's assets under the control and management of the receiver after—
 - (i) satisfying the claims of creditors whose claims rank in priority to the claim of the State, and

(ii) paying any amounts which the receiver is required to pay to a trustee in bankruptcy of the person; and

(h) the receiver, and not the person, is liable for the payment of any amounts which become payable by the person under this Act, during the period in which the receiver acts as receiver of the person, to the extent that such amounts can reasonably be considered to relate to the person's assets over which the receiver has authority.

Receipts.

263. The Comptroller shall provide an official receipt, in written or electronic form, for any money collected by him.

Special containers and coverings.

264. (1) Where, in the opinion of the Comptroller a container or covering in which goods are imported or exported—

(a) is not the usual or proper container or covering for the goods; or

(b) is designed for separate use, other than as a container or covering for the same or similar goods subsequent to importation or exportation,

such container or covering is, for all purposes of this Act and any other customs enactment, deemed to be separate and dutiable goods, except in cases where a contrary provision is made.

(2) Where any containers or coverings are deemed to be separate and dutiable goods under subsection (1), duty in respect of any such container or covering shall be imposed at the rate stated in the Common External Tariff for the containers.

Duties and drawbacks to be proportionate to quantity or value.

265. The duties, rates, charges and drawback imposed and allowed according to—

-
- (a) any specified quantity or any specified value of any goods; or
- (b) any particular description of container or covering in which goods are imported or exported,

are deemed to apply in the same proportion to any greater or lesser quantity or value or any other description of container or covering.

266. The duties, rates, charges and drawback imposed and allowed under this Act and any other customs enactment—

Mode of calculating weights and measures.

- (a) shall be paid and received according to the weights and measures established by the Weights and Measures Act or any enactment replacing that Act; and
- (b) may be paid in any currency being legal tender in Dominica.

Chap. 78:48

267. No action, suit or other proceedings shall be brought or instituted personally against any customs officer or authorised person in respect of any act performed by him in the exercise of any power granted to or duty imposed on him by or under this Act and any other customs enactment.

Actions against officers.

268. The provisions of this Act and any other customs enactment, so far as such provisions are applicable and subject to any regulations made under this Act regarding goods in transit, are deemed to apply to goods declared in transit to any destination beyond Dominica.

Goods in transit.

269. The Comptroller shall endeavour to ensure that relevant information concerning the requirements, obligations and administration of this Act is available to members of the public.

Availability of information.

Power to make regulations.

270. (1) The Minister may make Regulations—

- (a) for the further, better or more convenient implementation of the provisions or purposes of this Act; and
- (b) prescribing fees, rents or charges to be paid in respect of any matter referred to in the Regulations.

(2) Without limiting the generality of subsection (1), the Minister may make Regulations—

- (a) prescribing fees or charges which are payable to the Customs department to meet or assist in meeting costs and expenses incurred by that Department in granting a certificate of clearance;
- (b) prescribing the classes of goods which are or are not deemed to be stores for the use of passengers and crew or the service of vessels or aircraft about to depart from any customs place;
- (c) prescribing the conditions under which any stores referred to in paragraph (b)—
 - (i) may be shipped free of duty or under drawback of duty, and
 - (ii) are subject to duty, and the form and manner in which such stores shall be entered;
- (d) prescribing when an entry is deemed to have been made for the purposes of this Act;
- (e) prescribing the conditions under which an entry is deemed to have been passed for the purposes of this Act;

-
- (f) prescribing goods or classes of goods which shall be deemed to have been entered under section 38 or 50;
 - (g) exempting specified goods or goods of a specified class from the requirements of section 38 or 50, subject to such conditions as may be prescribed;
 - (h) modifying or excepting the application of any customs enactment to postal packets;
 - (i) securing, in the case of postal packets, the observance of any customs enactment;
 - (j) enabling the officers of the post office to perform for the purpose of any customs enactment and otherwise any or all of the duties of the importer;
 - (k) prescribing the procedure to be followed by—
 - (i) any vessel or aircraft arriving at a customs place,
 - (ii) any vessel or aircraft intending to leave a customs port or a customs airport for a destination outside Dominica,
 - (iii) coasting vessels on their arrival at or departure from any customs port,
 - (iv) coasting aircraft on their arrival at or departure from any customs airport, and
 - (v) penalties for contravention of any customs enactment or regulations made under this section;
 - (l) for carrying into effect any arrangement with the Government or postal administration;

- (m) prescribing the descriptions of postal packets which may or may not contain goods or other articles of any description, and the conditions under which the postal packets may contain such goods or articles;
 - (n) regulating the storage, putting alongside, making waterborne for loading of goods intended for export or for use as stores;
 - (o) regulating the loading, unloading or making waterborne for loading of goods carried, or to be carried, by way of coasting trade;
 - (p) for the control of the depositing, marking, keeping, securing and treatment of goods in and the removal of goods from warehouses;
 - (q) respecting the imposition of fines in amounts not exceeding \$10,000 for contravention of any regulation, or direction given or requirement made under any regulation; and
 - (r) for the forfeiture of any goods involved in any contravention referred to in paragraph (q).
- (3) For greater clarity, regulations made under subsection (2)(p) may provide for—
- (a) the registration and maintenance of warehouses;
 - (b) the payment of licence fees;
 - (c) the entering into and maintaining—

 - (i) of bonds for the security of duty chargeable on warehoused goods, or

-
- (ii) of contracts of insurance for warehoused goods;
 - (d) the proper conduct and management of warehouses, including the imposition of conditions and restrictions subject to which goods may be—
 - (i) carried to or from, deposited in, kept in or removed from a warehouse, or
 - (ii) made available to their owners for prescribed purposes;
 - (e) the attendance of customs officers at warehouses;
 - (f) the production to, and making available for inspection by, customs officers of warehoused goods;
 - (g) the provision of facilities to customs officers;
 - (h) the records to be kept by occupiers of warehouses;
 - (i) the minimum quantities or descriptions of goods which may be deposited in or removed from a warehouse at any one time;
 - (j) operations to be carried out on warehoused goods, including the taking of samples;
 - (k) the removal of goods from warehouses without payment of duty, subject to such conditions and restrictions as may be determined by or under the Regulations; or
 - (l) the destruction or abandonment of goods to the Comptroller without payment of duty, in such circumstances and subject to such conditions and

restrictions as may be determined by the Regulations.

(4) Regulations made under this Act shall be subject to negative resolution of the House of Assembly.

271. On the commencement of this Act—

Existing ports,
warehouses, etc.

(a) all duly approved ports, warehouses, airports, wharves and boarding stations, in operation on the day immediately before the commencement of this Act, shall continue to be ports, warehouses, airports, wharves and boarding stations; and

(b) all duly appointed wharves and airports, in operation on the day immediately before the commencement of this Act, shall be deemed to be approved places of loading and unloading until the appointment of such wharves or airports is revoked or varied under this Act.

272. The Customs (Control and Management) Act and the Customs (Import and Export) Tariffs Ordinance are repealed except the First and Second Schedules to the Ordinance which shall continue to have effect until altered or repealed in the manner provided under this Act or by regulations made under this Act.

Repeals.
Chap. 69:01
Cap. 265

273. (1) Notwithstanding the repeal of the enactments mentioned in section 272 (referred to in this section as the “repealed Acts”)—

Savings and transitional
provisions.

(a) any proclamation, rule, regulation, by-law, Orders or warrant made or issued under the repealed Acts shall, if in force on the day immediately before the commencement of this Act, continue in force in so far as such proclamation, rule,

regulation, by-law, Order or warrant is not inconsistent with the provisions of this Act until revoked by regulations made under this Act;

(b) any requirement performed, notice, decision, determination, direction or approval given, application made or thing done under any of the repealed Acts shall—

(i) if in force on the day immediately before the commencement of this Act, continue in force, and

(ii) so far as it could have been performed, made, issued, given or done under this Act have effect as if performed, made, issued, given or done under the corresponding provisions of this Act; and

(c) any certificate issued or made under any of the repealed Acts shall, if in force on the day immediately before the commencement of this Act, continue in force until the expiry of such certificate.

(2) Notwithstanding the repeal of the Customs (Control and Management) Act, the Appeal Commissioners appointed under it are to continue in office only for the purpose of hearing and determining any appeal pending before them.

(3) Notwithstanding subsection (2), an appeal pending before the Appeals Commissioners immediately before the date of commencement of this Act may be transferred to the Commission if the parties to the appeal consent.

(4) Where—

(a) in any enactment; or

(b) in any proclamation, rule, regulation, by-law, Order, form or document made under any of the repealed Acts,

a reference is made to any customs enactment or to the Customs Act, the reference shall be read as if it were made to this Act.

Consequential
amendments.
Chap 69:02

274. The Customs (Duty-Free Shopping) Act is amended as follows -

(a) in item 17 of the Arrangement of Sections by replacing the words “Customs (Control and Management) Act” with the words “Customs Act”;

(b) in section 2, by replacing the definition -

(i) of “Commissioners” with the following -

“Commission” means the Customs Appeal Commission established under section 213 of the Customs Act;” and

(ii) of “officer” with the following -

“officer” means a customs officer within the meaning of the Customs Act;”

(c) in section 8(f), by replacing the words “Customs Import and Export Tariffs Ordinance or of the Customs (Control and Management) Act” with the words “Customs Act”;

(d) in section 9(b), by replacing the words “Customs Import and Export Tariffs Ordinance or of the Customs (Control and Management) Act” with the words “Customs Act”;

(e) in section 10, by replacing the word “Commissioners” wherever it appears with the word “Customs Act”;

-
- (f) in section 15, by replacing the words “Customs (Control and Management) Act” wherever they appear with the words “Customs Act”;
- (g) in section 17 and its marginal notes, by replacing the words “Customs (Control and Management) Act” wherever they appear with the words “Customs Act”;
- (h) in the Second Schedule, by replacing the words “Customs (Control and Management) Act” where it appears in item 8 of that Schedule with the words “Customs Act”;

SCHEDULE 1

(Sections 42(2) and 67)

GOODS PROHIBITED OR RESTRICTED FROM WAREHOUSING

Aircraft
Animals, living
Arms, ammunition and explosives, fireworks
Asphalt, all kinds including pitch and tar
Bottles, empty in bags
Bricks
Cement and cement products
Chemicals including acids
Coal
Coke
Cylinders
Earthenware not in packages
Empty packages whether set up or collapsed or however packed
Film, cinematograph
Fireclay
Fish, dried or pickled
Flour
Fruits and nuts (other than in tins packed in cases)

Goods of a perishable nature
Goods on which duty is not collectable
Hay and chaff and other feeding stuff for animals (other than in tins packed in cases)

Iron and hardware not in packages
Lumber, wood and timber of all descriptions, shooks, staves, spars and headings except plywood
Lime
Matches
Machinery and parts
Meats (other than in tins packed in cases)
Molasses
Patent fuel
Petroleum and petroleum products (except petroleum jelly and vaseline)
Salt
Seeds for expressing oil therefrom
Shingles
Ships, boats and launches
Tiles
Tar
Tresshoops
Woodhoops
Vegetables (other than in tins packed in cases)
Goods for cold storage
Any goods which in the opinion of the Comptroller are likely to cause damage to other goods stored in the same warehouse.
Bag not exceeding 100 lbs. or 2 cu. ft. each
Bag exceeding 100 lbs. or 2 cu. ft. each
Keg not exceeding 15 gals. capacity each
Keg exceeding 15 gals. capacity each
Barrel, cask, drum, etc., not exceeding 30 gals. capacity each
Barrel, cask, drum, etc., exceeding 30 gals. capacity and not exceeding 60 gals. capacity each
Cask, hogshead, puncheon, etc., exceeding 60 gals. capacity and not exceeding 108gals. capacity each
Cask, hogshead, puncheon, pipe, etc.

SCHEDULE 2**(Sections 80(1), 80(2) and 251)****VALUATION OF GOODS**

1. (1) In this Schedule -

“customs value”, in relation to 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 produced in the same country and which are the same in all respects including physical characteristics, quality and reputation, but does not include goods which incorporate or reflect engineering, development, artwork, design work, and plans and sketches for which no adjustment has been made under subsection 8(1)(b)(iv) because such processing were undertaken in Dominica;

“person” means a natural or legal person;

“produced” includes grown, manufactured or mined;

“similar goods” means goods produced in the same country and 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, but does not include goods which

incorporate or reflect engineering, development, artwork, design work, and plans and sketches for which no adjustment has been made under subsection 8(1)(b)(iv) because such processing were undertaken in Dominica.

(2) For the purposes of the definition of “identical goods”, minor differences in appearance shall not preclude goods otherwise conforming to the definition from being regarded as identical.

(3) In determining whether goods are similar, the factors to be taken into consideration include—

(a) the quality and reputation of the goods; and

(b) the existence of a trademark in respect of the goods.

(4) For the purposes of this Schedule —

(a) a person is deemed to be related to another person only if -

(i) both persons are officers or directors of the same business,

(ii) both persons are legally recognised partners in business,

(iii) both persons are directly or indirectly controlled by a third person,

(iv) directly or indirectly, both persons jointly control a third person,

(v) both persons are members of the same family,

(vi) one person is the employer of the other person,

importer makes a request for such a change and the Comptroller agrees to the request.

(3) Except as provided for in subsection (2), it is only when the customs value of imported goods cannot be determined under a particular section that the section next following in the sequence established by that subsection can be applied.

(4) Where the customs value of imported goods cannot be determined under sections 3 to 7, inclusive, such customs value shall-

- (a) be determined using reasonable means consistent with the principles and general provisions of this Schedule;
- (b) to the greatest extent possible, be based on previously determined customs values; and
- (c) be determined using the methods of valuation laid down in sections 3 to 7, inclusive, using, where necessary, reasonable flexibility in their application.

(5) The customs value of imported goods shall not be determined under subsection (4) on the basis of-

- (a) the selling price in Dominica of goods produced in Dominica;
- (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 7;
- (e) the price of goods for export to a country other than Dominica;

-
- (f) minimum customs values; or
 - (g) arbitrary or fictitious values.

3. (1) The customs value of imported goods determined under this section is the transaction value of such goods, that is to say, the price actually paid or payable for the goods when sold for export to Dominica, adjusted in accordance with section 8, and in appropriate cases section 9, if -

- (a) there are no restrictions respecting the disposition or use of the goods by the buyer, other than restrictions which -
 - (i) are imposed or required by law or by the public authorities in Dominica,
 - (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 of the imported goods 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 imported goods by the buyer is likely to accrue, directly or indirectly, to the seller of such goods, unless an appropriate adjustment can be made in accordance with section 8; and
- (d) the buyer and seller of the imported goods are not related, or, where such buyer and seller are related, the transaction value is acceptable for customs purposes under subsection (2).

(2) For the purposes of subsection (1)—

- (a) where a buyer and a seller of the imported goods are related, that relationship shall not in itself be a ground for regarding the transaction value of goods as unacceptable in determining whether the transaction value is acceptable;
- (b) in a sale between related persons, the transaction value shall be accepted and the goods valued in accordance with that subsection whenever the importer demonstrates that such value closely approximates to one of the following occurring at or about the same time—
 - (i) the transaction value in sales, between buyers and sellers who are not related in any particular case, of identical or similar goods for export to Dominica,
 - (ii) the customs value of identical or similar goods, as determined under section 6, and
 - (iii) the customs value of identical or similar goods, as determined under section 7;
- (c) in applying the foregoing tests, due account shall be taken of demonstrated differences in commercial levels, quantity levels, the elements enumerated in section 8 and costs incurred by the seller, in sales in which the seller and the buyer are not related, which are not incurred by the seller in sales in which the seller and the buyer are related; and
- (d) the tests set out in paragraph (b) shall be used at the initiative of the importer and only for

comparison purposes and substitute values shall not be established under that paragraph.

- (3) For the purposes of subsection (2)(a)—
- (a) where necessary, the circumstances surrounding the sale shall be examined and the transaction value shall be accepted if the relationship between the seller and buyer of the imported goods did not influence the price; and
 - (b) where, having regard to the information provided by the importer or otherwise, the Comptroller has grounds for considering that the relationship between the seller and buyer of the imported goods influenced the price, he shall communicate such grounds to the importer who shall be given a reasonable opportunity to respond.
- (4) For the purposes of this section—
- (a) the price actually paid or payable is the total payment made or to be made by the buyer to or for the benefit of the seller for the imported goods, but such payment, whether made directly or indirectly, needs not necessarily take the form of a transfer of money;
 - (b) the total payment referred to in paragraph (a) includes all payments made or to be made as a condition of sale of the imported goods by the buyer to the seller or a third party to satisfy -
 - (i) an obligation of the seller,
 - (ii) any settlement by the buyer, whether wholly or in part, or

(iii) a debt owed by the seller;

(c) an activity, including a marketing activity, undertaken by the buyer on his own account, other than those for which an adjustment is provided by or under section 8 is not considered to be an indirect payment to the seller, notwithstanding that such activity—

(i) is likely to be regarded as a benefit to the seller, or

(ii) has been undertaken by agreement with the seller; and

(d) the cost of any activity referred to in paragraph (c) shall not be added to the price actually paid or payable in determining the customs value of imported goods.

(5) The customs value of imported goods does not include the following charges or costs -

(a) charges for construction, erection, assembly, maintenance or technical assistance undertaken after importation of imported goods such as industrial plant, machinery or equipment;

(b) customs duties and other taxes payable in Dominica by reason of the importation or sale of the goods; or

(c) the cost of transport after importation,

if such charges or costs are distinguished from the price actually paid or payable for the imported goods.

(6) Where goods which are the subject of a sale are entered for home use within Dominica, the entry of such goods

shall be regarded as adequate indication that such goods were sold for export to Dominica.

(7) Where successive sales of goods have taken place before valuation—

- (a) the indication in subsection (6) shall apply; and
- (b) each price resulting from each sale may be used as a basis for valuation.

4. (1) For the purposes of this section—

- (a) the customs value of imported goods determined under this section is the transaction value of identical goods sold for export to Dominica and exported at or about the same time as the goods being valued;
- (b) subject to paragraph (c), the transaction value of identical goods in a sale at the same commercial level and in substantially the same quantity as the goods being valued shall be used to determine the customs value of the imported goods; and
- (c) subject to subsection (2), where the transaction value referred to in paragraph (b) is not available, the transaction value of identical goods sold at a different commercial level or in different quantities, adjusted to take account of differences attributable to commercial level or to quantity, shall be used to determine the customs value of the imported goods.

(2) Where by reason of different commercial levels or different quantities an adjustment is required to be made to the transaction value in paragraph (c), such adjustment must 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 value.

(3) Where the costs and charges referred to in section 8(1)(e) 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 relevant identical goods arising from differences in distances and modes of transport.

(4) In applying this section-

- (a) where more than one transaction value of identical goods is available, the lowest transaction value shall be used to determine the customs value of the imported goods;
- (b) a transaction value for goods produced by a different person shall be taken into account only when no transaction value is available under subsection (1) for identical goods produced by the same person as the goods being valued; and
- (c) where by reason of different commercial levels or different quantities an adjustment is required to be made to the transaction value, such adjustment shall be made only on the basis of demonstrated evidence which clearly establishes the reasonableness and accuracy of the adjustment.

(5) For the purposes of this section, the “transaction value of identical imported goods” means a customs value previously determined under section 3, adjusted as specified in subsections (1)(b) and (2).

5. (1) For the purposes of this section—

- (a) the customs value of imported goods determined under this section is the transaction value of

similar goods sold for export to Dominica and exported at or about the same time as the goods being valued;

- (b) subject to paragraph (c), the transaction value of similar goods in a sale at the same commercial level and in substantially the same quantity as the goods being valued shall be used to determine the customs value of the imported goods; and
- (c) subject to subsection (2), where the transaction value referred to in paragraph (b) is not available, the transaction value of similar goods sold at a different commercial level or in different quantities, adjusted to take account of differences attributable to commercial level or to quantity, shall be used to determine the customs value of the imported goods.

(2) Where by reason of different commercial levels or different quantities an adjustment is required to be made to the transaction value in paragraph (c), such adjustment must 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 value.

(3) Where the costs and charges referred to in section 8(1)(e) are included in the transaction value, an adjustment shall be made to take account of any significant differences in the costs and charges between the imported goods and the similar goods in question arising from differences in distances and modes of transport.

(4) In applying this section -

- (a) where more than one transaction value of similar goods is available, the lowest transaction value

shall be used to determine the customs value of the imported goods;

- (b) a transaction value for goods produced by a different person shall be taken into account only when no transaction value is available under subsection (1) for similar goods produced by the same person as the goods being valued; and
- (c) where by reason of different commercial levels or different quantities an adjustment is required to be made to the transaction value, such adjustment shall be made only on the basis of demonstrated evidence which clearly establishes the reasonableness and accuracy of the adjustment.

(5) For the purposes of this section, the “transaction value of similar imported goods” means a customs value previously determined under section 3, adjusted as specified in subsections (1)(b) and (2).

6. (1) Subject to subsections (2) and (3), the customs value of imported goods determined under this section shall be based on—

- (a) in the case of imported goods or identical or similar imported goods sold in Dominica in the condition as imported, the unit price at which such goods are 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 sellers of the goods;
- (b) in the case of imported goods or identical or similar imported goods not sold at or about the time of importation of the goods being valued, the

unit price at which such goods are sold in Dominica in the condition as imported at the earliest date after the importation of goods being valued but before the expiration of ninety days after the importation; and

- (c) in the case of imported goods or identical or similar imported goods not sold in Dominica in the condition as imported, if the Comptroller so decides, the unit price at which the imported goods, after further processing, are sold in the greatest aggregate quantity to persons in Dominica who are not related to the sellers of such goods, but due allowance shall be made for the value added.

(2) The unit price at which the imported goods or identical or similar imported goods are sold shall be subject to deductions for the following—

- (a) the commissions usually paid or agreed to be paid or the additions usually made for profit and general expenses, including the direct and indirect costs of marketing the relevant goods, in connection with sales in Dominica of imported goods of the same class or kind;
- (b) the usual costs of transport and insurance and associated costs incurred within Dominica;
- (c) the customs duties and other taxes payable in Dominica by reason of the importation or sale of the goods; and
- (d) in the case of goods to which subsection (1)(c) applies, the value added by reason of any processing of such goods.

(3) For the purposes of subsections (1) and (2)—

(a) the deductions made for value added by reason of processing shall be based on objective and quantifiable data relating to the cost of the work or services; and

(b) accepted industry formulas, recipes, methods of construction and other industry practices shall form the basis of the calculations respecting the determination of customs value of imported goods.

(4) Subject to subsection (5), the unit price at which imported goods or identical or similar imported goods are sold in the greatest aggregate quantity is the price at which the greatest number of units is sold in sales to persons who are not related to the sellers of the goods at the first commercial level after importation at which such sales take place.

(5) A sale in Dominica to a person who supplies any service specified in section 8(1)(b)—

(a) directly or indirectly;

(b) free of charge; or

(c) at reduced cost,

for use in connection with the production and sale for export of the imported goods shall not be taken into account in establishing the unit price referred to in subsection (4).

(6) For the purposes of subsection (1)(a)-

(a) the “profit and general expenses” shall be taken as a whole, but—

(i) subject to sub-paragraph (ii), the figure for the purposes of this deduction shall be determined on the basis of information supplied by or on behalf of the importer, and

-
- (ii) where the importer's figures are inconsistent with the figures obtaining in sales of imported goods of the same class or kind, the figure referred to in sub-paragraph (i) may be based upon relevant information other than information supplied by or on behalf of the importer;
- (b) in determining the commissions or the additions usually made for profit and general expenses—
- (i) the question whether certain goods are of the same class or kind as other goods shall be determined on a case by case basis by reference to the circumstances involved, and
- (ii) an examination must be conducted in respect of the sales for which the necessary information can be provided respecting the narrowest group or range of imported goods of the same class or kind as the goods being valued.

(7) In subsection (1)(b)—

“earliest date”, in relation to imported goods, means the date by which sales of the imported goods or of identical or similar imported goods are made in sufficient quantity to establish the unit price;

“goods of the same class or kind”, in relation to imported goods, includes goods imported from the same country as the goods being valued as well as goods imported from other countries.

7. (1) The customs value of imported goods determined under this section shall be based on a computed value which shall consist of the aggregate 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 the amount 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 Dominica; and
 - (c) the cost and charges referred to in section 8(1)(e).
- (2) The cost or value of materials and fabrication referred to in subsection (1)(a) includes—
 - (a) the cost of supplying the services specified in section 8(1)(a)(ii) and (iii); and
 - (b) subject to subsection (3), the value, duly apportioned, of any element specified in section 8(1)(b) which has been supplied directly or indirectly by the buyer for use in connection with the production of the imported goods.
- (3) The cost or value of the services specified in paragraph 8(1)(b)(iv) which are undertaken in Dominica—
 - (a) shall be included only to the extent that such services are charged to the producer; and
 - (b) shall not be counted more than once in determining the computed value.
- (4) For the purpose of subsection (1) -
 - (a) the cost or value referred to in subsection (1)(a) shall be—

-
- (i) determined on the basis of information relating to the production of the goods being valued or supplied by or on behalf of the producer, and
 - (ii) based upon the commercial accounts of the producer, if such accounts are consistent with generally accepted accounting principle applied in the country where the goods are produced;
 - (b) subject to paragraph (c), the amount for profit and general expenses referred to in subsection (1)(a) shall be taken as a whole and shall be determined on the basis of information supplied by or on behalf of the producer, unless his figures are inconsistent with those 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 Dominica;
 - (c) where the producer's own figures for profit and general expenses are not consistent with the figures usually reflected in sales of the goods of the same class or kind referred to in paragraph (b), the amount for profit and general expenses may be based upon relevant information other than that supplied by or on behalf of the producer of the goods; and
 - (d) the question whether goods are "of the same class or kind" as other goods shall be determined on a case by case basis with reference to the circumstances involved, but an examination must be conducted in respect of sales for export to

Dominica of the narrowest group or range of goods of the same class or kind as the goods being valued for which the necessary information can be provided.

(5) In this section-

“goods of the same class or kind” means goods imported from the same country as the goods being valued;

“general expenses” includes the direct and indirect cost of producing and selling the goods for export which are not included under subsection (1)(a).

8. (1) In determining the customs value under section 3, there shall be added to the price actually paid or payable for the imported goods -

(a) the following costs, to the extent that such costs are incurred by the buyer but are not included in the price actually paid or payable for the goods -

(i) commission and brokerage, except buying commissions;

(ii) the cost of containers which are treated as containers for customs purposes respecting the relevant goods; or

(iii) the cost of packing, whether for labour or materials;

(b) the value, apportioned as appropriate, of the following goods and services if such goods and services are 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, or
 - (iv) engineering, development, artwork, design work, and plans and sketches undertaken elsewhere than in Dominica and necessary for the production of the imported goods;
- (c) royalties and licence fees, which, among other things, may include payments in respect of patents, trademarks and copyrights related to the goods being valued which the buyer must pay, 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 which accrues, directly or indirectly, to the seller of such goods; and
- (e) the aggregate of the following costs and charges—
- (i) the cost of transport of the imported goods to the port or place of importation,
 - (ii) loading and handling charges associated with the transport of the imported goods to the port or place of importation, and
 - (iii) the cost of insurance.

(2) Except as provided in this section, additions shall not be made to the price actually paid or payable in determining the customs value.

(3) Additions to the price actually paid or payable in respect of imported goods shall be made under this section only on the basis of objective and quantifiable data, but a transaction value shall not be determined under the provisions of section 3 if such objective and quantifiable data do not exist.

(4) Notwithstanding subsection (1)(e)-

(a) charges for the right to reproduce the imported goods in Dominica shall not be added to the price actually paid or payable for the imported goods in determining the customs value; and

(b) payments made by the buyer for the right to distribute or resell the imported goods shall not be added to the price actually paid or payable for the imported goods if the making of such payments is not a condition of the sale for export to Dominica of the goods.

(5) In this section, “buying commissions” means fees paid by an importer to his agent for the service of representing him abroad in the purchase of the goods being valued.

9. (1) Charges for interest under a financing arrangement entered into by the buyer and related to the purchase of imported goods shall not be included in the customs value determined under section 3-

(a) if the charges are distinguished from the price actually paid or payable for the imported goods;

-
- (b) if the financing arrangement has been made in writing; or
- (c) where required by the Comptroller, if the buyer can demonstrate that -
- (i) such goods are actually sold at the price declared as the price actually paid or payable, and
 - (ii) the claimed rate of interest does not exceed the level for such transactions prevailing in the country where, and at the time when, the finance was provided.
- (2) Subsection (1) applies—
- (a) notwithstanding that the finance is provided by the seller, a bank or another person, to the determination of the customs value under section 3; and
 - (b) *mutatis mutandis* to the determination of the customs value under a method other than the transaction value.

SCHEDULE 3

(Sections 102(1) and (2), and 103(1), (2) and (3))

GOODS PROHIBITED AND RESTRICTED FROM IMPORT AND EXPORT

PART 1

PROHIBITED IMPORTS

1. All gold and silver articles of foreign manufacture bearing imitations of British assay marks, and all gold and silver articles bearing marks purporting to be such marks, but which are below the standard indicated by the marks.

2. Coin of legal tender in Dominica or any coin purporting to be such, not being of the established standard in weight and fineness.

3. Articles of food intended for human consumption declared by the Ministry responsible for public health to be unfit for such purpose.

4. Indecent or obscene prints, paintings, photographs, books, cards, lithographic or other engraving or any other indecent or obscene articles.

5. Infected cattle, sheep or other animals, or their carcasses, hides, skins, horns, hoofs or any other parts, the importation of which may be prohibited by the Ministry responsible for agriculture in order to prevent the introduction or spread of any communicable disease.

6. Any pistol or other apparatus in the form of a stylographic pen or pencil capable of firing any kind of shot or cartridge, and any cartridge for such a pistol or apparatus containing tear gas.

7. Any goods bearing the Coat of Arms of Dominica or the Coat of Arms of any other country or coat of arms so closely resembling such Coats of Arms as to be calculated to deceive, unless the manufacturer of such goods holds the appropriate Government's authority to use such Coat of Arms in connection with his trade, business, calling or profession.

8. Fictitious stamps and any die, plate, instrument or materials capable of making any such stamps.

9. Goods, the importation of which is prohibited by any other enactment.

PART 2

RESTRICTED IMPORTS

10. Arms and ammunition, except with the written permission of the Commissioner of Police.

11. Cannabis sativa (known as Indian hemp or bhang), cannabis indica, choras, ganja or any preparation or mixture of such goods, except under licence from the Chief Medical Officer.

12. Gunpowder, blasting powder, detonators and high explosives of any description, except imported for the use of the Government.

13. Any goods which bear a design, in imitation, of any currency or bank notes or coin in common use in Dominica or elsewhere, except with the permission of the Minister.

14. Kerosene oil and other petroleum products with a flash point below 73 degrees Fahrenheit (Abel close test), except with the permission of the Minister.

15. Except as expressly permitted by the Comptroller in writing, spirits and wine, unless—

(a) specifically reported as such; and

(b) stored or imported in -

(i) in a cask containing five gallons or more,

(ii) in a demijohn containing one gallon or more,
or

(iii) in glass or stone bottles properly packed in cases, each case containing one gallon or more.

16. Tobacco, cigars, cigarillos or cigarettes, unless specifically reported as such and, unless imported by parcels post, in whole and complete packages each containing not less than twenty pounds net weight of tobacco, cigars, cigarillos or cigarettes.

17. Extracts, essences or other concentrations of tobacco or any admixture of such goods, tobacco stalk stripped from the leaf, whether manufactured or not, and tobacco stalks flour, except under such conditions as the Comptroller, with the approval of the Minister, may generally or in any particular case permit.

18. Cigarette making appliances, whether machine or paper, except with the permission of the Minister.

19. Goods, the importation of which is restricted by any other enactment, except in accordance with that enactment.

PART 3

PROHIBITED EXPORTS

20. Goods, the exportation of which is prohibited by any other enactment.

PART 4

RESTRICTED EXPORTS

21. Narcotic drugs and psychotropic substances except under licence of the Chief Medical Officer.

22. Ginger and dry coconuts except under licence from the Minister of Agriculture.

23. Rare or threatened species of animals or plants and live or dead wildlife or parts, their products and derivatives except if such goods are accompanied by the appropriate permits issued by the Director of Forestry.

24. Goods the exportation of which is regulated by any other enactment, except in accordance with such enactment.

SCHEDULE 4

(Section 198(1), (3))

FORFEITURE RULES

Notice of seizure

1. For the purposes of these Rules, a person has the relevant interest in any goods, article or item seized if the person was the owner, or one of the owners, of such goods, article or item at the time of seizure.

2. (1) Subject to sub-rule (2), the Comptroller shall give notice of—

- (a) the seizure of any goods, article or item seized as liable to forfeiture; and
- (b) the grounds of such seizure,

to any person who to his knowledge has the relevant interest in the goods.

(2) Notice shall not be required to be given under sub-rule (1) if the seizure was made in the presence of -

- (a) the person whose offence or suspected offence occasioned the seizure;
- (b) the owner or any of the owners of the goods, article or item seized or any servant or agent of such owner; or
- (c) in the case of any goods, article or item seized in a vessel or an aircraft, the master or commander of that vessel or aircraft.

3. The notice under rule 2—

- (a) shall be given in writing; and
- (b) shall be deemed to have been duly served on the person having the relevant interest in the goods-
 - (i) if delivered personally to the person,
 - (ii) if addressed to the person and left or forwarded by post to the person at his usual or last known place of abode or business, or, in the case of a body corporate, at its registered or principal office, or
 - (iii) if the person has no address in Dominica, or his address is unknown, by publication of the notice of seizure in the *Gazette*.

Notice of claim

4. Where a person having the relevant interest in any goods claims that the goods seized were not liable to forfeiture, the person shall—

- (a) subject to paragraph (b), within one month of the date of service of the notice of seizure; or,

(b) if no notice of seizure was served on him, within one month of the date of seizure, give notice of his claim in writing to the Comptroller at any customs office.

5. (1) Every notice under rule 4—

- (a) shall specify the name and address of the claimant; and
- (b) if a claimant is outside Dominica, shall specify the name and address of a solicitor in Dominica who is authorised to accept service and act on behalf of the claimant.

(2) For the avoidance of doubt, service upon a solicitor under subsection (1)(b) is deemed to be proper service upon the claimant.

Condemnation

6. Where—

- (a) on the expiration of the relevant period under rule 4 for the giving of a notice of claim, no such notice has been given to the Comptroller; or
- (b) a notice of claim is given, that notice does not comply with any requirement of rule 5,

the goods seized are deemed to have been duly condemned as forfeited.

7. Where—

- (a) a notice of claim in respect of any goods seized are duly given in accordance with rules 4 and 5, the Comptroller shall take proceedings for the condemnation of such goods, article or item by the Court; and

(b) the court finds that such goods were at the time of the seizure liable to forfeiture, the court shall condemn such goods as forfeited.

8. Where any goods, article or item is, in accordance with rule 6 or 7, deemed to have been condemned or condemned as forfeited, the forfeiture is, without prejudice to any restoration or sale, deemed to have had effect from the date when the liability to forfeiture arose.

9. Proceedings for the condemnation of any goods—

(a) shall be civil proceedings; and—

(b) may be instituted in the High Court or any Magistrates' Court having jurisdiction in the place

-
(i) where any offence in connection with such goods was committed,

(ii) where any proceedings for an offence in connection with such goods have been instituted,

(iii) where the claimant resides or, if the claimant has specified a solicitor under rule 4, where that solicitor has his office, or

(iv) where such goods were found, detained or seized or to where such goods were first brought after being found, detained or seized.

10. (1) In any proceedings for condemnation in respect of any goods, the claimant or his solicitor shall make oath that the goods were, or were to the best of his knowledge and belief, the property of the claimant at the time of the seizure.

(2) The claimant shall, in any proceedings for condemnation before the High Court, give such security for the costs in respect of such proceedings as the Court may determine.

(3) Where the claimant or his solicitor fails to comply with any requirement of this rule, the court shall give judgment for the Comptroller.

11. (1) Any party to condemnation proceedings in a Magistrates' Court who is aggrieved by a judgment of the Magistrate in such proceedings may, within 14 days of the judgment appeal to the High Court against the judgment of that Magistrate.

(2) Where in condemnation proceedings an appeal is made against the decision or judgment of any court, the goods seized shall remain in the possession of, or be returned to the possession of the Comptroller until the final determination of the matter.

12. In any proceedings arising out of the seizure of any goods, the fact, form and manner of the seizure shall be taken to have been as set out in the process, unless the contrary is proved.

13. Where any goods are, at the time of seizure, the property of—

- (a) a body corporate;
- (b) two or more partners; or
- (c) any number of persons exceeding five not being in partnership,

the oath required to be taken by rule 10, and any other thing required by or under this Schedule or the rules of court to be done by, or by any person authorised by, the claimant or owner may be taken or done by the following persons respectively, that is to say—

- (d) where the owner is a body corporate, the secretary or some other duly authorised officer of that body;

(e) where the owners are in partnership, any of those owners; or

(f) where the owners are any number of people exceeding five not being in partnership, any two of those persons on behalf of themselves and their co-owners.

SCHEDULE 5

(Section 213)

CUSTOMS APPEAL COMMISSION

Membership and
appointment.

1. (1) The Commission shall comprise not less than four persons appointed by the Minister.

(2) The Minister shall appoint a chairperson and a deputy chairperson of the Commission.

(3) The chairperson or deputy chairperson shall not be a public officer.

(4) The Commission or a panel of the Commission is deemed to be properly constituted notwithstanding that there is—

(a) a vacancy on the Commission; or

(b) a defect, other than a disqualification referred to in section 2, in the appointment of a member.

2. (1) A person is disqualified from being appointed to the Commission or remaining a member of the Commission if the person—

(a) is under the age of eighteen years;

(b) is a member of the House of Assembly;

(c) subject to section 1(2), is employed by the Ministry of Finance;

-
- (d) is an undischarged bankrupt, having been so adjudged or otherwise declared under any law in force in Dominica;
- (e) is certified to be insane or otherwise adjudged to be of unsound mind under any law in force in Dominica; or
- (f) has been convicted of an offence—
- (i) involving dishonesty, whether in Dominica or outside, or
 - (ii) in respect of a contravention of this Act or the Regulations.

3. (1) Each member other than the chairperson and the deputy chairperson shall be appointed for a term not exceeding three years.

Tenure of members.

(2) The chairperson and the deputy chairperson shall be appointed for a term not exceeding five years.

(3) A previous appointment of a person as a member does not affect the eligibility of the person to be re-appointed as a member.

(4) A notice of appointment of every member shall be published in the *Gazette* without delay after the appointment.

4. (1) A member may, at any time, resign from his office by giving written notice to the Minister and the resignation is effective upon receipt of the notice by the Minister or by a person authorised by the Minister to receive the written notice of resignation.

Resignation, removal and vacancy.

(2) The Minister may, by written notice, remove a member from office if the Minister is satisfied that—

- (a) the member is or becomes disqualified under section 2 from being appointed or from remaining as a member;
- (b) the member has an interest which affects or is likely to affect prejudicially the exercise and performance of his responsibilities as a member;
- (c) the member is unable or unfit to carry out his responsibilities as a member; or
- (d) it is in the public interest to remove the member from office.

(3) If a member—

- (a) resigns or is removed from office; or
- (b) dies before the expiry of the term for which he is appointed,

the Minister may appoint a new member in accordance with section 1 to replace the member who died, resigned or is removed from office.

(4) An appointment of a new member under subsection (3) may be for—

- (a) the unexpired period of the term of office of the member in whose place the new member is appointed; or
- (b) a new term—
 - (i) subject to sub-paragraph (ii), of not more than three years, or
 - (ii) if the member held the office of chairperson or deputy chairperson, of not more than five years.

(5) If a member is absent from Dominica or is unable to act, the Minister may appoint a person who is eligible to be so appointed to act during the member's absence or inability to act.

(6) Where a member vacates his office due to resignation, removal from office or death, a notice of the vacancy shall be published in the *Gazette*, without delay, after the vacancy arises.

5. (1) The Minister shall appoint a public officer to act as secretary to the Commission.

Secretary to the
Commission.

(2) The secretary—

(a) shall provide administrative support to the Commission; and

(b) is responsible for—

(i) giving notice of sittings and hearings of the Commission;

(ii) recording proceedings of the sittings and hearings of the Commission;

(iii) preparing the correspondence and reports of the Commission; and

(iv) carrying out such other functions and duties as the Commission may assign to him.

6. (1) The members of the Commission are entitled to be paid such remuneration and to be reimbursed for such reasonable expenses as the Minister may approve after consultation with the Cabinet.

Remuneration, expenses
and allowances of
members.

(2) The Minister may—

(a) reimburse the reasonable expenses of members;
or

(b) establish allowances for the reimbursement of the reasonable expenses of members,

incurred in the course of carrying out their responsibilities as members.

Hearings and decisions of Commission.

7. (1) Every hearing of the Commission shall be before a three-member panel comprising—

(a) the chairperson or deputy chairperson; and

(b) at least two other members.

(2) Every decision of the Commission shall require the concurrence of a majority of its members.

(3) Subject to its rules of procedure, the Commission may act notwithstanding a vacancy in its membership or the absence of any member.

Commission may determine procedure.

8. Subject to this Act, the Commission shall determine its own procedure, but the Commission shall give to the parties in any matter before it full opportunity to present evidence and make representations.

Passed in the House of Assembly this 28th day of September, 2010.

VERNANDA RAYMOND (MRS.)

Clerk of the House of Assembly (Ag.)

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