

ANTIGUA AND BARBUDA



THE CUSTOMS (CONTROL AND MANAGEMENT) ACT, 2013

No. 3 of 2013

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THE CUSTOMS (CONTROL AND MANAGEMENT) ACT 2013

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[L.S.]



I Assent,

Louise Lake-Tack,
Governor-General.

4th April, 2013.

ANTIGUA AND BARBUDA

CUSTOMS (CONTROL AND MANAGEMENT) ACT 2013

No. 3 of 2013

PART I

PRELIMINARY

AN ACT to revise the Customs (Control and Management) Act, 1993 No. 7 of 1993.

ENACTED by the Parliament of Antigua and Barbuda as follows —

1. Short title and commencement

This Act may be cited as the Customs (Control and Management) Act, **2013** and shall come into operation on a day to be appointed by the Minister by Notice published in the *Gazette*.

2. Interpretation and application

(1) In this Act, unless the context otherwise indicates—

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

“aircraft” means any machine that 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 12.

“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 in pursuance of a written law 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.

“boarding station” means any place appointed as such under section 12.

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

ascertaining net registered tonnage.

“cargo” means goods, other than mail, stores, crew member’s effects and passenger’s accompanied baggage, carried on board a conveyance for consideration.

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

“coasting aircraft” and “coasting vessel” have the meaning assigned to them in section 55.

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

“Comptroller” means the Comptroller of Customs appointed by the Public Service Commission or any person acting on his behalf.

“container”

(a) means an article of transport equipment –

- (i) of a permanent character and strong enough to be suitable for repeated use;
- (ii) specially designed to facilitate the carriage of goods by one or more modes of transport without intermediate reloading;
- (iii) fitted with devices permitting its ready handling, particularly its transfer from one mode of transport to another; and

(iv) so designed as to be easy to fill and empty;

(b) includes the normal accessories and equipment of the container when imported with the container; and

(c) excludes vehicles and conventional packing.

“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.

“COTED” means the Council for Trade and Economic Development.

“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 13.

“Customs Appeal Commission” means the body established as the Customs Appeal Commission under section 201.

“customs controlled area” means a place appointed or approved as such under Parts III and VIII.

“customs direction” means 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, and includes any notice, poster, or sign publicly displayed in a customs controlled area and a direction contained in a form prescribed under this Act.

“customs duty” refers to a duty imposed on imports or exports, not including Antigua and Barbuda Sales Tax.

“customs enactment” includes this Act and any subsidiary legislation made under it and any other enactment that relates to an assigned matter.

“customs officer” means the Comptroller and any person appointed by the Public Service Commission to act as a customs officer and any person acting in the aid of a customs officer.

“customs place” means, for purposes of this Act, a port or airport.

“customs port” means a place appointed as such under section 12.

“customs value” means the value of goods as determined in accordance with Schedule III.

“declaration” means the statement, in verbal, written or electronic form, made by the importer or exporter indicating the customs procedure to be applied to the goods being imported or exported and providing the information required by the Comptroller.

“document” means –

(a) any paper or other material on which there is writing;

- (b) any paper or other material on which there are marks, figures, symbols or perforations having a meaning for persons qualified to interpret them;
- (c) any paper or other material on which a photographic image or any other image is recorded; or
- (d) any article or material from which sounds, images or writing is capable of being produced with or without the aid of a computer or of some other device.

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

“driver” means the person in charge or command of a vehicle.

“dutiable goods” means goods of a class or description subject to duty, whether or not such goods are in fact chargeable with that duty, and whether or not that duty has been paid.

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

“entered” means that goods have been properly accounted for to the satisfaction of Customs.

“entry”, in relation to goods entered for home use, for export, entered temporarily for subsequent export, warehoused or placed on board a conveyance as stores or as goods in transit, refers to the submission, either in electronic or other form, of the entry documentation required under section 36 or section 48.

“entry by bill of sight” means an entry made in accordance with section 37.

“examination station” means any place approved as such under section 14.

“export” means to take or cause goods to be taken outside the territorial waters of Antigua and Barbuda or to be loaded on a vessel or aircraft for use as stores.

“exporter” means, in relation to goods, the owner or other person beneficially interested in the goods that are exported or supplied for use as stores, or an agent acting on behalf of that person.

“goods” includes any tangible property, including personal property, livestock, conveyances, stores, baggage, documents (including in electronic form), currency and mail and packets imported by post, and includes prohibited or restricted goods.

“home use” means that goods have completed the required customs clearance formalities, are no longer subject to customs control and are therefore available for free circulation in Antigua and Barbuda.

“import” means to bring goods or cause goods to be brought within the territorial waters of Antigua and Barbuda.

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

“internal waters” means the internal waters of Antigua and Barbuda and Redonda as defined in section 3 of the Maritime Areas Act, Cap 260.

“land”, in relation to the landing of aircraft, includes alighting on water.

“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.

“occupier” means any person who signs as principal any bond in respect of any building or place used as a warehouse for the deposit of goods.

“owner”, in relation to a conveyance, includes the master, commander or driver; and, in relation to goods, includes any person who is entitled, either as owner or agent for the owner, to the possession of the goods.

“passenger” means a person other than a crew member travelling on, arriving from, or departing on a conveyance.

“passenger’s accompanied baggage” means property, including currency, carried for a passenger on a conveyance whether in the passenger’s personal possession or not.

“perfect entry” means an entry made in accordance with section 36.

“police officer” means any member of the Royal Police Force of Antigua and Barbuda.

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

“proper officer” means **a customs officer or a person authorized by the Comptroller to discharge any duty related to an assigned matter.**

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

“Queens warehouse” means any warehouse or place whatever for the time being occupied or used by the Comptroller for the deposit of goods.

“spirits” means spirits of any description and includes all liquors mixed with spirits and all mixtures, compounds or preparations made with spirits, but excludes perfumed, methylated and medicated spirits.

“stores” means goods for use in a vessel or aircraft and includes fuel and spare parts and other articles or equipment whether or not for immediate fitting.

“transit” means the customs procedure under which imported goods are transferred under customs control from the port of entry to another port for exportation.

“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 office, which is the area of both importation and exportation.

“transit shed” means a building or place approved as such by the Comptroller under section 15 for the temporary deposit of goods that are imported or are to be exported.

“uncustomed goods” includes goods liable to duty on which full duties due have not been paid or secured, and any goods, whether liable to duty or not, that 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 or boat.

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

(2) This Act and every other customs law applies in relation to –

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

3. Application of Act to State and in certain cases

(1) The circumstances in which and the conditions under which the powers conferred by Part XIII may be exercised in relation to –

- (a) a member of the Antigua and Barbuda Defence Force;
 - (b) access to a Defence area; or
 - (c) any conveyance under the control of the Antigua and Barbuda Defence Force,
- shall be prescribed by regulations made by the Minister.

(2) Subject to sub-section (5), sections 27 to 34 shall not apply to any member of the Antigua and Barbuda Defence Force or any conveyance under the control of the Antigua and Barbuda Defence Force during such time as that person or conveyance is required to respond to an emergency.

(3) For the purposes of this section, "emergency" means –

- (a) a national emergency within the meaning of section 20 of the Constitution of Antigua and Barbuda, a state of emergency declared under section 2 of the Emergency Powers (Hurricane, Earthquake, Fire or Flood) Act Cap 148 and Part 1 (2) of the Disaster Management Act No. 13 of 2002;
- (b) a search and rescue event at any place outside Antigua and Barbuda involving a serious and imminent threat to the safety of persons or to a conveyance;

- (c) a state of war or other similar emergency in a place outside Antigua and Barbuda; or
- (d) such other circumstances as are determined by the Chief of Defence Staff of the Antigua and Barbuda Defence Force to be an emergency.

(4) Subject to subsection (5), sections 19 to 20 and 22 to 26 do not apply to any member of the Antigua and Barbuda Defence Force or any conveyance under the control of the Antigua and Barbuda Defence Force during such time as that person or conveyance is involved in an emergency described in sub-section (3)(a) or (d).

(5) Where a conveyance under the control of the Antigua and Barbuda Defence Force that is involved in, or is required to respond to, an emergency departs from or returns to Antigua and Barbuda, the Antigua and Barbuda Defence Force shall, within a period of 24 hours or such longer period as the Comptroller may allow –

- (a) notify the Comptroller that the conveyance has departed from or arrived in Antigua and Barbuda; and
- (b) provide to the Comptroller such details relating to goods and persons on the conveyance as the comptroller specifies.

(6) The power of the Comptroller under sub-section (5) to determine a time or to specify details required may be exercised generally or in respect of any particular case.

(7) Nothing in this Act shall be interpreted as limiting the immunities of –

- (a) any foreign warship or other foreign governmental vessel 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. Comptroller of Customs

(1) The Comptroller is responsible for the general management and administration of this Act, and for any other matter concerning which a duty is conferred on the Comptroller by or under any other enactment.

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

5. Customs officers, proper officers and authorized persons

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

(2) The authorisation under sub-section (1) shall be in writing (including any writing in electronic form) and shall specify –

- (a) the function or power that may be performed or exercised by the person authorised under sub-section (1); and
- (b) the term of the authorisation, which shall be for such period, not exceeding 3 years, as the Comptroller thinks fit.

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

(4) A person who is authorised under this section shall be deemed to be a customs officer for the purposes of this Act and any other customs enactment for the duration of the term of the authorisation.

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

- (a) for incapacity, neglect of duty, or misconduct;
- (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 authorised under this section, that person shall surrender to the Comptroller all articles and documents received by the person in relation to the authorisation.

(7) Any act required or authorised by this Act or any other enactment to be performed by the Comptroller, may be performed by any customs officer authorised by the Comptroller to perform such acts and that officer shall be deemed a proper officer.

(8) A person, not being a proper officer, authorised by the Comptroller to perform any act or duty to be performed by the proper officer under sub-section (7), shall be deemed to be a proper officer for the purpose authorised.

(9) For the purposes of this section, the authorisation by the Comptroller under sub-section (7) may occur prior to or subsequent to the exercise of the function or power.

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

(11) The Comptroller shall give an identity card or other means of identification to each customs officer.

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

(13) A customs officer must disclose any relationships with customs brokers.

6. Deeming of place of acts

Where an act is required by this or any other enactment to be performed in a particular place within a customs controlled area, it shall be deemed to be performed in such place if performed in a place authorised by the Comptroller for that purpose.

7. Confidentiality

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

(2) A person exercising powers 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 –

(a) in the exercise of any power under this Act; or

(b) in relation to an assigned matter.

(3) A person exercising powers under this Act or in relation to an assigned matter who, having possession of or control over any information or document obtained as described in sub-section (2)–

(a) communicates such information or anything contained in such document to an unauthorised person; or

(b) permits an unauthorised person to have access to the documents or information, commits an offence and is liable on conviction to a fine of \$20,000.

(4) Nothing in sub-section (3) 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 pursuant to any law, treaty, agreement or arrangement concluded by Antigua and Barbuda.

(6) The information that may be disclosed under sub-section (5) includes, but is not limited to, information about–

(a) the movement of a conveyance (including passenger and crew lists);

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

8. Police powers of officers

For the purpose of carrying out the provisions of this Act or any other customs enactment, all customs officers have the same powers, authorities and privileges as are given by law to members of the Royal Police Force of Antigua and Barbuda.

9. Duty of Police to render assistance

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.

10. Hours of general attendance

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

11. Power to impose customs charges

The Minister may by Order published in the *Gazette* impose such charges as may be deemed necessary for the administration of the Customs Department.

PART III

CUSTOMS CONTROLLED AREAS

12. Appointment of customs ports and wharves

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

(2) The Comptroller may, in such manner as the Comptroller thinks fit, approve any place for—

- (a) the loading or unloading of any class or description of goods; or
- (b) the embarkation and disembarkation of passengers,
and any place so approved shall be referred to as an “approved wharf”.

(3) The Comptroller may, for the purpose of the boarding of or disembarkation from vessels or vehicles by customs officers, appoint boarding stations within a port.

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

- (a) permit a proper officer at any time to enter upon and inspect that port and all buildings and goods in it; and
- (b) if required by the Comptroller –
 - (i) keep a record, in such form and manner and containing such particulars as the Comptroller may direct, of any vessel or vehicle arriving or departing from that customs port;
 - (ii) keep that 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 or vehicle; 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 or fails to comply with any provision of this section commits an offence and is liable on conviction to a fine of \$10,000.

13. Customs airport

(1) The Minister may by Order published in the *Gazette* –

- (a) appoint any area in Antigua and Barbuda as a customs airport;
- (b) alter the name or limits of any customs airport;
- (c) revoke the appointment 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 Antigua and Barbuda 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 that customs airport and all buildings and goods in it; and
- (b) if required by the Comptroller –
 - (i) keep a record, in such form and manner and containing such particulars as the Comptroller may direct, of any aircraft arriving or departing from that customs airport;
 - (ii) keep that 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 or fails to comply with any provision of this section commits an offence and is liable on conviction to a fine of \$10,000.

14. Examination stations

(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 port or a customs airport or any other place for the loading, unloading or examination of goods and for the embarkation and disembarkation of passengers.

(2) An approval under sub-section (1) may be for such periods and subject to such conditions or restrictions as the Comptroller thinks fit.

(3) The Comptroller may at any time, in such manner as the Comptroller thinks fit, and for reasonable cause, revoke or vary the terms of any approval given under this section.

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

15. Transit sheds

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

(2) An approval under sub-section (1) may be for such periods and subject to such conditions and restrictions as the Comptroller thinks fit.

(3) The Comptroller may at any time, in such manner as the Comptroller thinks fit, and for reasonable cause, revoke or vary the terms of any approval given under this section.

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

PART IV

ARRIVAL AND DEPARTURE

16. Prior notification of arrival

(1) With respect to vessels and aircraft, unless exempted by the Comptroller due to proximity, at any time prior to the arrival of a vessel, but not less than 24 hours prior to arrival of a vessel, or prior to the arrival of an aircraft, but not less than 15 minutes after departure of the aircraft from the foreign airport, the master or commander or his agent shall file a declaration with the proper officer in the form and manner prescribed by regulations, including the following information —

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

(2) On the arrival of a conveyance within Antigua and Barbuda, the master, commander, driver or his agent must proceed directly to the customs place notified in accordance with paragraph (1)(b), unless directed elsewhere by the proper officer.

(3) An agent of the master, commander or driver referred to in sub-sections (1) or (2) may perform the duties referred to in sub-section (1) or (2) on behalf of the master, commander or driver.

(4) A master, commander, driver or agent who fails to comply with sub-section (1) or (2) or any direction given by the proper officer under sub-section (3), commits an offence and is liable on conviction to a fine of \$10,000.

17. Requirement to answer questions

(1) The master, commander, driver, owner, agent of the master, commander, driver or owner, the operator and any member of the crew of, and any passenger on, a conveyance to which this sub-section applies shall —

- (a) answer any question asked by the proper officer relating to the conveyance and any persons or goods that are or have been carried by the conveyance; and
- (b) at the request of the proper officer, produce any documents within that person's possession or control relating to any of those matters.

(2) Sub-section (1) applies to —

- (a) a conveyance that has arrived in Antigua and Barbuda from a place outside Antigua and Barbuda;
- (b) a conveyance departing from Antigua and Barbuda for a place outside Antigua and Barbuda;
- (c) a conveyance that is within Antigua and Barbuda that is carrying international cargo or international crew or any international passenger, whether or not the conveyance is also carrying domestic cargo; and

(d) any other conveyance that is within Antigua and Barbuda that a customs officer has reasonable cause to suspect has been, or is about to be, involved in —

(i) the commission of an offence under this Act; or

(ii) the importation or exportation of any dutiable, uncustomed, prohibited restricted or forfeited goods.

(3) A person referred to in sub-section (1) who —

(a) refuses to answer any question put to that person by the proper officer under sub-section (1)(a) or knowingly gives a false answer to any question; or

(b) fails to comply with any request made under sub-section (1)(b) commits an offence and is liable on conviction to a fine of \$10,000.

18. Request to stop a conveyance

(1) The master or driver of a conveyance arriving within Antigua and Barbuda shall, on being directed by the proper officer to do so —

(a) stop the conveyance for boarding; and

(b) ensure that the conveyance remains stopped until the proper officer directs that the conveyance may proceed.

(2) When a proper officer is on board a conveyance being used in the service of the State, that officer is required to properly identify himself.

(3) The master or driver shall, by all reasonable means, facilitate the boarding of the conveyance by the proper officer.

(4) The master or driver shall, if so directed by the proper officer, cause that conveyance to leave Antigua and Barbuda immediately.

(5) An officer who proposes to give a direction under sub-section (4) shall first obtain the approval of the Comptroller to do so.

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

19. Conveyance to arrive at notified place only

(1) Where a conveyance —

(a) arrives in Antigua and Barbuda; and

(b) is carrying persons or goods subject to the control of the Customs and Excise Division, brought in that conveyance or any other conveyance from a place outside Antigua and Barbuda,

the master, commander, driver or his agent shall ensure that the conveyance lands, anchors, or otherwise arrives only at the place notified by that person.

(2) On arrival at the notified place or the place directed to by the proper officer, or a customs controlled area within that place, and until an inward report in accordance with section 23 has been made, no person shall leave or board the conveyance unless authorised to do so by the proper officer.

(3) A person who contravenes sub-section (1) or acts in contravention of sub-section (2) commits an offence and is liable on conviction to a fine of \$25,000, or three times the value of the goods whichever is the greater.

20. Conveyance arriving at place other than notified place

(1) Nothing in section 19 applies to a conveyance that berths, lands, anchors, or otherwise arrives at a place other than the place notified in accordance with section 16 (1)(b) or at the place directed to by the proper officer under section 16 (3), if the arrival —

(a) is required by any statutory or other requirement relating to navigation;

(b) is compelled by accident, stress of weather, or other necessity; or

(c) is authorised by the Comptroller.

(2) The master, commander or driver —

(a) shall immediately report the arrival of the conveyance to the proper officer or to a police officer;

(b) shall not, without the consent of the proper officer, permit any goods carried in the conveyance to be unloaded from it, or any of the crew or passengers 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 the conveyance.

(3) Subject to any authorisation granted by the Comptroller, no member of the crew and no passenger on the conveyance shall, without the consent of the proper officer —

(a) unload goods from the conveyance; or

(b) depart from the vicinity of the conveyance,

and all such persons shall comply with any customs directions given by the proper officer.

(4) When a conveyance is directed by the proper officer pursuant to section 16 (3) to arrive at a place other than the place notified in accordance with section 16 (1)(b), no person shall depart from or board the conveyance unless authorised to do so by the proper officer.

(5) A person who fails to comply with or acts in contravention of this section commits an offence and is liable on conviction to a fine of \$25,000.

(6) Notwithstanding sub-section (5) —

(a) the departure of passengers or members of the crew from the vicinity of the conveyance; or

(b) the removal of goods from the conveyance,

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

21. Control of pleasure craft

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

(2) In this section, “pleasure craft” means —

(a) a vessel that, at the time of its arrival at a place in Antigua and Barbuda, is being used for private recreational purposes only; or

(b) a vessel that the proper officer, after application is made to him in writing, permits to be treated as a pleasure craft.

(3) Regulations under sub-section (1) may allow the Comptroller to give such directions as he thinks fit, and may provide for —

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

(b) the forfeiture of any vessel or goods involved in any such offence.

22. Report of arrival of conveyance

(1) A report shall be made of the arrival of a conveyance in accordance with sub-sections (2), (3) and (4) of this section.

(2) Where a vessel arrives at a port —

(a) from a place outside Antigua and Barbuda; and

- (b) carrying goods brought in that vessel from a place outside Antigua and Barbuda and not yet cleared on importation, the master shall, within **24** hours of that arrival, submit to the Comptroller a report in such form and manner and containing such particulars as the Comptroller may direct.
- (3) Where an aircraft arrives at a customs airport —
 - (a) from a place outside Antigua and Barbuda; and
 - (b) carrying goods or passengers taken on board that aircraft at a place outside Antigua and Barbuda, being goods or passengers either —
 - (i) bound for a destination in Antigua and Barbuda and not yet cleared at a port; or
 - (ii) bound for a destination outside Antigua and Barbuda,the commander shall, upon arrival and before departure, submit to the Comptroller a report in such form and manner and containing such particulars as the Comptroller may direct.
- (4) When there is a failure to make a report as required by this section, the master, commander, driver or agent commits an offence and is liable on conviction to a fine of \$10,000.
- (5) When a report made under this section is inaccurate, the maker of the report shall, within 72 hours of the making of the report or such longer period as the Comptroller may permit, be allowed to amend it.
- (6) When goods appear on any clearance or manifest required to be produced but do not appear in the report filed under this section, then, unless the report is amended under sub-section (6), the master, commander, driver or agent —
 - (a) commits an offence and is liable on conviction to fine of \$20,000 or three time the value of the goods, whichever is greater; and
 - (b) in addition to the fine, pay the duty on the goods.
- (7) When a report made under this section is inaccurate and the maker of the inaccurate report satisfies the Comptroller that the error was not made knowingly or recklessly, then, notwithstanding any other provision of any customs enactment —
 - (a) that person shall not be guilty of an offence; and
 - (b) where the error consisted of the omission or incorrect reporting of any goods, those goods shall not be liable to forfeiture.
- (8) A person making a report under this section shall —
 - (a) answer all questions relating to the vessel or aircraft or vehicle, and 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 conveyance, its cargo, stores, baggage, crew, passengers, voyage or flight as the proper officer may require.

(9) A person who contravenes sub-section (9) commits an offence and is liable on conviction to a fine of \$20,000

(10) If, at any time after a conveyance carrying goods from a place outside Antigua and Barbuda arrives in Antigua and Barbuda and, before a report has been made in accordance with this section —

(a) bulk is broken;

(b) goods are unloaded from or taken on board that conveyance;

(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; or

(d) goods are staved, destroyed or thrown overboard, or any container is opened,

then, unless the matter is explained to the satisfaction of the Comptroller, the master, commander, driver or agent commits an offence and is liable to a fine of \$25,000 or three times the value of the goods, whichever is the greater and any goods in respect of which the offence is committed are liable to forfeiture.

(11) The Comptroller may require goods reported as stores on board any vessel or aircraft, or any portion of such goods, to be entered for warehousing and, for the purposes of this sub-section, the master or commander or agent shall be deemed to be the importer of those 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, commander, driver or agent commits an offence and is liable on conviction to a fine of \$25,000.

23. Vessel or aircraft commissioned by State

(1) Notwithstanding any other provisions of this Act, the master of a vessel or his agent or the commander of an aircraft or his agent having a commission from the State or from any foreign state, who has on board any goods other than stores, laden at any port or place outside Antigua and Barbuda shall, on arrival in Antigua and Barbuda or when called upon to do so by a proper officer, before any of the goods are unloaded —

(a) provide a written account of —

- (i) the goods;
 - (ii) the quality and quantity of every package or parcel of such goods;
 - (iii) the marks and numbers thereon; and
 - (iv) the names of the respective consignors and consignees;
- (b) make a declaration at the foot of the account 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.

(2) The master or commander or his agent who contravenes sub-section (1) commits an offence and is liable on conviction to a fine of \$25,000.

(3) Vessels and aircraft referred to in sub-section (1) are subject to search as non-commissioned vessels and aircraft.

(4) Proper officers may freely enter and go on board vessels and aircraft referred to in sub-section (1), and bring from them or cause to be brought into the Queen's warehouse any goods found on board.

(5) Sub-sections (3) and (4) are subject to such regulations in respect of vessels or aircraft of war belonging to the State as shall be prescribed by the Minister.

(6) When there is a failure to make a report as required by this section, the master or commander or his agent commits an offence and is liable on conviction to a fine of \$10,000.

(7) When a report made under this section is inaccurate, the maker of the report shall, within 72 hours of the making of the report or such longer period as the Comptroller may permit, be allowed to amend it.

(8) When goods appear on any clearance or manifest required to be produced but do not appear in the report filed under this section, then, unless the report is amended under sub-section (7), the master or commander or his agent —

- (a) commits an offence and is liable on conviction to a fine of \$10,000; and
- (b) in addition to the fine, pay the duty on the goods.

(9) When a report made under this section is inaccurate and the maker of the inaccurate report satisfies the Comptroller that the error was not made knowingly or recklessly, then, notwithstanding any other provision of any customs enactment —

- (a) that person shall not be guilty of an offence; and
- (b) where the error consisted of the omission or incorrect reporting of any goods, those goods shall not be liable to forfeiture.

(10) A person making 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.

(11) Notwithstanding any fine imposed under sub-section (6), a person who contravenes sub-section (10) commits an offence and is liable on conviction to a fine of \$10,000.

(12) If, at any time after a vessel or aircraft carrying goods from a place outside Antigua and Barbuda arrives in Antigua and Barbuda and, before a report has been made 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; or
- (d) goods are staved, destroyed or thrown overboard, or any container is opened,

then, unless the matter is explained to the satisfaction of the Comptroller, the master or commander or his agent commits an offence and is liable on conviction to a fine of \$25,000.

(13) The Comptroller may require goods reported as stores on board any vessel or aircraft, or any portion of such goods, to be entered for warehousing and, for the purposes of this sub-section, the master or commander or his agent shall be deemed to be the importer of those goods.

(14) 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 or his agent commits an offence and is liable on conviction to a fine of \$25,000.

24. Disembarkation

(1) Subject to such exemptions as may be prescribed, a person who is on board a conveyance that has arrived in Antigua and Barbuda shall comply with every customs direction concerning disembarkation.

(2) For the purposes of this section and section 28, a customs direction includes a direction given by the person in charge of the conveyance or by a crew member at the direction of the proper officer.

(3) Subject to such exemptions as may be prescribed, every person who disembarks from a conveyance to which this section applies shall, unless otherwise directed by the proper officer —

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

(b) remain there 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.

(4) This section does not apply to a person authorised generally or specifically by the proper officer to act in contravention of section 25.

(5) The **disembarkation** of any person does not constitute an offence where the **disembarkation** is necessary for reasons of health, safety or the preservation of life.

(6) A person, other than a person exempted by sub-section (4), who knowingly fails to comply with any requirement imposed by this section commits an offence and is liable on conviction to a fine \$10,000.

25. Baggage to be presented

(1) Subject to such exemptions as may be prescribed, every person who disembarks from a conveyance that has arrived in Antigua and Barbuda from a place outside Antigua and Barbuda shall —

(a) present his accompanying baggage to the proper officer for examination by the proper officer;

(b) comply with any customs direction relating to the movement of the baggage within the customs controlled area or from any conveyance to a customs controlled area; and

(c) answer all questions related to matters covered by this Act.

(2) A person moving or handling the baggage referred to in sub-section (1) shall comply with every customs direction relating to the movement of the baggage within the customs controlled area or 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 conviction to a fine of \$10,000.

26. Persons departing from Antigua and Barbuda to depart from customs controlled area

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

(2) A person who knowingly fails to comply with any requirement imposed by this section commits an offence and is liable on conviction to a fine of \$10,000.

27. Embarkation

(1) A person preparing to board a conveyance for departure from Antigua and Barbuda shall comply with every customs direction concerning embarkation.

(2) A person who knowingly fails to comply with any requirement imposed by this section commits an offence and is liable on conviction to a fine of \$10,000.

28. Outgoing baggage to be presented

(1) Subject to such exemptions as may be prescribed, every person who arrives at a customs controlled area for embarkation on to a conveyance that has, as its destination, a place outside Antigua and Barbuda shall —

(a) upon request by the proper officer, make his accompanying baggage available for examination by the proper officer; and

(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 a conveyance.

(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 conveyance.

(3) A person who knowingly fails to comply with any requirement imposed by this section commits an offence and is liable on conviction to a fine of \$10,000.

29. Certificate of clearance

(1) Unless otherwise approved by the Comptroller, before any certificate of clearance is granted to the master or commander or agent of a vessel or aircraft to which section 29 applies, the master or commander or agent shall —

(a) submit to the proper officer within such time or times as may be prescribed, an outward report in such form and manner, and containing such particulars verified by declaration, as may be prescribed, and accompanied by such supporting documents as the proper officer may require;

- (b) answer any question asked by the proper officer relating to the vessel or aircraft and its passengers, crew, cargo, stores, and 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 Antigua and Barbuda;
 - (d) produce all books and documents in the custody or control of the master or commander referred to in sub-section (1) relating to the vessel or aircraft, its cargo, stores, baggage, crew, passengers, voyage or flight;
 - (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 intended voyage or flight; and
 - (f) comply with all requirements of this or any other Act concerning the vessel or aircraft and its passengers, crew, cargo, stores, and intended voyage or flight.
- (2) Where clearance is sought for a vessel or aircraft —
- (a) that is in ballast; or
 - (b) that has on board only stores, passengers' baggage or empty containers upon which no freight or profit as earned,
- the proper officer granting clearance shall clear the vessel or aircraft as in ballast.
- (3) Any master or commander who —
- (a) fails to comply with sub-section (1)(a);
 - (b) refuses to answer any question put to that person by the proper officer under sub-section (1)(b) or knowingly gives a false answer to a question; or
 - (c) fails to produce any documents required by the proper officer,
- commits an offence and is liable on conviction to a fine of \$20,000.
- (4) Where —
- (a) an outward report submitted pursuant to sub-section (1) is erroneous, misleading or defective in any material particular; or
 - (b) any document submitted in support of the report filed in accordance with sub-section (1) is not genuine or is erroneous or misleading, the master or commander commits an offence and is liable on conviction to a fine of \$25,000.

30. Clearance of conveyances

(1) Unless otherwise approved by the Comptroller, where a conveyance has, as its destination, a place outside Antigua and Barbuda, the master, commander, driver or agent shall not cause that conveyance to depart from Antigua and Barbuda unless that person has received clearance in the prescribed form.

(2) Subject to such exemptions as may be prescribed, the master, commander, driver or agent, referred to in subsection (1), shall not cause that conveyance to depart —

(a) from the place in Antigua and Barbuda where it first arrived; or

(b) from any subsequent place of call within Antigua and Barbuda,

without the permission of the proper officer and subject to the production to the proper officer of any documents that the proper officer may require and to any conditions imposed by the Comptroller.

(3) Where it appears to a customs officer that a conveyance is likely to depart for a destination outside Antigua and Barbuda without clearance, the officer may give such instructions and take, in accordance with section 123, such steps by way of the detention of the conveyance as appear to him necessary to prevent the departure.

(4) Where a conveyance required to be cleared under this section —

(a) departs from a customs place for a destination outside Antigua and Barbuda without valid clearance; or

(b) after clearance, calls at a customs place without the permission of the proper officer, the master, commander, driver or agent commits an offence and is liable on conviction to a fine of \$25,000 and the conveyance is liable to forfeiture.

(5) Notwithstanding sub-section (4), no offence is committed where the departure or call was caused by accident, stress of weather or other unavoidable cause.

(6) A clearance becomes void where 24 hours after the granting of the clearance —

(a) the vessel cleared has not left the territorial waters of Antigua and Barbuda; or

(b) the aircraft cleared has not taken off for a destination outside Antigua and Barbuda.

31. Production of certificate of clearance

(1) The master or commander or agent to whom a certificate of clearance has been granted shall, on demand by the proper officer, produce the certificate of clearance for examination by the proper officer and answer any question that the proper officer may put to him concerning the vessel or aircraft or its passengers, crew, cargo, stores, and intended voyage or journey.

(2) For the purposes of sub-section (1), a proper officer may go on board a vessel or aircraft that 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 limits of a port or within the territorial waters of Antigua and Barbuda; or

(b) in the case of an aircraft, at any time while the aircraft is at a customs airport.

(3) A master or commander or owner or his agent who —

(a) fails to comply with a demand made by the proper officer under this section; or

(b) refuses to answer any question put to that person under this section, or knowingly gives a false answer to a question, commits an offence and is liable on conviction to a fine of \$10,000.

32. Power to refuse or revoke clearance

(1) For the purpose of securing the detention of a conveyance in pursuance of any power or duty conferred or imposed by this or any other customs enactment, or for the purpose of securing compliance with any provision of a customs enactment, the proper officer may—

(a) at any time refuse clearance of any conveyance; or

(b) where clearance has been granted, at any time while —

(i) the vessel is within the territorial waters of Antigua and Barbuda;

(ii) the aircraft is at a customs airport; or

(iii) the vehicle is within the borders of Antigua and Barbuda, revoke any clearance previously granted.

(2) Revocation of a clearance may be made either orally or in writing to the master, commander, driver or agent, and if made in writing may be served —

(a) by delivering it to the master, commander, driver or agent personally;

(b) by leaving it at the last known place of abode or business in Antigua and Barbuda of the master, commander or driver; or

(c) by leaving it on board the conveyance with the person appearing to be in charge or command of it.

(3) A clearance becomes void upon revocation under sub-section (2).

(4) Where revocation of a clearance is made under sub-section (2) and that revocation is not complied with within 3 hours, the master, commander, driver or agent commits an offence and is liable on conviction to a fine of \$25,000.

33. Departure to be from customs controlled area only

(1) Subject to such exemptions as may be prescribed, a master, commander, driver or agent shall not, except with the prior permission of the Comptroller —

- (a) cause a conveyance to depart for a place outside Antigua and Barbuda from a place in Antigua and Barbuda other than from a customs controlled area; or
- (b) having obtained clearance from a customs controlled area in Antigua and Barbuda to depart for any point outside Antigua and Barbuda, cause that conveyance —
 - (i) to fail to depart immediately from that area; or
 - (ii) to go to any other place in Antigua and Barbuda.

(2) A master, commander, driver or his agent who contravenes this sub-section (1) commits an offence and is liable to a fine of \$25,000.

(3) Sub-section (1) does not apply to a conveyance that is compelled by accident, stress of weather, or other necessity to return to a place in Antigua and Barbuda, and in any such case, the provisions of section 20 apply, subject to any modification that may be necessary.

PART V**IMPORTATION****Entry and Accounting for Goods****34. Imported goods subject to customs control**

(1) Goods are subject to the control of the Customs and Excise Division from the time of importation until the time the goods are lawfully removed from a customs controlled area—

- (a) for home use;
- (b) for exportation from Antigua and Barbuda; or
- (c) under a customs procedure allowed under this Act, when the Comptroller is satisfied that all conditions have been met.

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

(3) Special requirements as to the handling or processing of goods prior to entry, including requirements for the measurement or weighing of goods, may be prescribed by regulations.

35. Entry of goods on importation

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

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

(a) fresh fish taken by any person legally entitled to fish in Antigua and Barbuda and brought by such person in his vessel; and

(b) passenger baggage.

(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 cases as the Comptroller may permit, for temporary retention with a view to subsequent exportation.

(4) Nothing in this section prevents, subject to such conditions as may be prescribed, the processing of an entry of goods prior to the importation of the goods into Antigua and Barbuda.

(5) When an entry made under sub-section (1) is inaccurate in any particular, the importer shall, within 48 hours 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) When an inaccurate entry is submitted, and the Comptroller is satisfied that the inaccuracy was inadvertent and immaterial except for statistical purposes, then, notwithstanding any other provision of any customs enactment —

(a) the importer shall not be guilty of any offence; and

(b) the goods shall not be liable to forfeiture,

by reason only of the inaccuracy of the entry.

(7) The Comptroller may, notwithstanding that no entry has been made under sub-section (1), permit the delivery of any bullion, currency, notes or coins imported into Antigua and Barbuda to the importer, but where the importer fails, within 48 hours after the bullion, currency, notes or coins has been delivered, to submit to the proper officer a full and true account, including weight and value of any such bullion, currency, notes or coins, the importer commits an offence and is liable on conviction to a fine of \$25,000.

(8) If, by the time set forth in regulations made in accordance with sub-section (1) for entry—

(a) no entry has been made; or

(b) goods have not been unloaded or produced for examination and clearance,

the master, commander, driver or agent in charge of the conveyance in which the goods were imported may enter, unload or produce the goods for examination and clearance.

(9) Where the importer enters goods subsequent to the filing of an entry under sub-section (8), that entry shall be substituted for the entry made under sub-section (8).

(10) A person entering goods may, in accordance with any conditions that the proper officer may impose —

(a) inspect the goods; or

(b) draw samples from the goods.

(11) Every person entering goods under this section shall —

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

(b) on the request of a proper officer, present the goods to the officer, remove any covering from the goods, unload any conveyance or open any part of it, or open and unpack any package that the officer wishes to examine.

(12) Subject to sub-sections (6) and (7), a person who contravenes this section commits an offence and is liable on conviction to a fine of \$10,000.

36. Entry by bill of sight

(1) Where an importer is unable for want of full information to make a perfect entry in accordance with this Act, he 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 sub-section (1) has been made, the Comptroller shall permit —

(a) the importer to examine the goods; and

(b) the entry and delivery of the goods where —

(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, such weight or measurement as declared on the entry is correct.

37. Provisional Assessment

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

- (a) examined and a provisional assessment be made by the proper officer of the value of and duty payable on the goods; and
- (b) provisionally entered based on the payment of the amount of duty calculated by the importer, such amount being brought to account as revenue.

(2) Pending final entry of the goods, the importer shall, in addition to the amount paid under sub-section (1)(b), pay as a deposit to the Comptroller, an amount equal to fifty per cent of any additional duty provisionally assessed under sub-section (1)(a).

(3) The importer may, with the approval of the Comptroller, secure the deposit payable under sub-section (2) by means of a bond.

(4) When goods are provisionally entered pursuant to sub-section (2), notice in writing, in such form as the Comptroller thinks fit, shall be given to the importer indicating —

- (a) the provisional assessment pursuant to sub-section (1)(a);
- (b) the basis for the assessment; and
- (c) the documents or other information relating to the value of the goods that the importer is required to produce within 30 days of the provisional entry.

(5) The amount of duty that was provisionally assessed under sub-section (1)(a) shall be treated as the final assessment and the deposit paid shall be brought to account as revenue where —

- (a) the documents or other information required under sub-section (4) have not been produced within the specified time; or
- (b) the importer informs the Comptroller in writing before the expiration of the time specified that he is unable to produce any further documents or information, unless the importer commences proceedings with the Customs Appeals Commission within the required time period.

(6) The Comptroller shall notify the importer of a final assessment determined under sub-section (5) within two weeks of the date of the assessment.

(7) Where the additional documents or other information required under sub-section (4)(c) have been provided to the satisfaction of the Comptroller and the duty assessed by the Comptroller is more than or less than the provisional assessment made under sub-section (1)(a), the difference in duty shall either be refunded to or paid by the importer and any bond secured for the payment of duties or charges shall be cancelled.

38. Removal of goods from customs controlled area

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

- (a) with the permission of the proper officer after entry has been made in the prescribed form and manner and accepted;
- (b) pursuant to a permit or other authorisation granted by the Comptroller in respect of those goods, subject to such conditions as 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 sub-section (1)(a), while goods remain subject to the customs control, the Comptroller may revoke any notice of delivery given in respect of those goods.

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

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

39. Removal of uncleared goods to customs warehouse

(1) When in the case of imported goods —

- (a) clearance has not taken place within 7 days of importation by air, within 14 days of importation by sea, within 30 days of the transshipment of goods, within 21 days of importation from the date when report was made of the importing vessel or aircraft under section 23 and section 24 or, where no such report was made, the date when it should properly have been made; or
- (b) the goods have been cleared, but they have not been unloaded from the importing conveyance by the expiration of the period in sub-section (a), then the proper officer may, subject to sub-section (2), cause the goods to be deposited in a Queen's warehouse in accordance with the provisions of Part VIII.

(2) Goods shall be deposited in a Queen's warehouse unless they are —

- (a) of a type set out in the First Schedule; or
- (b) in the opinion of the Comptroller, of a perishable nature,

in which case the Comptroller may sell or otherwise dispose of them.

(3) The Comptroller shall provide notice to the importer or his agent within 7 days of the decision to remove the goods under subsection (1) or to sell or otherwise dispose of them under sub-section (2).

(4) Where a restriction is placed upon the unloading of goods from a conveyance by virtue of an enactment relating to the prevention of an epidemic or infectious disease, then, in relation to those goods, the date of the removal of the restriction will be deemed to be the date of importation.

40. Control of movement of uncleared goods

(1) The Minister may make regulations as to the manner in which, and the conditions under which, goods subject to this section may be moved within any customs controlled area, between customs controlled areas or between a customs controlled area and any other place.

(2) This section applies to —

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

(3) Regulations issued under sub-section (1) may require that goods referred to in sub-section (2) only be moved —

- (a) by a person licenced by the Comptroller for that purpose; or
- (b) in such conveyance, or by such other means, as may be approved by the Comptroller for that purpose.

(4) A licence or approval for the purposes of sub-section (3) may be granted for such periods and be subject to such conditions and restrictions as the Comptroller thinks fit.

(5) The Comptroller may, at any time, in such manner as he thinks fit and for reasonable cause, revoke or vary the terms of any licence or approval granted under this section.

(6) A person who contravenes or fails to comply with any —

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

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

41. Control of movement of goods

(1) The Comptroller may impose conditions and restrictions with respect to the movement of imported goods between the place of importation and —

- (a) a place designated by the Comptroller for the entry and clearance of those goods; or
- (b) the place of exportation of those goods.

(2) Any condition or restriction imposed under sub-section (1) may —

- (a) require the goods to be moved within such period and by such route as may be specified by or under regulations;
- (b) require the goods to be carried in a vehicle or container complying with regulations and secured in such manner as may be specified under regulations; and
- (c) prohibit, except in such circumstances as may be so specified, the unloading or loading of the vehicle or container or any interference with its security.

(3) Any document required to be created or produced as a result of a direction under sub-section (1) shall be created or produced in such form and manner and contain such particulars as the Comptroller may direct, but the Comptroller may relax any requirement that a specific document be created or produced and if he does so may impose substituted requirements.

(4) A person who contravenes or fails to comply with any direction under sub-section (1) commits an offence and is liable on conviction to a fine of \$10,000 and any goods in respect of which the offence was committed shall be liable to forfeiture.

42. Treatment of improperly imported goods

(1) Subject to sub-section (3), and notwithstanding any other provision of this or any other customs enactment, goods shall be liable to forfeiture where such goods are —

- (a) unloaded at any port, unloaded from an aircraft, unloaded from a vehicle, 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 under or by virtue of any written law;
- (c) prohibited or restricted goods by or under any written law and are found, whether before or after unloading, to have been concealed in any manner on board a conveyance;

- (d) chargeable with duty and are found, whether before or after unloading, to have been concealed in any manner on board a conveyance;
 - (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 appearing to be intended to deceive a customs officer.
- (2) Sub-section (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 conviction to a fine of \$100,000 dollars, or three times the value of the goods, whichever is greater and the consignment shall be forfeited.

43. Importation by post

- (1) This Act applies to postal packets and mail in the same manner, so far as is reasonable, as it applies to any other goods and —
- (a) persons may be punished for offences against this and any other customs enactment;
 - (b) goods may be examined and seized; and
 - (c) in relation to any matter mentioned in paragraph (a) or (b), legal action may be taken.
- (2) Where goods contained in a postal packet do not correspond with any declaration of contents made in respect of them, those goods shall be liable to forfeiture.
- (3) Unless otherwise provided by law, postal packets imported into Antigua and Barbuda shall not be removed from customs control until all duty chargeable on the goods has been paid.
- (4) The Postmaster General shall have the right of recovery for the amount he would have been entitled to as postage from any sum paid in pursuance of any customs enactment or otherwise under customs regulations in respect of any postal packet.

44. Time of importation

The time of importation of goods shall be deemed to be —

(1) where the goods are brought by sea, the time when the vessel carrying the goods comes within the territorial waters of Antigua and Barbuda;

(2) where the goods are brought by air, the time when the aircraft carrying them lands in Antigua and Barbuda; or

45. Appointment of entities to collect duties and taxes

The Minister may appoint entities to collect duties and taxes assessed by Customs and may make regulations therefore.

PART VI**EXPORTATION AND LOADING****46. Goods for export subject to customs Control**

(1) Goods to be exported are subject to customs control —

(a) if the goods are in a package to which a customs seal has been applied, from the time when a customs seal is first applied to the package until the exportation of the goods to a place outside Antigua and Barbuda whether or not any other paragraph of this sub-section applies to the goods;

(b) where the goods are to be exported under drawback, from the time of the claim for drawback or the time the goods are brought to a customs controlled area for exportation, if earlier, until the exportation of the goods to a place outside Antigua and Barbuda; and

(c) where the goods are to be exported otherwise than under drawback, from the time when the goods are brought to a customs controlled area for exportation (whether or not the goods are later transported from that area to any other location, and, if the goods are transported to another location, during the transportation, until their exportation to a place outside Antigua and Barbuda.

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

47. Entry of goods for exportation

(1) Subject to section 49, the exporter of goods, other than passengers' accompanied baggage, shall submit to the proper officer an export entry covering those goods —

(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 makes an entry under this section shall —
 - (a) answer any question asked by the proper officer with respect to the goods; and
 - (b) at the request of the proper officer, present the goods to the officer, remove any covering from the goods, unload any conveyance or open any part of it, or open and unpack any package that the officer wishes to examine.
- (3) Where an entry made under sub-section (1) is incorrect, the exporter shall, within 48 hours after the submission of the entry or such longer period as the Comptroller may permit, be allowed to submit to the Comptroller a full and accurate entry covering the goods.
- (4) Where the Comptroller is satisfied that the error under sub-section (3) was not made knowingly or recklessly, then, notwithstanding any other provision of any customs enactment —
 - (a) the person making the entry shall not be guilty of any offence by reason only of the error; and
 - (b) the goods that were the subject of the error shall not be liable to forfeiture by reason only of the error.
- (5) Where goods that have been declared for exportation or for use as stores are not loaded on to the conveyance for which they are cleared, or are not exported according to the export entry, the goods shall be liable to forfeiture unless within 24 hours of the departure of that conveyance the person who made the entry notifies the proper officer of the failure and the reasons for it.
- (6) Where the Comptroller receives notice in accordance with sub-section (5), he —
 - (a) shall cancel or amend the export entry; and
 - (b) may, where applicable, allow the goods to be released from the control of customs.
- (7) Except as otherwise permitted by the Comptroller, if goods are put on board a conveyance for exportation or for use as stores before the export entry in respect of them has been made, those goods shall be liable to forfeiture.
- (8) Where the placing on board referred to in sub-section (7) was done fraudulently, any person concerned in that act commits an offence and shall be arrested, and on conviction is liable to a fine of \$25,000.

48. Comptroller may waive conditions of shipment

- (1) The Comptroller may waive any of the requirements imposed by section 48 (1) in relation to any class or description of goods, subject to such conditions and restrictions as he may see fit to impose.
- (2) The Comptroller may direct what goods need not be declared for export by the exporter until after the departure of the conveyance by which the goods are exported.

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

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

(5) Where goods are not declared for export within the time provided by sub-section (3), the exporter commits an offence and is liable on conviction to a fine of \$10,000 or three times the value of the goods, whichever is the greater.

49. Entry outwards of conveyances

(1) Unless the Comptroller otherwise permits —

(a) before goods for exportation or use as stores are loaded on to a vessel or aircraft; or

(b) where a vessel or aircraft carrying goods arrives at a port but it is intended that it will proceed to a destination outside Antigua and Barbuda, the master or commander or agent shall submit to the proper officer an entry outwards for the vessel or aircraft, in such form and containing such particulars as the Comptroller may direct.

(2) Where a vehicle carrying goods arrives at a border point and it is intended that it will proceed to a destination outside Antigua and Barbuda, the driver must stop at the border and make an entry outwards describing the goods contained in the vehicle and submit any required customs documents related to goods for export or goods under customs control.

(3) Where an entry outwards made under sub-section (1) or (2) is incorrect, the person who made it shall, within 48 hours of the making of the entry outwards or such longer period as the Comptroller may permit, be allowed to amend it.

(4) Where the Comptroller is satisfied that the error was not made knowingly or recklessly, then, notwithstanding any other provision of any customs enactment —

(a) the person making the entry outwards shall not be guilty of any offence; and

(b) the goods that were the subject of the error shall not be liable to forfeiture, by reason only of the error.

(5) Where —

(a) a person who is required by sub-section (1) or (2) to make an entry outwards fails to do so, that person commits an offence and is liable to a fine of \$10,000; and

(b) where goods are loaded on board a conveyance in contravention of sub-section (1)—

- (i) those goods are liable to forfeiture; and
- (ii) the master, commander, driver or agent commits an offence and is liable on conviction to a fine of \$10,000 or three times the value of the goods, whichever is the greater.

50. Security for exportation of goods

(1) Where warehoused goods or goods subject to drawback 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 those goods if they had been imported into Antigua and Barbuda for home use.

(2) The security under sub-section (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 those goods to the satisfaction of the Comptroller.

51. Exportation by post

(1) This Act applies to postal packets and mail in the same manner, so far as is reasonable, as it applies to any other goods and —

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

(2) Where goods contained in a postal packet do not correspond with any declaration of contents made in respect of them, those goods shall be liable to forfeiture.

52. Time of exportation

The time of exportation of goods shall be deemed to be the time when the goods are put on board a vessel or aircraft with the intention that they should be exported in that vessel or aircraft or, in the case of goods being exported by vehicle, at the time of leaving Antigua and Barbuda.

53. Offences in relation to exportation

(1) If goods that have been loaded or retained on board a conveyance for exportation or for use as stores are not exported and discharged at a place outside Antigua and Barbuda or used as stores, but are unloaded in Antigua and Barbuda, then unless —

- (a) the unloading was authorised by the proper officer; and
- (b) except where that officer otherwise permits, duty chargeable on those goods is paid and drawback or other allowance made in respect of those goods is repaid, the master, commander, driver or any other person involved in the unloading of the goods from the conveyance commits an offence.

(2) The Comptroller may impose such conditions and restrictions as he thinks fit with respect to goods covered by this section and any failure to comply with this subsection is an offence.

(3) If, after a conveyance has obtained clearance but before it has left Antigua and Barbuda, it is discovered that goods cleared for exportation or for use as stores are no longer on board, then, unless those goods —

- (a) have been unloaded with the permission of the proper officer; or
- (b) are stores that could reasonably have been consumed since the granting of the clearance, the master, commander, driver or agent commits an offence and is liable to pay, in addition to any fine that may be imposed under sub-section (5) the duty that would have been payable on those goods if entered for home use.

(4) A person commits an offence if that person —

- (a) exports, or causes to be exported, 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;
- (b) exports, or causes to be exported, goods found not to correspond with the export entry made in respect of them; or
- (c) exports, or causes to be exported —
 - (i) warehoused goods;
 - (ii) goods chargeable with duty that have been transferred from an importing conveyance; or
 - (iii) goods entitled to drawback on exportation,

in a vessel of less than 5 tons burden.

(5) Where a person commits an offence under this section, he is liable to a fine of \$25,000 or three times the value of the goods, whichever is the greater, and the goods are liable on conviction to forfeiture.

PART VII

COASTING TRADE

54. Definition of coasting trade

(1) Subject to this Part —

- (a) the carriage of goods by sea or by air from one part of Antigua and Barbuda to another part of Antigua and Barbuda shall be deemed to be coasting trade; and
- (b) any vessel or aircraft whilst so employed in the carriage of goods shall be deemed to be a coasting vessel or coasting aircraft.

(2) If any doubt arises as to what constitutes a carriage by sea, the Minister may determine and direct in what cases the trade by water from one port or place in Antigua and Barbuda to another port or place in Antigua and Barbuda shall be deemed a carriage by sea within the meaning of any customs enactment.

(3) Goods shall not be carried in a coasting vessel or aircraft except such as shall be loaded to be carried coastwise at some port or place in Antigua and Barbuda.

55. Limits on coasting trade

(1) Subject to sub-section (2) —

- (a) goods not yet entered on importation; and
- (b) goods for exportation,

shall not be carried by way of coasting trade in any vessel or aircraft used for that purpose.

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

- (a) a coasting vessel or aircraft to carry goods by way of coasting trade notwithstanding that the vessel or aircraft is also carrying goods brought in it from a place outside Antigua and Barbuda and not yet entered in Antigua and Barbuda without being treated as a coasting vessel or a coasting aircraft;
- (b) goods brought by another vessel or aircraft to a place in Antigua and Barbuda from a place outside Antigua and Barbuda that are consigned to and intended to be delivered to another place in Antigua and Barbuda to be transferred before entry of the goods

has been made to a coasting vessel or a coasting aircraft for carriage by way of coasting trade to that other place; or

- (c) a vessel or aircraft that has begun to load goods for exportation or for use as stores on a voyage to a destination outside Antigua and Barbuda to carry goods by way of coasting trade until that loading has been completed.

(3) Where goods are —

- (a) carried by way of coasting trade in contravention of sub-section (1); or
- (b) loaded, unloaded, carried or otherwise dealt with contrary to any condition or restriction imposed by the Comptroller under sub-section (2) or (3), the master or commander or agent commits an offence and is liable on conviction to a fine of \$10,000 or three times the value of the goods, whichever is the greater.

56. Provisions relating to vessels and aircraft from places outside Antigua and Barbuda

(1) Notwithstanding any provision in any customs enactment to the contrary, where a vessel or an aircraft arrives in Antigua and Barbuda from a place outside Antigua and Barbuda—

- (a) having on board cargo intended to be delivered at more than one customs place in Antigua and Barbuda; or
- (b) intending to load cargo for a foreign place at more than one customs place in Antigua and Barbuda, 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 Antigua and Barbuda without being deemed a coasting vessel or aircraft.

(2) Goods referred to in sub-section (1) shall be completely separated from the inward cargo still on board, to the satisfaction of the proper officer.

(3) A vessel or an aircraft engaged in conveying goods only from one customs controlled area within Antigua and Barbuda to another customs controlled area within Antigua and Barbuda shall not, by reason thereof, be deemed a coasting vessel or coasting aircraft within the meaning of the Act.

57. Clearance of coasting vessels and aircraft

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

(2) The declaration to be submitted to the proper officer under sub-section (1) shall be in such form and manner and containing such particulars as the Comptroller may direct, and the declaration, when signed by the proper officer, will serve as the clearance of that vessel or aircraft.

(3) Where no officer is stationed at the place where a declaration is required to be produced under sub-section (1), the vessel or aircraft may depart from that place and the declaration shall be produced to a proper officer at the first customs place at which the vessel or aircraft arrives where an officer is stationed.

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

(5) A general clearance granted under sub-section (4) may be revoked at any time by the Comptroller by notice in writing delivered to the master or owner of the vessel or the commander or owner of the aircraft or to any member of the crew on board that vessel or aircraft.

(6) Except as provided by this section, where a coasting vessel or coasting aircraft carrying goods departs from a place in Antigua and Barbuda —

(a) without clearance; or

(b) in contravention of any condition or restriction imposed by the Comptroller upon a general clearance of that vessel or aircraft under sub-section (4), the master or commander or agent commits an offence and is liable on conviction to a fine of \$10,000 or three times the value of the goods, whichever is the greater.

58. Comptroller may vary procedure

Notwithstanding anything to the contrary contained in this Part, the Comptroller may permit the loading and clearance for export and the entry and unloading of a vessel or aircraft and goods under such conditions as he may, in any particular case, think fit.

59. Coastwise passengers

The carriage of passengers, officers, and crew coastwise, whether or not in a coasting vessel or aircraft, shall be subject to regulations made under this Act.

60. Cargo book

(1) The master of a coasting vessel and the commander of a coasting aircraft shall keep a cargo book in such form and manner and containing such particulars as may be prescribed.

(2) The master of a coasting vessel or the commander of a coasting aircraft shall, upon a demand made by the proper officer, produce the cargo book of that vessel or aircraft for inspection.

(3) Subject to sub-section (4), where —

(a) goods have been loaded onto or unloaded from a coasting vessel or a coasting aircraft at a place in Antigua and Barbuda, then, before that vessel or aircraft departs from that place; or

- (b) a coasting vessel or a coasting aircraft arrives at a place in Antigua and Barbuda where goods are to be unloaded, then before any goods are unloaded, the master, commander or agent shall produce to the proper officer the cargo book of that vessel or
aircraft.

(4) Where no customs officer is stationed at the place referred to in sub-section (3), the vessel or aircraft may depart from that place, or unload, and the cargo book shall be produced to a proper officer at the first place the vessel or aircraft arrives where an officer is stationed.

(5) The master of a coasting vessel or the commander of a coasting aircraft who fails to keep or produce a cargo book as required by this section, commits an offence and is liable on conviction to a fine of \$10,000 or three times the value of the goods, whichever is greater, and goods unloaded in contravention of sub-section (3) are liable to forfeiture.

61. Examination of goods in coasting vessels

(1) The proper officer may examine goods carried or to be carried in a coasting vessel —

(a) at any time while they are on board the vessel; or

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

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

(3) The proper officer —

(a) may board and search a coasting vessel at any time during its voyage; and

(b) may at any time require any document that should properly be on board a coasting vessel to be produced or brought to the proper officer for examination, and the master or agent who does not allow boarding or fails to produce any document that should be on board to the proper officer when required commits an offence and is liable **on conviction** to a fine of \$10,000.

62. Offences in relation to carriage of goods coastwise

(1) Where, in the case of a coasting vessel or coasting aircraft —

(a) goods are taken on board or unloaded at a place outside Antigua and Barbuda; or

(b) the vessel or aircraft touches at some place outside Antigua and Barbuda or deviates from its voyage or flight, and the master, commander or agent does not report that fact in writing to the proper officer at the first place in Antigua and Barbuda where the vessel or aircraft arrives where an officer is stationed, those goods are liable to forfeiture and the master, commander, owner or agent commits an offence and is

liable on conviction to a fine of \$10,000 or three times the value of the goods, whichever is greater.

(2) If goods —

(a) are carried by way of coasting trade or shipped for use as stores on a coasting vessel or a coasting aircraft contrary to any requirement in force with respect to those goods under or by virtue of any written law; or

(b) are brought to any place in Antigua and Barbuda for the purpose of being carried or shipped contrary to any requirement in force in respect of those goods, any person who caused the goods to be so carried or shipped commits an offence and is liable on conviction to a fine of \$10,000 or three times the value of the goods, whichever is greater and the goods are liable to forfeiture.

PART VIII

WAREHOUSING

63. Approval of warehouses

(1) The Comptroller may approve as a warehouse any secured place in Antigua and Barbuda for the deposit, keeping and security of goods chargeable with customs duties or goods for exportation or for use as stores.

(2) Where the Comptroller is satisfied that an applicant is a fit and proper person to operate a warehouse, he may issue a licence subject to such terms and conditions as the Comptroller may stipulate, and upon payment of the prescribed fee.

(3) Warehouses may be approved under subsection (1) for the following purposes:

(a) short-term storage;

(b) long-term storage under bond;

(c) manufacturing in bond;

(d) storage of unclaimed or abandoned goods;

(e) storage of goods imported contrary to this or any other enactment;

(f) storage of ships' stores; or

(g) storage of goods for duty-free shops.

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

(5) The Comptroller may —

(a) restrict the goods which may be permitted to be warehoused in a particular warehouse to those 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, which minimum amount in respect of warehouses restricted under paragraph (a) may differ from the amount in respect of warehouses not so restricted.

(6) The occupier of the warehouse shall be liable for contravention of any condition or restriction imposed under subsection (3).

(7) The occupier shall post a bond, as prescribed in the regulations, as security for the liability imposed under subsection (3).

(8) When, after the approval of a secured place as a warehouse under subsection (1), the occupier of that warehouse contravenes any condition or restriction imposed by the Comptroller under subsection (2), (3) or (4), the occupier commits an offence and is liable on conviction to a fine of \$20,000 or three times the value of the goods, whichever is greater.

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

(10) Where 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 when the revocation is due to take effect or the approval is due to expire, hereinafter referred to as the "date of cessation", give notice of his intention in writing, and such notice shall be deemed to have been served on all persons interested in any goods then deposited in that warehouse, or permitted by or under this Act to be so deposited between the date of the giving of the notice and the date of cessation, if addressed to the occupier of, and left at, the warehouse.

(11) If, after the date of cessation or such later date as the Comptroller may permit, uncleared goods remain in a place no longer approved under subsection (1), such goods may be taken by a proper officer to a customs controlled area and, without prejudice to any other power or earlier sale provided by this Act, if they are not cleared within one month, they may be sold.

64. Maintenance of goods

(1) Goods deposited in a warehouse shall be arranged, stowed and maintained in a manner that permits easy access to the goods.

(2) The Comptroller may give such 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 conviction to a fine of \$10,000.

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

(5) An occupier who fails to produce the goods in accordance with sub-section (4) commits an offence and is liable on conviction to a fine of \$25,000 or three times the value of the goods, whichever is greater.

65. Regulations

(1) The Minister may make regulations for the proper control and management of goods in a warehouse.

(2) The Minister may make regulations allowing for private sector management and control of any warehouse.

66. Goods not to be warehoused

(1) No class or description of goods in the First Schedule may be warehoused, except for those goods constructively warehoused for short-term storage.

(2) The Minister may, by Order published in the *Gazette*, delete from or add to the list of class or description of goods in the First Schedule.

(3) Unless the Comptroller may otherwise permit, and subject to such conditions and restrictions as he thinks fit to impose, no warehoused goods may remain warehoused for longer than two years, and any warehoused goods that remain warehoused after such time, may be sold or otherwise disposed of.

(4) The Minister may, by Order published in the *Gazette*, prescribe any class or description of goods that may not remain warehoused for a period longer than two months and may, by Order published in the *Gazette*, delete or add to the list of class or description of goods covered by this subsection.

(5) Goods that are warehoused contrary to this section are liable to forfeiture.

67. Re-entry

(1) Goods permitted to be removed from a warehouse for transport to another warehouse may, at any time before they have been physically placed in the warehouse —

(a) be entered by their owner for home use, if eligible, or for exportation or use as stores, and shall then be dealt with as if they had been entered or withdrawn from the warehouse; or

(b) be removed for transport to another warehouse approved for warehousing of such goods, and shall then be dealt with as if they had been warehoused and removed for transport.

(2) If the owner, with the concurrence of the occupier, 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, where 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.

(3) Goods shall not be re-warehoused under this section after three years in a warehouse.

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

68. Removal from warehouse

(1) Goods may be examined by a proper officer upon removal from warehouse for home use, for entry for use as stores or for export.

(2) The occupier shall be liable for the duty due on any discrepancy not otherwise allowed by law discovered in the goods at the time of delivery for entry for home use, for entry for use as stores, for export or at any earlier time that a discrepancy is discovered.

(3) 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, subject to such allowances as are by law permitted, be paid to the Comptroller, unless the excess is otherwise permitted by law.

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

69. Loss or deterioration of goods

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

(a) the duty that such goods would have borne if they had been entered for home use on the date of the discovery of the deficiency; or

(b) in the case of goods not eligible for home use, an amount that is, in the opinion of the Comptroller, the value of the goods, and

the occupier commits an offence and is liable on conviction to a fine of \$10,000 or three times the value of the goods, whichever is the greater.

(2) Where goods have, without payment of duty, been lawfully removed from a warehouse for transport to another warehouse or to some other place, and they fail to reach that other warehouse or place, then, notwithstanding any other fine or liability to forfeiture incurred under this Act the transporter of the goods shall pay to the Comptroller —

(a) The duty that such goods would have borne if they had been entered for home use on the date of their removal from the warehouse; or

(b) in the case of goods not eligible for home use, an amount that is, in the opinion of the Comptroller, the value of the goods, and the transporter of the goods commits an offence and is liable on conviction to a fine of \$10,000 or three times the value of the goods, whichever is the greater.

(3) Where warehoused goods are damaged, destroyed or unlawfully removed by or with the assistance of a customs officer and that officer is convicted of an offence in relation to that damage, destruction or removal, then, except where the occupier of the warehouse or the owner of the goods was a party to the offence, the Comptroller shall pay compensation for any loss caused by the damage, destruction or removal, and notwithstanding any other provision of any customs enactment, no duty shall be payable on the goods by the occupier or the owner and any sum paid by way of duty before the conviction of the customs officer shall be repaid.

70. Payment of duties

(1) Unless otherwise permitted under this Act, goods may not be removed from warehouse until all duty chargeable on those goods, and any charges in respect of the removal of the goods from warehouse have been paid and, in the case of goods requiring entry and not yet entered, until entry of those goods has been made.

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

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

(4) Where the goods are spirits, wine or tobacco, and the goods are removed from the warehouse within two years of entry into a warehouse, the calculation shall be in accordance with the quantity of the goods ascertained by weight, measure or strength at the time of removal of the goods, unless 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 other legitimate cause, in which case the calculation shall be in accordance with the account made at the time of entry into the warehouse.

(5) Where, within two years, warehoused goods have deteriorated or have been changed to such a degree that the Comptroller is satisfied that they have become worthless, he may allow such abatement of the duty chargeable on them as, in his opinion, the amount of the deterioration or damage bears to the original value of the goods.

(6) The abatement shall be allowed where the deterioration or change occurred within two years of the entry into warehouse or such longer period as is otherwise allowed under this Act.

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

(8) Where any condition or restriction imposed under subsection (1) is contravened, the goods shall be liable to forfeiture.

PART IX

DUTIES, REFUNDS AND DRAWBACK

71. Power to impose duties

(1) The Parliament may, by resolution, impose import and export duties upon any goods imported into or exported from Antigua and Barbuda and may revoke, reduce, increase or alter any such duties chargeable.

(2) Notwithstanding subsection (1), the Minister may, by interim Order —

(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) impose new import or export customs duties.

(3) The duties or exemptions imposed by subsection (2) shall apply from the date of publication of the Order in the *Gazette* until the expiration **date** of the Order, but in no case may they apply for longer than six months.

(4) The Minister may, by Order **exempt imported or exported goods from payment of customs duties in the public interest as of the date thereof, but such Order shall thereafter be published in the Gazette specifying the name of the beneficiary and the amount of the exemption.**

(5) The name of the beneficiary and the amount of **the exemption exceeding \$10,000** granted under subsection (4) **shall** be reported to Parliament and to the Public Accounts Committee **annually**.

(6) 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 in regulations.

(7) Goods may be entered into Antigua and Barbuda without payment of customs duties where —

(a) the Comptroller permits goods to be imported into Antigua and Barbuda for temporary use for such periods as the Comptroller may see fit to allow;

(b) goods permitted to be warehoused on importation into Antigua and Barbuda 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 Antigua and Barbuda are exported to another country and then are re-imported into Antigua and Barbuda and it is shown to the satisfaction of the Comptroller that —
 - (i) no duty was chargeable on those goods on any previous importation into Antigua and Barbuda, or if any duty was chargeable, it has been paid;
 - (ii) no drawback has been paid or duty refunded on the exportation of the goods or any drawback paid or duty refunded has been repaid; and
 - (iii) the goods have not undergone any process outside Antigua and Barbuda since their exportation.

(8) Where goods are exported for repairs and re-imported, upon re-importation duty will be payable only on the value of the repairs made abroad.

(9) 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, the duty becomes payable by the person who, but for that exemption, would have had to pay the duty, and the goods in respect of which the exemption was granted become liable to forfeiture.

(10) Goods exempted from duty by virtue of any provision of any customs enactment shall, upon a demand made by a customs officer, be produced or otherwise accounted for to the officer.

(11) A person who fails to produce or account for goods referred to in sub-section (9) commits an offence and is liable on conviction to a fine of \$25,000 or three times the value of the goods, whichever is greater.

(12) If the goods referred to in sub-section (9) are subsequently found, they are liable to forfeiture.

72. Rate of duty

(1) Unless otherwise provided under this Act, duty shall be payable on goods at the rate in force with respect to goods of that class or description —

- (a) when an entry for home use is submitted, whether in electronic or other form, when the entry is delivered to a proper officer in respect of goods imported in Antigua and Barbuda;
- (b) when an export entry is submitted, whether in electronic or other form, when the entry is delivered to a proper officer in respect of goods to be exported from Antigua and Barbuda;

- (c) where goods are removed from a conveyance under any bond or other security, at the time of the delivery of the goods;
- (d) where goods are removed from a warehouse for home use, at the time of the removal of the goods from warehouse;
- (e) where goods are exported, at the time of release for export; and
- (f) in any other case, at the time of the importation or exportation of the goods.

(2) The person making an entry of goods shall, upon making the entry, specify the classification of the goods, specify the appropriate customs procedure code, and, in the case of manual transactions, specify the rate of duty applicable to the goods.

73. Valuation

(1) The valuation of goods shall be in accordance with the World Trade Organization (WTO) Valuation Code, as set forth in the Second Schedule.

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

(3) The currency exchange rate in effect on the date of submission of the entry will apply in determining the value of goods, unless otherwise provided for by regulations.

74. Assessment of duty

(1) An entry with respect to the importation or exportation of goods, made under this Act, will be deemed by the Comptroller to be an assessment by the importer or exporter as to the value of the goods, the duty rate applicable to those goods, and any other determinations required before importation or exportation, unless otherwise provided in this Act.

(2) Where the Comptroller has reasonable cause to suspect that duty or other charges is payable on goods for which no entry 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.

(3) The importer or exporter shall be advised of the assessment under subsection (1) or (2) by notice in writing.

(4) The Comptroller may make any amendments to an assessment of duty due that 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.

(5) Where a re-assessment is made under this section and it has the effect of imposing a new liability or altering an existing liability, written notice to that effect shall be given by the Comptroller to the importer or exporter.

(6) The Comptroller is not entitled to make amendments to a duty assessment after the expiration of 7 years from the date on which the original assessment was made.

(7) An importer or exporter who is dissatisfied with a decision of the Comptroller under this section, may, within 21 days after the date on which notice of the decision is given, appeal to the Customs Appeal Commission against that decision.

(8) A person who makes an assessment pursuant to sub-section (1) shall —

(a) keep the documents, records and information in respect of that entry in such manner and for such period as is 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.

(9) A person who fails to produce any document, record or information required by a customs officer under sub-section (8) commits an offence and is liable on conviction to a fine of **\$50,000**.

75. Payment of Duty on imports

(1) The duty, taxes and any other charges on imported goods constitutes, immediately on the submission of the entry, a debt due to the State and shall be based on the First Schedule of the Common External Tariff and any other legislation providing for the imposition of duties, taxes or charges.

(2) The duty payable under sub-section (1) is —

(a) owed by the importer of the goods, and, if more than one, jointly and severally by all of them; 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 the fact that —

(a) the goods have ceased to be subject to customs control;

(b) a bond or other security has been given for the payment of duty; or

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

(4) Unless expressly permitted by any 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 that duty shall, in the case of goods in respect of which an entry is required, be paid on the submission of the entry to a proper officer.

(5) The Comptroller may detain subsequent shipments of an importer who has not paid a debt due under this Act or under any other legislation providing for the imposition of duties, taxes, levies or charges.

(6) The Comptroller may, provided appropriate security is provided, as set forth in 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 any duty, the payment of which has been deferred in accordance with subsection (6) remains unpaid by the due date for payment, interest shall be imposed at a rate of one per cent per month on the amount unpaid

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

(9) The Minister may make regulations governing the reimportation of goods.

76. Payment of duty on exports

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

(2) The duty payable under sub-section (1) is —

(a) owed by the exporter of the goods, and, if more than one, jointly and severally by all of them; 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 the fact that —

(a) the goods have ceased to be subject to customs control;

(b) a bond or other security has been given for the payment of duty; or

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

(4) Unless expressly permitted by any customs enactment, exported goods shall not be delivered or removed on exportation until the exporter has paid the duty chargeable on those goods and that duty shall, in the case of goods in respect of which an entry is required, be paid on the submission of the entry.

(5) The Comptroller may, provided appropriate security is provided as set forth in the regulations, approve any person or any class of persons as persons who may defer the payment of duty due under this section.

(6) Where any duty, the payment of which has been deferred in accordance with subsection (5) remains unpaid by the due date for payment, interest shall be imposed at a rate of one per cent per month on the amount unpaid.

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

77. Date for payment of duties

(1) Unless otherwise specified in this Act, the due date for the payment of duty assessed in accordance with section 75 shall be the date that is 7 working days after the date on which written notice of the assessment or re-assessment is given by the Comptroller.

(2) Where all or part of any duty remains unpaid after the due date, interest shall be imposed at a rate of at a rate of one per cent per month on the amount unpaid.

78. Payment of additional duties

(1) Where an appeal or other proceeding results in a re-assessment that insufficient duties were paid, the additional amount due must be paid to the Comptroller within 7 working days of the re-assessment.

(2) Where the additional duties specified in subsection (1) are not paid by the due date, interest will apply at a rate of at a rate of one per cent per month on the amount unpaid.

79. Refunds

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

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

(3) Where the refund required by subsection (1) or (2) is not paid within 30 days, interest will apply at a rate of at a rate of one per cent per month on the amount unpaid.

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

80. Goods temporarily imported

(1) Where the Comptroller is satisfied that goods have been temporarily imported, a sum equal to the amount of the duty payable on the goods had they been entered for home use may be secured, and, in such cases as are approved by the Comptroller, on receipt of the security the Comptroller may release the goods from customs control without payment of duty.

(2) Subject to any regulations that may be prescribed, the person giving the security under sub-section (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 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 of Antigua and Barbuda.

(4) If, at the expiration of the period prescribed by sub-section (2), the goods have not been dealt with in accordance with that sub-section —

(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 two weeks after the expiration of that period or such longer period as the Comptroller may allow, and on such payment, the security shall be released.

(5) Except as the law may permit, this section does not apply to duties imposed under the Customs Duties (Dumping and Subsidies) Act, Cap. 126.

(6) This section does not apply to any goods that are declared in the Common External Tariff to be goods to which rules of the kind set forth in this section do not apply.

DRAWBACK

81. Claims for drawback

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

(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 is made has been paid and not otherwise drawn back;

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

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

(3) The Minister may, by Order, prescribe any class or description of goods in respect of which no drawback shall be claimable.

82. Drawback of duty on certain goods

(1) Subject to this section, drawbacks of duty may be allowed on such 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 they 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 exported the goods shall not, without the permission of the Comptroller, be unshipped or relanded or unpacked before export.

(4) Where drawback has been allowed or paid on goods treated as exported and those goods are unshipped or relanded or unpacked before export, the amount of drawback allowed in respect of those goods shall, immediately on their unshipment or relanding or unpacking, constitute a debt due to the State and the debt shall immediately be payable by the owner of the goods at the time of their unshipment or relanding or unpacking.

(5) A debt due under sub-section (4) is recoverable by legal action brought on behalf of the State.

(6) Where under this section drawback is allowed to any person, the Comptroller may, in his discretion, apply the whole or any part of the sum allowed towards the payment of any duty that 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, Cap. 126.

83. Extent of drawback

(1) Subject to this section, where goods are entered —

(a) for shipment for use as stores; or

(b) for 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 into Antigua and Barbuda.

(2) Subject to 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 two hundred and seventy dollars.

(b) goods that were imported in Antigua and Barbuda more than 12 months before the date of the claim for drawback;

(c) goods not in the packages in which they were originally imported in Antigua and Barbuda, or in the case of bulk goods, where that bulk has been broken; or

(d) goods that have been tampered with or used.

(3) Where imported goods are shipped in error, are defective or are unfit or unsafe for use, drawback may be claimed provided that the goods are exported or destroyed under Customs supervision.

84. Drawback on goods destroyed or damaged after shipment

(1) Where it is proved to the satisfaction of the Comptroller that after being shipped for exportation or for use as stores, goods have been destroyed by accident on board the exporting conveyance, drawback on those goods is payable as if they had been exported to their destination.

(2) Where it is proved to the satisfaction of the Comptroller that after being shipped for exportation or for use as stores, goods have been materially damaged by accident on board the exporting conveyance, those goods may, with the consent of the Comptroller and in accordance with any conditions and restrictions that may be imposed by the Comptroller, be brought back into Antigua and Barbuda, and reloaded or unloaded, and if re-entered for home use, are chargeable with the duty normally chargeable on the importation of such damaged goods.

85. Offences in relation to drawback

(1) A person who obtains or attempts to obtain or assists another person to obtain or attempt to obtain drawback for which there is no lawful entitlement, commits an offence and is liable on conviction to a fine of \$20,000 dollars or three times the amount obtained or attempted to be obtained, whichever is greater, and the goods are liable to forfeiture.

(2) A person who, with intent to defraud, obtains or attempts to obtain or assists another person to obtain or attempt to obtain drawback for which there is no lawful entitlement, commits an offence and is liable on conviction to a fine of \$25,000 or three times the amount obtained or attempted to be obtained, whichever is greater, and on conviction to imprisonment for 2 years and the goods are liable to forfeiture.

PART X

RECORDKEEPING

86. Keeping of records

(1) Every importer, exporter, agent, broker, carrier, warehouse occupier, operator of a customs controlled area, airport manager, port manager, any person concerned with the coasting trade and any other person who conducts business under any Customs enactment shall keep or

cause to be kept in Antigua and Barbuda, whether in electronic form or otherwise, all documents, books, records, and any other information relating to the transaction of such business under the Customs Act in the form and manner required by the Comptroller of Customs for a period of time not less than 7 years from the date of such transaction.

(2) A person who fails to keep records required by this section commits an offence and is liable on conviction to a fine not exceeding \$50,000.

87. Regulations

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

88. Access to records

- (1) A person to whom section 87(1) above applies shall, when required by a proper officer —
- (a) make available and give access to the documents, books, records, or any other information that the person is required to keep under section 87(1) above;
 - (b) give access to the 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 asked by a proper officer in respect of those documents, books, records, or other information;
 - (e) provide working space and personnel to assist the officer in the performance of his duties; and
 - (f) provide copies of the records to the officer.

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

(3) A person, who fails without reasonable 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 to a fine \$50,000.

89. Retention of records by Comptroller

(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.

(2) Where the Comptroller takes possession of a document, book, record or other information under sub-section (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) Every copy so certified is admissible as evidence in all courts or tribunals as if it were the original.

(4) Notwithstanding sub-section (2), where the Comptroller requires original invoices or certificates of origin, or both, to be produced for goods imported or exported, he may —

- (a) require such invoices or certificates of origin, or both, to be submitted in duplicate and may retain the duplicates; or
- (b) retain the originals, if such invoices or certificates of origin, or both, are not submitted in duplicate.

PART XI

PROHIBITED AND RESTRICTED GOODS

90. Prohibited and restricted imports

(1) No goods listed in Part I of the Third Schedule may be imported into Antigua and Barbuda.

(2) No goods listed in Part II of the Third Schedule may be imported into Antigua and Barbuda except in accordance with the conditions and restrictions prescribed by that Part.

(3) The Minister may, by Order published in the *Gazette*, amend the Third Schedule in respect of imported goods.

(4) A prohibition or restriction imposed by an Order made under sub-section (3) 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.

(5) All Orders in force at the commencement of this Act prohibiting or restricting the importation of goods into Antigua and Barbuda shall continue in force as if they were made under this Act, unless revoked.

91. Prohibited and restricted exports

(1) No goods listed in Part III of the Third Schedule may be exported from Antigua and Barbuda.

(2) No goods listed in Part IV of the Third Schedule, may be exported from Antigua and Barbuda except in accordance with the conditions and restrictions prescribed by that Part.

(3) The Minister may, by Order published in the *Gazette*, amend the Third Schedule in respect of exported goods.

(4) A prohibition or restriction imposed by an Order made under sub-section (3) may —

(a) be general;

(b) be limited to the exportation of goods to a specified place or by or to a specified person or class of persons; or

(c) whether general or limited, be absolute or conditional.

(5) Unless otherwise specified in the Order, an Order under this section prohibiting or restricting the exportation of goods extends to and applies to the shipment of the goods for use as stores by vessels and aircraft.

(6) All orders in force at the commencement of this Act prohibiting or restricting the exportation of goods from Antigua and Barbuda shall continue in force as if made under this Act, unless revoked.

92. Production of licence or permit for restricted goods

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

(2) A person who:

(a) imports or exports restricted goods without the required licence or permit;

(b) fails to comply with a term or condition of a licence or permit; or

(c) is knowingly concerned in a breach of this sub-section, commits an offence and the goods may be liable to forfeiture.

93. Other Orders

The Minister may, by Order published in the *Gazette* —

(1) prohibit or restrict the exportation or carriage coastwise of any class or description of goods; and

(2) prohibit or restrict the importation, exportation or carriage coastwise of any class or description of goods to or from any specified place in Antigua and Barbuda.

94. Goods imported in transit, transshipment or as stores

(1) Subject to sub-section (2), goods imported in transit or in transshipment, or as the bona fide stores of any aircraft or vessel, shall not be treated as prohibited or restricted goods.

(2) Sub-section (1) shall not apply where goods referred to in that sub-section are expressly prohibited from or restricted from being imported in transit or transshipment, or as stores, in any Order made under any customs enactment or any Act prohibiting or restricting the importation or exportation of goods.

(3) Goods imported in accordance with sub-section (1) shall be exported within such time as the Comptroller may allow.

95. Penalty for prohibited goods

(1) A person who —

(a) imports into Antigua and Barbuda or unships or lands in Antigua and Barbuda goods, the importation of which is prohibited under this Part;

(b) exports, or transports with intent to export, goods from Antigua and Barbuda, the exportation of which is prohibited under this Part;

(c) is knowingly concerned in any importation, exportation, transportation, shipment, unshipment or landing of goods to which paragraph (a) or (b) applies;

(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 with or conspires in the removal from a customs controlled area of goods, the importation of which is prohibited under this Part,

commits an offence and is liable on conviction to a fine of \$25,000.

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

PART XII**COMMUNITY ORIGIN GOODS****96. Definitions**

In this Part —

“Community origin” has the meaning assigned to it in section 102;

“export duties” means any duties or charges with equivalent effect imposed on or in connection with the export of goods;

“Less Developed Country” means the Member States regarded as such in accordance with Article 4 of the Revised Treaty;

“materials” includes raw materials, intermediate products, parts and components used in the process of production, repair, renovation or improvement of goods;

“Member State” has the meaning assigned to it in the Revised Treaty;

“More Developed Country” means a Member State regarded as such in accordance with Article 4 of the Revised Treaty;

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

customs privileges; and

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

97. Import duty on goods of Community origin

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

(2) Sub-section (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, pursuant to the provisions of the Revised Treaty, a Member State has suspended the operation of the preferential treatment of Community origin goods in respect of any class of goods exported to that Member State from Antigua and Barbuda, the Minister may issue a notification in the *Gazette* to that effect and thereafter, notwithstanding sub-section (1), any goods of that class exported from that Member State, if entered for use in Antigua and Barbuda during the continuance in force of the notification, shall be liable to import duty and entry tax.

98. Export duty on goods of Community origin

(1) Export duties shall not apply to goods of Community origin traded within the Community.

(2) Export duties applicable to goods exported to non-Member States may be applied where goods are exported through a Member State, destined for export to a non-Member State.

(3) The Comptroller is authorised to take any necessary action to prevent the evasion of the payment of export duties.

99. Drawback

(1) Notwithstanding section 97, Community origin goods that benefit from drawback when exported from another Member State may be treated upon importation into Antigua and Barbuda as if such goods are not of Community origin for the purpose of this Part.

(2) If goods that on importation were treated as Community origin goods, and after importation, drawback is allowed, then, notwithstanding section 98, the full amount of duty that would have been chargeable if the goods had not been treated as Community origin goods becomes payable upon demand being made by the Comptroller.

(3) The duty that would have been chargeable on the goods shall, immediately on demand being made by the Comptroller, constitute a debt to the State.

(4) The debt referred to in sub-section (3) is recoverable by action at the suit of the Comptroller on behalf of the State.

100. Quantitative restrictions

(1) Nothing in Part XI authorises the application of any quantitative restriction on —

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

(2) Nothing in sub-section (1) prohibits the taking of measures necessary to prevent evasion of any prohibition or restriction under Part XI.

101. Determination of origin

(1) The origin of Community Origin Goods shall be where the goods —

- (a) were wholly produced within the Community; or
- (b) were produced within the Community wholly or partly from materials imported from a non-Member State or from materials of undetermined origin by a process that results in a substantial transformation characterised —
 - (i) by the goods being classified in a tariff heading different from that in which any of the materials is classified; or
 - (ii) in the case of the goods set out in the List in Schedule 1 to the CARICOM Revised Treaty of Chaguaramas, only by satisfying the conditions specified for those goods.

(2) Subject to sub-section (3), Community origin goods exported from Antigua and Barbuda to another Member State for repair, renovation or improvement shall, on the return of the goods to Antigua and Barbuda, be treated as goods that are of Community origin.

(3) Sub-section (2) applies only where the goods are returned directly to Antigua and Barbuda 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 percent of the cost of repair, renovation or improvement;

(b) in the case of goods undergoing the process of repair, renovation or improvement in a Less Developed Country, 80 percent 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 whether the goods are of Community origin may be made by the Comptroller without regard to any proof or statements made by the importer.

(5) The Comptroller, after making the above determination on a matter, shall immediately inform the local competent authority which shall promptly inform COTED of any trading arrangements concluded pursuant to paragraph (4) and COTED may, as it thinks fit, recommend to the Member States concerned the adoption of alternative trading arrangements.

(6) A person who furnishes or causes to be furnished any document that is untrue in a material particular in support of a claim in Antigua and Barbuda that goods are of Community origin and therefore eligible for preferential treatment commits an offence and is liable on conviction to a fine of \$25,000 or three times the value of the goods, whichever is greater, and the goods shall be liable to forfeiture.

102. Common External Tariff

(1) The Rules of Origin set out in the Common External Tariff shall be applied to goods that do not qualify for Community origin treatment.

(2) The Minister may in keeping with relevant determinations of COTED, alter or suspend the Common External Tariff with respect to any item.

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

103. Cooperation in customs services

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

PART XIII**POWERS****104. Patrol and surveillance**

(1) Subject to sub-section (2), a proper officer may, for the purposes of the detection of offences against this Act or any other customs enactment, at any time and in such manner as the officer considers appropriate, patrol upon and pass freely along and over any part of the Antigua and Barbuda whether or not that part is private property and may remain in any such part for the purpose of carrying out investigations or surveillance.

(2) This section does not authorise the entry into a dwelling-house without the permission of the occupant.

(3) Any officer proceeding as authorised by sub-section (1) shall not be liable to any criminal or civil proceeding for so doing.

105. Power to land or moor

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

106. Power to board conveyance

(1) At any time while a conveyance is within the territorial waters of Antigua and Barbuda or within the borders of Antigua and Barbuda, a proper officer may require that conveyance to stop and may board it, and may remain on board and may search any part of it.

(2) A proper officer on board any conveyance in accordance with sub-section (1) may —

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

(3) Any person who prevents a proper officer from performing any acts referred to in sub-section (2) or who refuses to produce any documents requested or to answer any questions asked under that sub-section, commits an offence and is liable on conviction to a fine of \$20,000.

(4) Goods found concealed on board a conveyance within the territorial waters of Antigua and Barbuda or within Antigua and Barbuda are liable to forfeiture.

(5) Where the master, commander or driver of a conveyance refuses to stop or permit a proper officer to board when required to do so under sub-section (1), the master, commander or driver of that conveyance or his agent commits an offence and is liable on conviction to a fine of \$25,000.

(6) Where the crew of a vessel or aircraft or occupant of a vehicle refuses to stop when required to do so under sub-section (1) and chase is given, and the identity of the master, commander or driver cannot be ascertained, each person who is the crew of the vessel or aircraft or occupant of the vehicle during the chase commits an offence and is liable on conviction to a fine of \$25,000.

107. Power to station officer on vessel

(1) The Comptroller may station a proper officer on board a vessel at any time while it is within Antigua and Barbuda.

(2) The master of a vessel on which a proper officer is stationed in accordance with this section who neglects or refuses to provide —

(a) proper and sufficient food and water, together with reasonable accommodation for the officer; and

(b) a means of safe access to and egress from that vessel as required by the officer, commits an offence and is liable on conviction to a fine of \$10,000.

108. Right of access

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

(2) The power of search provided by sub-section (1) includes the power to break into or open any locked building, vehicle, place or container.

109. Searching of conveyance

(1) A proper officer may search a conveyance —

(a) that has arrived into Antigua and Barbuda;

- (b) that is departing from Antigua and Barbuda to a place outside Antigua and Barbuda and at all times while the conveyance is travelling within Antigua and Barbuda en route to a point outside Antigua and Barbuda;
- (c) that is not a conveyance to which paragraph (a) or (b) applies that is carrying any international cargo, while the conveyance remains within Antigua and Barbuda; or
- (d) that is not a conveyance to which paragraph (a), (b) or (c) applies that is within Antigua and Barbuda and that officer has reasonable cause to suspect —
 - (i) is carrying dutiable, uncustomed, prohibited, restricted or forfeited goods; or
 - (ii) has been, is being, or is about to be involved in the commission of an offence against this Act.

(2) In the exercise of the power conferred by sub-section (1), a proper officer may, using such force as in the circumstances is reasonable, enter every part of the conveyance and open any package, locker or other place and may examine all goods found in the conveyance.

(3) Any person who prevents a proper officer from exercising a power under this section commits an offence and is liable on conviction to a fine of \$10,000.

110. Power to search premises

(1) Subject to section 156, where a proper officer has reasonable grounds to believe that an article subject to forfeiture under any customs enactment is kept at or concealed in any building or other place, he may after being authorised by the Comptroller in writing so to do —

- (a) enter that building or place at any time, and search for, seize, detain or remove any article that appears to him to be liable to forfeiture;
- (b) so far as is reasonably necessary for the purpose of the entry, search, detention or removal, break open any door, window or container and force and remove any other impediment or obstruction; and
- (c) search for and remove any invoice, bill of lading, customs declaration, correspondence and/or any other documents relating to the importation and or exportation of goods.

(2) Where in the case of any entry, search, seizure, detention or removal, damage is caused and no goods liable to forfeiture are found, the owner of the damaged building or damaged goods is entitled to recover from the Comptroller the costs of repairing that damage.

(3) A person who prevents an entry or search under this section commits an offence and is liable on conviction to a fine of \$10,000.

(4) Notwithstanding sub-section (1), an officer shall not enter a private dwelling except with the consent of the occupant or owner of that dwelling or pursuant to a warrant issued under this Act.

111. Power to search vehicles

(1) A customs officer who has reasonable grounds to believe that —

(a) there are in or on any vehicle that is within a customs controlled area any dutiable, uncustomed, prohibited, or forfeited goods; or

(b) there are in or on any vehicle not within a customs controlled area any goods that have been unlawfully imported or are in the process of being unlawfully exported, may stop the vehicle and search it and may detain the vehicle for such period as may be reasonably necessary for that purpose.

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

(3) If 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 sub-section (1) or (2), that person commits an offence and is liable on conviction to a fine of \$10,000.

112. Securing goods

For the purpose of performing any function or exercising any power that is required or authorised under this Act, a proper officer may, while boarding or searching any conveyance —

(1) secure, by appropriate means, goods on board that conveyance; or

(2) remove goods on board that conveyance to a secure place.

113. Procedures to search persons

(1) Where a search of persons is to be conducted under this Act —

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

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

(2) Before a person is searched he must be informed that he 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 person is detained under this Act to be searched and there is no suitable person to conduct the search available at the place where the search is to take place, the person detained may be taken to another place to be searched.

(4) A proper officer shall not be liable to any prosecution or action at law based on any search made in accordance with this section.

(5) All intimate searches should be conducted by a medical practitioner.

114. Application of sections 116, 117 and 118

116, 117 and 118 apply to —

(1) a person on board a conveyance that has arrived in, or is departing from, Antigua and Barbuda;

(2) a person in the process of disembarking from, or embarking on to a conveyance described in paragraph (1); or

(3) a person who, having entered into Antigua and Barbuda at a customs place, remains in that customs place.

115. Preliminary search of persons by use of aids

(1) A proper officer may conduct a preliminary search of a person to whom section 114 applies, and may detain that person for the purposes of conducting that preliminary search.

(2) A preliminary search is a search that —

(a) involves little or no physical contact between the person conducting the search and the person being searched; and

(b) is conducted by using any aid, including a dog, a chemical substance, or x-ray or imaging equipment, or some other mechanical, electrical, or electronic device or other similar aid, but not by any more invasive means.

116. Searching of persons if reasonable cause to suspect items concealed

(1) A proper officer may cause a person to be searched if the officer has reasonable grounds to believe that the person —

(a) has concealed on or about his person —

(i) any dutiable, uncustomed or prohibited goods, or goods liable to forfeiture;

(ii) evidence relating to any goods referred to in sub-paragraph (i); or

(iii) any article that is or might be evidence of the contravention or possible contravention of this Act; and

(b) either he —

(i) is in a customs controlled area;

(ii) has, within the preceding 24 hours, arrived in Antigua and Barbuda at a place other than a customs place; or

(iii) is about to depart from Antigua and Barbuda from any place other than a customs place.

(2) Reasonable force may be used if it is necessary to detain or search any person covered by this section.

(3) A proper officer who searches a person under this section may require any person that the officer thinks necessary to assist him.

(4) A search of a person may be conducted under this section whether or not that person has earlier been the subject of a preliminary search under section 116.

117. Searching of persons for dangerous items

(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) For the purposes of this section, "dangerous item" means —

(a) any firearm or ammunition as defined in section 2(1) of the Firearms Act, 1972 (CAP 171).

(b) any substance or device that could be used to endanger a person's safety.

(3) A customs officer or police officer who undertakes a search under this section shall, within 3 working days of the search, give a written report to the Comptroller of the search, the circumstances in which it was conducted, and the matters that gave rise to the reasonable belief that the person had a dangerous item on or about his person.

118. Seizure of items found

(1) A proper officer may seize any article found when carrying out a search under section 117 that the officer has reasonable grounds to believe is an item referred to in that section.

(2) An officer may seize any article found on or about a person when carrying out a search under section 118 that the officer has reasonable grounds to believe is an item referred to in that section.

119. Questioning of persons in a customs controlled area

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

120. Power to carry and use firearms

(1) Where the Comptroller is satisfied that it is necessary for the protection of any customs officer engaged in the performance of any duty, he may, in accordance with section 16 of the Firearms Act, Cap. 171 apply for a licence on behalf of such officer to carry a firearm.

(2) A customs officer may use a firearm, which he is authorized to carry under subsection (1), where such use is necessary for –

(a) the preservation of life;

(b) the summoning of a vessel in accordance with the provisions of section 121

(3) No customs officer shall be permitted to carry a firearm under this section unless such officer is properly trained and has been granted a licence by the Firearms Licensing Committee established under section 15A of the Firearms Act, Cap. 171.

121. Firing on vessel

(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 Antigua and Barbuda, chase any vessel if —

(a) the master of the vessel fails to comply with signals or instructions given by the proper officer; or

(b) the master of the vessel refuses to permit the vessel to be boarded by the proper officer

and may, as a last resort after having fired a warning shot, fire at or onto the vessel to compel it to stop.

[and may, as a last resort after having fired a warning shot, fire at or onto the vessel to compel it to stop. Every officer or person acting on his direction shall be fully indemnified and discharged from every indictment, information, prosecution, penalty action or other proceeding for so doing and from all of the consequences thereof.]

(2) A 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 is aware of the signal to stop; and

(b) warning shots have been fired.

122. Detention of conveyance

(1) This section applies —

- (a) if a customs officer has reasonable cause to believe that an offence against this Act or any other Act has been, is being, or is about to be committed on or with the use of the conveyance while it was or is within Antigua and Barbuda; or
 - (b) if a conveyance is within Antigua and Barbuda, and a customs officer has reasonable cause to believe that there is on the conveyance a person who was carried into Antigua and Barbuda on it in contravention of this Act or any other Act.
- (2) Where sub-section (1) applies, the officer may —
- (a) direct the conveyance to proceed to the nearest customs controlled area, or any other place the officer considers appropriate; or
 - (b) direct that the conveyance remain where it is, and in either case, the officer may detain the conveyance for any time and for any purposes reasonably necessary to carry out an investigation into the commission of the offence.

(3) If the person in charge of a conveyance attempts to or threatens to cause the conveyance to depart from a place to which the conveyance has been directed to proceed or in which the conveyance has been directed to remain pursuant to sub-section (2) without a certificate of clearance, the customs officer may, notwithstanding any other seizure power under this Act, seize and detain the conveyance until a certificate of clearance has been obtained.

123. Power to examine and take account of goods

(1) Notwithstanding any other provision of any customs enactment, a proper officer may examine any goods —

- (a) that have been imported ;
- (b) that are in a public or private customs warehouse;
- (c) that have been loaded into or unloaded from any conveyance at any place in Antigua and Barbuda;
- (d) that have been entered for exportation or for use as stores;
- (e) that have been brought to any place in Antigua and Barbuda for exportation or for use as stores, or for shipment for exportation or for use as stores; or
- (f) in respect of which any claim for drawback, allowance, rebate, remission or repayment of duty has been made, and may for that purpose require any container to be opened or unpacked.

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

(3) Any transport of goods to a place directed under sub-section (2), and unloading, opening, unpacking, weighing, repacking, bulking, sorting, lotting, marking, numbering, loading, carrying or landing the goods, and any treatment applied to the containers in which the goods are kept, for the purposes of and incidental to the examination by the proper officer, their removal for exportation or for use as stores or warehousing, shall be done, and any facilities or assistance required for the examination shall be provided, by or at the expense of the owner of the goods.

(4) If —

- (a) imported goods that a proper officer has the power under this section to examine; or
 - (b) goods, other than imported goods, that a proper officer has directed to be brought to a place for the purposes of examination,
- are, without the authority of the proper officer, removed from customs charge before they have been examined, those goods shall be liable to forfeiture.

(5) For the purposes of this section, whenever goods are removed to a bonded area 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) packages shall not be opened or otherwise dealt with except in the presence of, or by the authority of the proper officer.

124. Examination of goods subject to customs control

(1) A proper officer may examine, weigh, analyse, or test, or cause to be examined, weighed, reasonable cause to believe are subject to the control of the Customs Department, and may, for that purpose, open or cause to be opened any packages in which the goods are contained or believed to be contained.

(2) All reasonable expenses incurred by the proper officer under sub-section (1) are a debt owed to the State by the importer or exporter or the owner of the goods and are recoverable in the same manner as duty under this Act.

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

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

(5) A proper officer shall, subject to section 156, be allowed free access to all lands, buildings, and places, and to all goods in or on any lands, buildings, or places, for the purpose of

exercising powers under this section in respect of goods that are, or are believed to be subject to customs control.

125. Writ of Assistance

(1) The High Court may, on an application by the Comptroller, issue a writ of assistance.

(2) A writ of assistance issued pursuant to sub-section (1) shall automatically expire on the date six months following the date of its issuance if not earlier cancelled by the High Court on an application by the Comptroller.

(3) Any officer in possession of a writ of assistance issued pursuant to sub-section (1) may, 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, in the case of resistance, break open doors, chests, trunk and other packages for the purpose of seizing and taking away any uncustomed or prohibited goods or any books or documents relating thereto and any goods, books or documents seized shall be securely kept in a customs warehouse.

126. Examination of goods no longer subject to customs control

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

(a) goods in respect of which an offence against this Act has been committed; or

(b) goods that are liable to forfeiture under this Act.

(2) The Comptroller may require a person who has, or whom the Comptroller believes has, possession or control of goods described in sub-section (1) to produce them for inspection by a proper officer.

(3) A proper officer may exercise all the powers provided under section 125 in respect of goods described in sub-section (1).

(4) A proper officer may take and retain possession of goods produced under sub-section (2) for the purposes of exercising the powers given by sub-section (3), and may retain possession of the goods until the completion of the investigation into the grounds for suspecting that the goods

(a) are goods in respect of which an offence against this Act has been committed; or

(b) are goods that are liable to forfeiture under this Act.

(5) A person who fails or refuses to produce or account for any goods when required to do so under this section commits an offence and is liable on conviction to a fine of \$25,000.

127. Accounting for goods

(1) The Comptroller may, by notice in writing, require the person who is authorized to operate a customs controlled area to —

- (a) account for goods that the Comptroller believes have been entered into that customs controlled area; and
- (b) produce any documents books and or records, whether in electronic form or otherwise relating to the movement of goods into or out of that customs controlled area.

(2) A person who fails or refuses to comply with sub-section (1) commits an offence and is liable on conviction to a fine of \$25,000.

128. Production of goods

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

(2) 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 conviction to a fine of \$25,000.

129. Verification of entries

(1) The Comptroller may require from a person making entry of goods proof by declaration or the production of documents, in addition to any declaration or documents otherwise required by this Act, of the correctness of the entry, and may refuse to deliver the goods or to accept the entry before such proof is provided.

(2) Where the Comptroller is not satisfied with the correctness of any entry in relation to any goods, or with any other aspect of the importation or exportation of those goods, he may detain the goods for a period that is reasonably necessary to enable the goods to be examined and, if necessary, to cause an investigation to be made, whether in Antigua and Barbuda or elsewhere, into the importation or exportation of those goods.

130. Power to take samples

(1) Samples of goods subject to customs control or believed to be subject to customs control may be taken and used by the proper officer for the purposes of examination and disposed of in the prescribed manner.

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

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

131. Power of arrest

(1) Subject to sub-section (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.

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

(3) Where a customs officer arrests a person under a power conferred by this section, the officer shall, as soon as practicable, deliver the arrested person into the custody of a police officer.

132. Escape from officer

Where a person subject to arrest under section 132 or any other customs enactment escapes from a customs officer or a police officer attempting to arrest him, or if a customs officer or police officer is for any reason unable or fails to arrest the person, the person may afterwards be arrested and detained by a customs officer at any place in Antigua and Barbuda within 7 years from the time the offence was committed, and dealt with as if he had been arrested at the time of committing the offence.

133. Power to pay rewards

The Comptroller, with the approval of the Minister, may reward or give an award to any person including a customs officer for any service in relation to an assigned matter that appears to him to merit such reward or award in an amount exceeding \$5,000, **provided that no customs officer shall be rewarded more than \$20,000 in any one financial year.**

134. Power to require attendance

(1) Where under any customs enactment the master, commander or driver of a conveyance 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 the conveyance is within the territorial waters of Antigua and Barbuda or within the borders of Antigua and Barbuda, require the master, commander, driver or agent or a senior officer of the conveyance, to appear in the office of the Comptroller or the officer.

(2) Any master, commander, driver or agent who fails to comply with sub-section (1) commits an offence and is liable on conviction to a fine of \$10,000.

135. Power to require information and the production of evidence

(1) The Comptroller may, at any time within 7 years of the importation, exportation or carriage coastwise of any goods, require any person —

(a) concerned in that importation, exportation or carriage coastwise; or

(b) concerned in the carriage, unloading, landing or loading of the goods,

to furnish to him in such form and manner as the Comptroller may require, any information relating to the goods, and to produce and permit a proper officer to inspect, take extracts from, make copies of or remove for a reasonable period, any invoice, bill of lading or other book or document relating to the goods in that person's control or possession.

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

(3) A person who fails to comply with this section commits an offence and is liable on conviction to a fine of \$10,000.

136. Discretionary power to Comptroller in special circumstances

The Comptroller may permit the entry, unloading, removal and loading of goods, and the report and clearance of conveyances in such form and manner as he may direct to meet the exigencies of any case to which a customs enactment cannot be conveniently applied.

137. Power to accept compensation for offences

(1) Notwithstanding any other provision of this Act, where a person requests in writing that the offence be dealt with administratively, rather than through court proceedings, the Comptroller may, at any time prior to the commencement of proceedings in a court against the person for the offence —

- (a) impose a fine or penalty (not including imprisonment) not exceeding that prescribed for the offence;
- (b) seize the goods; or
- (c) mitigate or remit any fine or penalty or restore anything seized under the customs laws.

(2) This section shall not affect any right conferred by any written law to claim goods in the case of a seizure, or to commence or require the commencement of legal proceedings at any time prior to the payment of the fine or penalty.

138. Power to require security

(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 in relation to a particular transaction, or in relation to transactions generally or to a class of transactions, and for such period and amount, and on such conditions as to penalty or otherwise, as the Comptroller may direct.

(4) Where the Comptroller is satisfied that the obligations for which any security given in accordance with this section have been fulfilled, the person who gave the security shall be released from the conditions of the security as soon as possible, subject to any provision of this Act prohibiting release.

(5) Any bond taken for the purposes of an assigned matter is taken on behalf of the Government of Antigua and Barbuda, and 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, he may require a new security in place of or in addition to the existing security.

(7) If the new security is not given, the Comptroller may refuse to accept an entry or to perform any other act in relation to any matter with respect to which the new security is required.

(8) A person who is dissatisfied with a decision of the Comptroller under this section may, within 7 days after the date on which notice of the decision is given, request that the Comptroller reconsider the decision.

139. Power to require provision of facilities

(1) A person required under this Act to provide a place to be used for the examination of goods by a proper officer shall —

- (a) provide and maintain the equipment and facilities that are reasonably necessary to enable a proper officer to take account of or examine goods and to conduct searches or perform any other duties the Comptroller may direct;
- (b) keep any equipment in a convenient place approved by the proper officer for that purpose; and
- (c) allow the proper officer to use the equipment at any reasonable time and provide the officer with any assistance necessary for the performance of the officer's duties.

(2) A person who contravenes sub-section (1) commits an offence and is liable on conviction to a fine of \$10,000.

(3) Any person referred to in sub-section (1) shall provide and maintain any fitting required for the purpose of affixing any lock or seal that the proper officer may need to affix to the premises or any part of the premises of that person or to any conveyance or apparatus kept on the premises.

(4) Where there is default in the provision or maintenance of any fitting in accordance with sub-section (3), the fitting may be provided or any work necessary for its maintenance may be carried out by or on behalf of the proper officer, and any expenses incurred shall be paid on demand of the officer by the person in default.

(5) The expenses incurred under sub-section (4) shall, on demand, constitute a debt owed to the State recoverable in accordance with this Act.

(6) A person who fails to pay the expenses on demand is, in addition to any other penalty liable to a fine of \$10,000.

(7) A person referred to in this section who —

(a) wilfully destroys or damages any fitting or any lock or key provided for use with the lock or any label or seal placed on such lock;

(b) improperly retains access to any place or article secured by a lock put in place by a proper officer; or

(c) has any fitting or any article intended to be secured by means of a fitting constructed in a manner that defeats the intention of this section,

commits an offence and is liable on conviction to a fine of \$25,000.

140. Audit or examination of records

(1) Subject to section 156, a proper officer may, at all reasonable times, enter any premises or place where records are kept pursuant to section 87 and audit or examine those records either in relation to specific transactions or to assess the adequacy and integrity of the manual or electronic system by which such records are created and stored.

(2) For the purposes of sub-section (1), a proper officer shall, subject to section 156, have full and free access to all lands, buildings, and places and to all books, records, and documents, whether in the custody or under the control of the licensee, importer, or exporter, or any other person, for the purpose of inspecting any books, records, and documents and any property, process, or matter that the officer considers —

(a) necessary or relevant for the purpose of collecting any duties due under any customs enactment for the purpose of carrying out any function lawfully performed by a proper officer; or

(b) likely to provide any information otherwise required for the purposes of enforcing any customs enactment.

(3) The proper officer may, without fee or reward, make extracts from or copies of any books, records or documents covered by this section.

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

141. Requirement to produce documents

(1) Where —

- (a) a proper officer has reasonable cause to believe that goods have been unlawfully imported, exported, undervalued, entered, removed, or otherwise unlawfully dealt with by any person in contravention of this Act or that any person intends to unlawfully import, export, manufacture, undervalue, enter, remove, or otherwise deal with any goods; or
- (b) goods have been seized under this Act, the Comptroller may, by written notice, require any person whom the proper officer believes to be or to have been the owner, importer or exporter of those goods, or an agent of the owner, importer or exporter of the goods, or to have been involved in any way in the activities referenced

in sub-section (1)(a), to produce and deliver to that 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 may be supposed 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.

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

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

(3) A person who fails to comply with a request under this section commits an offence and is liable on conviction to a fine of \$10,000.

142. Power to require copies of documents

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 thereof as he may deem necessary.

143. Further powers in relation to documents

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

- (a) to produce for inspection by a specified officer documents or records that the Comptroller considers necessary or relevant to —
 - (i) an investigation under this Act;
 - (ii) an audit under this Act; or

(iii) the recovery of a debt due and payable to the State under this Act; or

(b) to allow the specified officer to take extracts from, or make copies of, documents or records of the kind referred to in paragraph (a) or to appear before a specified officer and answer all questions put to the person concerning the goods, or transactions relating to those goods, that are the subject of the investigation or audit, or that are relevant to the recovery of the debt, referred to in paragraph (a).

(2) A person who fails to comply with a request made under this section commits an offence and is liable on conviction to a fine of \$25,000.

144. Copying of documents obtained during search

(1) Where a proper officer carries out any lawful search, inspection, audit, or examination under any customs enactment, and has reasonable cause to believe that documents coming into his possession during such search, inspection, audit, or examination are evidence of the commission of an offence against this Act, he may remove the documents for the purpose of making copies.

(2) Documents removed in accordance with sub-section (1) shall, as soon as practicable after copies of the documents have been made, be returned to the person entitled to possession of them.

(3) 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.

145. Retention of documents and goods obtained during search

(1) Where a proper officer carries out any lawful search, inspection, audit, or examination under this Act, and has reasonable cause to believe that any documents or goods coming into his possession during the search, inspection, audit, or examination are evidence of the commission of an offence against this Act, or are intended to be used for the purpose of committing any offence against this Act, the officer may, subject to sub-section (4), take possession of and retain the documents or goods.

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

(3) Notwithstanding any other law, a copy certified in accordance with sub-section (2) is admissible in evidence in all courts or tribunals as if it were the original.

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

(a) in any proceedings for an offence relating to the documents or goods, the court or tribunal may order, either at the hearing or on a subsequent application, that the documents or goods—

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

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

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

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

(a) refuse to issue the Order; or

(b) make any Order that a court or tribunal may make under sub-section (4) (a).

146. Detention of goods suspected to be illegally obtained

(1) A customs officer may, without warrant, seize and detain goods if —

(a) the goods are in Antigua and Barbuda and he is satisfied that they either —

(i) are being, or are intended to be, exported from Antigua and Barbuda; or

(ii) are being, or have been, imported into Antigua and Barbuda;

(b) the goods came to his attention, or into his possession, during a search, inspection, audit, or examination under this Act or any Act that relates to the reporting of imports or exports of currency; and

(c) he has reasonable grounds to believe that the goods were obtained in contravention of any law.

(2) Reasonable force may be used 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 the seizure and detention occurs, the Comptroller shall notify that person of the detention and seizure and issue a receipt.

(4) Subject to section 150, goods detained under this section shall be taken to a place of security as directed by the proper officer or other authorised person and there detained.

147. Return of goods detained under section 147

(1) "Investigation period", in relation to goods seized and detained under section 147 —

(a) means the period of 6 months after the date on which the goods were seized and detained; and

(b) includes any extension of that period granted by the court.

(2) Goods seized and detained under section 147 shall be returned to the person from whom they were seized as soon as practicable after —

(a) the completion of all relevant investigations, if it is shown that the goods are not tainted or uncustomed property; or

(b) the expiration of the investigation period, if sooner.

(3) Notwithstanding sub-section (2), the Comptroller need not return the goods as provided in sub-section (2), and may continue to detain them until the relevant proceedings or requests (including any resulting applications) are determined if, on or before the expiration of the investigation period or any extension thereof —

(a) a charge has been brought against any person in respect of an offence; or

(b) a foreign country makes a request to the Attorney-General under any provision or Agreement relating to mutual legal assistance.

148. Extension of 6-month period in section 148

(1) The 6-month period referred to in section 148 (1)(a) may be extended by order of the court for a further period of up to 90 days if the application for the extension is made before the expiration of the period of 6 months and the court is satisfied —

(a) that the reasonable cause to believe that the goods were obtained in contravention of law, as referenced in section 147 exists; and

(b) that the extension to be granted is necessary to allow for the completion of investigations in or outside Antigua and Barbuda in relation to the goods.

(2) The application for an extension must be made in writing and served on the person from whom the goods were seized (if that person can be identified and located), and shall include —

(a) a description of the goods detained;

(b) the date on which the detention commenced;

(c) a statement of the facts supporting the reasonable grounds required under section 147; and

(d) a statement of the reasons why the extension is necessary to allow the completion of investigations in or outside Antigua and Barbuda in relation to the goods.

(3) The person from whom the goods were seized is entitled to appear and be heard on the application.

(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.

149. Custody of certain articles detained under section 146

(1) Where the article detained under section 146 is a conveyance or animal, a proper officer may leave that item in the custody of —

(a) the person from whom the goods have been seized; or

(b) any other person authorised by the proper officer who consents to having such custody.

(2) A person who has the custody of goods under sub-section (1) shall, until a final decision is made under section 148 as to whether or not the goods are to be returned, hold them in safekeeping, without charge to the State and in accordance with any reasonable conditions that may be imposed by the Comptroller.

(3) A person to whom sub-section (2) applies shall —

(a) make the item available to the proper officer on request;

(b) not alter or dispose of the item or remove it from Antigua and Barbuda, unless authorised to do so by the proper officer; and

(c) return the item on demand to the custody of the Comptroller.

150. Search warrants

(1) A magistrate may issue a search warrant if he is satisfied, on an application by a proper officer in writing made on oath, that there are reasonable grounds to believe that there is, in or on any place or article—

(a) anything that there are reasonable grounds to believe may be evidence of —

(i) the commission of an offence against this Act; or

(ii) the unlawful exportation or importation of goods;

(b) anything that there are reasonable grounds to believe is intended to be used for the purpose of

- (i) committing an offence against this Act; or
- (ii) unlawfully exporting or importing goods; or

(c) anything that is liable to seizure under this Act.

(2) The proper officer, before applying for a warrant, shall have made reasonable enquiries and shall disclose on the application details of any other applications that the officer knows have been made within the previous 20 working days in respect of the place or article specified, including the offence or offences alleged in any other application and the result of any other application or applications.

(3) Every search warrant shall be —

(a) directed to and executed by a designated proper officer; or

(b) directed to customs officers generally and executed by any customs officer or officers.

(4) A warrant may be issued subject to such reasonable conditions as may be specified in the warrant.

151. Entry and search under warrant

(1) In executing a 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 is at the place while the warrant is being executed and who the officer believes is connected to the matter referred to in the warrant.

(2) A proper officer or a police officer shall not detain a person pursuant to sub-section (1) for a period of time exceeding 48 hours.

(3) A proper officer or a police officer may, without warrant, arrest a person who refuses to be searched or detained pursuant to sub-section (1).

(4) In executing a warrant referred to in sub-section (1) a proper officer or a police officer may seize any item found in the place being searched or on the person being searched if the customs officer or police officer has reasonable cause to believe that the item is referred to in the warrant.

(5) A person called upon to assist the proper officer or a police officer in executing the warrant, has, for that purpose, the powers referred to in this section.

(6) A person who fails or refuses to comply with a search or detention pursuant to this section commits an offence and is liable on conviction to a fine of \$10,000.

152. Execution of search warrant

(1) A proper officer executing a search warrant shall produce it for inspection upon initial entry into a place and in response to any reasonable request thereafter and, when requested by or

on behalf of the owner or the person occupying the premises, shall provide a copy of the warrant no later than 7 days after the request is made.

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

- (a) by delivering to the owner or person occupying the premises a written notice containing the information;
- (b) by leaving a notice in a prominent position at the place searched or attached to the article searched;
- (c) by sending a notice to the owner or person occupying the premises by registered mail; or
- (d) in such other manner as the court may direct in any particular case.

153. Emergency warrants

(1) In any case where the Comptroller is satisfied, on an application made by a proper officer, that circumstances exist that would justify the grant of a search warrant under section 151, but the urgency of the situation requires that the search should begin before a warrant under that section could with all practicable diligence be obtained, the Comptroller may, orally or in writing, grant an emergency warrant to the officer making the application.

(2) An application for an emergency warrant may be made orally, but otherwise every application for a warrant must comply with the requirements of section 151.

(3) Where the Comptroller grants the application for an emergency warrant, the proper officer must, before executing the warrant, file a written statement containing the particulars of the application, and the statement shall, for the purposes of section 151, be deemed to be an application under that section.

(4) A proper officer executing an emergency warrant shall produce the statement made in accordance with sub-section (3) for inspection upon initial entry and in response to any reasonable request thereafter and, when requested, shall provide a written copy of the statement no later than 7 days after the request is made.

(5) The provisions of sections 152 and 153, so far as they are applicable and with the necessary modifications, shall apply to emergency warrants in the same manner as they apply to other search warrants.

(6) An emergency warrant shall remain valid for 30 days from the time the authorisation is given.

(7) As soon as practicable after an emergency warrant has expired, the proper officer who applied for it, or, if that officer is not able to do so, another proper officer, shall provide a written

report, in the prescribed form, setting out the manner in which the emergency warrant has been executed and the results obtained by the execution of the warrant.

154. Use of aids by customs officer

(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 in exercising those powers a dog, a chemical substance, x-ray or imaging equipment, or some other mechanical, electrical, or electronic device.

(2) This section does not apply to a search carried out on residential premises except pursuant to a warrant issued under section 151 or 154.

155. Conditions applying to entry of buildings

Every provision of this Act that confers on a customs officer the power to enter any building without the authority of a warrant or an emergency warrant or writ of assistance is subject to—

(1) reasonable notice of the intention to enter being given, except where it would frustrate the purpose of the entry;

(2) entry being made at a time that is reasonable, taking into account the circumstances so as to avoid frustrating the purpose of the entry;

(3) identification being produced on initial entry and, if requested, at any subsequent time; and

(4) the authority for the entry and the purpose of the entry being clearly stated to the owner or person occupying the building, if present.

156. Detention of dangerous goods

(1) A customs 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 —

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

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

(2) Where a customs officer detains goods under sub-section (1), he shall, as soon as practicable, deliver those goods into the custody of the Royal Police Force of Antigua and Barbuda.

(3) Where goods have been delivered under sub-section (2), responsibility for those goods passes from the Comptroller to the Royal Police Force of Antigua and Barbuda.

157. Protection of persons acting under authority of Act

(1) A proper officer, a police officer, a member of the Armed Forces, or a person assisting one of the above, shall not be liable for the loss of or damage to any document, goods or conveyance caused by the action or inaction of that person lawfully exercising any power conferred under this Act.

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

158. Comptroller may prescribe forms

(1) Subject to this Act, the Comptroller may, by order, prescribe forms required to be used for the purposes of implementing any customs enactment and any forms so prescribed shall be published in the Gazette [based on legislation] months before the forms are required to be used.

(2) Every importer and exporter must use the appropriate forms.

(3) Every document submitted to the Comptroller or a

proper officer for the purposes of any customs enactment shall be in such form and shall contain the particulars as may be prescribed by the Comptroller.

(4) Unless otherwise required by the Comptroller, any document submitted under this section may be in written or electronic form and such document will serve as a legal document.

159. Errors in documentation

(1) A person who submits a document to the Comptroller pursuant to section 36 or 48 shall ensure that the information given in that document is correct.

(2) Where a proper officer discovers that an error not constituting a false declaration within the meaning of section 173 has been made in a document submitted in accordance with section 36 or 48, and such error constitutes a pattern of negligence, the Comptroller may impose a fine of \$50,000.

(3) Where an error in a document is determined by the Comptroller to be a clerical error or a mistake of fact or negligence not constituting a pattern of negligence, no penalty will be imposed.

160. Witnessing of signatures

Where a document or declaration, whether in written or electronic form, is required by a customs enactment to be signed in the presence of the Comptroller or any particular officer and such document or declaration is signed in the presence of a witness whose signature is known to and who is approved by the Comptroller or the officer who receives the same, then in such case such document or declaration shall be as 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.

161. Documents in foreign language

Where a document in a foreign language is presented to a proper officer in relation to the carrying out of any duty or the exercise of any power under this Act or any other Act, the officer may require the person who presented the document to supply to the officer an English translation of the document prepared by a person approved by the officer, at the expense of the person who presented the document.

PART XIV**OFFENCES****162. Impersonation of officer**

(1) A person who, for the purpose of obtaining admission to any building, conveyance or other place, or for the purpose of performing or procuring to be performed any act that he is not entitled to perform or procure to be performed, or for any other unlawful purpose, falsely assumes the name, designation or character of the Comptroller, of a customs officer or of any other person authorised by the Comptroller to discharge any duty relating to an assigned matter, commits an offence and, in addition to any other proceedings that may be taken against him, is liable on conviction to a fine of **\$100,000** and to imprisonment for not less than 2 years.

(2) Without limiting the scope of sub-section (1) a person commits an offence under sub-section (1) if that person, by words, conduct or demeanour holds himself out to be the Comptroller or a customs officer or wears or uses the uniform, name, designation or description of the Comptroller or of a customs officer.

163. Offences against officers

(1) Any person who maliciously shoots at a conveyance in the service of the Customs Department, or maliciously shoots at a customs officer executing his duty, or assaults a customs officer executing his duty, whether or not he causes physical damage, or with violence commits any of the offences mentioned in sub-section (4), and any person aiding, abetting or assisting in such actions is liable on conviction to imprisonment for 10 years.

(2) A person who —

- (a) intentionally obstructs or hinders a proper officer in the performance of a duty or the exercise of a power imposed or conferred on him by any customs enactment;
- (b) does anything calculated to impede the carrying out of a search for anything liable to forfeiture under any customs enactment or detention, seizure or removal under any customs law;
- (c) intentionally rescues, damages or destroys anything liable to forfeiture or does anything calculated to prevent the procuring or giving of evidence as to whether or not anything is liable to forfeiture;

- (d) intentionally interferes with any equipment, conveyance, dog, communication system, or other article used, or intended for use, by a customs officer;
- (e) acts with the intention of impairing the effectiveness of any equipment, conveyance, dog, communication system, or other aid used, or intended for use, by a customs officer; or
- (f) prevents the arrest of a person under any customs enactment or rescues an arrested person, commits an offence and is liable on conviction to a fine of \$20,000 and on conviction to imprisonment for 3 years.

(3) Where an offence under any sub-section of this section is committed by a person armed with a lethal weapon, including sticks or stones or other similar articles, or in any violent manner, there shall be substituted a liability to imprisonment for 7 years for the liability to imprisonment provided in the applicable sub-section.

(4) A person who 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 any customs enactment, commits an offence and is liable on conviction to a fine of \$5,000.

(5) Any person who —

- (a) staves, breaks, or destroys goods to prevent detention or seizure thereof 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 the customs laws, or prevents the apprehension of such a person;
- (c) obstructs a customs officer from going, remaining or returning from on board a conveyance within Antigua and Barbuda, from searching a conveyance, detaining or seizing any goods liable to forfeiture, or from otherwise acting in the execution of his duty; or
- (d) attempts to commit, or aids, abets or assists in the commission of any of the offences mentioned in this sub-section, commits an offence and is liable on conviction to each such offence to a fine of \$25,000.

164. Bribery and collusion

(1) If the Comptroller, a proper officer or any other person authorised by the Comptroller to discharge any duty relating to an assigned matter —

- (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 such 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 of Antigua and Barbuda is or may be defrauded or that is otherwise unlawful, that person commits an offence and is liable on conviction to a fine of \$100,000 and on conviction to imprisonment for 5 years.

(2) A person who —

(a) directly or indirectly offers or gives to the Comptroller, a proper officer or to any other person authorised by the Comptroller to discharge any duty relating to an assigned matter, any payment or other reward whether pecuniary or other, or any promise or security for any such payment or reward; or

(b) proposes or enters into any agreement with the Comptroller, the officer or another authorised person, in order to induce him to perform, abstain from performing any act related to an assigned matter whereby the Government of Antigua and Barbuda is or may be defrauded or that is otherwise unlawful, or otherwise in contravention of the Comptroller's, a customs officer's or an authorised person's duty, commits an offence and is liable on conviction to a fine of \$100,000 and on conviction to imprisonment for 5 years.

165. Carrying away officers

(1) Where a conveyance departs from Antigua and Barbuda carrying on board a customs officer without his consent, the master, commander or driver or his agent commits an offence and is liable on conviction to a fine of \$100,000 and on conviction to imprisonment for 5 years.

(2) In addition to any other liability imposed on any person under sub-section (1), the amount of any expenses incurred by the Comptroller or the Government of Antigua and Barbuda caused by the carrying away of a customs officer may be recovered from that person or from the owner of the conveyance.

166. Interfering with customs vessels, aircraft, etc.

(1) A person who, unless for just and sufficient cause interferes in any way with any vessel, aircraft, vehicle, buoy, anchor, chain, rope or mark that is being used by a proper officer in the performance of his duty commits an offence and is liable on conviction to a fine of \$50,000 and on conviction to imprisonment for 2 years.

(2) A person who fires upon any vessel, aircraft or vehicle being used by a proper officer in the performance of his duty, commits an offence and is liable on conviction to imprisonment for 5 years.

167. Signalling to smugglers

(1) In this section references to a “prohibited signal” or a “prohibited message” are references to a signal or message connected with the smuggling or intended smuggling of goods into or out of Antigua and Barbuda.

(2) A person who by any means sends a prohibited signal or transmits a prohibited message from any place in Antigua and Barbuda or from any conveyance to a person in any other conveyance commits an offence and is liable on conviction to a fine of \$25,000 or to imprisonment for 2 years and any equipment or apparatus used for the sending of the signal or message is liable to forfeiture.

(3) Sub-section (2) applies whether or not the person for whom the signal or message is intended is in a position to receive it or is actually engaged at that time in smuggling.

(4) For the purposes of this section any conveyance to which a signal described in sub-section (1) is sent –

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

shall, for the purposes of this section, be deemed to be a smuggling conveyance unless the contrary is proved.

(5) Where a customs officer or a police officer has reasonable grounds to believe that a prohibited signal or a prohibited message is being or is about to be transmitted from any conveyance, building or other place in Antigua and Barbuda, he may board or enter that conveyance, building or place and take such steps as are reasonably necessary to prevent the sending of that signal or message.

168. Adapting conveyance for smuggling

If any conveyance comes to or is found within Antigua and Barbuda having —

- (1) any part adapted for the purpose of concealing goods or persons; or

(2) any hole, pipe or device adapted for the purpose of concealing goods or persons, the master, commander, driver or person in charge of the conveyance and the owner each commit an offence and each is liable on conviction to a fine of \$25,000 and the conveyance is liable to forfeiture.

169. Communicating with arriving conveyances

A person who, with fraudulent intent, communicates in any way with a conveyance arriving from a place outside Antigua and Barbuda before that arriving conveyance has been cleared by the

proper officer, commits an offence and is liable on conviction to a fine of \$25,000 and to imprisonment for a period of 1 year.

170. Offering smuggled goods for sale

If a person offers for sale goods purported to be imported without payment of duty, or purported to be otherwise unlawfully imported, then, whether or not those goods were in fact chargeable with duty or were so imported, the goods are liable to forfeiture and the person so offering them for sale commits an offence and is liable on conviction to a fine of \$25,000 or three times the value of the goods, whichever is greater.

171. Special penalty where offender armed or disguised

If a person concerned in the movement or carriage of goods performs any act contrary to or for the purpose of contravening any prohibition or restriction in force under any written law with respect to the importation, exportation or carriage coastwise of goods, and that person is armed with any offensive weapon or disguised in any way, or if any person so armed or disguised is found in Antigua and Barbuda in possession of any article that is liable to forfeiture under any customs enactment, that person commits an offence and is liable on conviction to a fine of \$100,000 or three times the value of the goods, whichever is greater, or, upon conviction, to imprisonment for 5 years and the goods shall be forfeited.

172. False declarations

(1) A person who knowingly —

- (a) makes or signs, or causes to be made or signed, or submits or causes to be submitted to the Comptroller or a proper officer, any declaration, notice, certificate or other document; or
- (b) makes any statement in answer to any question put to him by a proper officer that he is required under any written law to answer, that is false in a material particular, commits an offence and is liable on conviction to a fine of \$25,000 or five times the value of the goods, whichever is greater and, on conviction, to imprisonment for 5 years, and the goods in relation to which the document or statement was made are liable to forfeiture.

(2) Where by reason of an act described in sub-section (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 shall be payable immediately to the Comptroller, and may be recovered accordingly.

173. Counterfeiting documents

A person who —

(1) with respect to a document that is required under any customs enactment or that is used in the transaction of any business relating to an assigned matter —

- (a) counterfeits or falsifies that document;
- (b) knowingly accepts, receives or uses any such document so counterfeited or falsified;
- (c) alters any such document after it has been officially issued; or

(2) 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, commits an offence and is liable on conviction to a fine of \$100,000 or five times the value of the goods, whichever is greater, or, on conviction, to imprisonment for 5 years and the goods are liable to forfeiture.

174. False scales

(1) A person who, is required by any customs enactment to provide scales, knowingly provides scales that do not give a true reading, commits an offence and is liable on conviction to a fine of \$25,000.

(2) 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, if —

- (a) any person referenced in sub-section (1); or
- (b) any person by whom or on whose behalf the article is or is to be weighed, counted, gauged or measured, performs any act that may prevent or hinder the officer from taking a true account or making a proper examination, commits an offence and is liable on conviction to a fine of \$10,000.

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

175. Fraudulent evasion

(1) Without prejudice to any other customs enactment, if a person, with fraudulent intent —

- (a) knowingly acquires possession of any of the following —
 - (i) goods that have been unlawfully removed from a warehouse or a customs warehouse;
 - (ii) goods that are chargeable with any duty that has not been paid; or
 - (iii) goods with respect to the importation, exportation or carriage coastwise of which any prohibition or restriction is in force under any written law; or

(b) is in any way knowingly concerned with smuggling, unloading, landing, carrying, removing, depositing, harbouring, keeping or concealing of goods, that person commits an offence and is liable on conviction to a fine of \$50,000 or five times the value of the goods, whichever is greater and, to imprisonment for 5 years and any goods in respect of which the offence was committed are liable to forfeiture.

(2) Without prejudice to any other customs enactment, where a person is, in relation to goods, in any way knowingly concerned in a fraudulent evasion or attempt at evasion —

(a) of any duty chargeable on those goods; or

(b) of any prohibition or restriction in force with respect to the importation, exportation or carriage coastwise of those goods under or by virtue of any written law, that person commits an offence and is liable on conviction to a fine of \$50,000 or three times the value of the goods, whichever is greater, and, on conviction, to imprisonment for 5 years and any goods in respect of which the offence was committed are liable to forfeiture.

176. Vessels and vehicles

Every person who:

(1) without lawful authority acquires possession or control of an uncustomed vehicle or vessel;

(2) forges, alters or tampers with a vehicle identification number, licence plate or other identification mark of a vehicle or hull mark or other marks of a vessel with intent to conceal its true identity; or

(3) knowingly or recklessly acquires possession of such a vessel or vehicle, commits an offense and is liable on conviction to a fine of \$50,000 or three times the value of the goods, whichever is greater, and, on conviction, to imprisonment for 5 years and the vehicle or vessel shall be forfeited.

177. Removing locks, seals or marks

(1) Where, in pursuance of a power conferred by a customs enactment, a lock, seal or mark is used to secure or identify any goods or place or container in which goods are kept then if, without the authority of the proper officer —

(a) that lock, seal or mark is removed or tampered with by any person; or

(b) at any time before the lock, seal or mark is lawfully removed, any goods are wilfully removed or any additional goods are inserted by any person,

that person and any other person then in charge of the goods each commits an offence and each is liable on conviction to a fine of \$50,000 or three times the value

of the goods, whichever is greater, **or** to imprisonment for 5 years and the goods are liable to forfeiture.

(2) For the purposes of sub-section (1), goods in a conveyance shall be deemed to be in the charge of the master, commander or driver of that conveyance.

178. Intermeddling with goods found floating, etc.

A person other than a proper officer or a person otherwise authorised by law to do so, who interferes with or picks up goods, including spirits, that are prohibited or restricted from being imported or exported, found floating upon or sunk into the sea and fails to report such goods within a reasonable time to a proper officer or a police officer, commits an offence and is liable **on conviction** to a fine of \$10,000 and the goods shall be forfeited.

179. Penalty in cases of forfeiture

Where any conveyance or goods become liable to forfeiture under a customs enactment, a person knowingly concerned in the act or omission that causes the conveyance or goods to become liable to forfeiture commits an offence and is liable on conviction to a fine of \$25,000 or five times the value of the item seized whichever is greater.

180. Offences in relation to warehouses

(1) Where a person, without the authority of a the proper officer and without just and sufficient cause, opens any door or lock of a customs warehouse or creates or obtains access to any customs warehouse or to goods in a customs warehouse, commits an offence and is liable on conviction to a fine of \$50,000 or to imprisonment for 2 years.

(2) Goods shall be liable to forfeiture when goods that have been —

- (a) entered for warehousing, 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, are removed without being warehoused or are otherwise not warehoused, unless otherwise permitted under this Act;
- (c) deposited in customs warehouse, are unlawfully removed or are unlawfully loaded into a conveyance for removal or for exportation or for use as stores;
- (d) entered for warehousing, are concealed, either before or after they have been warehoused; or
- (e) lawfully permitted to be removed from a customs warehouse without payment of duty for any purpose, are not delivered to the destination to which they should have been taken in accordance with that permission.

(3) A person who is in any way concerned with the actions described in sub-section (2) commits an offence and is liable on conviction to a fine of \$25,000 or three times the value of the goods, whichever is greater.

(4) A person who is in any way concerned with any actions described in sub-section (2), with intent to—

(a) defraud the Government of Antigua and Barbuda of any duty chargeable on those goods; or

(b) evade any prohibition or restriction in force with respect to those goods under any written law,

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

181. General penalty and limit of penalty

Unless otherwise provided, a person who commits an offence against any customs enactment for which no specific penalty is provided shall be liable on conviction to a fine of \$25,000.

PART XV

FORFEITURE AND SALE OF GOODS

182. Detention, seizure and condemnation of goods

(1) Any goods liable to forfeiture under a customs enactment may be seized or detained by a proper officer or police officer.

(2) Anything liable to forfeiture under a customs act —

(a) may be seized or detained in any place; and

(b) if seized or detained, shall be delivered to the Comptroller immediately unless the article is or may be required for use in connection with proceedings to be brought under a law other than a customs enactment.

(3) Where —

(a) the person seizing or detaining anything liable to forfeiture under a customs enactment is a police officer; and

(b) that article is required for use in connection with proceedings that may be brought under a law other than a customs enactment, the article may be retained in the custody of the police until either those proceedings are completed or it is decided that no such proceedings will be brought.

(4) Where the article may be required for use in connection with proceedings that may be brought under a law other than a customs enactment, notice in writing of the seizure or detention, with full particulars of the articles seized or detained, shall be given to the Comptroller immediately.

(5) Where an article is retained in the custody of the police under sub-section (3), a customs officer is authorised to examine it and take account of it while it remains in such custody.

183. Forfeiture of conveyances used in connection with goods liable to forfeiture

(1) Where an article has become liable to forfeiture under any customs enactment —

(a) any conveyance, animal, container (including any article of passenger's baggage) or any other article that has been used for the carriage, handling, deposit or concealment of the article liable to forfeiture, either at the time when the article was in the commission of the offence for which it later became liable to forfeiture or after it became liable to forfeiture; and

(b) any other article mixed, packaged or found with the article liable to forfeiture, is also liable to forfeiture.

(2) Where a conveyance is or has been within the territorial waters of Antigua and Barbuda or within the borders of Antigua and Barbuda while constructed, adapted, altered or fitted in any manner for the purpose of concealing goods, that conveyance is liable to forfeiture.

(3) If, at any time while a vessel is within the territorial waters of Antigua and Barbuda, 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 any conveyance has imported cargo into Antigua and Barbuda and a substantial part of that cargo is afterwards found to be missing then, if the master, commander or his agent is unable to account for that missing cargo to the satisfaction of the Comptroller, that conveyance is liable to forfeiture.

(5) Where any conveyance has become liable to forfeiture, all tackle, apparel or furniture belonging to it is also liable to forfeiture.

184. Special provisions as to forfeiture of large vessels

(1) Notwithstanding any other customs enactment, a vessel of two hundred and fifty or more tons burden shall not be liable to forfeiture unless the offence in respect of or in connection with which the forfeiture is sought —

(a) was the primary purpose of the voyage during which the offence was committed; or

(b) was committed while the vessel was under chase after refusing to stop when required to do so.

(2) Where —

(a) any vessel of two hundred and fifty or more tons burden would, but for sub-section (1), be liable to forfeiture for or in connection with an offence under any customs enactment; and

(b) in the opinion of the Comptroller, a responsible officer, 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 that offence, the Comptroller may impose a fine on that vessel in any sum not exceeding \$25,000, and until that fine is paid, may withhold clearance of that vessel.

(3) No claim shall be brought against the Comptroller for damages in respect of the payment of any deposit or the detention of any vessel under this section.

(4) The exemption from forfeiture of any vessel under this section shall not affect the liability to forfeiture of any goods carried on board.

185. Sale of certain seized goods

(1) Where —

(a) a living creature;

(b) any goods that are of a perishable nature;

(c) any goods that, in the opinion of the Comptroller, are likely to deteriorate or diminish in value during storage;

(d) any goods that, in the opinion of the Comptroller, it is desirable to sell immediately; or

(e) any goods that, in the opinion of the Comptroller, are likely to create a health or safety risk if stored in the premises by Customs, has or have been seized as being liable to forfeiture, the Comptroller may sell or destroy the article seized before its condemnation.

(2) The net proceeds of sale are deemed substituted for the article sold, and all the provisions of this Part, so far as they are applicable, extend and apply to those proceeds.

186. Sale of goods condemned as forfeited

(1) Any goods condemned as forfeited by virtue of the Fourth Schedule, or deemed to have been condemned as forfeited by that Schedule, shall, unless it is a prohibited or restricted article, be sold by public auction.

(2) Any auction under this section shall be advertised in the public media and the Gazette.

(3) The Comptroller shall authorise a person to act as auctioneer at an auction under this section.

(4) None of the following persons shall be permitted to bid for anything at an auction under this section —

(a) a customs officer; or

(b) any person who has or had an interest in the article being auctioned, and a person who makes a bid in contravention of this sub-section commits an offence and is liable on conviction to a fine of \$10,000.

(5) All moneys arising from the sale of anything at auction under this section shall be used to pay —

(a) firstly, fees for the auctioneer;

(b) secondly, any duty payable on that article;

(c) thirdly, all the charges incidental to the sale, warehousing and carriage of that article; and

(d) lastly, all the charges incidental to the seizure of that article or to any condemnation proceedings for the article,

and any excess shall be paid by the Comptroller into the consolidated fund.

(6) The value for duty of anything sold at auction under this section shall be the price realised less the included duty.

(7) Any goods not sold at an auction under this section, and all prohibited or restricted goods condemned or deemed to be condemned as forfeited, may be destroyed or otherwise disposed of as the Comptroller may direct.

(8) Nothing in this section prevents the Comptroller from authorising the withholding from sale of anything condemned or deemed to be condemned as forfeited, and its use by the Department.

187. Sale of goods not condemned

(1) Where anything that is not condemned or deemed to be condemned as forfeited, is, by virtue of any customs enactment sold, it shall, unless it is of a perishable nature, be sold at a public auction.

(2) An auction under this section shall be advertised in the public media and the *Gazette*.

(3) The Comptroller shall appoint a person, who may be a customs officer, to act as auctioneer at any auction under this section.

(4) All moneys arising from the sale of anything at an auction under this section shall be used to pay

(a) firstly, fees for the auctioneer;

- (b) secondly, any duty payable on the article; and
- (c) lastly, all the charges incidental to the sale, warehousing and carriage of the article,
- (d) And any excess shall, if application is made within 6 months of the sale, be paid over to any person who satisfied the Comptroller that he was the owner of the article at the time of its sale.

(5) The value for duty of anything sold under this section shall be the price realised less the included duty.

(6) The Comptroller shall sell any goods that are of a perishable nature in the manner that appears to him most likely to realise the largest sum.

(7) Any goods that cannot be sold at an auction under this section or by the Comptroller under sub-section (6) may be destroyed or otherwise disposed of as the Comptroller may direct.

188. Notice of seizure

(1) Where any goods have been seized, the proper officer shall, as soon thereafter as is reasonably practicable in the circumstances, give notice in writing of the seizure and the reasons for the seizure, in the prescribed form, to any person known or believed to have an interest in the goods, or where that person is overseas, to his agent in Antigua and Barbuda.

(2) Notwithstanding sub-section (1), a seizure is not invalidated or rendered illegal by reason of any failure to give such notice if reasonable steps were taken to give the notice.

189. Delivery of goods seized on deposit of value

(1) Where any goods have been seized as being liable to forfeiture, unless the goods are prohibited goods, the Comptroller may, at any time before their condemnation, deliver the goods to the owner or other person from whom they were seized, on the deposit with the Comptroller of a cash sum equal to the value of the goods, together with any duty to which the goods may be liable as determined by the Comptroller.

(2) The money deposited shall be deemed substituted for the goods seized, and all the provisions of this Part so far as they are applicable, apply to the money accordingly.

190. Protection of officers seizing or detaining goods

(1) Where, in any proceedings against the State or the Comptroller for the condemnation of anything seized as liable to forfeiture under any customs enactment, judgment is given for the claimant, the court may, if it sees fit, certify that there were reasonable grounds for the seizure.

(2) Where proceedings described in sub-section (1) are brought and judgment is given for the plaintiff or prosecutor, then if either —

- (a) a certificate relating to the seizure has been granted under sub-section (1); or

(b) the Court is satisfied that there were reasonable grounds for seizing or detaining the article, the plaintiff or prosecutor shall not be entitled to recover any damages or costs and the defendant shall not be liable to any punishment.

(3) Nothing in sub-section (2) affects the right of any person to the return of the article seized or detained or to compensation for any damage to the article during the detention or destruction of it.

(4) A certificate under sub-section (1) may be proved by the production of either the original certificate or a certified copy of it, purporting to be signed by an officer of the court by which it was granted.

Appeals Against Seizure

191. Application for order disallowing seizure

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 189 or within such further time as the Court may allow, apply to the Court for an order —

(1) that the seizure is to be disallowed on the grounds that no reasonable cause for the seizure, or the continued detention, exists under this Act and that the goods are to be returned or otherwise made available to the applicant; and

(2) that the State must pay to the applicant a sum as compensation for any depreciation in the value of the goods resulting from the seizure or detention, and for any transport and storage costs, as the court thinks fit.

192. Court may disallow seizure

(1) Where an application is made under section 192, the Court may either dismiss the application or issue an order —

(a) that the seizure is to be disallowed in whole or in part and the goods are to be returned; and

(b) that the State is to pay to the applicant a sum as compensation for any depreciation in the value of the goods resulting from the seizure or detention, and for any transport and storage costs, as the Court thinks fit and any such order may be issued upon and subject to such terms and conditions as the Court thinks fit.

(2) 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.

(3) No order that the seizure of the goods is to be disallowed shall be issued if the Court is of the opinion that the goods or any of them are required to be produced in evidence in any proceedings pending under this Act or where there are proceedings pending that may result in condemnation of the goods.

(4) No order for the payment of compensation shall be made except in respect of goods that, in the opinion of the Court, were seized or detained without reasonable cause, and except to the extent that the Court disallows the seizure.

(5) Where the Court issues an order for the payment of any sum as compensation to any person under this section, the sum so awarded is recoverable by that person as a debt due from the State.

193. Application for order disallowing seizure where notice not received

(1) Except where the goods have already been condemned to the State, any person claiming an interest in goods seized as being liable to forfeiture under this Act who did not receive notice under section 189, may, within one month after the date on which the goods were seized, apply to the High Court for an Order —

(a) of a kind specified in section 193 where the goods seized have not been sold, destroyed or otherwise disposed of; or

(b) that compensation be paid by the State for the whole or part of any loss suffered by the applicant where the goods seized have been sold, destroyed or otherwise disposed of.

(2) The Court may dismiss the application under sub-section (1) or issue an order —

(a) of the kind specified in section 193 where the goods seized have not been sold, destroyed, or otherwise disposed of; or

(b) that compensation of such amount as the Court thinks fit be paid by the State to the applicant for the whole or any part of any loss suffered by the applicant where the goods seized have been sold, destroyed, or otherwise disposed of.

(3) No order for the payment of compensation shall be issued except in respect of goods that, in the opinion of the Court, were seized or detained without reasonable cause, and except to the extent that the Court disallows the seizure.

(4) Where the Court issues an order dismissing the application, that order is deemed to be an order for condemnation of the goods to the State unless the goods have already been condemned under section 195.

(5) Without limiting sub-section (2), the Court may dismiss an application under sub-section (1) that is not made as soon as reasonably practicable after the applicant became aware of the seizure of the goods.

194. Condemnation if no appeal against seizure

Where no application is made under section 192 within the time specified in that section, the goods shall be deemed condemned to the State as if such an application had been made and dismissed.

195. Condemnation if application discontinued

Where an application under section 192 or 194 is not completed, the goods are condemned to the State as if that application had been dismissed.

General Provisions as to Forfeiture

196. Condemnation of seized goods on conviction

(1) Subject to sub-section (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 that have been seized in accordance with this Act and —

(a) in respect of which the offence was committed; or

(b) that were otherwise liable to forfeiture under this Act.

(2) Where the Court imposes a sentence on any person on the conviction of that person for an offence to which sub-section (1) applies, the Court may, if it thinks fit, order the restoration of the goods forfeited to the person from whom the goods were seized and, where such an order is issued the conviction does not have effect as a condemnation of those goods.

(3) In issuing an order pursuant to sub-section (2) the Court may impose such conditions as it thinks fit.

(4) Sub-section (2) does not apply where the goods have, before the conviction, been sold by public auction, or restored to the person from whom they were seized, or otherwise disposed of by the Comptroller under any other provision of this Act.

197. Disposal of forfeited goods

(1) The State has the property right to forfeited goods or to the proceeds of sale under section 186.

(2) Condemned goods may be sold by public auction, used, destroyed, or otherwise disposed of after their condemnation as the Comptroller may direct.

198. Application of forfeiture provisions

The provisions of this Act with respect to the forfeiture of goods extend and apply to any conveyance or other article forfeited under this Act, except where this Act expressly provides otherwise.

PART XVI**ADMINISTRATIVE (CUSTOMS) PROCEEDINGS****199. Appeal to Comptroller**

(1) Where the amount of duty demanded or any decision of the Comptroller under this Act is disputed by the importer, any amount in dispute shall be paid by the importer under

protest and the importer may, within 14 days from the date of payment, file a written protest in respect of that entry requesting that the Comptroller reconsider the disputed decision.

(2) A request made under sub-section (1) shall —

(a) state the grounds for disputing the amount of duty demanded; and

(b) outline the further documentation or information on which the request is based.

(3) The Comptroller, after investigating the matter within 14 days of the original assessment, and taking into account any further submissions of the importer or his agent, may confirm the original assessment or substitute a new assessment for the original assessment, resulting in an increase, a decrease or a confirmation of the amount of duty originally determined to be due.

Customs Appeal Commission**200. Customs Appeal Commission**

(1) The Minister shall establish a body to be known as the Customs Appeal Commission.

(2) The Customs Appeal Commission will establish its own rules of procedure and publish them in the *Gazette*.

(3) The Minister shall, by notice in the *Gazette* appoint 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

201. Appeal to Customs Appeal Commission

Where this Act provides for an appeal of a decision of the Comptroller made in response to a request for reconsideration of a decision of the Comptroller under section 200, a person who is dissatisfied with a decision of the Comptroller on reconsideration may appeal that decision to the Customs Appeal Commission within 21 days.

202. Commencement of proceedings

Proceedings before the Commission shall be commenced by the lodging of an application in the prescribed form, together with the prescribed fee (if any), with the Commission.

203. Nature of appeal

Appeals shall be by way of a hearing de novo.

204. Commission may extend time for appeal

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.

205. Hearing

(1) Subject to section 207, as soon as the Commission considers that an appeal is ready to be heard the Commission shall fix a date, time, and place for the hearing of the appeal and shall notify the appellant and the Comptroller of the date, time, and place fixed.

(2) A notice to the appellant under sub-section (1) —

(a) shall, in addition to the matters referred to in sub-section (1), inform the appellant of the provisions of sub-sections (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 may provide evidence and shall be given an opportunity to be heard either 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, or both, fail to appear before the Commission at the time and place appointed, the Commission may nevertheless, upon proof of service of the notice of the hearing, proceed to determine the appeal.

(5) Subject to sub-section (6), the hearing of an appeal before the Commission shall be in public.

(6) Where 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, it may hold a hearing or any part of a hearing in private.

(7) The Commission may order that any part of any evidence given or the name of any witness not be published, and any such order may be subject to such conditions as the Commission thinks fit.

206. Commission may decide appeal without oral hearing if both parties consent

(1) Notwithstanding section 206, the Commission may, if it thinks fit and if both parties consent, decide an appeal without holding a hearing.

(2) Where the Commission, at any time during its consideration of an appeal in accordance with sub-section (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 206.

207. Commission's powers

For the purpose of a hearing and deciding any appeal before it, the Commission shall have —

(1) all the powers, duties, functions, and discretions of the Comptroller in making its decision; and

(2) all the powers of the High Court, in the exercise of its civil jurisdiction, in respect of citing parties and conducting and maintaining order at the hearings of the Commission.

208. Evidence

(1) The Commission may receive as evidence any statement, document, information, or matter that, in the opinion of the Commission, may assist the Commission to deal effectually with the proceedings.

(2) The Commission may take evidence on oath.

(3) The Commission may permit a person appearing as a witness before it to give evidence by tendering a written statement and verifying it by oath.

209. Powers of investigation

(1) For the purposes of dealing with the matters before it, the Commission or any person authorised by the Commission in writing to do so may —

(a) inspect and examine any papers, documents, records, or articles;

(b) require any person to produce for examination any papers, documents, records, or articles in that person's possession or under that person's control, and to allow copies of or extracts from any such papers, documents, or records to be made; and

(c) require any person to furnish, in a form approved by or acceptable to the Commission, any information or particulars that may be required by it.

(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 the matters before it, the Commission may of its own motion, or on 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 in the order impose such terms and conditions as it thinks fit in respect of the production of and use that is to be made of the information.

(4) Every person shall have the same privileges in relation to the giving of information to the Commission, the answering of questions put by the Commission, and the production of papers, documents, records, and articles to the Commission as witnesses have in Courts of law.

210. Power to summon witnesses

For the purposes of dealing with the matters before it, the Commission may of its own motion, or on application, issue in writing a summons requiring any person to attend at the time and place specified in the summons and to give evidence, and to produce any papers, documents, records, or articles in that person's possession or under that person's control that are relevant to the matters before the Commission.

211. Service of summons by the Commission

(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 registered post addressed to the person summoned at that person's usual place of residence or business at least 10 days before the date on which the attendance of the witness is required.

(2) Where the summons is delivered by registered post it shall be deemed for the purposes of sub-section (1)(b) to have been served at the time when the letter would be delivered in the ordinary course of post.

212. Protection of persons appearing

Every witness giving evidence, and every counsel or agent or other person appearing before the Commission, shall have the same privileges and immunities as witnesses and counsel in Courts of law.

213. Grounds of appeal and burden of proof

(1) Subject to sub-section (2), in an appeal, the appellant is limited to the grounds stated in the appellant's notice of appeal, and the burden of proof is on the appellant.

(2) The Commission may, either on the application of the appellant or of its own motion, amend the grounds stated in the notice of appeal.

214. Sittings of Commission

(1) Sittings of the Commission shall be held at such times and places as the Commission determines.

(2) The Commission may adjourn a sitting or modify the place of a sitting either before the time of the sitting or at the sitting.

215. Commission may dismiss frivolous or vexatious appeal

The Commission may at any time dismiss an appeal if it is satisfied that the appeal is frivolous or vexatious.

216. Decision of Commission

(1) Every decision of the Commission shall be given in writing, with a statement of the reasons for the decision.

(2) A copy of the decision shall be given to the parties to the appeal.

217. Appeals to High Court

(1) A party who is dissatisfied with a decision of the Commission under this Act as being erroneous in point of law or fact may appeal to the High Court.

(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 Court may allow.

(3) Where a notice of appeal is filed in accordance with sub-section (2), the appellant shall also, within the time specified in that sub-section, serve a copy of the notice on the Commission, and, except in the case of an appeal by the Comptroller, shall give security for the costs of the appeal of such amount and in such form as may be fixed by the Court.

218. Stating case for High Court

(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 that 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.

PART XVII

COURT PROCEEDINGS

219. Prosecutions for customs offences

(1) After exhaustion of all appeal proceedings available before the Comptroller and the Customs Appeals Commission, and subject to any express provisions to the contrary in any customs enactment, a decision by the Customs Appeals Commission, a disputed matter involving a customs enactment may be appealed to the High Court.

(2) Subject to the powers of the Director of Public Prosecutions and to sub-section (4), proceedings for prosecution of an offence under any customs enactment, or for condemnation, shall not be commenced except by order of the Comptroller in writing.

(3) In the case of the death, removal, discharge or absence of the officer in whose name any proceedings were commenced by virtue of sub-section (2)(b), those proceedings may be continued by any officer authorised to act on his behalf by the Comptroller.

(4) Notwithstanding sub-section (2), where a person has been arrested for an offence under any customs enactment, any court before which he is brought may deal summarily with the case against him.

220. Place of offence

An offence under any customs enactment shall be regarded as having been committed and every cause of complaint as having arisen, either —

(1) in the place in which it actually was committed or arose; or

(2) in any place on land where the offender or person prosecuted may be or may be brought.

221. Place of trial

Proceedings for an offence under any customs enactment may be commenced —

(1) in any court having jurisdiction in the place —

(a) where the offence was committed;

(b) where the person charged with the offence resides or is found; or

(c) in the case of a corporate body charged with the offence, where that corporate body has its registered or principal office; or

(2) if anything was detained or seized or found in connection with the offence, in any court having jurisdiction in the place where the thing was detained, seized, found or condemned as forfeited.

222. Time limit on proceedings

Unless otherwise provided in this Act and notwithstanding any other written law, proceedings under any customs enactment may be commenced at any time within 7 years after the date of the offence.

223. Limitation as to pleading

The fact that duties of customs have been secured by bond or otherwise shall not be pleaded or made use of in answer to or in stay of proceedings under any customs enactment.

224. Officer may prosecute

Any officer or other person authorised by the Comptroller, although not an attorney-at-law, may prosecute and conduct any information or other proceedings under any customs enactment in respect of any offence or penalty.

225. Alternative prison sentence

Where —

- (1) a court has imposed a fine for an offence against a customs enactment; and
- (2) Such fine is not paid within the time specified by the Court, months, the court may, notwithstanding anything contained in any other law, order the defendant who was convicted of the offence to be imprisoned for a term not exceeding 3 years.

226. Imprisonment for second offence

Subject to this Act and any other law imposing a sentence of imprisonment for an offence under this Act, where —

- (1) a defendant is liable to a fine of \$25,000 or more for an offence under any customs enactment; and
- (2) the defendant has previously incurred a fine or forfeiture under a customs enactment that has been enforced in any court, the court may, if it thinks fit, in lieu of ordering payment of a fine, order the defendant to be imprisoned for a period not exceeding 5 years.

227. Incidental provisions as to legal proceedings for offences

- (1) In proceedings for an offence under a customs enactment, a 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 a customs enactment, that security has been given by bond or otherwise for the payment of any duty or compliance with any condition.

228. Institution of civil proceedings

(1) Notwithstanding anything to the contrary in **any enactment**, proceedings for the recovery of rents, charges, expenses, duties, penalties and all other sums of money payable under a customs enactment may be sued for, determined, enforced and recovered by suit or other appropriate civil proceedings in a magistrate's court, in the name of the Comptroller.

(2) The Magistrate's Court is hereby vested with the necessary jurisdiction for the purpose of sub-section (1).

(3) Civil proceedings brought in the name of the Comptroller shall not be invalidated or lapse by reason of any change in person holding that office, and where such change occurs, those proceedings may be continued in the name of the person for the time being the holder of or 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.

229. Service of Process

(1) Any summons or other process issued for the purpose of proceedings under a customs enactment shall be deemed to have been duly served —

(a) if delivered personally to the person to whom it is addressed; or

(b) if left at his last known place of abode or business or, in the case of a corporate body, at its registered or principal office.

(2) Any summons, notice, order or other document issued for the purposes of any proceedings under a customs enactment, or of an appeal from the decision of the court in such proceedings may be served by a proper officer.

(3) In this section, the expression "appeal" includes an appeal by way of case stated.

230. Costs

In proceedings under a customs enactment the same rules as to costs shall be observed as in proceedings between private persons.

231. Payment of duty after Appeal

(1) Where a decision of the Comptroller, the Customs Appeal Commission or of the High Court is made —

(a) that the amount of duty should be increased, the appellant shall pay the amount of the increase to the Comptroller; or

(b) that the amount of duty should be 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.

(3) If the amount due under subsection (1) is not paid within 30 days of the decision, interest shall apply at the rate of one per cent per month on the amount unpaid.

PART XVIII

PROOF IN PROCEEDINGS

232. Burden of Proof

(1) 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, that relates to —

- (a) the identity or nature of any goods;
- (b) the value of any goods for 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 goods,

shall be presumed to be true unless the contrary is proved.

(2) The presumption in sub-section (1) shall not be countered by the fact that evidence is produced on behalf of the State in support of any such allegation.

(3) This section shall apply to proceedings in which the existence of intent to defraud the revenue of the Customs is in issue.

(4) Notwithstanding the foregoing provisions of this section, but subject to this Act, in any proceedings for an offence against this Act where it is alleged that the defendant intended to commit the offence, the prosecution has the burden of proving that intent beyond a reasonable doubt.

233. Onus of proof on defendant in certain cases

In any prosecution under a customs enactment the onus is on the defendant to prove that —

- (1) the duties assessed have been paid; and
- (2) the goods were, as applicable —

- (a) lawfully loaded into or unloaded from any conveyance;
- (b) lawfully transferred from one conveyance to another conveyance; and
- (c) lawfully imported or exported.

234. Averment in proceedings

(1) The averment that —

- (a) the Comptroller has elected that a particular penalty should be sued for or recovered;
- (b) goods thrown overboard, staved or destroyed were so dealt with to prevent or avoid their seizure;
- (c) a person is or was appointed or authorised by the Comptroller to discharge, or was engaged by the orders 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) an offence was committed or an act was performed within the limits of a customs port, approved wharf, customs airport or other customs controlled area, or within the territorial waters of Antigua and Barbuda;
- (f) the Comptroller is or is not satisfied as to any matter as to which he is required by a customs enactment to be satisfied; or
- (g) that the proceedings were instituted by an order of the Comptroller, is sufficient evidence of the matter in question, until the contrary is proved.

(2) Where in proceedings brought by or against the Comptroller, the Attorney-General, a customs officer, a police officer, or against any other person in respect of anything purporting to have been done in pursuance of a power or duty conferred or imposed on him under a customs enactment, a question arises as to the place from which goods have been brought or as to whether or not —

- (a) duty has been paid or secured in respect of goods;
- (b) goods are of the description or nature alleged in the information, writ or other process;
- (c) goods were lawfully brought to any place for the purpose of being loaded into a conveyance or were exported; or

- (d) 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.

235. Evidence of officers

If upon any trial a question arises as to whether a person is a proper officer, his own evidence thereof shall be deemed sufficient, and any proper officer shall be deemed a competent witness upon the trial of any suit or information regarding a seizure or penalty, regardless of whether the officer may be entitled to a reward upon the conviction of the party charged in the suit.

236. Proof of certain documents

(1) A document purporting to be signed by the Cabinet **Secretary**, the Minister, the Comptroller, or by their order, or by a person with their authority, shall, until the contrary is proved, be deemed to have been so signed, and the matters contained in that document may, in proceedings under any customs enactment, be proved by the production of that document or any document purporting to be a copy of that document.

(2) Where a book or other document is required to be kept by a customs enactment, the production of that book or other document, or a copy of it certified as a true copy by a proper officer in proceedings under the customs enactment will be treated as *prima facie* evidence of the matters stated in it.

(3) In any proceeding under a customs enactment, the production of a certificate purporting to be signed by the competent authority shall be sufficient evidence of all matters stated in the certificate unless the contrary is proved.

237. Presumption of authenticity of documents

All documents purporting to be sealed with the seal of the Customs Department, are, in all Courts and in all proceedings under this Act and any other Act, deemed to have been sealed with due authority, unless the contrary is proved.

238. Valuation of goods for penalty

(1) In all cases where the fine for an offence under a customs enactment is an amount that is to be determined by the value of goods, such value shall be determined in accordance with the Third Schedule.

(2) A certificate signed by the proper officer attesting to the value of the goods shall be accepted by the court as *prima facie* evidence of the value of the goods.

239. Certificate of condemnation

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 the officer of the court.

PART XIX

AGENTS

240. Authority to be produced

(1) Whenever a person makes application to transact business on behalf of any other person, the proper officer may require the person so applying to produce an authority, whether written or electronic, from the person on whose behalf the application is made, and in default of the production of such authority may refuse to transact business on behalf of the other person with the purported agent.

(2) A document required by a customs enactment to be signed by a particular person may, with the approval of the Comptroller, be signed by a person authorised by that person to sign on his behalf, and shall be deemed for all purposes to be signed by the person required to sign.

(3) The Comptroller may, for cause, refuse to allow any application referred to in sub-section (1) or revoke the acceptance of any application under sub-section (1).

241. Entities other than individuals

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

(2) Where the entity in sub-section (1) has elected or appointed officers, the president, vice-president, secretary and treasurer thereof, or other equivalent officers, shall be deemed to be so authorised unless there is evidence to the contrary.

242. Regulations as to brokers

The Minister may make regulations for the licensing of customs brokers.

243. Customs brokers

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

(2) A person employed as a customs officer shall not be licensed as a customs broker.

244. Gazetting of customs brokers

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

245. Penalties

A person who transacts or attempts to transact business as an agent without the authority of the principal or as a customs broker without holding a valid licence issued by the Comptroller or a person who assists or attempts to assist that person, commits an offence and is liable on conviction to a fine of \$10,000 or three times the value of the goods that occasioned the offense, whichever is greater.

246. Ship agents

Where —

- (1) under a customs enactment a special procedure is prescribed in regard to ships; and
- (2) the owner of the ship is not resident or represented in Antigua and Barbuda, it shall be the duty of the master of the ship to appoint an agent in Antigua and Barbuda for the purpose of performing any act that under any customs enactment must be performed by the owner of the ship.

PART XX**MISCELLANEOUS****247. Joint and Several Liability**

(1) Where liability for an offence under a customs law is incurred by two or more persons jointly, each person is liable for the full amount of any fine or penalty and may be proceeded against jointly or severally.

(2) Where a corporation fails to pay duty required to be paid by this Act, the directors of the corporation at the time the corporation was required to pay the duty are jointly and severally liable, together with the corporation, to pay the duty and any penalties relating thereto.

248. Officials of unincorporated bodies

(1) Where any liability or obligation is imposed by or under this Act or its regulations on an unincorporated body, the body and each of the persons who are officials of the body at the time the liability or obligation is imposed are jointly and severally liable and responsible to satisfy the liability or obligation.

(2) In this section, “official” of an unincorporated body means —

- (a) in the case of a partnership, a partner of the partnership, other than a limited partner within the meaning of the law;
- (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 in the management and day-to-day operations of the joint venture;

(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 similar office of the body;

(ii) where there is no official of the body, as referred to in sub-section (i), a member of any committee that has management of the affairs of the body; or

(iii) where there is no official such as that referred to in sub-paragraph (i) or committee referred to in sub-paragraph (ii), a member of the body.

(3) Notwithstanding sub-section (1), an official is not liable under that sub-section unless —

(a) a certificate for the amount of the body's liability referred to in that sub-section has been registered in the High Court under this Act and execution for that amount has been returned unsatisfied in whole 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 sub-section (1) has been proved; or

(c) the body has made an assignment or a receiving order has been made against it, and a claim for the amount of the body's liability referred to in sub-section (1) has been proved.

(4) A person who ceases to be an official of an unincorporated body shall be deemed, for the purposes of this Act, not to cease being an official thereof until the Comptroller receives notification in writing of such cessation.

(5) A document that is served on an unincorporated body pursuant to this Act or its regulations shall be deemed to have also been served on the officials thereof.

249. Executors and administrators

(1) For the purposes of this Act, where an individual dies —

(a) the individual's estate shall be deemed to be the same person as the individual and not to be a trust;

(b) where any liability or obligation is imposed by this Act on the individual or his estate, the executors or administrators are, subject to this section, responsible to satisfy the obligation; and

- (c) the estate and the executors or administrators, are jointly and severally liable for the payment of all amounts that are payable by the estate under this Act, except that the executors or administrators are liable for the payment of amounts that became payable before the individual died only to the extent of the assets of the estate after satisfying the claims of creditors whose claims rank in priority to the claim of the State.

(2) When an individual dies, the Minister may, where it is considered appropriate to do so, waive in writing the requirement that the individual's executor or administrators pay the duty owed.

250. Trustees in Bankruptcy

For the purposes of this Act, where a person is adjudged a bankrupt —

- (1) the person's estate shall be deemed not to be an estate or trust;

(2) property held by the person immediately before he was adjudged a bankrupt shall be 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 to remain vested in the person;

(3) the property held by the trustee in bankruptcy for the person on the day the person is discharged from bankruptcy shall be deemed not to pass to the person on the order of discharge being granted but to have been held by and vested in the person continuously since the day it was acquired by the person or the trustee;

(4) where any liability or obligation is imposed by this Act on the person in relation to assets to which the bankruptcy relates, the trustee in bankruptcy is, subject to this section, responsible to satisfy the liability or obligations; and

(5) the trustee in bankruptcy, and not the person, is liable for the payment of all amounts that become payable by the person under this Act before the person is discharged from bankruptcy, except that -

- (a) the trustee is liable for the payment of amounts that became payable by the person before the person became a bankrupt only to the extent that the person's property in the possession of the trustee is available to satisfy the liability; and
- (b) the trustee is not liable for the payment of any amount that a receiver is liable to pay or any amount that relates to activities that the person engages in, on or after the day the person is adjudged a bankrupt and to which the bankruptcy does not relate.

251. Receivers

- (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 corporation; 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 shall be deemed to be an agent of the person in the course or furtherance of any of the person's activities over which the receiver has authority, and any act performed by the receiver in relation to the person's assets over which the receiver has authority shall be deemed to have been performed by the receiver as agent on behalf of the person;
- (b) the receiver shall be deemed not to be a trustee of the estate of the person or any part thereof;
- (c) where the assets of a person over which the receiver has authority are not all of the person's assets, through the period during which the receiver acts as receiver of the person, the assets over which the receiver has authority shall be deemed to be separate from the other assets of the person as if they were assets of a separate person;
- (d) where any liability or obligation is imposed by the Act on the person in relation to assets over which the receiver has authority the receiver is, subject to this section, responsible to satisfy the obligation;
- (e) the person and the receiver are jointly and severally liable for the payment of all amounts that became payable by the person under this Act before the receiver was appointed, except that the receiver is liable for the payment of those amounts only to the extent of the person's assets under the control and management of the receiver after satisfying the claims of creditors whose claims rank in priority to the claim of the State and after paying any amounts that the receiver is required to pay to a trustee in bankruptcy of the person; and
- (f) the receiver, and not the person, is liable for the payment of all amounts that become payable by the person under this Act during the period in which the receiver acts as receiver of the person to the extent that the amounts can reasonably be considered to relate to the person's assets over which the receiver has authority.

252. Receipts

The Comptroller shall provide an official receipt in written or electronic form for any money collected by him.

253. Duties and drawback to be proportionate to quantity or value

All duties, rates, charges and drawback imposed and allowed according to any specified quantity or any specified value of goods or according to any particular description of the container shall be deemed to apply in the same proportion to any greater or lesser quantity or value or any other description of container.

254. Mode of calculating weights and measures

All duties, rates, charges and drawback imposed and allowed under the customs laws shall be paid and received according to the weights and measures established by the Metrology Act, 2007, No. 17 of 2007, and may be paid in any currency being legal tender in Antigua and Barbuda.

255. Sales under customs enactments

The Auctioneers Act, **Cap. 37** shall not apply to sales under any customs enactment when conducted by a customs officer authorised under this Act.

256. Actions against officers

No action, suit or other proceedings shall be brought or instituted personally against any officer in respect of any act performed by him in pursuance of any power granted to or duty imposed on him by a customs enactment.

257. Goods in transit

The provisions of this Act and any other customs enactment so far as they are applicable, and subject to any regulations made under this Act regarding goods in transit, shall be deemed to apply to goods declared in transit to a destination beyond Antigua and Barbuda.

258. Power to make regulations

The Minister may make regulations for the further, better or more convenient implementation of any of the provisions or purposes of any customs enactment.

259. Availability of information

It is the duty of the Comptroller to ensure that relevant information concerning the requirements, obligations and administration of this Act is available to the public.

260. Existing ports, warehouses, etc., to continue

All ports, warehouses, airports, wharves and boarding stations, approved as such at the commencement of this Act, shall continue to be ports, warehouses, airports, wharves and boarding stations, and all duly appointed wharves and airports shall be deemed to be approved places of loading and unloading until the appointment thereof is revoked or varied under this Act.

261. Repeals and savings

- (1) The Customs (Control and Management) Act, 1993 No. 7 of 1993 is hereby repealed.
- (2) Notwithstanding the repeal of the Customs (Control and Management) Act, 1993, No. 7 of 1993, the following provisions shall apply —
 - (a) all offices, appointments, proclamations, rules, regulations, by-laws, orders, warrants, seals, certificates, books, records, instruments, documents, proceedings, and generally all acts of authority made under the repealed Act and in force on the commencement of this Act, shall continue to be in force under this Act as if made under this Act, and accordingly shall, where necessary, be deemed to have so made;
 - (b) where under any repealed law any act is authorised to be performed, such act may be performed under this Act unless the act is inconsistent with the express provisions of this Act; and
 - (c) where in any enactment, or in any proclamation, rule, regulation, by-law, order, form or document made under any enactment, reference is made to any customs enactment or to the Customs Act or to any enactment amending same, the reference shall be read and shall operate as if it had been made to this Act.

SCHEDULES

FIRST SCHEDULE

Section 67

GOODS NOT PERMITTED TO BE WAREHOUSED ON IMPORTATION

Animals, living,
Arms, Ammunition and Explosives,
Asphalt, all kinds, including Pitch and Tar,

Bricks and Tiles,
Cattle and other animal foods,
Cement,
Cheese,
Chemicals,

Fireworks,
Fish (other than in tins packed in cases),
Fruit and Nuts (other than in cases),
Grain, Flour, Pulse and preparations thereof (other than in tins packed in cases),
Hay and Chaff,
Manures,
Matches (not contained in hermetically sealed cases of zinc or tin),
Meats (other than in tins packed in cases),
Metals.
Oil -
Edible,
Fuel,
Other kinds. including essential, medicinal and perfumed oils.

Salt,
Vegetables (other than preserved vegetables in tins packed in cases).
Seeds for expressing oil therefrom,
Ships, Boats and Launches,
Starch,
Stones and Slates,
Sugar (unless packed in tins or cases)

Any goods which in the opinion of the Comptroller are likely to cause damage to other goods stored in the same warehouse.

SECOND SCHEDULE

SECTION 74

VALUATION OF GOODS

1. (1) In this Schedule:
 - (a) 'customs value of imported goods' means the value of goods for the purposes of levying ad valorem duties of customs on imported goods;
 - (b) 'produced' includes grown, manufactured and mined;

- (c) 'identical goods' means goods produced in the same country which are the same in all respects, including physical characteristics, quality and reputation. Minor differences in appearance shall not preclude goods otherwise conforming to the definition from being regarded as identical;
- (d) 'similar goods' means goods produced in the same country 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. The quality of the goods, their reputation and the existence of a trademark are among the factors to be considered in the determining goods are similar.
- (e) 'identical goods' and 'similar goods', as the case may be, do not include goods which incorporate or reflect engineering, development, artwork, design work, and plans and sketches for which no adjustment has been made under paragraph 8 (1) (b) (iv) because such elements were undertaken in Antigua and Barbuda;
- (f) '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.

(2) For the purpose of this Schedule:

- (a) persons shall be deemed to be related only if —
 - (i) they are officers or directors of one another's business;
 - (ii) they are legally recognised partners in business;
 - (iii) they are employer and employee;
 - (iv) any person directly or indirectly owns, controls or holds 5 percent or more of the outstanding voting stock or shares of both of them;
 - (v) one of them directly or indirectly controls the other;
 - (vi) both of them are directly or indirectly controlled by a third person; or
 - (vii) together they directly or indirectly control a third person; or
 - (viii) they are members of the same family;
- (b) one person shall be deemed to control another when the former is legally or operationally in a position to exercise restraint or direction over the latter;

(c) persons who are associated in business with one another in that one is the sole agent, sole distributor or sole concessionaire, however described, or the other shall be deemed to be related only if they fall within the criteria of sub-paragraph 2 (a);

(d) the term 'person' means a natural or legal person;

(e) an event shall be deemed to occur about the same time as another event if the first event occurs on the same day as the other event or within the forty-five (45) days

immediately before or the forty-five (45) days immediately after, the day on which the other event occurs.

2. (1) The customs value of imported goods shall be determined under paragraph 3 whenever the conditions prescribed therein are fulfilled.

(2) Where such value cannot be determined under paragraph 3, it shall be determined by proceeding sequentially through paragraphs 4 to 7, inclusive, to the **first** such paragraph under which it can be determined, subject to the provision that, where the importer requests it and the (Comptroller) agrees, the order of application of paragraphs 6 and 7 shall be reversed.

(3) Except as provided for in sub-paragraph (2), it is only when the customs value of imported goods cannot be determined under a particular paragraph that the provisions of the next paragraph in the sequence established by sub-paragraph (2) can be applied.

(4) Where the customs value of imported **goods** cannot be determined under paragraphs 3 to 7, inclusive, it 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

(e) make use of the methods of valuation laid down in paragraphs 3 to 7, inclusive, using, where necessary, reasonable flexibility in their application.

(5) No customs value shall be determined under sub-paragraph (4) on the basis of:

(a) the selling price in Antigua and Barbuda of goods produced in Antigua and Barbuda;

(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 paragraph 7;
- (e) the price of the goods for export to a country other than Antigua and Barbuda;
- (f) minimum customs values; or
- (g) arbitrary or fictitious values.

3. (1) The customs value of imported goods determined under this paragraph shall be the transaction value, that is, the price actually paid or payable for the goods when sold for export to Antigua and Barbuda, adjusted in accordance with paragraph 8, and in appropriate cases paragraph 9, provided —

- (a) that there are no restrictions as to 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 Antigua **and** Barbuda,
 - (ii) limit the geographical area in which the goods may be resold; or
 - (iii) do not substantially affect the value of the goods;
- (b) that the sale or price is not subject to some condition or consideration for which a value cannot be determined with respect to the goods being valued;
- (c) that no part of the proceeds of any subsequent resale, disposal or use of the goods by the buyer will accrue directly or indirectly to the seller, unless an appropriate adjustment can be made in accordance with paragraph 8; and
- (d) that the buyer and seller are not related, or where the buyer and seller are related, that the transaction value is acceptable for customs purposes under sub-paragraph (2).

- (2) (a) In determining whether the transaction value is acceptable for the purposes of sub-paragraph (1), the fact that the buyer and the seller are related within the meaning of paragraph 1 shall not in itself be ground for regarding the transaction value as unacceptable. Where necessary the circumstances surrounding the sale shall be examined and the transaction value shall be accepted provided that the relationship did not influence the price. If, in the light of information provided by the importer otherwise, the (Comptroller) has grounds for considering that the relationship influenced the price, he shall communicate the grounds to the importer who shall be given a reasonable opportunity to respond.

(b) In a sale between related persons, the transaction value shall be accepted and the goods valued in accordance with sub-paragraph (1) 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 Antigua and Barbuda;
- (ii) the customs value of identical or similar goods, as determined under paragraph 6;
- (iii) the customs value of identical or similar goods, as determined under paragraph 7;

In applying the foregoing tests, due account shall be taken of demonstrated differences in commercial levels, quantity levels, the elements enumerated in paragraph 8 and costs incurred by the seller in sales in which he and the buyer are not related that are not incurred by the seller in sales in which he and the buyer are related.

(c) The tests set forth in sub-paragraph (2) (b) shall be used at the initiative of the importer and only for comparison purposes. Substitute values may not be established under that sub-paragraph.

(3) (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.

Payments may be made directly or indirectly, need not necessarily take the form of a transfer of money, and shall include —

- (i) all payments made or to be made as a condition of sale of the imported goods by the buyer to the seller or by the buyer to a third party to satisfy an obligation of the seller; and
- (ii) any settlement by the buyer, whether in whole or in part, of a debt owed by the seller.

(b) Activities, including marketing activities, undertaken by the buyer on his own account, other than those for which an adjustment is provided in Paragraph 8, are not considered to be an indirect payment to the seller, even though they might be regarded as of benefit to the seller or have been undertaken by agreement with the seller, and their cost shall not be added to the price actually paid or payable in determining the customs value of imported goods.

(4) The customs value of imported goods shall not include the following charges or costs, provided that they are distinguished from the price actually paid or payable for the imported goods

- (a) charges for construction, erection, assembly, maintenance or technical assistance, undertaken after importation or imported goods such as industrial plant, machinery or equipment;
- (b) customs duties and other taxes payable in Antigua and Barbuda by reason of the importation or sale of the goods;
- (c) the cost of transport after importation.

(5) The fact that goods which are the subject of sale are entered for home use within Antigua and Barbuda shall be regarded as adequate indication that they were sold for export to Antigua and Barbuda. This indication shall also apply where successive sales of goods have taken place before valuation. Where such successive sales have taken place each price resulting from them may be used as a basis for valuation.

4. (1) (a) The customs value of imported goods determined under this Paragraph shall be the transaction value of identical goods sold for export to Antigua and Barbuda and exported at or about the same time as the goods being valued.

(b) In applying this Paragraph, 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. Where no such sale is found, the transaction value of identical goods sold at a different commercial level and/or in different quantities, adjusted to take account of differences attributable to commercial level and/or to quantity, shall be used, provided that successive adjustments can be made on the basis of demonstrated evidence which clearly establishes the reasonableness and accuracy of the adjustment, whether the adjustment leads to an increase or a decrease in value.

(2) Where the cost and charges referred to in Paragraph 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 identical goods in question arising from differences in distances and modes of transport.

(3) In applying this paragraph

- (a) if more than one transaction value of identical goods is found. The lowest such value shall be used to determine the customs value of the imported goods;
- (b) a transaction value for goods produced by a different person shall be taken into account only when no transaction value can be found under sub-paragraph (1) for identical goods produced by the same person as the goods being valued: and

(c) a condition for adjustment because of different commercial levels or different quantities shall be that such adjustment shall be made only on the basis of demonstrated evidence that clearly establishes the reasonableness and accuracy of the adjustment.

(4) For the purposes of this Paragraph, the transaction value of identical imported goods means a customs value previously determined under Paragraph 3, adjusted as provided for in sub-paragraph (1) (b) and (2) of this Paragraph.

5. (1) (a) The customs value of imported goods determined under this Paragraph shall be the transaction value of similar goods sold for export to Antigua and Barbuda and exported at or about the same time as the goods being valued.

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

(2) Where the costs and charges referred to in Paragraph 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 similar goods in question arising from differences in distances and modes of transport.

(3) In applying this Paragraph –

(a) if more than one transaction value of similar goods is found, the lowest such value shall be used to determine the customs value of the imported goods;

(b) a transaction value for goods produced by a different person shall be taken into account only when no transaction value can be found under sub-paragraph (1) for similar goods produced by the same person as the goods being valued;

(c) a condition for adjustment because of different commercial levels or different quantities shall be that such adjustment shall be made only on the basis of demonstrated evidence that clearly establishes the reasonableness and accuracy of the adjustment.

(4) For the purposes of this Paragraph, the transaction value of similar imported goods means a customs value previously determined under Paragraph 3, adjusted as provided for in sub-paragraph (1) (b) and (2) of this Paragraph.

6. (1) (a) If the imported goods or identical or similar imported goods are sold in Antigua and Barbuda in the condition as imported, the customs value of the imported goods,

determined under this Paragraph, shall be based on the unit price at which the imported goods or identical or similar imported 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 persons from whom they buy such goods, subject to deduction for the following —

- (i) either 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 goods in question) in connection with sales in Antigua and Barbuda of imported goods of the class or kind;
 - (ii) the usual costs of transport and insurance and associated costs incurred within Antigua and Barbuda; and
 - (iii) the customs duties and other taxes payable in Antigua and Barbuda by reason of the importation or sale of the goods.
- (b) If neither the imported goods nor identical nor similar imported goods are sold at or about the time of importation of the goods being valued, the customs value of imported goods determined under this Paragraph shall, subject otherwise to the provisions of sub-paragraph (1) (a), be based on the unit price at which the imported goods or identical or similar imported goods are sold in Antigua and Barbuda in the condition as imported at the earliest date after the importation of goods being valued but before the expiration of ninety (90) days after such importation.

(2) If neither the imported goods nor identical nor similar imported goods are sold in Antigua and Barbuda in the condition as imported, then, if the Comptroller so decides, the customs value shall be based on the unit price at which the imported goods, after further processing, are sold in the greatest aggregate quantity to persons in Antigua and Barbuda who are not related to the persons from whom they buy such goods, due allowance being made for the value added by such processing and the deductions provided for in sub-paragraph (1) (a). Where this method of valuation is used, deductions made for the value added by further processing shall be based on objective and quantifiable data relating to the cost of such work. Accepted industry formulas, recipes, methods of construction and other industry practices shall form the basis of the calculations.

(3) In this paragraph, 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 persons from whom they buy such goods at the first commercial level after importation at which such sales take place.

(4) Any sale in Antigua and Barbuda to a person who supplies directly or indirectly free of charge or at reduced cost for use in connection with the production and sale for export of the imported goods any of the elements specified in Paragraph 8 (1) (b), shall not be taken into account in establishing the unit price for the purposes of this paragraph.

(5) For the purposes of sub-paragraph (1) (a) (i) —

- (a) 'profit and general expenses' shall be taken as a whole. The figure for the purposes of this deduction shall be determined on the basis of information supplied by or on behalf of the importer unless his figures are inconsistent with those obtaining in sales of the imported goods of the same class or kind. Where the importer's figures are inconsistent with such figures, the amount for profit and general expenses may be based upon relevant information other than that supplied by or on behalf of the importer; and
- (b) in determining either the commissions or the additions usually made for profit and general expenses, 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. In doing this, sales for which the necessary information can be provided of the narrowest group or range of imported goods of the same class or kind as the goods being valued should be examined.
- (c) 'goods of the same class or kind' includes goods imported from the same country as the goods being valued as well as goods imported from other countries.

(6) For the purposes of sub-paragraph (1) (b), the 'earliest date' shall be 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.

7. (1) The Customs value of imported goods determined under this paragraph shall be based on a computed value which shall consist of the sum of —

- (a) the cost or value of materials and fabrication or other processing employed in producing the imported goods;
- (b) an amount for profit and general expenses equal to that usually reflected in sales of goods of the same class or kind as the goods being valued which are made by producers in the country of exportation for export to Antigua and Barbuda;
- (c) the cost or value of the items referred to in paragraph 8 (1) (e).

(2) The cost or value of materials and fabrication referred to in sub-paragraph (1) (a) above shall include the cost of elements specified in Paragraph 8 (1) (a) (ii) and (iii). It shall also include the value, duly apportioned, of any element specified in Paragraph 8 (1) (b) which has been supplied directly or indirectly by the buyer for use in connection with the production of the imported goods. The value of the elements specified in Paragraph 8(1)(b) (iv) which are undertaken in Antigua and Barbuda shall be included only to the extent that such elements are charged to the producer. No cost or value of an element referred to in this sub-paragraph shall be counted more than once in determining the computed value.

(3) The 'cost or value' referred to in sub-paragraph (1) (a) shall be determined on the basis of information relating to the production of the goods being valued or supplied by or on behalf of the producer. It shall be based upon the commercial accounts of the producer, provided that these accounts are consistent with the generally accepted accounting principle applied in the country where the goods are produced.

(4) For the purpose of sub-paragraph (1) (b) —

- (a) the 'amount for profit and general expenses' 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 Antigua and Barbuda;
- (b) if the producer's own figures for profit and general expenses are not consistent with those usually reflected in sales of the goods of the same class or kind referred to in sub-paragraph (4) (a) 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;
- (c) 'goods of the same class or kind' means goods imported from the same country as the goods being valued;
- (d) 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. In doing this, sales for export to Antigua and Barbuda 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 should be examined;
- (e) the 'general expenses' referred to cover the direct and indirect cost of producing and selling the goods for export which are not included under sub-paragraph (1) (a).

8. (1) In determining the customs value under Paragraph 3, there shall be added to the price actually paid or payable for the imported goods —

- (a) the following, to the extent that they are incurred by the buyer but are not included in the price actually paid or payable for the goods —
 - (i) commission and brokerage, except buying commissions;
 - (ii) the cost of containers which are treated as being one for customs purposes with the goods in question;
 - (iii) the cost of packing, whether for labour or materials;

- (b) the value, apportioned as appropriate, of the following goods and services where supplied directly or indirectly by the buyer free of charge or at reduced cost for use in connection with the production and sale for export of the imported goods, to the extent that such value has not been included in the price actually paid or payable —
- (i) materials, components, parts and similar items incorporated in the imported goods;
 - (ii) tools, dies, moulds and similar items used in the production of the imported goods;
 - (iii) materials consumed in the production of the imported goods;
 - (iv) engineering, development, artwork, design work, and plans and sketches undertaken elsewhere than in Antigua and Barbuda 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 that the buyer must pay, either directly or indirectly, as a condition of sale of the goods being valued, to the extent that such royalties and fees are not included in the price actually paid or payable;
- (d) the value of any part of the proceeds of any subsequent resale, disposal or use of the imported goods that accrues directly or indirectly to the seller;
- (e) (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) No additions shall be made to the price actually paid or payable in determining the customs value except as provided in this paragraph.

(3) Additions to the price actually paid or payable shall be made under this paragraph only on the basis of objective and quantifiable data; and if such do not exist a transaction value shall not be determined under the provisions of paragraph

(4) In this paragraph, the term '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.

(5) Notwithstanding sub-paragraph (1) (c) of this paragraph —

(a) charges for the right to reproduce the imported goods in Antigua and Barbuda shall not be added to the price actually paid or payable for the imported goods in determining the customs value; and

(6) 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 such payments are not a condition of the sale for export to Antigua and Barbuda of the goods.

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 paragraph 3 provided that —

(a) the charges are distinguished from the price actually paid or payable for the goods;

(b) the financing arrangement has been made in writing;

(c) where required by the Comptroller, the buyer can demonstrate —

(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) The provisions of sub-paragraph (1) shall apply regardless of whether the finance is provided by the seller, a bank or another person; and it shall also apply, *mutatis mutandis*, where customs value is determined under a method other than the transaction value.

THIRD SCHEDULE

GOODS PROHIBITED OR RESTRICTED TO BE IMPORTED OR EXPORTED

Sections 91 (1)

PART I - PROHIBITED GOODS

1. Firearms having a disguised appearance and in particular pistols made to resemble stylographic pens and pencils.

2. Pipes or other utensils for use in connection with the smoking or preparation for smoking of opium, Cannabis, Cocaine or any other drug the use of which is prohibited by any other law.

3. Goods, the importation of which is prohibited by any other law of Antigua and Barbuda.

Section 91 (2)

PART II - RESTRICTED GOODS

The importation of any mechanical game, device, or appliance, which, in the opinion of the Comptroller of Custom and Excise, is such as can be used to play at any game of chance for money or money's worth except expressly authorized by the Comptroller of Customs and Excise.

The importation of tear gas and any ingredient which may produce what is commonly known as tear gas or tear smoke except with the written authority of the Commissioner of Police.

Section 92 (1)

PART III - PROHIBITED GOODS

1. Firearms having a disguised appearance and in particular pistols made to resemble stylographic pens and pencils.

2. Pipes or other utensils for use in connection with the smoking or preparation for smoking of opium, Cannabis, Cocaine or any other drug the use of which is prohibited by any other law.

3. Goods, the exportation of which is prohibited by any other law of Antigua and Barbuda.

Section 92 (2)

PART IV - RESTRICTED GOODS

1. The importation of tear gas and any ingredient which may produce what is commonly known as tear gas or tear smoke except with the written authority of the Commissioner of Police.

2. Goods, the exportation of which is restricted by any other law of Antigua and Barbuda.

FOURTH SCHEDULE

FORFEITURE RULES

Sections 183, 184, 186, 188 and 190

1. (1) The Comptroller shall, except as provided by sub-paragraph (2), give notice of the seizure of anything seized as liable to forfeiture and of the grounds of that seizure to any person who to his knowledge was the owner of, or one of the owners of, that thing at the time of its seizure.
(2) Notice shall not be required to be given under sub-paragraph (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 thing seized or any servant or agent of his; or
 - (c) in the case of anything seized in a vessel or aircraft, the master or commander of that vessel or aircraft.
2. Notice under paragraph (1) shall be given in writing and shall be deemed to have been duly served on the person concerned —
 - (a) if delivered to him personally;
 - (b) if addressed to him and left or forwarded by post to him 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
 - (c) where he has no address in Antigua and Barbuda, or his address is unknown, by publication of the notice of seizure in the Gazette.
3. Where any person, who was at the time of the seizure of anything the owner or one of the owners of it, claims that it was not liable to forfeiture, he shall, within one month of the date of service of the notice of seizure or, where no such notice was served, within one month of the date of seizure, give notice of his claim in writing to the Comptroller at any customs office.
4. Any notice under paragraph 3 shall specify the name and address of the claimant and, in the case of a claimant who is outside Antigua and Barbuda, shall specify the name and address of a solicitor in Antigua and Barbuda who is authorised to accept service and act on behalf of the claimant, and service upon a solicitor so specified shall be deemed to be proper service upon the claimant.

5. If, on the expiration of the relevant period under paragraph 3 for the giving of a notice of claim, no such notice has been given to the Comptroller, or where such notice is given, that notice does not comply with any requirement of paragraph 4, the thing seized shall be deemed to have been duly condemned as forfeited.
6. Where notice of claim in respect of anything seized is duly given in accordance with paragraphs 3 and 4, the Comptroller shall take proceedings for the condemnation of that thing by the court, and if the court finds that the thing was at the time of its seizure liable to forfeiture, that court shall condemn that thing as forfeited.
7. Where anything is in accordance with either paragraph 5 or 6 deemed to have been condemned or condemned as forfeited, then without prejudice to any restoration or sale, the forfeiture shall be deemed to have had effect from the date when the liability to forfeiture arose.
8. Proceedings for the condemnation of anything shall be civil proceedings and may be instituted —
 - (a) in any magistrates court having jurisdiction in the place —
 - (i) where any offence in connection with that thing was committed or where any proceedings for such an offence have been instituted;
 - (ii) where the claimant resides or, if the claimant has specified a solicitor under paragraph 4, where that solicitor has his office; or
 - (iii) where that thing was found, detained or seized or to where the thing was first brought after being found, detained or seized; or
 - (b) in the High Court.
9. (1) In any proceedings for condemnation, the claimant or his solicitor shall make oath that the thing was, or was to the best of his knowledge and belief, the property of the claimant at the time of the seizure.
 - (2) In any proceedings for condemnation before the High Court, the claimant shall give such security for the costs of the proceedings as may be determined by the Court.
 - (3) If any requirement of this paragraph is not complied with, the court shall give judgement for the Comptroller.
10. (1) Any party to condemnation proceedings in a magistrate's court may appeal to the High Court against the decision of that magistrate's court in those proceedings.

(2) Where any appeal is made against the decision of any court in condemnation proceedings, the thing seized shall remain in the possession of, or be returned to the possession of, the Comptroller until the final determination of the matter.

11. In any proceedings arising out of the seizure of anything, the fact, form and manner of the seizure shall be taken to have been as set forth in the process, unless the contrary is proved.

12. Where anything is at the time of its seizure the property of a body corporate, of two or more partners or of any number of persons exceeding five not being in partnership, the oath required to be taken by paragraph 9, and any other thing required by 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 –

(a) where the owner is a body corporate, the secretary or some other authorised officer of that body;

(b) where the owners are in partnership, any of those owners; or

(c) 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.

13. (1) Where, under Sections 189 (1), 189 (6), 189 (7) and 191 (1), anything is restored, sold or destroyed, and it is held in proceedings taken under this Schedule that the thing was not liable to forfeiture at the time of its seizure, the Comptroller shall on demand by the claimant tender to him –

(a) where the thing was restored, an amount equal to any amount paid as a condition of that restoration;

(b) where the thing was sold, an amount equal to the proceeds of sale; or

(c) where the thing was destroyed an amount equal to its market value at the time of its seizure.

(2) Where an amount tendered under sub-paragraph (1) includes a sum on account of the duty chargeable on the thing which has not been paid, the Comptroller may deduct so much of that amount as represents the duty.

(3) If the claimant accepts an amount tendered to him under sub-paragraph (1), he shall not be entitled to maintain any further action on account of the seizure, detention, restoration, sale or destruction of the thing seized.

(4) Where the claimant and the Comptroller are unable to agree upon the market value of anything destroyed under Section 189 (1), 189 (6), 189 (7) and 191 (1), that value shall be determined by the Customs Appeal Commissioners.

Passed by the House of Representatives this
1st day of February, 2013.

Passed by the Senate on this 13th day of
February, 2013.

D. Gisele Isaac-Arrindell,
Speaker.

Hazlyn M. Francis,
President.

Romona Small,
Clerk to the House of Representatives.

Romona Small,
Clerk to the Senate.