

Penalty in cases of forfeiture.

192. Where any vessel, aircraft or goods is liable to forfeiture under a customs enactment, a person who is knowingly concerned in the act or omission which causes the vessel, aircraft or goods to be liable to forfeiture commits an offence and is liable on summary conviction to a fine of \$25,000 or equivalent to three times the value of such vessel, aircraft or goods.

Offences in relation to warehouses.

193. (1) A person commits an offence and is liable on summary conviction to a fine of \$25,000 and to imprisonment for 2 years if the person —

(a) without the authority of a proper officer; and

(b) without just and sufficient cause,

opens any door or lock of a customs warehouse or creates or obtains access to any warehouse or to goods in a warehouse.

(2) Goods are liable to forfeiture if goods having been —

(a) entered for warehousing, such goods are taken into a warehouse without the authority of, or otherwise than in accordance with any direction given by, the proper officer;

(b) entered for warehousing, such goods are removed without being warehoused or are otherwise not warehoused, unless otherwise permitted under this Act;

(c) deposited in a warehouse, such goods are unlawfully removed or are unlawfully loaded into a vessel or an aircraft for removal or for exportation or for use as stores;

(d) entered for warehousing, such goods are concealed, either before or after they have been warehoused; or

(e) lawfully permitted to be removed from a warehouse without payment of duty for any purpose, such goods are not delivered to the destination to which they should have been taken in accordance with that permission.

(3) Subject to subsection (4), a person commits an offence and is liable on summary conviction to a fine of \$25,000 if the person is in any way concerned in any contravention of subsection (1).

(4) Where, in respect of any goods liable to forfeiture under this section, a person is in any way concerned in any action described in subsection (2), with the intent to—

(a) defraud the State of any duty chargeable on such goods;

(b) evade any duty chargeable on such goods; or

(c) evade any prohibition or restriction, under any enactment, in force with respect to such goods,

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

194. A person who commits an offence against any customs enactment for which no specific penalty is provided is liable on summary conviction to a fine of \$25,000.

General penalty and
limit of penalty.

PART XV

FORFEITURE AND SALE OF GOODS

Detention, seizure and
condemnation of goods.

195. (1) A proper officer or a police officer may seize and detain any goods liable to forfeiture under this Act or any other customs enactment.

(2) Subject to subsection (3), where a proper officer or a police officer seizes or detains, in any place, any goods liable to forfeiture, the officer shall, immediately, deliver the goods to the Comptroller.

(3) Where -

(a) a police officer seizes or detains any goods liable to forfeiture under a customs enactment; and

(b) the goods are required for use in connection with proceedings which may be brought under a law other than a customs enactment,

the police officer may, subject to subsection (4), retain the article in the custody of the police until the proceedings are completed or it is decided that proceedings are not to be brought.

(4) Where any goods are retained in the custody of the police under subsection (3)—

(a) the police officer shall immediately give the Comptroller a notice, in writing, containing full particulars of the seizure or detention of the goods; and

(b) a customs officer is authorised to examine the seized goods and take account of the goods while such goods remain in the custody of the police.

196. (1) Where an article is a tainted article—

Forfeiture of vessels, etc.
used in connection with
goods liable to forfeiture.

- (a) any vessel, aircraft, vehicle, animal, container or any other article which has been used for the carriage, handling, deposit or concealment of the tainted article is liable to forfeiture; and
- (b) any other article mixed, packaged or found with the tainted article is liable to forfeiture.

(2) Where—

- (a) an illegally fitted vessel is or has been within the territorial waters of Dominica; or
- (b) an illegally fitted aircraft is or has been at any airport in Dominica,

the illegally fitted vessel or aircraft is liable to forfeiture.

(3) If, at any time while a vessel is within the waters of Dominica, any part of its cargo or any article carried on board is thrown overboard or is staved or destroyed to prevent seizure, that vessel is liable to forfeiture.

(4) Where—

- (a) any vessel or aircraft in Dominica has imported cargo on board and a substantial part of that cargo is afterwards found to be missing; and
- (b) the master or commander of the vessel or aircraft or the relevant agent is unable to account for that missing cargo to the satisfaction of the Comptroller,

the vessel or aircraft is liable to forfeiture.

(5) Where a vessel or an aircraft is liable to forfeiture, the tackle, apparel or furniture of the vessel or aircraft is liable to forfeiture.

(6) For the purposes of this section—

- (a) the reference in subsection (1)(a) to “container” shall be construed to include a reference to any article of the passenger’s baggage;
- (b) the reference in subsection (2) to “illegally fitted” shall be construed to mean a reference to constructed, adapted, altered or fitted in any manner for the purpose of concealing goods; and
- (c) the time of use of a vessel, aircraft, vehicle, animal, container under subsection (1)(a), in relation to a tainted article, includes the time of the commission of the offence for which the article later became liable to forfeiture or after it became liable to forfeiture.

Special provisions
respecting forfeiture of
larger vessels.

197. (1) Notwithstanding any other customs enactment, a vessel of two hundred and fifty tons burden or more is not liable to forfeiture by reason of the commission of an offence unless the offence in respect of or in connection with which the forfeiture is sought—

- (a) was the primary purpose of the voyage of the vessel during which the offence was committed; or
- (b) was committed while the vessel was under chase after refusing to stop when required to do so.

(2) Where -

- (a) any vessel of two hundred and fifty tons burden or more would, but for subsection (1), be liable to forfeiture for or in connection with an offence under a customs enactment; and

(b) in the opinion of the Comptroller, a responsible officer of the vessel, including the master, mate or engineer of the vessel or, in the case of a vessel carrying a passenger certificate, the purser or chief steward, is implicated by his own act or by neglect in the commission of the offence,

the Comptroller may, subject to subsections (3) and (4), impose on that vessel a fixed penalty of \$100,000 or such larger amount as may be prescribed.

(3) Where—

(a) a vessel is liable to a fixed penalty under subsection (2); and

(b) the Comptroller is not satisfied that the penalty is adequate in relation to the offence committed,

the Comptroller may bring proceedings in accordance with the forfeiture rules set out in Schedule 4 for the condemnation as forfeited of that vessel in a sum not exceeding \$250,000 or such larger amount as may be prescribed.

(4) Where condemnation proceedings are instituted under subsection (3), the Comptroller may require the master or any other responsible officer of the vessel to deposit with the Comptroller a sum equal to the amount claimed in the condemnation proceedings.

(5) Where, in respect of a vessel, the Comptroller requires the payment of—

(a) a fixed penalty under subsection (2); or

(b) a deposit under subsection (4),

the Comptroller may withhold clearance of the vessel until payment of the fixed penalty or the deposit.

(6) No claim shall be brought against the Comptroller for damages in respect of the payment of any deposit or the detention of any vessel under this section.

(7) The exemption from forfeiture of any vessel under this section does not affect the liability to forfeiture of any goods carried on board that vessel.

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

(a) the proper officer at the place of importation shall immediately send a copy of the import entry for goods free of duty to the proper officer at the bonded area or bonded factory;

(b) the goods shall be removed directly from the place of importation to the bonded area and, if not sealed, shall be accompanied by a customs guard; and

(c) the packages containing goods shall not be opened or otherwise dealt with except in the presence of, or by the authority of, the proper officer at the bonded area or factory.

Sale of certain seized goods.

198. (1) This section applies to–

(a) a living creature;

(b) anything which is of a perishable nature;

(c) anything which, in the opinion of the Comptroller, is likely to deteriorate or diminish in value during storage;

(d) anything which, in the opinion of the Comptroller, it is desirable to sell immediately; or

(e) anything which, in the opinion of the Comptroller, is likely to create a health or safety risk if stored in or on the premises by the Customs department.

(2) Where a living creature or any other article to which this section applies has been seized as being liable to forfeiture—

(a) the Comptroller may sell or destroy the living creature or other article seized before its condemnation; and

(b) the net proceeds of sale are deemed substituted for the article sold, and this Part, so far as it is applicable, extends and applies to such proceeds.

199. (1) The Comptroller shall sell by public auction any goods—

Sale of goods condemned as forfeited.

(a) condemned as forfeited; or

(b) deemed to have been condemned as forfeited,

in accordance with the forfeiture rules set out in Schedule 4 unless the goods are prohibited or restricted goods.

(2) An auction under this section shall be advertised, not less than 7 days before the auction is due to take place, in the *Gazette* or in such other manner as the Comptroller thinks fit.

(3) The Comptroller shall, in writing, authorise a person to act as auctioneer at an auction under this section.

(4) A person is disqualified from bidding for anything at an auction under this section, if the person—

(a) is a customs officer; or

(b) has or had an interest in the article being auctioned.

(5) A person who makes a bid in contravention of subsection (4) commits an offence and is liable on summary conviction to a fine of \$10,000.

(6) The proceeds of the sale of any goods at an auction under this section shall be applied as follows—

- (a) first, to pay any duty payable in respect of the goods;
- (b) secondly, to pay all the charges incidental to the sale, warehousing and carriage of the goods;
- (c) thirdly, to pay all the charges incidental to the seizure of the goods or to any condemnation proceedings respecting the goods; and
- (d) lastly, if any excess remains after the payments referred to in paragraphs (a), (b) and (c) have been made, such excess shall be paid by the Comptroller into the Consolidated Fund.

(7) The value for duty of any goods sold at auction under this section is the price realised less the included duty, if any.

(8) The Comptroller shall destroy or otherwise dispose of or cause to be destroyed—

- (a) any goods not sold at an auction under this section; and
- (b) all prohibited or restricted goods condemned or deemed to be condemned as forfeited.

(9) Nothing in this section prevents the Comptroller from authorising -

- (a) the withholding from sale of any goods condemned or deemed to be condemned as forfeited; and

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- (b) the use by a proper officer of any goods withheld under paragraph (a),

where such retention or use is likely to assist the proper officer in the performance of his duty.

200. (1) Where any article which is not condemned or deemed not to be condemned as forfeited is required by or under this Act or any other customs enactment to be sold, the article shall, unless it is of a perishable nature, be sold at a public auction.

Sale of articles not
condemned as forfeited.

(2) An auction under this section shall be advertised in the *Gazette* not less than 7 days before the auction is due to take place.

(3) The Comptroller shall appoint a person, who may be a customs officer, to act as auctioneer at any auction under this section.

(4) The proceeds of the sale of any article at an auction under this section shall be applied as follows-

- (a) first, to pay any duty payable on the article; and
- (b) secondly, to pay all the charges incidental to the sale, warehousing and carriage of the article; and
- (c) lastly, if any excess remains after the payments in paragraphs (a) and (b) have been made, such excess shall, where an application is made within 6 months of the sale, be paid over to any person who satisfies the Comptroller that he was the owner of the article at the time of its sale.

(5) The value for duty of any article sold under this section is the price realised less the included duty.

(6) The Comptroller shall sell any article which is of a perishable nature in such manner as appears to him most likely to realise the largest sum.

(7) Where an article or item to which this section applies cannot be sold—

(a) at an auction under this section; or

(b) by the Comptroller under subsection (6),

the article or item may be destroyed or otherwise disposed of in such manner as the Comptroller directs.

(8) A sale under this section may be held at the same time and place as a sale under section 199.

Notice of seizure.

201. (1) Where any goods have been seized, the proper officer shall, as soon as practicable but not later than 2 working days from the date of seizure, give notice in writing of the seizure and the reasons for the seizure, in the prescribed form—

(a) subject to paragraph (b), to any person known or believed to have an interest in the goods; or

(b) where the person referred to in paragraph (a) is overseas, to his agent in Dominica.

(2) Notwithstanding subsection (1), a seizure is not invalidated or rendered illegal by reason of any failure to give the notice if the proper officer proves that reasonable steps were taken to give the notice.

Delivery of goods seized on deposit of value.

202. (1) Subject to subsection (2), where any goods have been seized as being liable to forfeiture—

(a) the Comptroller may, at any time before condemnation of the goods, deliver the goods to

the owner or other person from whom they were seized, on the deposit with the Comptroller of a sum of money equal to the aggregate value of the goods and the duty payable;

- (b) the sum of money deposited is deemed substituted for the goods seized; and
- (c) this Part, so far as it is applicable, applies to the money accordingly.

(2) Subsection (1) does not apply to goods which have been seized as being liable to forfeiture if such goods are prohibited goods.

203. (1) Where, in any proceedings against the State or the Comptroller for the condemnation of any goods seized as being liable to forfeiture under this Act or any other customs enactment, judgment is given for the claimant, the court may, if it sees fit, certify that there were reasonable grounds for the seizure of the goods.

Protection of officers
seizing and detaining
goods.

(2) Where, in any proceedings described in subsection (1), judgment is given for the claimant or prosecutor—

- (a) the claimant or prosecutor is not entitled to recover any damages or costs; and
- (b) the defendant is not liable to any punishment,

if a certificate relating to the seizure has been granted under subsection (1) or the court is satisfied that there were reasonable grounds for the seizure or detention of the goods.

(3) Nothing in subsection (2) affects the right of any person—

- (a) to the return of the goods seized or detained; or

(b) to compensation for any damage to the goods during the detention or destruction of such goods.

(4) A certificate under subsection (1) may be proved by the production of the original certificate or a certified copy of the certificate, purporting to be signed by an officer of the court by which it was granted.

Application for order disallowing seizure.

204. A person claiming an interest in goods seized as being liable to forfeiture may, within 20 working days after the date on which a notice is given to that person under section 201 or within such further time as the court may allow, apply to the court for an order—

- (a) disallowing the seizure on the grounds that no reasonable cause for the seizure or the continued detention of the goods exists under this Act;
- (b) for the return of the goods or for the return of the goods otherwise to be made available to the claimant; and
- (c) for payment of compensation by the State to the claimant such sum as the court thinks fit—
 - (i) for any depreciation in the value of the goods resulting from the seizure or detention, or
 - (ii) for any transport and storage costs respecting the seized or detained article.

Court may disallow seizure.

205. (1) Subject to this section, where an application is made under section 204, the court may issue an order dismissing the application or disallowing the seizure.

(2) Where the court issues an order disallowing the seizure, the court may, upon and subject to such terms and conditions as the court thinks fit, order that—

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- (a) the seizure is disallowed, in whole or in part;
 - (b) the goods are to be returned, in whole or in part;
and
 - (c) the State pays to the applicant such sum as compensation, as the court thinks fit—
 - (i) for any depreciation in the value of the goods resulting from the seizure or detention, and
 - (ii) for any transport and storage costs.

(3) Where the court issues an order dismissing the application, that order is deemed to be an order for condemnation of the goods to the State unless the goods have already been condemned in proceedings brought under section 197(3).

(4) The court shall not issue an order disallowing the seizure of the goods if the court is of the opinion that—

- (a) the goods are required, in whole or in part, to be produced in evidence in any proceedings pending under this Act; or
- (b) there are proceedings pending which may result in condemnation of the goods.

(5) The court shall not issue an order for the payment of compensation except—

- (a) in respect of goods which, in the opinion of the court, were seized or detained without reasonable cause; and
- (b) to the extent that the court disallows the seizure or detention.

(6) Where the court issues an order for the payment of any sum as compensation to any person under this section, the sum awarded is recoverable by that person as a civil debt due from the State.

Application for order disallowing seizure where notice not received.

206. (1) Except where the goods have already been condemned to the State, a person claiming an interest in goods seized as being liable to forfeiture under this Act who did not receive a notice under section 201, may, within 2 months after the date on which the goods were seized, apply to the court for an order –

(a) for the return of the goods, if the goods seized have not been sold, destroyed or otherwise disposed of; or

(b) for payment of compensation by the State for the whole or part of any loss suffered by the applicant by reason of the sale, destruction or disposal otherwise of the goods seized.

(2) The court may—

(a) dismiss the application made under subsection (1); or

(b) issue an order directing-

(i) the goods to be returned, if the goods seized have not been sold, destroyed or otherwise disposed of, or

(ii) the State to pay to the applicant such sum of money, as the court thinks fit, as compensation for the whole or any part of any loss suffered by the applicant by reason of the sale, destruction or disposal otherwise of the goods seized.

(3) The court shall not issue an order respecting the payment of compensation except—

- (a) in respect of goods which, in the opinion of the court, were seized or detained without reasonable cause; and
- (b) to the extent that the court disallows the seizure or detention.

(4) Where the court issues an order dismissing the application, that order is deemed to be an order for condemnation of the goods to the State unless the goods have already been condemned in proceedings brought under section 197(3).

(5) Without limiting the generality of subsection (2)(a), the Court may dismiss an application under subsection (1) if the application was not made as soon as reasonably practicable after the applicant became aware of the seizure of the goods.

207. Where no application is made under section 203 within the time specified in that section, the goods are deemed condemned to the State as if an application were made and dismissed.

Condemnation if no appeal against seizure.

208. Where an application under section 204 or 205 is not completed, the goods are condemned to the State as if the application were dismissed.

Condemnation if application discontinued.

209. (1) Subject to subsection (2), where this Act provides that on the commission of any offence any goods are liable to forfeiture, the conviction of any person for that offence has effect as a condemnation, without suit or judgment, of any goods which—

Condemnation of seized goods on conviction.

- (a) have been seized in accordance with this Act and in respect of which the offence was committed; or
- (b) were otherwise liable to forfeiture under this Act.

(2) Subject to subsection (4), where the court imposes a sentence on any person on the conviction of that person for an offence to which subsection (1) applies—

(a) the court may, if it thinks fit, order the restoration of the goods forfeited to the person from whom the goods were seized; and

(b) where such an order is issued, the conviction does not have effect as a condemnation of such goods.

(3) The Court may, in issuing an order under subsection (2), impose such conditions as it thinks fit.

(4) Subsection (2) does not apply if, before the conviction of the person for the offence, the goods have been—

(a) sold at public auction;

(b) restored to the person from whom they were seized; or

(c) otherwise disposed of by the Comptroller under any other provision of this Act.

Disposal of forfeited goods.

210. (1) The State has the property rights to forfeited goods or to the proceeds of sale under section 198, 199 or 200.

(2) Where goods have been condemned, such goods may be sold by public auction, used, destroyed, or otherwise disposed of in such manner as the Comptroller may direct.

Application of forfeiture provisions.

211. Except where this Act expressly provides otherwise, the provisions of this Act with respect to the forfeiture of goods extend and apply to any vessel, aircraft or other article forfeited under this Act.

PART XVI**ADMINISTRATIVE (CUSTOMS) PROCEEDINGS**

212. (1) Where, in respect of an entry, an importer disputes the amount of duty assessed or any decision of the Comptroller under this Act, the importer—

Appeals to Comptroller.

(a) shall pay the amount in dispute under protest; and

(b) may, within 3 months from the date of payment, file a written protest in respect of that entry requesting the Comptroller to reconsider the disputed decision.

(2) A request made under subsection (1) must –

(a) state the grounds for disputing the amount of duty demanded; and

(b) specify any further documentation or information on which the request is based.

(3) The Comptroller may, after—

(a) investigating the matter within 90 days of the date of the original assessment; and

(b) taking into account any further submissions of the importer or his agent,

confirm the original assessment or substitute a new assessment for the original assessment.

213. (1) There is hereby established a body to be known as the Customs Appeal Commission for the purpose of hearing appeals under this Part.

Customs Appeal
Commission.

(2) The Minister shall, by notice in the *Gazette*, appoint as commissioners persons who –

(a) have experience in customs matters; or

(b) in the opinion of the Minister, by reason of their profession and training are qualified to be commissioners.

(3) Schedule 5 has effect in respect to the constitution of the Commission and other matters relating to the Commission.

Appeals to Commission. **214.** A person who is dissatisfied with a decision of the Comptroller under section 213 has a right of appeal against that decision to the Commission within 30 days of the date of the decision.

Procedure. **215.** (1) Subject to this Act, the Commission shall conduct its proceedings in such manner as it considers appropriate.

(2) Proceedings before the Commission shall be commenced by the lodging of a notice of appeal in the prescribed form, together with the prescribed fee, if any, with the Commission.

Nature of appeal. **216.** Every appeal to the Commission shall be by way of a hearing *de novo*.

Commission may extend time for appeal. **217.** Where under this Act a person is entitled to appeal to the Commission within a specified time, the Commission may, on an application made within the specified time, extend the time within which the appeal may be brought.

Hearing. **218.** (1) Subject to section 220, as soon as the Commission considers that an appeal is ready to be heard, the Commission shall—

(a) fix a date, time and place for the hearing of the appeal; and

(b) notify the appellant and the Comptroller of the date, time and place fixed.

(2) A notice to the appellant under subsection (1) –

(a) shall, in addition to specifying the matters referred to in subsection (1), inform the appellant of the provisions of subsections (5) and (6); and

(b) shall be served on the appellant by personal service or by post in accordance with this Act.

(3) At the hearing of an appeal before the Commission, the appellant and the Comptroller—

(a) may provide evidence; and

(b) shall be given an opportunity to be heard in person or by a person authorised by the appellant or the Comptroller to appear on his behalf, without regard to whether that person is an attorney-at-law.

(4) Where the appellant or the Comptroller fails to appear before the Commission at the time and place appointed, the Commission may, notwithstanding such failure, upon proof of service of the notice of the hearing, proceed to determine the appeal.

(5) Subject to subsection (6), the hearing of an appeal shall be held in public.

(6) The Commission may hold a hearing or any part of a hearing in private if the Commission is of the opinion that it is proper to do so, having regard to the interests of any party and to the public interest.

(7) The Commission may, subject to such conditions as the Commission thinks fit, order that any part of any evidence given or the name of any witness not be published.

Commission may decide appeal without oral hearing if both parties consent.

219. (1) Notwithstanding section 218, the Commission may, if—

- (a) the Commission thinks fit; and
- (b) both parties consent,

decide an appeal without holding an oral hearing.

(2) Where the Commission, at any time during its consideration of an appeal in accordance with subsection (1), decides that an oral hearing should be held, the Commission shall fix a date, time and place for the hearing of the appeal in accordance with section 218.

Powers of commission.

220. For the purpose of hearing and deciding any appeal before it, the Commission has –

- (a) all the powers, duties, functions, and discretions of the Comptroller in making the assessment, decision, ruling, determination or direction;
- (b) all the powers of the Magistrates' Court, in the exercise of its civil jurisdiction, in respect of citing parties and conducting and maintaining order at the hearings of the Commission; and
- (c) such other powers assigned to it under this Part.

Evidence.

221. The Commission may, in respect of its proceedings—

- (a) take evidence on oath;
- (b) permit a person appearing as a witness before it to give evidence by tendering a written statement and verifying such statement by oath; and

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- (c) receive as evidence any statement, document, information or matter which, in the opinion of the Commission, may assist the Commission to deal effectually with the appeal or any other matter before it.

222. (1) For the purposes of dealing with the matters before it, the Commission or a person authorised in that regard by the Commission in writing may – Powers of investigation.

- (a) inspect and examine any papers, documents, records or articles;
- (b) require any person -
- (i) to produce for examination any papers, documents, records or articles in the possession or under the control of that person, and
- (ii) to allow the making of copies of, or the taking of extracts from, such papers, documents, records or article; or
- (c) require any person to furnish, in a form approved by or acceptable to the Commission, such information or particulars as the Commission may require.

(2) The Commission may, if it thinks fit, require that any written information or particulars or any copies or extracts furnished under this section be verified by statutory declaration or otherwise.

(3) For the purposes of dealing with any matter before it, the Commission may -

- (a) of its own motion or on an application, order that any information or particulars, or a copy of the

whole or any part of any paper, document or record furnished or produced to it be supplied to any person appearing before the Commission; and

- (b) impose such terms and conditions, as it thinks fit, in respect of the production and use of such information, particulars, paper, document or record.

Power to summon witness.

223. For the purposes of dealing with any matter before it, the Commission may of its own motion, or on an application, issue in writing a summons requiring any person—

- (a) to attend and give evidence at the time and place specified in the summons; and
- (b) to produce any papers, documents, records or articles in that person's possession or under that person's control which are relevant to the matter before the Commission.

Service of summons by Commission.

224. (1) A summons by the Commission to a witness shall be served by –

- (a) delivering it to the person summoned at least 24 hours before the attendance of the witness is required; or
- (b) sending it by registered post addressed to the person summoned at that person's usual place of residence or business at least 7 days before the date on which the attendance of the witness is required.

(2) Where the summons is delivered by registered post, it is deemed for the purposes of subsection (1)(b) to have been served at the time when the letter would be delivered in the ordinary course of post.

225. (1) Every witness giving evidence before the Commission has the same privileges and immunities as witnesses have in a court of law.

Protection of persons appearing before the Commission.

(2) Every counsel or agent or other person appearing before the Commission has the same privilege and immunities as a counsel has in a court of law.

(3) Without prejudice to the generality of subsections (1) and (2), every person appearing before the Commission has in relation to—

(a) the giving of information to the Commission,

(b) answering questions put to that person by the Commission; and

(c) the production of papers, documents, records and articles to the Commission,

the same privileges as witnesses have in courts of law in relation to the matters specified in paragraphs (a), (b) and (c).

226. (1) Subject to subsection (2), in an appeal, the appellant is limited to the grounds of appeal stated in the appellant's notice of appeal, and the burden of proof is on the appellant.

Grounds of appeal and burden of proof.

(2) The Commission may, on the application of the appellant or of its own motion, amend the grounds of appeal stated in the notice of appeal.

227. (1) The Commission may sit at such times and places as the Commission determines.

Sittings of Commission.

(2) The Commission may, before the time of a sitting or at a sitting, adjourn a sitting or modify the place of the sitting.

228. The Commission may, at any time, dismiss an appeal if it is satisfied that the appeal is frivolous or vexatious.

Commission may dismiss frivolous and vexatious appeals.

Decisions of
Commission.

229. (1) Every decision of the Commission shall be given in writing, with a statement of the reasons for the decision.

(2) The Commission shall give a copy of the decision to the parties to the appeal.

PART XVII

COURT PROCEEDINGS

Appeals to High Court.

230. (1) A party who is dissatisfied with a decision of the Commission under this Act, may appeal to the High Court against any decision of the Commission which involves a question of law, including a question of mixed fact and law.

(2) Every appeal under this section shall be made by filing a notice of appeal within 30 working days after the date of the decision appealed against or within such further time as the High Court may allow.

(3) Where a notice of appeal is filed in accordance with subsection (2), the appellant shall -

(a) within the time specified in that subsection, serve a copy of the notice on the Commission; and

(b) except in the case of an appeal by the Comptroller, give security for the costs of the appeal of the amount and in the form fixed by the High Court.

Stating case for High
Court.

231. (1) The Commission may, on the application of the appellant or the Comptroller or of its own motion, state a case for the opinion of the High Court on any question of law arising in respect of any appeal which was heard before the Commission.

(2) The Commission shall give notice to the Comptroller and the appellant of the Commission's intention to state a case under this section.

232. A party who is dissatisfied with a decision of the High Court under this Part may appeal to the Court of Appeal on a question of law, including a question of mixed fact and law.

Appeals to Court of Appeal.

233. (1) Where the Commission or the High Court determines that the amount of duty should be –

Payment of duty after appeal.

(a) increased, the appellant shall pay the amount of the increase to the Comptroller; or

(b) decreased, the Comptroller shall pay the amount of the decrease to the appellant,

within 30 days of the decision unless the decision has been further appealed.

(2) Where the amount due under subsection (1) is not paid within 30 days of the decision, it shall bear interest at a rate of one per cent per month or part of a month during which it remains unpaid.

234. (1) After exhaustion of all appeal proceedings available before the Comptroller and Commission, and subject to any express provisions to the contrary in any customs enactment, a disputed matter involving a customs enactment may be prosecuted in the High Court.

Prosecution for customs offences.

(2) Subject to the powers of the Director of Public Prosecutions under the Constitution and to subsection (4), proceedings for an offence under any customs enactment, or for condemnation, shall not be commenced except –

(a) by order of the Comptroller in writing; and

(b) in the name of a proper officer.

(3) In the case of the death, removal, discharge or absence of the officer in whose name any proceedings were commenced by virtue of subsection (2)(b), those proceedings may be continued by any officer authorised to act on his behalf by the Comptroller.

(4) Where a person has been arrested for an offence under any customs enactment, any court before which he is brought may deal preliminarily with the case against the person.

Place of offence.

235. (1) An offence under this Act or any other customs enactment shall be regarded as having been committed—

(a) in the place in which the offence arose or was actually committed; or

(b) in any place on land where the offender or person prosecuted may be or may be brought.

(2) Every cause of complaint in respect of an offence under this Act or any other customs enactment shall be regarded as having arisen—

(a) in the place in which it actually was committed or arose; or

(b) in any place on land where the offender or person prosecuted may be or may be brought.

Place of trial.

236. Proceedings for an offence under any customs enactment may be commenced –

(a) in any court having jurisdiction in the place –

(i) where the offence was committed,

(ii) subject to subparagraph (iii), where the person charged with the offence resides or is found, or

(iii) if the person charged with the offence is a corporate body, where that corporate body has its registered or principal office; or

(b) if any goods were—

(i) detained or seized or found in connection with the offence, or

(ii) condemned as forfeited,

in any court having jurisdiction in the place where the goods were detained, seized, found or condemned as forfeited.

237. Unless otherwise provided in this Act and notwithstanding any other enactment, proceedings in respect of an offence committed under this Act or any other customs enactment may be commenced at any time within 3 years after the date of commission of the offence.

Time limit on proceedings.

238. The fact that customs duties have been secured by a bond or otherwise shall not be pleaded or made use of in answer to or in stay of proceedings under this Act or any other customs enactment.

Limitation as to pleadings.

239. An officer or other person authorized by the Comptroller, although not an attorney, may conduct proceedings before a magistrate's Court in relation to an assigned matter.

Officers may prosecute.

240. Notwithstanding anything contained in any other enactment to the contrary, where a fine imposed by a court in respect of an offence against this Act or any other customs enactment is not paid within one month of the date of its imposition, the court may order the defendant in default who was convicted of the offence to be imprisoned for -

Alternative prison sentence.

(a) a term not exceeding 3 years; if such fine is \$50,000 or less; or

(b) a term of 5 years, if such fine exceeds \$50,000.

Imprisonment for second and subsequent offence.

241. Subject to this Act and any other enactment imposing a sentence of imprisonment for an offence, where—

(a) a defendant is liable on summary conviction to a fine of \$25,000 or more for an offence under this Act or any other customs enactment; and

(b) such defendant has previously incurred a fine or forfeiture under this Act or any other customs enactment which has been enforced in any court,

the court may, if it thinks fit, in lieu of ordering payment of the fine referred to in paragraph (a), order the defendant to be imprisoned for a period not exceeding 5 years.

Incidental provisions as to legal proceedings for offences.

242. (1) In proceedings for an offence under this Act or any other customs enactment, the court in which the matter is considered may mitigate any pecuniary penalty as it sees fit.

(2) It is not a defence, in any proceedings for an offence or for the condemnation of an article as being forfeited under this Act or any other customs enactment, that security has been given by a bond or otherwise for the payment of any duty or compliance with any condition.

Institution of civil proceedings.
Chap. 7:80

243. (1) Notwithstanding anything to the contrary in the State Proceedings Act, proceedings for the recovery of rents, charges, expenses, duties, penalties and all other sums of money payable under a customs enactment may be instituted, determined, enforced and recovered by suit or other appropriate civil proceedings in a Magistrate's Court, in the name of the Comptroller as nominal plaintiff.

(2) The Magistrate's Court is vested with the necessary jurisdiction for the purpose of subsection (1), and, except as provided in this Act, the ordinary civil procedure of the Magistrate's Courts applies to proceedings under that subsection.

(3) For the avoidance of doubt—

- (a) civil proceedings brought in the name of the Comptroller are not invalidated or do not lapse by reason of any change in the person holding the office of Comptroller; and
- (b) where any such change occurs, the civil proceedings may be continued in the name of the person who, for the time being, is the holder of or is acting in the office of Comptroller.

(4) Nothing in this section shall be construed so as to prejudice or affect the right of the Attorney-General to institute civil proceedings on behalf of the State.

244. (1) A summons or other process issued for the purpose of proceedings under a customs enactment is deemed to have been duly served if it was –

Service of process.

- (a) delivered personally to the person to whom it is addressed;
- (b) subject to paragraph (c), left at the last known place of abode or business of the person to whom it is addressed; or
- (c) in the case of a corporate body, left at its registered or principal office.

(2) A summons, notice, order or other document issued for the purposes of—

- (a) any proceedings under this Act or any other customs enactment; or

(b) an appeal from the decision of the court in the proceedings,

may be served by a proper officer.

(3) For the purposes of this section, the expression “appeal” includes an appeal by way of case stated.

Costs.

245. In proceedings under this Act or any other customs enactment, the same rules as to costs shall be observed as in proceedings between private persons.

PART XVIII

PROOF IN PROCEEDINGS

Burden of proof.

246. (1) Subject to subsection (4), this section applies to proceedings respecting the intent to defraud the revenue of the Customs department.

(2) Subject to subsection (4), in any proceedings under this Act instituted by or on behalf of or against the State, other than a prosecution of an individual for an indictable offence, every allegation made on behalf of the State in any statement of claim, statement of defence, plea or information which relates to –

- (a) the identity or nature of any goods;
- (b) the value of any goods liable to duty;
- (c) the country or time of exportation of any goods;
- (d) the fact or time of the importation of any goods;
- (e) the place of manufacture, production or origin of any goods; or
- (f) the payment of any duty on any goods,

is presumed to be true unless the contrary is proved.

(3) Subject to subsection (4), the presumption in subsection (2) shall not be countered by the fact that evidence is produced on behalf of the State in support of any such allegation.

(4) Subject to this Act, where it is alleged, in any proceedings for an offence against this Act, that a defendant intended to commit the offence, the prosecution has the burden of proving that intent beyond a reasonable doubt.

(5) In any prosecution under this Act or any other customs enactment, the onus is on the defendant to prove, on a balance of probability, that—

(a) the duties assessed have been paid; and

(b) the goods were, where applicable –

(i) lawfully transferred from a vessel or an aircraft to another vessel or aircraft,

(ii) lawfully loaded into or unloaded from any vessel or aircraft, and

(iii) lawfully imported or exported.

247. (1) The averment that -

Averment in proceedings.

(a) goods thrown overboard, staved or destroyed were so dealt with to prevent or avoid their seizure;

(b) a person is or was appointed or authorised by the Comptroller to discharge any duty;

(c) a person was engaged by order, or with the concurrence, of the Comptroller in the discharge of any duty;

-
- (d) a person is or was the Minister, the Comptroller, a customs officer or a police officer;
 - (e) any place is within -
 - (i) the limits of a customs port, approved wharf, customs airport or other customs controlled area; or
 - (ii) the territorial waters of Dominica;
 - (f) the Comptroller is or is not satisfied with any matter which he is required to be satisfied with by reason of this Act or any other customs enactment; or
 - (g) proceedings were instituted by order of the Comptroller,

is sufficient evidence of the matter in question, until the contrary is proved.

(2) Where, in proceedings brought by or against a competent person or against any other person in respect of anything purporting to have been done in the exercise of a power or duty under this Act or any other customs enactment, a question arises respecting any or all of the following—

- (a) the place from which goods have been brought;
- (b) whether or not customs duty has been paid or secured in respect of goods;
- (c) whether or not goods are of the description or nature alleged in the information, writ or other process;
- (d) whether or not goods were lawfully brought to any place for the purpose of being loaded into a vessel or an aircraft or exported;

(e) whether or not goods were exported; or

(f) whether or not goods are or were subject to any prohibition or restriction on their importation, exportation or carriage coastwise,

the burden of proof lies on the other party to the proceedings.

(3) For the purposes of this section, “competent person” means—

(a) the Comptroller;

(b) the Director of Public Prosecutions;

(c) the Attorney-General;

(d) a customs officer;

(e) an authorised person; or

(e) a police officer.

248. (1) Where in any proceedings instituted under this Act a question arises as to whether a person is a proper officer, evidence or certification of the Comptroller is sufficient evidence of the matter.

Evidence of officers.

(2) Any proper officer is deemed a competent witness upon the trial of any suit or information regarding any seizure of goods or penalty under this Act, regardless of whether the officer is entitled or is likely to be entitled to a reward upon the conviction of the party charged in the suit or information.

249. (1) A document which is purported to be signed by—

Proof of certain documents.

(a) the Minister or any other member of the Cabinet;

(b) the Comptroller; or

(c) a person with the authority or order of the Minister or other member of the Cabinet or the Comptroller,

is deemed to have been so signed, until the contrary is proved.

(2) The matters contained in any document referred to in subsection (1) may, in any proceedings under this Act or any other customs enactment, be proved by the production of that document or any document purporting to be a copy of that document.

(3) Where a book or other document is required to be kept by or under this Act or any other customs enactment, the production of that document or a copy of that document certified as a true copy by a proper officer in proceedings under this Act or other customs enactment is *prima facie* evidence of the matters stated in it.

(4) In any proceeding under this Act or any other customs enactment, the production of a certificate purporting to be signed by the competent authority is sufficient evidence of all matters stated in the certificate, unless the contrary is proved.

Presumption of authenticity of documents.

250. All documents purporting to be sealed with the seal of the Customs department, are, in every court and in all proceedings under this Act and any other Act, deemed to have been sealed with due authority, unless the contrary is proved.

Valuation of goods for penalty.

251. (1) Where the fine for an offence under a customs enactment is an amount which is to be determined by the value of goods, such value shall be determined in accordance with Schedule 2.

(2) A certificate signed by the proper officer attesting to the value of the goods is *prima facie* evidence of the value of the goods.

Certificate of condemnation.

252. Condemnation by a court under any customs enactment may be proved in any court, or before any competent tribunal, by the production of a certificate of condemnation purporting to be signed by a Magistrate.

PART XIX

AGENTS, CUSTOMS BROKERS, ETC.

253. (1) When a person makes an application to transact business on behalf of any other person, the proper officer may—

Authority to be produced.

- (a) require the person to produce a written authority from the other person on whose behalf the application is made; and
- (b) in default of the production of such authority, refuse to transact business with the purported agent on behalf of the other person.

(2) Where a document is required by this Act or any other customs enactment to be signed by a person—

- (a) the document may, with the approval of the Comptroller, be signed by an agent of that person; and
- (b) the signed document is deemed for all purposes to be signed by the person required to sign.

(3) The Comptroller may, in his own discretion, refuse to allow an application referred to in subsection (1).

254. (1) A document produced under this Act by a person other than an individual shall be signed by an individual authorised to do so by the governing body of the person.

Persons other than individuals.

(2) Where the person in subsection (1) has elected or appointed officers, the president, vice-president, secretary, treasurer or any other equivalent officer of the person is deemed to be authorised to sign a document referred to in subsection (1), unless there is evidence to the contrary.

Customs brokers and
tariff clerks.

255. (1) The Comptroller may licence persons as customs brokers—

- (a) to transact business with the Customs department on behalf of other persons; and
- (b) to submit, on behalf of other persons, entries required to be submitted to the Customs department.

(2) An importer or exporter of goods may, in accordance with regulations, designate a fit and proper employee as his tariff clerk for the purposes of—

- (a) transacting business with the Customs department on behalf of the importer or exporter; and
- (b) to submit, on behalf of the importer or exporter, declarations or entries required to be submitted to the Customs department.

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

(4) The Minister may make regulations respecting customs brokers and tariff clerks.

(5) Regulations made under subsection (4) may make provision respecting persons who on the date immediately before the commencement of this Act were conducting business as customs brokers or tariff clerks.

Penalties.

256. (1) A person who transacts or attempts to transact business as an agent without the authority of the principal commits an offence and is liable on summary conviction to a fine of \$10,000 or equivalent to three times the value of the goods which occasioned the offence, whichever is greater.

(2) Any person who assists or attempts to assist a person in the commission of an offence under subsection (1) commits an offence and is liable on summary conviction to a fine of \$10,000 or equivalent to three times the value of the goods in respect of which the offence is committed, whichever is greater.

257. Where –

Ship agents.

- (a) under a customs enactment a special procedure is prescribed in regard to a vessel; and
- (b) the owner of the vessel is not resident or represented in Dominica,

it is the duty of the master of the vessel to appoint an agent in Dominica for the purpose of performing any act which, under any customs enactment, must be performed by the owner of a vessel.

PART XX

MISCELLANEOUS

258. (1) Where liability for an offence under this Act or any other customs enactment is incurred by two or more persons jointly -

Joint and Several liability.

- (a) each person is liable for the full amount of any fine or penalty prescribed; and
- (b) the persons committing the offence may be proceeded against jointly or severally.

(2) Where a corporate body fails to pay any duty required to be paid by or under this Act—

- (a) the corporate body commits an offence;
- (b) a director of the corporate body at the time the corporate body was required to pay the duty who

is proved to have consented to or connived at the failure to pay the duty commits an offence.

(3) A corporate body and a director under subsection (2) are jointly and severally liable for the payment of the duty and any related penalties.

Officials of
unincorporated bodies.

259. (1) In this section, “official”, in relation to an unincorporated body, means –

- (a) in the case of a partnership, a partner of the partnership;
- (b) in the case of a joint venture, a participant in the joint venture, other than a participant who contributes to the capital of the joint venture, but who is not otherwise concerned with the management and day-to-day operations of the joint venture; or
- (c) in the case of an unincorporated body other than a body referred to in paragraph (a) or (b) -
 - (i) a person who holds office as chairman, president, treasurer, secretary or any other similar office of that unincorporated body,
 - (ii) where there is no official of the body as referred to in subsection (i), a member of any committee which has management of the affairs of that unincorporated body, or
 - (iii) where there is no official or committee referred to in sub-paragraph (i) or (ii), a member of the unincorporated body.

(2) Where any liability or obligation is imposed by or under this Act or the Regulations on an unincorporated body, the unincorporated body and every official of the unincorporated body at the time such liability or obligation is imposed are jointly and severally liable and responsible to satisfy the liability or obligation.

(3) Notwithstanding subsection (2), an official of an unincorporated body is not liable under that subsection unless –

- (a) a certificate for the amount of the body's liability referred to in subsection (2) has been registered in the High Court under this Act and execution for that amount has been returned unsatisfied, wholly or in part;
- (b) the body has commenced liquidation or dissolution proceedings or has been dissolved and a claim for the amount of the body's liability referred to in subsection (1) has been proved;
- (c) a receiving order has been made against the body under the Bankruptcy Act and a claim for the amount of the body's liability referred to in subsection (1) has been proved; or
- (d) the body has made an assignment under the Bankruptcy Act and a claim for the amount of the body's liability referred to in subsection (1) has been proved.

Chap 9:90

(4) A person who ceases to be an official of an unincorporated body is deemed, for the purposes of this Act, not to cease being an official of the body until the Comptroller receives notification in writing of the cessation.

(5) Where a document is served on an unincorporated body under this Act or regulations made under this Act, the

document is deemed to have also been served on the officials of the body.

Executors and administrators.

260. (1) For the purposes of this Act, where an individual dies—

- (a) the individual's estate is deemed to be the same person as the individual and is not deemed to be a trust;
- (b) subject to this section, the executor or administrator of the deceased individual is responsible to satisfy any liability or obligation imposed by this Act on the individual or his estate; and
- (c) subject to subsection (2), the estate and executor, or, as the case may be, the estate and administrator, of the deceased individual are jointly and severally liable for the payment of all amounts payable by the estate under this Act.

(2) The executor or administrator of the deceased individual is liable for the payment of such amounts which became payable before the individual died only to the extent of the assets of the estate after satisfying the claims of creditors whose claims rank in priority to the claim of the State.

(3) When an individual dies, the Cabinet may waive, in writing, the requirement that the executor or administrator of the deceased individual pays the duty owed if the Cabinet considers it appropriate to waive payment of such duty.

Trustees on bankruptcy.

261. For the purposes of this Act, where a person is adjudged a bankrupt -

- (a) the person's estate is deemed not to be an estate or trust;

-
- (b) property held by the person immediately before he was adjudged a bankrupt is deemed not to pass to or be vested in the trustee in bankruptcy upon the receiving order being made or the assignment in bankruptcy being filed, but is deemed to remain vested in the person;
- (c) the property held by the trustee in bankruptcy for the person on the day the person is discharged from bankruptcy is deemed not to pass to the person on the order of discharge being granted, but to have been held by and vested in the person continuously since the day such property was acquired by the person or the trustee;
- (d) where any liability or obligation is imposed by or under this Act on the person in relation to assets to which the bankruptcy relates, the trustee in bankruptcy is, subject to this section, responsible to satisfy the liability or obligation; and
- (e) subject to paragraphs (f) and (g), the trustee in bankruptcy, and not the person, is liable for the payment of all amounts which become payable by the person under this Act before the person is discharged from bankruptcy;
- (f) the trustee in bankruptcy is liable for the payment of amounts which became payable by the person before the person became a bankrupt only to the extent that the person's property in the possession of the trustee is available to satisfy such liability; and
- (g) the trustee in bankruptcy is not liable for the payment of any amount which—

(i) a receiver is liable to pay, or

(ii) relates to activities which the person engages in, on or after the day the person is adjudged a bankrupt and to which the bankruptcy does not relate.

Receivers.

262. (1) In this section –

“asset” includes any property; and

“receiver” includes –

- (a) a person who is appointed to manage or operate an asset of another person under the authority of a court order, an Act or a bond, debenture or other debt security;
- (b) a liquidator appointed to liquidate the assets or wind up the affairs of a corporate body; or
- (c) a committee, guardian or curator who has authority to manage and care for the affairs and other assets of an individual who is incapable of managing his own affairs and assets.

(2) For the purposes of this Act, where a receiver is vested with authority to manage, operate, liquidate, or wind up assets of a person or to manage and care for the affairs and other assets of a person—

- (a) the receiver is deemed to be an agent of the person in the course or furtherance of any of the person’s activities over which the receiver has authority;

-
- (b) any act performed by the receiver in relation to the person's assets over which the receiver has authority is deemed to have been performed by the receiver as agent on behalf of the person;
 - (c) the receiver is deemed not to be a trustee of the estate of the person or any part of such estate;
 - (d) where the assets of a person over which the receiver has authority do not represent the whole of the person's assets through the period during which the receiver acts as receiver of the person, the assets over which the receiver has authority is deemed to be separate from the other assets of the person as if such other assets were assets of a separate person;
 - (e) where any liability or obligation is imposed by this Act on the person in relation to assets over which the receiver has authority, the receiver is, subject to this section, responsible to satisfy such liability or obligation;
 - (f) subject to paragraph (g), the person and the receiver are jointly and severally liable for the payment of all amounts which became payable by the person under this Act before the receiver was appointed;
 - (g) the receiver is liable for the payment of the amounts only to the extent of the person's assets under the control and management of the receiver after—
 - (i) satisfying the claims of creditors whose claims rank in priority to the claim of the State, and

(ii) paying any amounts which the receiver is required to pay to a trustee in bankruptcy of the person; and

(h) the receiver, and not the person, is liable for the payment of any amounts which become payable by the person under this Act, during the period in which the receiver acts as receiver of the person, to the extent that such amounts can reasonably be considered to relate to the person's assets over which the receiver has authority.

Receipts.

263. The Comptroller shall provide an official receipt, in written or electronic form, for any money collected by him.

Special containers and coverings.

264. (1) Where, in the opinion of the Comptroller a container or covering in which goods are imported or exported—

(a) is not the usual or proper container or covering for the goods; or

(b) is designed for separate use, other than as a container or covering for the same or similar goods subsequent to importation or exportation,

such container or covering is, for all purposes of this Act and any other customs enactment, deemed to be separate and dutiable goods, except in cases where a contrary provision is made.

(2) Where any containers or coverings are deemed to be separate and dutiable goods under subsection (1), duty in respect of any such container or covering shall be imposed at the rate stated in the Common External Tariff for the containers.

Duties and drawbacks to be proportionate to quantity or value.

265. The duties, rates, charges and drawback imposed and allowed according to—

-
- (a) any specified quantity or any specified value of any goods; or
- (b) any particular description of container or covering in which goods are imported or exported,

are deemed to apply in the same proportion to any greater or lesser quantity or value or any other description of container or covering.

266. The duties, rates, charges and drawback imposed and allowed under this Act and any other customs enactment—

Mode of calculating weights and measures.

- (a) shall be paid and received according to the weights and measures established by the Weights and Measures Act or any enactment replacing that Act; and
- (b) may be paid in any currency being legal tender in Dominica.

Chap. 78:48

267. No action, suit or other proceedings shall be brought or instituted personally against any customs officer or authorised person in respect of any act performed by him in the exercise of any power granted to or duty imposed on him by or under this Act and any other customs enactment.

Actions against officers.

268. The provisions of this Act and any other customs enactment, so far as such provisions are applicable and subject to any regulations made under this Act regarding goods in transit, are deemed to apply to goods declared in transit to any destination beyond Dominica.

Goods in transit.

269. The Comptroller shall endeavour to ensure that relevant information concerning the requirements, obligations and administration of this Act is available to members of the public.

Availability of information.

Power to make regulations.

270. (1) The Minister may make Regulations—

- (a) for the further, better or more convenient implementation of the provisions or purposes of this Act; and
- (b) prescribing fees, rents or charges to be paid in respect of any matter referred to in the Regulations.

(2) Without limiting the generality of subsection (1), the Minister may make Regulations—

- (a) prescribing fees or charges which are payable to the Customs department to meet or assist in meeting costs and expenses incurred by that Department in granting a certificate of clearance;
- (b) prescribing the classes of goods which are or are not deemed to be stores for the use of passengers and crew or the service of vessels or aircraft about to depart from any customs place;
- (c) prescribing the conditions under which any stores referred to in paragraph (b)—
 - (i) may be shipped free of duty or under drawback of duty, and
 - (ii) are subject to duty, and the form and manner in which such stores shall be entered;
- (d) prescribing when an entry is deemed to have been made for the purposes of this Act;
- (e) prescribing the conditions under which an entry is deemed to have been passed for the purposes of this Act;

-
- (f) prescribing goods or classes of goods which shall be deemed to have been entered under section 38 or 50;
 - (g) exempting specified goods or goods of a specified class from the requirements of section 38 or 50, subject to such conditions as may be prescribed;
 - (h) modifying or excepting the application of any customs enactment to postal packets;
 - (i) securing, in the case of postal packets, the observance of any customs enactment;
 - (j) enabling the officers of the post office to perform for the purpose of any customs enactment and otherwise any or all of the duties of the importer;
 - (k) prescribing the procedure to be followed by—
 - (i) any vessel or aircraft arriving at a customs place,
 - (ii) any vessel or aircraft intending to leave a customs port or a customs airport for a destination outside Dominica,
 - (iii) coasting vessels on their arrival at or departure from any customs port,
 - (iv) coasting aircraft on their arrival at or departure from any customs airport, and
 - (v) penalties for contravention of any customs enactment or regulations made under this section;
 - (l) for carrying into effect any arrangement with the Government or postal administration;

-
- (m) prescribing the descriptions of postal packets which may or may not contain goods or other articles of any description, and the conditions under which the postal packets may contain such goods or articles;
 - (n) regulating the storage, putting alongside, making waterborne for loading of goods intended for export or for use as stores;
 - (o) regulating the loading, unloading or making waterborne for loading of goods carried, or to be carried, by way of coasting trade;
 - (p) for the control of the depositing, marking, keeping, securing and treatment of goods in and the removal of goods from warehouses;
 - (q) respecting the imposition of fines in amounts not exceeding \$10,000 for contravention of any regulation, or direction given or requirement made under any regulation; and
 - (r) for the forfeiture of any goods involved in any contravention referred to in paragraph (q).
- (3) For greater clarity, regulations made under subsection (2)(p) may provide for—
- (a) the registration and maintenance of warehouses;
 - (b) the payment of licence fees;
 - (c) the entering into and maintaining—
 - (i) of bonds for the security of duty chargeable on warehoused goods, or

-
- (ii) of contracts of insurance for warehoused goods;
 - (d) the proper conduct and management of warehouses, including the imposition of conditions and restrictions subject to which goods may be—
 - (i) carried to or from, deposited in, kept in or removed from a warehouse, or
 - (ii) made available to their owners for prescribed purposes;
 - (e) the attendance of customs officers at warehouses;
 - (f) the production to, and making available for inspection by, customs officers of warehoused goods;
 - (g) the provision of facilities to customs officers;
 - (h) the records to be kept by occupiers of warehouses;
 - (i) the minimum quantities or descriptions of goods which may be deposited in or removed from a warehouse at any one time;
 - (j) operations to be carried out on warehoused goods, including the taking of samples;
 - (k) the removal of goods from warehouses without payment of duty, subject to such conditions and restrictions as may be determined by or under the Regulations; or
 - (l) the destruction or abandonment of goods to the Comptroller without payment of duty, in such circumstances and subject to such conditions and

restrictions as may be determined by the Regulations.

(4) Regulations made under this Act shall be subject to negative resolution of the House of Assembly.

271. On the commencement of this Act—

Existing ports,
warehouses, etc.

(a) all duly approved ports, warehouses, airports, wharves and boarding stations, in operation on the day immediately before the commencement of this Act, shall continue to be ports, warehouses, airports, wharves and boarding stations; and

(b) all duly appointed wharves and airports, in operation on the day immediately before the commencement of this Act, shall be deemed to be approved places of loading and unloading until the appointment of such wharves or airports is revoked or varied under this Act.

272. The Customs (Control and Management) Act and the Customs (Import and Export) Tariffs Ordinance are repealed except the First and Second Schedules to the Ordinance which shall continue to have effect until altered or repealed in the manner provided under this Act or by regulations made under this Act.

Repeals.
Chap. 69:01
Cap. 265

273. (1) Notwithstanding the repeal of the enactments mentioned in section 272 (referred to in this section as the “repealed Acts”)—

Savings and transitional
provisions.

(a) any proclamation, rule, regulation, by-law, Orders or warrant made or issued under the repealed Acts shall, if in force on the day immediately before the commencement of this Act, continue in force in so far as such proclamation, rule,

regulation, by-law, Order or warrant is not inconsistent with the provisions of this Act until revoked by regulations made under this Act;

(b) any requirement performed, notice, decision, determination, direction or approval given, application made or thing done under any of the repealed Acts shall—

(i) if in force on the day immediately before the commencement of this Act, continue in force, and

(ii) so far as it could have been performed, made, issued, given or done under this Act have effect as if performed, made, issued, given or done under the corresponding provisions of this Act; and

(c) any certificate issued or made under any of the repealed Acts shall, if in force on the day immediately before the commencement of this Act, continue in force until the expiry of such certificate.

(2) Notwithstanding the repeal of the Customs (Control and Management) Act, the Appeal Commissioners appointed under it are to continue in office only for the purpose of hearing and determining any appeal pending before them.

(3) Notwithstanding subsection (2), an appeal pending before the Appeals Commissioners immediately before the date of commencement of this Act may be transferred to the Commission if the parties to the appeal consent.

(4) Where—

(a) in any enactment; or

(b) in any proclamation, rule, regulation, by-law, Order, form or document made under any of the repealed Acts,

a reference is made to any customs enactment or to the Customs Act, the reference shall be read as if it were made to this Act.

Consequential
amendments.
Chap 69:02

274. The Customs (Duty-Free Shopping) Act is amended as follows -

(a) in item 17 of the Arrangement of Sections by replacing the words “Customs (Control and Management) Act” with the words “Customs Act”;

(b) in section 2, by replacing the definition -

(i) of “Commissioners” with the following -

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

(ii) of “officer” with the following -

“officer” means a customs officer within the meaning of the Customs Act;”

(c) in section 8(f), by replacing the words “Customs Import and Export Tariffs Ordinance or of the Customs (Control and Management) Act” with the words “Customs Act”;

(d) in section 9(b), by replacing the words “Customs Import and Export Tariffs Ordinance or of the Customs (Control and Management) Act” with the words “Customs Act”;

(e) in section 10, by replacing the word “Commissioners” wherever it appears with the word “Customs Act”;

-
- (f) in section 15, by replacing the words “Customs (Control and Management) Act” wherever they appear with the words “Customs Act”;
- (g) in section 17 and its marginal notes, by replacing the words “Customs (Control and Management) Act” wherever they appear with the words “Customs Act”;
- (h) in the Second Schedule, by replacing the words “Customs (Control and Management) Act” where it appears in item 8 of that Schedule with the words “Customs Act”;

SCHEDULE 1

(Sections 42(2) and 67)

GOODS PROHIBITED OR RESTRICTED FROM WAREHOUSING

Aircraft
Animals, living
Arms, ammunition and explosives, fireworks
Asphalt, all kinds including pitch and tar
Bottles, empty in bags
Bricks
Cement and cement products
Chemicals including acids
Coal
Coke
Cylinders
Earthenware not in packages
Empty packages whether set up or collapsed or however packed
Film, cinematograph
Fireclay
Fish, dried or pickled
Flour
Fruits and nuts (other than in tins packed in cases)

Goods of a perishable nature
Goods on which duty is not collectable
Hay and chaff and other feeding stuff for animals (other than in tins packed in cases)

Iron and hardware not in packages
Lumber, wood and timber of all descriptions, shooks, staves, spars and headings except plywood
Lime
Matches
Machinery and parts
Meats (other than in tins packed in cases)
Molasses
Patent fuel
Petroleum and petroleum products (except petroleum jelly and vaseline)
Salt
Seeds for expressing oil therefrom
Shingles
Ships, boats and launches
Tiles
Tar
Tresshoops
Woodhoops
Vegetables (other than in tins packed in cases)
Goods for cold storage
Any goods which in the opinion of the Comptroller are likely to cause damage to other goods stored in the same warehouse.
Bag not exceeding 100 lbs. or 2 cu. ft. each
Bag exceeding 100 lbs. or 2 cu. ft. each
Keg not exceeding 15 gals. capacity each
Keg exceeding 15 gals. capacity each
Barrel, cask, drum, etc., not exceeding 30 gals. capacity each
Barrel, cask, drum, etc., exceeding 30 gals. capacity and not exceeding 60 gals. capacity each
Cask, hogshead, puncheon, etc., exceeding 60 gals. capacity and not exceeding 108gals. capacity each
Cask, hogshead, puncheon, pipe, etc.

SCHEDULE 2**(Sections 80(1), 80(2) and 251)****VALUATION OF GOODS**

- 1.** (1) In this Schedule -
- “customs value”, in relation to imported goods, means the value of goods for the purposes of levying *ad valorem* duties of customs on imported goods;
- “goods of the same class or kind” means goods which fall within a group or range of goods produced by a particular industry or industry sector, and includes identical or similar goods.
- “identical goods” means goods produced in the same country and which are the same in all respects including physical characteristics, quality and reputation, but does not include goods which incorporate or reflect engineering, development, artwork, design work, and plans and sketches for which no adjustment has been made under subsection 8(1)(b)(iv) because such processing were undertaken in Dominica;
- “person” means a natural or legal person;
- “produced” includes grown, manufactured or mined;
- “similar goods” means goods produced in the same country and which, although not alike in all respects, have like characteristics and like component materials which enable them to perform the same functions and to be commercially interchangeable, but does not include goods which

incorporate or reflect engineering, development, artwork, design work, and plans and sketches for which no adjustment has been made under subsection 8(1)(b)(iv) because such processing were undertaken in Dominica.

(2) For the purposes of the definition of “identical goods”, minor differences in appearance shall not preclude goods otherwise conforming to the definition from being regarded as identical.

(3) In determining whether goods are similar, the factors to be taken into consideration include—

(a) the quality and reputation of the goods; and

(b) the existence of a trademark in respect of the goods.

(4) For the purposes of this Schedule —

(a) a person is deemed to be related to another person only if -

(i) both persons are officers or directors of the same business,

(ii) both persons are legally recognised partners in business,

(iii) both persons are directly or indirectly controlled by a third person,

(iv) directly or indirectly, both persons jointly control a third person,

(v) both persons are members of the same family,

(vi) one person is the employer of the other person,

-
- (vii) one person directly or indirectly owns, controls or holds five per cent or more of the outstanding voting stock or shares of the other person, or
 - (viii) one person directly or indirectly controls the other person;
 - (b) one person (person A) is deemed to control another person (person B) when person A is legally or operationally in a position to exercise restraint or direction over person B;
 - (c) two persons who are associated in business with one another whereby one is the sole agent, sole distributor or sole concessionaire, however described, of the other person are deemed to be related only if such persons fall within a criterion specified in paragraph (a); and
 - (d) an event is deemed to occur about the same time as another event if one event occurs—

 - (i) on the same day as the other event, or
 - (ii) within forty-five days immediately before or after, the day on which the other event occurs.

2. (1) Subject to this section, the customs value of imported goods shall be determined under section 3 whenever the conditions prescribed in that section are fulfilled.

(2) Where the customs value of imported goods cannot be determined under section 3, such value shall be determined by proceeding sequentially through sections 4 to 7, in ascending order, to the first section under which it can be determined, but the order of application of sections 6 and 7 shall be reversed, if the

importer makes a request for such a change and the Comptroller agrees to the request.

(3) Except as provided for in subsection (2), it is only when the customs value of imported goods cannot be determined under a particular section that the section next following in the sequence established by that subsection can be applied.

(4) Where the customs value of imported goods cannot be determined under sections 3 to 7, inclusive, such customs value shall-

- (a) be determined using reasonable means consistent with the principles and general provisions of this Schedule;
- (b) to the greatest extent possible, be based on previously determined customs values; and
- (c) be determined using the methods of valuation laid down in sections 3 to 7, inclusive, using, where necessary, reasonable flexibility in their application.

(5) The customs value of imported goods shall not be determined under subsection (4) on the basis of-

- (a) the selling price in Dominica of goods produced in Dominica;
- (b) a system which provides for the acceptance for customs purposes of the higher of two alternative values;
- (c) the price of goods on the domestic market of the country of exportation;
- (d) the cost of production, other than computed values which have been determined for identical or similar goods in accordance with section 7;
- (e) the price of goods for export to a country other

than Dominica;

- (f) minimum customs values; or
- (g) arbitrary or fictitious values.

3. (1) The customs value of imported goods determined under this section is the transaction value of such goods, that is to say, the price actually paid or payable for the goods when sold for export to Dominica, adjusted in accordance with section 8, and in appropriate cases section 9, if -

- (a) there are no restrictions respecting the disposition or use of the goods by the buyer, other than restrictions which -
 - (i) are imposed or required by law or by the public authorities in Dominica,
 - (ii) limit the geographical area in which the goods may be resold, or
 - (iii) do not substantially affect the value of the goods;
- (b) the sale or price of the imported goods is not subject to some condition or consideration for which a value cannot be determined with respect to the goods being valued;
- (c) no part of the proceeds of any subsequent resale, disposal or use of the imported goods by the buyer is likely to accrue, directly or indirectly, to the seller of such goods, unless an appropriate adjustment can be made in accordance with section 8; and
- (d) the buyer and seller of the imported goods are not related, or, where such buyer and seller are related, the transaction value is acceptable for customs purposes under subsection (2).

(2) For the purposes of subsection (1)—

- (a) where a buyer and a seller of the imported goods are related, that relationship shall not in itself be a ground for regarding the transaction value of goods as unacceptable in determining whether the transaction value is acceptable;
- (b) in a sale between related persons, the transaction value shall be accepted and the goods valued in accordance with that subsection whenever the importer demonstrates that such value closely approximates to one of the following occurring at or about the same time—
 - (i) the transaction value in sales, between buyers and sellers who are not related in any particular case, of identical or similar goods for export to Dominica,
 - (ii) the customs value of identical or similar goods, as determined under section 6, and
 - (iii) the customs value of identical or similar goods, as determined under section 7;
- (c) in applying the foregoing tests, due account shall be taken of demonstrated differences in commercial levels, quantity levels, the elements enumerated in section 8 and costs incurred by the seller, in sales in which the seller and the buyer are not related, which are not incurred by the seller in sales in which the seller and the buyer are related; and
- (d) the tests set out in paragraph (b) shall be used at the initiative of the importer and only for

comparison purposes and substitute values shall not be established under that paragraph.

- (3) For the purposes of subsection (2)(a)—
- (a) where necessary, the circumstances surrounding the sale shall be examined and the transaction value shall be accepted if the relationship between the seller and buyer of the imported goods did not influence the price; and
 - (b) where, having regard to the information provided by the importer or otherwise, the Comptroller has grounds for considering that the relationship between the seller and buyer of the imported goods influenced the price, he shall communicate such grounds to the importer who shall be given a reasonable opportunity to respond.
- (4) For the purposes of this section—
- (a) the price actually paid or payable is the total payment made or to be made by the buyer to or for the benefit of the seller for the imported goods, but such payment, whether made directly or indirectly, needs not necessarily take the form of a transfer of money;
 - (b) the total payment referred to in paragraph (a) includes all payments made or to be made as a condition of sale of the imported goods by the buyer to the seller or a third party to satisfy -
 - (i) an obligation of the seller,
 - (ii) any settlement by the buyer, whether wholly or in part, or

(iii) a debt owed by the seller;

(c) an activity, including a marketing activity, undertaken by the buyer on his own account, other than those for which an adjustment is provided by or under section 8 is not considered to be an indirect payment to the seller, notwithstanding that such activity—

(i) is likely to be regarded as a benefit to the seller, or

(ii) has been undertaken by agreement with the seller; and

(d) the cost of any activity referred to in paragraph (c) shall not be added to the price actually paid or payable in determining the customs value of imported goods.

(5) The customs value of imported goods does not include the following charges or costs -

(a) charges for construction, erection, assembly, maintenance or technical assistance undertaken after importation of imported goods such as industrial plant, machinery or equipment;

(b) customs duties and other taxes payable in Dominica by reason of the importation or sale of the goods; or

(c) the cost of transport after importation,

if such charges or costs are distinguished from the price actually paid or payable for the imported goods.

(6) Where goods which are the subject of a sale are entered for home use within Dominica, the entry of such goods

shall be regarded as adequate indication that such goods were sold for export to Dominica.

(7) Where successive sales of goods have taken place before valuation—

- (a) the indication in subsection (6) shall apply; and
- (b) each price resulting from each sale may be used as a basis for valuation.

4. (1) For the purposes of this section—

- (a) the customs value of imported goods determined under this section is the transaction value of identical goods sold for export to Dominica and exported at or about the same time as the goods being valued;
- (b) subject to paragraph (c), the transaction value of identical goods in a sale at the same commercial level and in substantially the same quantity as the goods being valued shall be used to determine the customs value of the imported goods; and
- (c) subject to subsection (2), where the transaction value referred to in paragraph (b) is not available, the transaction value of identical goods sold at a different commercial level or in different quantities, adjusted to take account of differences attributable to commercial level or to quantity, shall be used to determine the customs value of the imported goods.

(2) Where by reason of different commercial levels or different quantities an adjustment is required to be made to the transaction value in paragraph (c), such adjustment must be made on the basis of demonstrated evidence which clearly establishes the reasonableness and accuracy of the adjustment, whether the

adjustment leads to an increase or a decrease in value.

(3) Where the costs and charges referred to in section 8(1)(e) are included in the transaction value, an adjustment shall be made to take account of significant differences in such costs and charges between the imported goods and the relevant identical goods arising from differences in distances and modes of transport.

(4) In applying this section-

- (a) where more than one transaction value of identical goods is available, the lowest transaction value shall be used to determine the customs value of the imported goods;
- (b) a transaction value for goods produced by a different person shall be taken into account only when no transaction value is available under subsection (1) for identical goods produced by the same person as the goods being valued; and
- (c) where by reason of different commercial levels or different quantities an adjustment is required to be made to the transaction value, such adjustment shall be made only on the basis of demonstrated evidence which clearly establishes the reasonableness and accuracy of the adjustment.

(5) For the purposes of this section, the “transaction value of identical imported goods” means a customs value previously determined under section 3, adjusted as specified in subsections (1)(b) and (2).

5. (1) For the purposes of this section—

- (a) the customs value of imported goods determined

under this section is the transaction value of similar goods sold for export to Dominica and exported at or about the same time as the goods being valued;

- (b) subject to paragraph (c), the transaction value of similar goods in a sale at the same commercial level and in substantially the same quantity as the goods being valued shall be used to determine the customs value of the imported goods; and
- (c) subject to subsection (2), where the transaction value referred to in paragraph (b) is not available, the transaction value of similar goods sold at a different commercial level or in different quantities, adjusted to take account of differences attributable to commercial level or to quantity, shall be used to determine the customs value of the imported goods.

(2) Where by reason of different commercial levels or different quantities an adjustment is required to be made to the transaction value in paragraph (c), such adjustment must be made on the basis of demonstrated evidence which clearly establishes the reasonableness and accuracy of the adjustment, whether the adjustment leads to an increase or a decrease in value.

(3) Where the costs and charges referred to in section 8(1)(e) are included in the transaction value, an adjustment shall be made to take account of any significant differences in the costs and charges between the imported goods and the similar goods in question arising from differences in distances and modes of transport.

(4) In applying this section -

- (a) where more than one transaction value of similar goods is available, the lowest transaction value

shall be used to determine the customs value of the imported goods;

- (b) a transaction value for goods produced by a different person shall be taken into account only when no transaction value is available under subsection (1) for similar goods produced by the same person as the goods being valued; and
- (c) where by reason of different commercial levels or different quantities an adjustment is required to be made to the transaction value, such adjustment shall be made only on the basis of demonstrated evidence which clearly establishes the reasonableness and accuracy of the adjustment.

(5) For the purposes of this section, the “transaction value of similar imported goods” means a customs value previously determined under section 3, adjusted as specified in subsections (1)(b) and (2).

6. (1) Subject to subsections (2) and (3), the customs value of imported goods determined under this section shall be based on—

- (a) in the case of imported goods or identical or similar imported goods sold in Dominica in the condition as imported, the unit price at which such goods are sold in the greatest aggregate quantity, at or about the time of the importation of the goods being valued, to persons who are not related to the sellers of the goods;
- (b) in the case of imported goods or identical or similar imported goods not sold at or about the time of importation of the goods being valued, the

unit price at which such goods are sold in Dominica in the condition as imported at the earliest date after the importation of goods being valued but before the expiration of ninety days after the importation; and

- (c) in the case of imported goods or identical or similar imported goods not sold in Dominica in the condition as imported, if the Comptroller so decides, the unit price at which the imported goods, after further processing, are sold in the greatest aggregate quantity to persons in Dominica who are not related to the sellers of such goods, but due allowance shall be made for the value added.

(2) The unit price at which the imported goods or identical or similar imported goods are sold shall be subject to deductions for the following—

- (a) the commissions usually paid or agreed to be paid or the additions usually made for profit and general expenses, including the direct and indirect costs of marketing the relevant goods, in connection with sales in Dominica of imported goods of the same class or kind;
- (b) the usual costs of transport and insurance and associated costs incurred within Dominica;
- (c) the customs duties and other taxes payable in Dominica by reason of the importation or sale of the goods; and
- (d) in the case of goods to which subsection (1)(c) applies, the value added by reason of any processing of such goods.

(3) For the purposes of subsections (1) and (2)—

(a) the deductions made for value added by reason of processing shall be based on objective and quantifiable data relating to the cost of the work or services; and

(b) accepted industry formulas, recipes, methods of construction and other industry practices shall form the basis of the calculations respecting the determination of customs value of imported goods.

(4) Subject to subsection (5), the unit price at which imported goods or identical or similar imported goods are sold in the greatest aggregate quantity is the price at which the greatest number of units is sold in sales to persons who are not related to the sellers of the goods at the first commercial level after importation at which such sales take place.

(5) A sale in Dominica to a person who supplies any service specified in section 8(1)(b)—

(a) directly or indirectly;

(b) free of charge; or

(c) at reduced cost,

for use in connection with the production and sale for export of the imported goods shall not be taken into account in establishing the unit price referred to in subsection (4).

(6) For the purposes of subsection (1)(a)-

(a) the “profit and general expenses” shall be taken as a whole, but—

(i) subject to sub-paragraph (ii), the figure for the purposes of this deduction shall be determined on the basis of information supplied by or on behalf of the importer, and

-
- (ii) where the importer's figures are inconsistent with the figures obtaining in sales of imported goods of the same class or kind, the figure referred to in sub-paragraph (i) may be based upon relevant information other than information supplied by or on behalf of the importer;
- (b) in determining the commissions or the additions usually made for profit and general expenses—
- (i) the question whether certain goods are of the same class or kind as other goods shall be determined on a case by case basis by reference to the circumstances involved, and
- (ii) an examination must be conducted in respect of the sales for which the necessary information can be provided respecting the narrowest group or range of imported goods of the same class or kind as the goods being valued.

(7) In subsection (1)(b)—

“earliest date”, in relation to imported goods, means the date by which sales of the imported goods or of identical or similar imported goods are made in sufficient quantity to establish the unit price;

“goods of the same class or kind”, in relation to imported goods, includes goods imported from the same country as the goods being valued as well as goods imported from other countries.

7. (1) The customs value of imported goods determined under this section shall be based on a computed value which shall

consist of the aggregate of-

- (a) the cost or value of materials and fabrication or other processing employed in producing the imported goods;
- (b) an amount for profit and general expenses equal to the amount usually reflected in sales of goods of the same class or kind as the goods being valued which are made by producers in the country of exportation for export to Dominica; and
- (c) the cost and charges referred to in section 8(1)(e).

(2) The cost or value of materials and fabrication referred to in subsection (1)(a) includes—

- (a) the cost of supplying the services specified in section 8(1)(a)(ii) and (iii); and
- (b) subject to subsection (3), the value, duly apportioned, of any element specified in section 8(1)(b) which has been supplied directly or indirectly by the buyer for use in connection with the production of the imported goods.

(3) The cost or value of the services specified in paragraph 8(1)(b)(iv) which are undertaken in Dominica—

- (a) shall be included only to the extent that such services are charged to the producer; and
- (b) shall not be counted more than once in determining the computed value.

(4) For the purpose of subsection (1) -

- (a) the cost or value referred to in subsection (1)(a)

shall be—

- (i) determined on the basis of information relating to the production of the goods being valued or supplied by or on behalf of the producer, and
- (ii) based upon the commercial accounts of the producer, if such accounts are consistent with generally accepted accounting principle applied in the country where the goods are produced;
- (b) subject to paragraph (c), the amount for profit and general expenses referred to in subsection (1)(a) shall be taken as a whole and shall be determined on the basis of information supplied by or on behalf of the producer, unless his figures are inconsistent with those usually reflected in sales of goods of the same class or kind as the goods being valued which are made by producers in the country of exportation for export to Dominica;
- (c) where the producer's own figures for profit and general expenses are not consistent with the figures usually reflected in sales of the goods of the same class or kind referred to in paragraph (b), the amount for profit and general expenses may be based upon relevant information other than that supplied by or on behalf of the producer of the goods; and
- (d) the question whether goods are "of the same class or kind" as other goods shall be determined on a case by case basis with reference to the circumstances involved, but an examination must be conducted in respect of sales for export to

Dominica of the narrowest group or range of goods of the same class or kind as the goods being valued for which the necessary information can be provided.

(5) In this section-

“goods of the same class or kind” means goods imported from the same country as the goods being valued;

“general expenses” includes the direct and indirect cost of producing and selling the goods for export which are not included under subsection (1)(a).

8. (1) In determining the customs value under section 3, there shall be added to the price actually paid or payable for the imported goods -

(a) the following costs, to the extent that such costs are incurred by the buyer but are not included in the price actually paid or payable for the goods -

(i) commission and brokerage, except buying commissions;

(ii) the cost of containers which are treated as containers for customs purposes respecting the relevant goods; or

(iii) the cost of packing, whether for labour or materials;

(b) the value, apportioned as appropriate, of the following goods and services if such goods and services are supplied directly or indirectly by the buyer free of charge or at reduced cost for use in

connection with the production and sale for export of the imported goods, to the extent that such value has not been included in the price actually paid or payable –

- (i)* materials, components, parts and similar items incorporated in the imported goods,
 - (ii)* tools, dies, moulds and similar items used in the production of the imported goods,
 - (iii)* materials consumed in the production of the imported goods, or
 - (iv)* engineering, development, artwork, design work, and plans and sketches undertaken elsewhere than in Dominica and necessary for the production of the imported goods;
- (c)* royalties and licence fees, which, among other things, may include payments in respect of patents, trademarks and copyrights related to the goods being valued which the buyer must pay, directly or indirectly, as a condition of sale of the goods being valued, to the extent that such royalties and fees are not included in the price actually paid or payable;
- (d)* the value of any part of the proceeds of any subsequent resale, disposal or use of the imported goods which accrues, directly or indirectly, to the seller of such goods; and
- (e)* the aggregate of the following costs and charges—
- (i)* the cost of transport of the imported goods to the port or place of importation,
 - (ii)* loading and handling charges associated with the transport of the imported goods to the port

or place of importation, and

(iii) the cost of insurance.

(2) Except as provided in this section, additions shall not be made to the price actually paid or payable in determining the customs value.

(3) Additions to the price actually paid or payable in respect of imported goods shall be made under this section only on the basis of objective and quantifiable data, but a transaction value shall not be determined under the provisions of section 3 if such objective and quantifiable data do not exist.

(4) Notwithstanding subsection (1)(e)-

(a) charges for the right to reproduce the imported goods in Dominica shall not be added to the price actually paid or payable for the imported goods in determining the customs value; and

(b) payments made by the buyer for the right to distribute or resell the imported goods shall not be added to the price actually paid or payable for the imported goods if the making of such payments is not a condition of the sale for export to Dominica of the goods.

(5) In this section, “buying commissions” means fees paid by an importer to his agent for the service of representing him abroad in the purchase of the goods being valued.

9. (1) Charges for interest under a financing arrangement entered into by the buyer and related to the purchase of imported goods shall not be included in the customs value determined under section 3-

(a) if the charges are distinguished from the price actually paid or payable for the imported goods;

-
- (b) if the financing arrangement has been made in writing; or
- (c) where required by the Comptroller, if the buyer can demonstrate that -
- (i) such goods are actually sold at the price declared as the price actually paid or payable, and
 - (ii) the claimed rate of interest does not exceed the level for such transactions prevailing in the country where, and at the time when, the finance was provided.
- (2) Subsection (1) applies—
- (a) notwithstanding that the finance is provided by the seller, a bank or another person, to the determination of the customs value under section 3; and
 - (b) *mutatis mutandis* to the determination of the customs value under a method other than the transaction value.

SCHEDULE 3

(Sections 102(1) and (2), and 103(1), (2) and (3))

GOODS PROHIBITED AND RESTRICTED FROM IMPORT AND EXPORT

PART 1

PROHIBITED IMPORTS

1. All gold and silver articles of foreign manufacture bearing imitations of British assay marks, and all gold and silver articles bearing marks purporting to be such marks, but which are below the standard indicated by the marks.

2. Coin of legal tender in Dominica or any coin purporting to be such, not being of the established standard in weight and fineness.

3. Articles of food intended for human consumption declared by the Ministry responsible for public health to be unfit for such purpose.

4. Indecent or obscene prints, paintings, photographs, books, cards, lithographic or other engraving or any other indecent or obscene articles.

5. Infected cattle, sheep or other animals, or their carcasses, hides, skins, horns, hoofs or any other parts, the importation of which may be prohibited by the Ministry responsible for agriculture in order to prevent the introduction or spread of any communicable disease.

6. Any pistol or other apparatus in the form of a stylographic pen or pencil capable of firing any kind of shot or cartridge, and any cartridge for such a pistol or apparatus containing tear gas.

7. Any goods bearing the Coat of Arms of Dominica or the Coat of Arms of any other country or coat of arms so closely resembling such Coats of Arms as to be calculated to deceive, unless the manufacturer of such goods holds the appropriate Government's authority to use such Coat of Arms in connection with his trade, business, calling or profession.

8. Fictitious stamps and any die, plate, instrument or materials capable of making any such stamps.

9. Goods, the importation of which is prohibited by any other enactment.

PART 2

RESTRICTED IMPORTS

10. Arms and ammunition, except with the written permission of the Commissioner of Police.

11. Cannabis sativa (known as Indian hemp or bhang), cannabis indica, choras, ganja or any preparation or mixture of such goods, except under licence from the Chief Medical Officer.

12. Gunpowder, blasting powder, detonators and high explosives of any description, except imported for the use of the Government.

13. Any goods which bear a design, in imitation, of any currency or bank notes or coin in common use in Dominica or elsewhere, except with the permission of the Minister.

14. Kerosene oil and other petroleum products with a flash point below 73 degrees Fahrenheit (Abel close test), except with the permission of the Minister.

15. Except as expressly permitted by the Comptroller in writing, spirits and wine, unless—

(a) specifically reported as such; and

(b) stored or imported in -

(i) in a cask containing five gallons or more,

(ii) in a demijohn containing one gallon or more,
or

(iii) in glass or stone bottles properly packed in cases, each case containing one gallon or more.

16. Tobacco, cigars, cigarillos or cigarettes, unless specifically reported as such and, unless imported by parcels post, in whole and complete packages each containing not less than twenty pounds net weight of tobacco, cigars, cigarillos or cigarettes.

17. Extracts, essences or other concentrations of tobacco or any admixture of such goods, tobacco stalk stripped from the leaf, whether manufactured or not, and tobacco stalks flour, except under such conditions as the Comptroller, with the approval of the Minister, may generally or in any particular case permit.

18. Cigarette making appliances, whether machine or paper, except with the permission of the Minister.

19. Goods, the importation of which is restricted by any other enactment, except in accordance with that enactment.

PART 3

PROHIBITED EXPORTS

20. Goods, the exportation of which is prohibited by any other enactment.

PART 4

RESTRICTED EXPORTS

21. Narcotic drugs and psychotropic substances except under licence of the Chief Medical Officer.

22. Ginger and dry coconuts except under licence from the Minister of Agriculture.

23. Rare or threatened species of animals or plants and live or dead wildlife or parts, their products and derivatives except if such goods are accompanied by the appropriate permits issued by the Director of Forestry.

24. Goods the exportation of which is regulated by any other enactment, except in accordance with such enactment.

SCHEDULE 4

(Section 198(1), (3))

FORFEITURE RULES

Notice of seizure

1. For the purposes of these Rules, a person has the relevant interest in any goods, article or item seized if the person was the owner, or one of the owners, of such goods, article or item at the time of seizure.

2. (1) Subject to sub-rule (2), the Comptroller shall give notice of—

- (a) the seizure of any goods, article or item seized as liable to forfeiture; and
- (b) the grounds of such seizure,

to any person who to his knowledge has the relevant interest in the goods.

(2) Notice shall not be required to be given under sub-rule (1) if the seizure was made in the presence of -

-
- (a) the person whose offence or suspected offence occasioned the seizure;
 - (b) the owner or any of the owners of the goods, article or item seized or any servant or agent of such owner; or
 - (c) in the case of any goods, article or item seized in a vessel or an aircraft, the master or commander of that vessel or aircraft.

3. The notice under rule 2—

- (a) shall be given in writing; and
- (b) shall be deemed to have been duly served on the person having the relevant interest in the goods—
 - (i) if delivered personally to the person,
 - (ii) if addressed to the person and left or forwarded by post to the person at his usual or last known place of abode or business, or, in the case of a body corporate, at its registered or principal office, or
 - (iii) if the person has no address in Dominica, or his address is unknown, by publication of the notice of seizure in the *Gazette*.

Notice of claim

4. Where a person having the relevant interest in any goods claims that the goods seized were not liable to forfeiture, the person shall—

- (a) subject to paragraph (b), within one month of the date of service of the notice of seizure; or,

(b) if no notice of seizure was served on him, within one month of the date of seizure, give notice of his claim in writing to the Comptroller at any customs office.

5. (1) Every notice under rule 4—

- (a) shall specify the name and address of the claimant; and
- (b) if a claimant is outside Dominica, shall specify the name and address of a solicitor in Dominica who is authorised to accept service and act on behalf of the claimant.

(2) For the avoidance of doubt, service upon a solicitor under subsection (1)(b) is deemed to be proper service upon the claimant.

Condemnation

6. Where—

- (a) on the expiration of the relevant period under rule 4 for the giving of a notice of claim, no such notice has been given to the Comptroller; or
- (b) a notice of claim is given, that notice does not comply with any requirement of rule 5,

the goods seized are deemed to have been duly condemned as forfeited.

7. Where—

- (a) a notice of claim in respect of any goods seized are duly given in accordance with rules 4 and 5, the Comptroller shall take proceedings for the condemnation of such goods, article or item by the Court; and

(b) the court finds that such goods were at the time of the seizure liable to forfeiture, the court shall condemn such goods as forfeited.

8. Where any goods, article or item is, in accordance with rule 6 or 7, deemed to have been condemned or condemned as forfeited, the forfeiture is, without prejudice to any restoration or sale, deemed to have had effect from the date when the liability to forfeiture arose.

9. Proceedings for the condemnation of any goods—

(a) shall be civil proceedings; and—

(b) may be instituted in the High Court or any Magistrates' Court having jurisdiction in the place

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(i) where any offence in connection with such goods was committed,

(ii) where any proceedings for an offence in connection with such goods have been instituted,

(iii) where the claimant resides or, if the claimant has specified a solicitor under rule 4, where that solicitor has his office, or

(iv) where such goods were found, detained or seized or to where such goods were first brought after being found, detained or seized.

10. (1) In any proceedings for condemnation in respect of any goods, the claimant or his solicitor shall make oath that the goods were, or were to the best of his knowledge and belief, the property of the claimant at the time of the seizure.

(2) The claimant shall, in any proceedings for condemnation before the High Court, give such security for the

costs in respect of such proceedings as the Court may determine.

(3) Where the claimant or his solicitor fails to comply with any requirement of this rule, the court shall give judgment for the Comptroller.

11. (1) Any party to condemnation proceedings in a Magistrates' Court who is aggrieved by a judgment of the Magistrate in such proceedings may, within 14 days of the judgment appeal to the High Court against the judgment of that Magistrate.

(2) Where in condemnation proceedings an appeal is made against the decision or judgment of any court, the goods seized shall remain in the possession of, or be returned to the possession of the Comptroller until the final determination of the matter.

12. In any proceedings arising out of the seizure of any goods, the fact, form and manner of the seizure shall be taken to have been as set out in the process, unless the contrary is proved.

13. Where any goods are, at the time of seizure, the property of—

(a) a body corporate;

(b) two or more partners; or

(c) any number of persons exceeding five not being in partnership,

the oath required to be taken by rule 10, and any other thing required by or under this Schedule or the rules of court to be done by, or by any person authorised by, the claimant or owner may be taken or done by the following persons respectively, that is to say—

(d) where the owner is a body corporate, the secretary or some other duly authorised officer of that body;

(e) where the owners are in partnership, any of those owners; or

(f) where the owners are any number of people exceeding five not being in partnership, any two of those persons on behalf of themselves and their co-owners.

SCHEDULE 5

(Section 213)

CUSTOMS APPEAL COMMISSION

Membership and
appointment.

1. (1) The Commission shall comprise not less than four persons appointed by the Minister.

(2) The Minister shall appoint a chairperson and a deputy chairperson of the Commission.

(3) The chairperson or deputy chairperson shall not be a public officer.

(4) The Commission or a panel of the Commission is deemed to be properly constituted notwithstanding that there is—

(a) a vacancy on the Commission; or

(b) a defect, other than a disqualification referred to in section 2, in the appointment of a member.

2. (1) A person is disqualified from being appointed to the Commission or remaining a member of the Commission if the person—

(a) is under the age of eighteen years;

(b) is a member of the House of Assembly;

(c) subject to section 1(2), is employed by the Ministry of Finance;

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- (d) is an undischarged bankrupt, having been so adjudged or otherwise declared under any law in force in Dominica;
- (e) is certified to be insane or otherwise adjudged to be of unsound mind under any law in force in Dominica; or
- (f) has been convicted of an offence—
- (i) involving dishonesty, whether in Dominica or outside, or
 - (ii) in respect of a contravention of this Act or the Regulations.

3. (1) Each member other than the chairperson and the deputy chairperson shall be appointed for a term not exceeding three years. Tenure of members.

(2) The chairperson and the deputy chairperson shall be appointed for a term not exceeding five years.

(3) A previous appointment of a person as a member does not affect the eligibility of the person to be re-appointed as a member.

(4) A notice of appointment of every member shall be published in the *Gazette* without delay after the appointment.

4. (1) A member may, at any time, resign from his office by giving written notice to the Minister and the resignation is effective upon receipt of the notice by the Minister or by a person authorised by the Minister to receive the written notice of resignation. Resignation, removal and vacancy.

(2) The Minister may, by written notice, remove a member from office if the Minister is satisfied that—

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- (a) the member is or becomes disqualified under section 2 from being appointed or from remaining as a member;
 - (b) the member has an interest which affects or is likely to affect prejudicially the exercise and performance of his responsibilities as a member;
 - (c) the member is unable or unfit to carry out his responsibilities as a member; or
 - (d) it is in the public interest to remove the member from office.

(3) If a member—

- (a) resigns or is removed from office; or
- (b) dies before the expiry of the term for which he is appointed,

the Minister may appoint a new member in accordance with section 1 to replace the member who died, resigned or is removed from office.

(4) An appointment of a new member under subsection (3) may be for—

- (a) the unexpired period of the term of office of the member in whose place the new member is appointed; or
- (b) a new term—
 - (i) subject to sub-paragraph (ii), of not more than three years, or
 - (ii) if the member held the office of chairperson or deputy chairperson, of not more than five years.

(5) If a member is absent from Dominica or is unable to act, the Minister may appoint a person who is eligible to be so appointed to act during the member's absence or inability to act.

(6) Where a member vacates his office due to resignation, removal from office or death, a notice of the vacancy shall be published in the *Gazette*, without delay, after the vacancy arises.

5. (1) The Minister shall appoint a public officer to act as secretary to the Commission.

Secretary to the
Commission.

(2) The secretary—

(a) shall provide administrative support to the Commission; and

(b) is responsible for—

(i) giving notice of sittings and hearings of the Commission;

(ii) recording proceedings of the sittings and hearings of the Commission;

(iii) preparing the correspondence and reports of the Commission; and

(iv) carrying out such other functions and duties as the Commission may assign to him.

6. (1) The members of the Commission are entitled to be paid such remuneration and to be reimbursed for such reasonable expenses as the Minister may approve after consultation with the Cabinet.

Remuneration, expenses
and allowances of
members.

(2) The Minister may—

(a) reimburse the reasonable expenses of members;
or

(b) establish allowances for the reimbursement of the reasonable expenses of members,

incurred in the course of carrying out their responsibilities as members.

Hearings and decisions of Commission.

7. (1) Every hearing of the Commission shall be before a three-member panel comprising—

(a) the chairperson or deputy chairperson; and

(b) at least two other members.

(2) Every decision of the Commission shall require the concurrence of a majority of its members.

(3) Subject to its rules of procedure, the Commission may act notwithstanding a vacancy in its membership or the absence of any member.

Commission may determine procedure.

8. Subject to this Act, the Commission shall determine its own procedure, but the Commission shall give to the parties in any matter before it full opportunity to present evidence and make representations.

Passed in the House of Assembly this 28th day of September, 2010.

VERNANDA RAYMOND (MRS.)

Clerk of the House of Assembly (Ag.)