

THE CUSTOMS ACT

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SCHEDULE

THE CUSTOMS ACT

Cap. 89	14 of 1971
Laws	S. 8 and
23 of 1954,	2nd Sch.
30 of 1954,	19 of 1971,
44 of 1954,	29 of 1971,
66 of 1954,	7 of 1974,
35 of 1957,	S.6.
40 of 1959,	45 of 1975,
49 of 1960.	25 of 1978,
Acts	12 of 1985
2 of 1963,	Sch.,
32 of 1964,	4 of 1991,
19 of 1967,	35 of 1997,
24 of 1968,	16 of 2000,
42 of 1969	3 of 2001.
3rd Sch,	

[21st July, 1941.]

1. This may be cited as the Customs Act.

Short title

PART 1. *Preliminary*

2.—(1) In this Act and in any other enactment relating to the Customs—

Interpretation.
32/1964
S.2 (b).

“agent”, in relation to the Master or owner of an aircraft or ship, includes any person who notifies the Commissioner in writing that he intends to act as the agent, and who or on whose behalf any person authorized by him signs any document required or permitted by the customs laws to be signed by an agent; provided that the owner of any aircraft or ship, if resident or represented in the Island, shall be deemed to be the agent of the Master for all the purposes of the customs laws, if no such agent be appointed;

12/1985
Sch.

“aircraft” includes balloons, kites, gliders, airships and flying machines;

“approved place of unloading” and “approved place of loading” mean, respectively, an approved place of unloading and an approved place of loading appointed by the Minister pursuant to subsection (2);

32/1964
S. 2 (a).

“boarding station” means a boarding station appointed by the Minister pursuant to subsection (2);

32/1964
S. 2 (a).

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

12/1985
Sch.
32/1964
S. 2 (a).
24/1968
S. 2.
45/1975
S. 2.
32/1964
S.2 (a).

“carriage” includes every description of conveyance for the transport by land of human beings or property;

“Commissioner” means the Commissioner of Customs and Excise;

“Commonwealth” means the Commonwealth as defined in section 1 of the Constitution of Jamaica;

“Customs area” means a Customs area appointed by the Minister pursuant to subsection (2);

“customs laws” shall mean and includes this Act and any regulations or proclamations made thereunder and all other enactments relating to the Customs;

3/2001
S. 2.

“document” means—

- (a) any written information relating, directly or indirectly, to goods which are imported or exported;
- (b) any written declaration required by the Commissioner; and
- (c) any record generated in any manner whatsoever, including any record generated by an automated recording device or programme required to retrieve information in usable form;

“drawback” means a refund of all or part of any duty of customs or excise authorized by law in respect of goods exported or used in any particular manner;

“duty” includes any tax or surtax imposed by the customs or excise laws;

“entered” in relation to goods imported, warehoused, put on board an aircraft or ship as stores or exported means the acceptance and signature by the proper officer of an entry, specification, or shipping bill, and declaration signed by the importer or exporter on the prescribed form in the prescribed manner, together with the payment to the proper officer by the importer or exporter of all rents and charges due to the government in respect of the goods, and, in the case of dutiable goods (except on the entry for warehousing of imported goods, the payment by the importer or exporter to the proper officer of the full duties due thereon, or else,

where permitted, the deposit of a sum of money or giving of security for the duties, as provided by law, or, in the case of goods for which security by bond is required on the exportation, putting on board an aircraft or ship as stores or removal of such goods, the giving of such security;

“export” means to take or cause to be taken out of the Island or the waters thereof;

“exporter” includes any person by whom any goods (including goods transferred from an importing aircraft or ship) are exported from the Island or supplied for use as aircraft’s or ships’ stores in accordance with section 157, and also the owner, or any person acting on his behalf, and any person who for customs purposes signs any document relating to goods exported or intended for exportation or supplied or intended for supply as aircraft’s or ships’ stores as aforesaid;

“goods” includes all kinds of goods, wares, merchandise and livestock;

“import” means to bring or cause to be brought within the Island or the waters thereof;

“importer” includes the owner or any other person for the time being possessed of or beneficially interested in any goods at and from the time of the importation thereof until the same are duly delivered out of the charge of the officers, and also any person who signs any document relating to any imported goods required by the customs laws to be signed by an importer;

“Master” includes the person having or taking the charge or command of any aircraft or ship;

“name” includes the registration mark of an aircraft;

“obscuration” means the difference, caused by matter in solution, between the actual strength of spirits and the apparent strength as indicated by the hydrometer;

“occupier” includes any person who signs as principal any bond in respect of any building or place used for the deposit of goods for the security thereof or of the duties thereon under the customs laws;

“offence against the customs laws” includes any act of any person contrary to the customs laws or any failure of any person to perform an act required by the customs laws to be performed by him;

4/1991
S. 2.

“officer” includes any person employed in the Department of Customs and Excise, the Revenue Protection Division of the Ministry of Finance and all officers of the Constabulary Force, as well as any person acting in the aid of any officer or any such person; and any person acting in the aid of an officer acting in the execution of his office or duty shall be deemed to be an officer acting in the execution of his office or duty;

“owner of goods” includes any person who is for the time being entitled, either as owner or agent for the owner, to the possession of any goods;

“Over the Island” means above the area contained within the imaginary lines bounding the Island and the waters thereof; and if any person, goods or thing shall descend or fall or be dropped or thrown from any aircraft within such area, such person, goods or thing shall be deemed to have descended or fallen, or to have been dropped or thrown from an aircraft over the Island;

32/1964
S. 2 (a).

“port” means a port appointed by the Minister pursuant to subsection (2);

32/1964
S. 2 (a).

“private warehouse” means a private warehouse appointed by the Minister pursuant to subsection (2);

“prohibited goods” and “restricted goods” mean respectively any goods the importation or exportation of which is prohibited or restricted by law;

“proof” means such spirits as at the temperature of 51 degrees Fahrenheit shall weigh 12/13ths of the weight of an equal measure of distilled water;

“proper officer” means any officer whose right or duty it may be to exact the performance of, or to perform, the act referred to;

“Queen’s warehouse” means any warehouse or place whatsoever for the time being occupied or used by the

- Commissioner for the deposit of goods for security thereof or of the duty due thereon; 12/1985 Sch.
- “ship” includes a steamship as hereinafter defined, and any other ship, boat, lighter, or other floating craft of any description, but does not include aircraft;
- “special store” means a special store appointed by the Minister pursuant to subsection (2); 32/1964 S. 2 (a).
- “steamship” means a ship of at least one hundred tons burden propelled by mechanical power;
- “sufferance wharf” means any sufferance wharf designated by the Minister pursuant to subsection (2); 32/1964 S. 2 (a).
- “Taxpayer Appeals Department” means the Taxpayer Appeals Department established under section 11A of the Revenue Administration Act; 3/2001 S. 2.
- “uncustomed goods” includes goods liable to duty on which the full duties due have not been paid, and any goods, whether liable to duty or not, which are imported or exported or in any way dealt with contrary to the customs laws;
- “warehoused” means deposited in a Queen’s or private warehouse;
- “warehouse-keeper” means the owner or occupier of a private warehouse;
- “waters of the Island” means any waters within a space contained within an imaginary line drawn parallel to the shores or outer reefs of the Island which appear above the surface at low-water mark at ordinary spring tides and distant twelve miles therefrom: 14/1971 S. 8 and 2nd Sch.
- Provided that where the outer limit of any part of the territorial sea of the Island does not run parallel as aforesaid at such distance, the said line shall follow and coincide with that limit. 32/1964 S. 2 (b).
- (2) The Minister may for the purposes of the customs laws from time to time by notice published in the *Gazette*—
- (a) appoint any quay, jetty, wharf or other place, including any part of an aerodrome to be an approved place of unloading or an approved place of loading at which coastwise or imported goods or goods about to be

carried coastwise or exported may be unloaded or loaded, as the case may be;

- (b) appoint any station or place to be a boarding station at which aircraft or ships arriving at or departing from any port or place shall bring to for the boarding or landing of officers;
- (c) appoint any place to be a Customs area;
- (d) appoint any place, whether on the coast or elsewhere, subject to such conditions or limitations as may be specified in the notice, to be a port; and any customs aerodrome whether within a port or not shall be deemed to be a port for aircraft;
- (e) appoint any building or place to be a private warehouse;
- (f) appoint any building in a Customs area to be a special store;
- (g) designate any place other than an approved place of loading or unloading, either generally or in a particular case, to be a sufferance wharf at which goods may be loaded or unloaded under such conditions and in such manner as he may direct.

Officers to have powers of Constables.

3. For the purpose of carrying out the provisions of the customs laws all officers shall have the same powers, authorities and privileges as are given by law to officers of the Constabulary Force.

What shall be deemed acts of Commissioner.
12/1985
Sch.

4. Every act, matter or thing required by the customs laws to be done or performed by, with, to or before the Commissioner, if done or performed by, with, to or before any officer assigned by the Commissioner for such purpose, shall be deemed to be done or performed by, with, to or before the Commissioner; and every person employed on any duty or service relating to the customs by the orders or with the concurrence of the Commissioner (whether previously or subsequently expressed) shall be deemed to be the officer for that duty or service; and every act required

(6) On payment of the deposit, as required by this section, and on the passing of a proper entry or shipping bill for such goods by the importer, exporter, consignee, or agent, the Commissioner shall cause delivery or permit shipment thereof, as the case may be.

12 1985
Sch.

(7) All such deposits shall be paid by the Commissioner to the Accountant-General, and, in case no such proceedings shall be brought within the time limited for that purpose, such deposit shall be retained and paid into the Consolidated Fund in the same manner as if it had been originally paid and received as the duty due on such goods; and in case of such proceedings, if it shall be determined that the duty so deposited was not the proper duty, but that a less duty was payable, the difference between the deposit and the duty found to be due, or the whole deposit, as the case may require, shall be returned to such importer, exporter, consignee or agent and in like manner where in case of such proceedings it is determined that the duty so deposited was less than the proper duty the difference between the deposit and the duty found to be due shall be recovered and paid into the Consolidated Fund.

12 1985
Sch.

32/1964
S. 6(d).

18.—(1) Any person (hereinafter in this Act referred to as the “objector”) who has disputed an assessment by notice of objection under section 17 of this Act and who is dissatisfied with the decision of the Commissioner therein may appeal to the Taxpayer Appeals Department within thirty days of the date of receiving the Commissioner’s decision.

Appeals to
Revenue
Court.

12/1985
Sch.

(2) The onus of proving that the assessment complained of is erroneous shall be on the objector.

L.N.
8B/2002

(3) An objector who is dissatisfied with the decision of the Taxpayer Appeals Department may appeal to the Revenue Court within thirty days of the date of receiving that decision or within such longer period of time as may be permitted by or pursuant to rules of court.

^{3/2}
S. 3 (v).

18A.—(1) The provisions of this section apply in relation to appeals under sections 18 and 19.

Provisions
relating to
appeals.
L.N.
8B/2002.

(2) Notwithstanding the provisions of sections 18(1) and 19(4)(b), the Taxpayer Appeals Department upon being satisfied that owing to absence from Jamaica, sickness or other reasonable cause, the objector or importer, as the case may be, was prevented from making the appeal within the period specified therein, shall extend the period as may be reasonable in the circumstances.

(3) Upon an appeal under section 18(1) or 19(4)(b), the Commissioner of Taxpayer Appeals may confirm, reduce the amount under or vacate the decision complained of.

(4) An appeal under section 18(3) shall be limited to the grounds stated in the notice of objection under section 17, but the Revenue Court may, in its discretion, permit the grounds of appeal to be amended.

Value.
3/2001
S. 4.
Schedule.

19.—(1) Where, pursuant to the provisions of any enactment for the time being in force, imported goods are required to be entered, the value of those goods shall be determined in accordance with the provisions of the Schedule.

(2) Nothing in the Schedule shall be construed as restricting or calling into question the right of the Commissioner to satisfy himself as to the truth or accuracy of any document or information presented to him for customs valuation purposes.

(3) The Commissioner shall, on a written request by the importer, give reasons in writing as to how the customs value of the importer's goods was determined.

(4) On receipt of the reasons referred to in subsection (3), an importer may—

(a) request a review of the valuation; and

(b) if dissatisfied with the review, appeal to the Taxpayer Appeals Department within thirty days of the date of receiving the Commissioner's decision.

(5) An importer who is dissatisfied with the decision of the Taxpayer Appeals Department may appeal to the Revenue Court within thirty days of the date of receiving that decision or within such longer period of time as may be permitted by or pursuant to rules of court.

(6) Where, in determining the value of goods under subsection (1), it is necessary to establish the equivalent in Jamaican currency of any other currency—

(a) the rate of exchange shall, subject to paragraph (b), be the last spot market weighted average selling rate as determined by the Bank of Jamaica prior to the date of report of the aircraft or ship;

- (b) if the Commissioner gives permission for goods to be entered before the date of report as aforesaid, the rate of exchange shall be the spot market weighted average selling rate as determined by the Bank of Jamaica on the day the relevant entry is first accepted by the proper officer.

(7) The Commissioner may, in respect of goods conveyed into the Island by air, reduce the amount of the freight charges to be added to the value of the goods for purposes of assessment of duty to such amount, not being less than one-fourth of the freight charges actually payable on such goods, as he may think fit.

(8) The Commissioner may, within two years from the date of entry of imported goods, adjust the value accepted by an Officer at the date of entry of such goods, where he discovers that the value accepted by the Officer was incorrect—

- (a) based on new information concerning the goods; or
(b) for any other reason.

(9) Where the value has been adjusted pursuant to subsection (8), the Commissioner shall demand the additional duty payable or shall refund the duty overpaid based upon the new value.

(10) The Minister may, by order, subject to negative resolution of the House of Representatives, amend the Schedule. Schedule.

(11) The Minister may, by order, subject to negative resolution of the House of Representatives—

- Schedule
- (a) suspend the operation of any provision of the Schedule or the operation of the Schedule in relation to any category of goods, for such period as may be specified in the order; and
 - (b) specify how the value of any goods or category of goods to which the suspension relates shall be determined during that period.

Obligation to secrecy. **19A.—(1)** Every person having an official duty or being employed in the administration of this Act shall—

- (a) regard and deal with as secret and confidential all documents and information relating to the valuation or assessment of customs duties in respect of imported goods; and
- (b) make and subscribe a declaration to that effect before a Justice of the Peace.

(2) Notwithstanding any provision contained in any enactment, every person referred to in subsection (1) having possession of or control over any document or information who communicates or attempts to communicate any such information or anything contained in such document to any person—

- (a) other than the Commissioner or an officer of the Customs Department;
- (b) without the consent in writing of the person, government or body which provided the document or information; or
- (c) otherwise than for the purposes of this Act,

commits an offence under this Act and is liable on summary conviction in a Resident Magistrate's Court to a fine not exceeding five hundred thousand dollars or to imprisonment for a term not exceeding nine months or to both such fine and imprisonment.

20.—(1) If any article is enumerated in the tariff, or can reasonably be classified under two or more names, headings or descriptions, and there is a difference of duty, the highest duty provided shall be charged and collected thereon.

Duty payable on classification at highest rate.

(2) Goods containing any article liable to duty as a part or ingredient thereof shall be liable to duty at the rate payable on such part or ingredient, and any goods composed of more than one article liable to duty shall be liable to duty at the rate payable on the article charged with the highest rate of duty:

Duty on composite goods.

Provided that the highest rate shall not be exacted in cases where the Commissioner in his discretion decides that the goods contain only a negligible proportion of the article liable to the highest rate:

12/1985 Sch.

Provided also that in no case shall any less duty be charged on any such goods than the duty due thereon when considered as a whole without regard to their contents.

21. If any article subject to the payment of specific duty is imported in any package intended for sale, or of a kind usually sold with the goods when the same are sold retail, and marked or labelled, or commonly sold, as containing, or commonly reputed to contain, a specific quantity of such article, then such package shall be deemed to contain not less than such specific quantity.

Duty chargeable on reputed quantity.

22. If any article subject to the payment of duty according to the weight thereof is imported in any package intended for sale, or of a kind usually sold with the goods when the same are sold retail, and such package is not marked or labelled, or is not in the opinion of the Commissioner commonly sold as containing,

On gross weight in certain cases.

12/1985 Sch.

12/1985
Sch.

or commonly reputed to contain, a specific quantity of such article, and the importer is not able to satisfy the Commissioner as to the correct net weight, the duty thereon shall be calculated according to the gross weight of such package and its contents.

Minister
may fix
standard
contents for
packages
containing
liquids.

23. It shall be lawful for the Minister by notice in the *Gazette* to specify, in gallons or fractions of a gallon, standard capacities for packages containing goods liable to duties according to the liquid measurement thereof, in all cases where, in his absolute discretion, he shall consider that such packages, being of sizes within limits to be specified in the notice, are reputed to be, or are sold as packages of standard sizes, whether or not any statement of the actual contents is contained on any label or other attachment to or part of such package, and thereupon all packages having capacities within the limits specified in any such notice shall be deemed to contain the standard capacity specified in the notice in each case.

Duties, &c.,
to be pro-
portionate to
quantity or
value.

24. All duties, rates, charges and drawbacks imposed and allowed according to any specified quantity, or any specified value, or any particular description of package, shall be deemed to apply in the same proportion to any greater or less quantity or value, or any other description of package, and shall be paid and received in any currency being legal tender in the Island, and according to the weights and measures, established by the laws of the Island.

Abatement
of duty.

12/1985
Sch.

25. No claim for any abatement of duty in respect of any goods imported into the Island shall be allowed on account of damage, unless such claim shall be made on the first examination thereof, nor unless it shall be proved to the satisfaction of the Commissioner that such damage was sustained before the delivery thereof out of the care of the Commissioner.

approved place of unloading or sufferance wharf approved for the purpose within the same port, there to be landed forthwith;

- (d) no goods (except goods unloaded into a vessel to be landed in accordance with paragraph (c) shall be unloaded from any aircraft or ship arriving from any place outside the Island, except at an approved place of unloading or sufferance wharf approved for the purpose, and all goods when so unloaded, and all goods which shall have been put into a vessel to be landed in accordance with paragraph (c) shall immediately upon being unloaded or landed be conveyed in the care of the proper officer into the Customs area, or to a Queen's warehouse if the Commissioner shall so require;

12/1985
Sch.

- (e) no goods shall be removed from any part of the Customs area or from the Queen's warehouse into which the same shall have been conveyed unless such goods shall first have been duly reported and entered, and authority for the removal or delivery of the same has been given by the proper officer;

- (f) goods entered to be warehoused shall be removed by the importer by such ways, in such manner and within such time as the proper officer shall direct to the warehouse for which the same are entered, and delivered into the care of the officer in charge of the warehouse; provided that, if the Commissioner shall so require, the importer shall first enter into a bond for the due warehousing of such goods.

12/1985
Sch.

77. The provision of section 76 shall apply to the cargo of the aircraft or ship only. No goods whatsoever other than cargo, duly reported as such, shall be taken out of any aircraft or ship arriving from any place outside the Island or delivered to any person aboard such aircraft or ship other than for the consumption or use of the crew or passengers thereof except under such conditions (which conditions may vary the procedure

As to goods
other than
cargo.

12/1985
Sch. as to reporting the aircraft or ship as required by this Act) as may be prescribed in any regulations made under this Act or directed by the Commissioner in any particular case. The term “goods” in the expression “no goods whatsoever” shall include passengers’ baggage, stores, and any goods which may be taken on board any aircraft or ship arriving from any place outside the Island while such aircraft or ship is within the Island or the waters thereof.

Forfeiture. 78. If any goods shall be unloaded, removed or dealt with contrary to the provisions of section 76 or section 77 or to the terms and conditions contained in any written permission given by the Commissioner they shall be forfeited.

12/1985
Sch.

Delivery of
bullion and
coin.

79. Notwithstanding anything hereinbefore contained it shall be lawful for the Commissioner to permit the delivery to the importer of any bullion or coin under the authority of the proper officer without entry thereof, but if such importer shall not within forty-eight hours after the same shall have been removed from the importing aircraft or ship deliver to the proper officer a full and true account thereof, including its weight and value, he shall incur a penalty of one thousand dollars.

12/1985
Sch.

Declara-
tion in
absence of
documents
3/2001
S. 5.

80.—(1) If the importer of any goods is unable to furnish full particulars of the goods for want of any document or information concerning them he shall make and subscribe a declaration in the prescribed form to that effect before the Commissioner who shall act in accordance with subsection (2).

(2) The Commissioner—

- (a) shall permit the importer to examine and enter the goods; and
- (b) may allow delivery of the goods if he is satisfied that—
 - (i) the description of the goods for tariff and statistical purposes is correct;
 - (ii) in the case of goods liable to duty *ad valorem*, the value declared on the entry is acceptable; and

- (iii) in the case of goods liable to duty according to the weight or measurement thereof, the weight or measurement declared on the entry is correct.

Entry of
goods where
Commis-
sioner is
to
assess value.
3/2001
S. 5.

81.—(1) Where goods examined under section 80 (1) are liable to duty *ad valorem* and the Commissioner considers that he is unable to make a proper assessment of the value thereof, he may direct that—

- (a) the goods be further examined and, on that basis, a provisional assessment be made of the duty payable on the goods;
- (b) the goods be entered provisionally based on the payment by the importer of the amount of duty calculated by him; and
- (c) such amount be brought to account as revenue.

(2) Pending entry of the goods, an importer shall, in addition to the amount referred to in subsection (1) (b), deposit with the Commissioner, an amount equal to the difference between the duty assessed provisionally by the Commissioner under subsection (1) (a) and the duty calculated by the importer under subsection (1) (b).

(3) The importer may, with the approval of the Commissioner, give security in the form of a bond for the amount payable under subsection (2).

(4) Where goods are entered provisionally pursuant to this section, the Commissioner shall, in writing, require the importer of such goods to produce, within three months of the provisional entry, such document or information relating to the value of the goods as the Commissioner may specify.

(5) Where—

- (a) the documents or information required under subsection (4) have not been produced within the time specified in that subsection; or

- (b) the importer informs the Commissioner in writing before the expiration of the time specified in subsection (4) that he is unable to produce any further documents or information,

the amount of duty which was assessed provisionally under subsection (1) shall be treated as the final assessment.

(6) Unless the importer commences proceedings under section 18 within four months of the date of the final assessment under subsection (5), the deposit paid shall be brought to account as revenue.

(7) Where an importer fails to produce the required documents or information pursuant to subsection (4)—

- (a) the Commissioner shall notify the importer in writing of the final assessment within two weeks of the date of such assessment;
- (b) no dispute shall be considered to have arisen until such time as the final assessment is made under subsection (6).

(8) Where—

- (a) the additional documents or information required under subsection (4) have been provided to the satisfaction of the Commissioner; and
- (b) the amount of duty as assessed by the Commissioner is greater or less than the amount of the provisional assessment made under subsection (1),

the amount representing the difference shall either be refunded to or paid by the importer, as the case may be.

Entry where
importer
provides false
documents.
3/2001
S. 5.

82.—(1) Where—

- (a) pursuant to section 81 (4), an importer submits documents or information to the Commissioner relating to the value of goods imported by him; and
- (b) the Commissioner knows or has reasonable grounds for believing that such documents or information are false in any material particular in relation to the value of the goods,

the Commissioner shall act in accordance with subsection (2).

(2) The Commissioner—

- (a) shall inform the importer in writing that he is not satisfied with the documents or information; and
- (b) may, in writing, request the importer to submit such further documents or information within such period, as the Commissioner may specify.

(3) Where the imported goods required to be entered are not prohibited or restricted, the Commissioner may allow provisional entry of such goods on the payment of a deposit equal to the amount of the duty assessed by the Commissioner together with an additional amount, not being more than one-half of the amount assessed.

(4) The amount of duty based on the calculation by the importer shall be accepted by the Commissioner unless the Commissioner commences proceedings in court within four months of the date of provisional entry of the goods.

(5) The deposit, together with the additional amount paid pursuant to subsection (3), shall, in addition to any penalty which the court may impose, be forfeited where the court finds that the importer has committed an offence.

(6) Where the Commissioner has commenced proceedings in court, no dispute shall be considered to have arisen for the purposes of section 17 until the court proceedings have been concluded.

(7) Where he considers it necessary, the Commissioner may cause goods which are entered provisionally to be photographed before delivery in such manner as to show—

- (a) the method of packaging;
- (b) a sample of the goods; or
- (c) any identifying marks that indicate the nature and type of the goods.

83. The Commissioner may retain such samples of the goods entered under section 80 for such period up to the final entry of such goods as he shall require, and the proper officer shall make an inventory of such goods and shall cause a certified copy of the inventory to be forwarded to the importer.

Samples to
be retained.

3/2001
S.6.

Goods not
entered after
declaration.
12.1985
Sch

84. If the importer, having made a declaration in accordance with section 80, shall not make entry as therein provided, or if the Commissioner is not satisfied as aforesaid (in which case any entry which shall have been made shall be *ipso facto* void), the Commissioner shall cause the goods referred to in such declaration to be deposited in a Queen's warehouse and dealt with as provided in section 88.

Power to
waive pro-
duction of
documents.

12/1985
Sch
3.2001
S. 8.

85. Notwithstanding anything hereinbefore contained, if the Commissioner is satisfied, whether before or after the warehousing under section 84 of any goods liable to duty *ad valorem*, that it is impossible for the importer to obtain satisfactory documentary evidence of the value of such goods, or if in any case the documentary evidence relating to such goods, though not complete, is in the opinion of the Commissioner sufficient to enable a reliable estimate of the value to be made, it shall be lawful for the Commissioner to permit such goods to be entered according to the estimated value.

Deposit in
Certain cases

12/1985
Sch.

86. Where the Commissioner permits any goods to be entered in the absence of any document under the provisions of section 85, it shall be lawful for him to require the person entering the goods to deposit with him such additional sum as he shall require, not exceeding one-half of the duty paid upon such goods. Any sum so deposited shall be forfeited unless the person entering the goods shall produce the required document within three months of the date of entry or unless he shall explain his failure to the satisfaction of the Commissioner.

Goods not
entered or
delivered.

87. If any goods imported in any aircraft or ship shall remain on board such aircraft or ship, or having been unloaded, shall not be entered and also produced for

prohibited goods, or any books or documents relating thereto, and put and secure the same in a Queen's warehouse.

203. If any officer shall have reasonable cause to suspect that any uncustomed or prohibited goods, or any books or documents relating to uncustomed or prohibited goods, are harboured, kept or concealed in any house or other place in the Island, and it shall be made to appear by information on oath before any Resident Magistrate or Justice in the Island, it shall be lawful for such Resident Magistrate or Justice by special warrant under his hand to authorized such officer to enter and search such house or other place, by day or by night, and to seize and carry away any such uncustomed or prohibited goods, or any books or documents relating to uncustomed or prohibited goods, as may be found therein; and it shall be lawful for such officer, in case of resistance, to break open any door, and to force and remove any other impediment or obstruction to such entry, search or seizure as aforesaid.

Search
warrant

204.—(1) Any officer may upon reasonable suspicion stop and examine any carriage to ascertain whether any uncustomed or prohibited goods are contained therein; and, if none shall be found, the officer shall not on account of such stoppage and examination be liable to any prosecution or action at law; and any person driving or conducting such carriage refusing to stop or allow such examination when required by any officer shall incur a penalty of four thousand dollars.

Officer
may stop
carriage.

12/1985
Sch.

(2) For the purposes of this section the expression "officer" includes all Constables.

Officer
may patrol
freely
12 1985
Sch.

205. Any officer, when on duty, and having the authority of the Commissioner, may patrol upon and pass freely either on foot or otherwise, along and over and enter any part of the Island other than a dwelling-house or other building, and any such officer so proceeding shall not be liable to any indictment, action or suit for so doing.

Officer
may moor
patrol craft.

206. The officer in charge of any aircraft or ship employed for the prevention of smuggling may land or haul any such aircraft or ship upon any part of the Island which shall be deemed most convenient for that purpose, and moor any such aircraft or ship on any part of the Island, and continue such aircraft or ship so moored as aforesaid for such time as he shall deem necessary and proper; and such officer shall not be liable to any indictment, action, or suit for so doing.

PART IX. *General*

General
penalty.

35/1997
S. 2.

207. Save as otherwise provided in section 208 any person who shall be convicted of any offence against the customs laws for which no specific penalty is provided shall incur a penalty of ten thousand dollars.

Penalty in
cases of
forfeiture.

35/1997
S. 2.

208. Where any aircraft, ship, carriage or goods become liable to forfeiture under the customs laws, any person who shall be knowingly concerned in the act or omission which renders the same liable to forfeiture shall be guilty of an offence against this Act, and shall incur the penalty provided by this Act in respect of such offence, or, where no such penalty is provided, shall incur a penalty not exceeding treble the value of the goods seized and any such person may be arrested and detained by any officer, and taken before a Resident Magistrate or two Justices to be dealt with according to law:

Provided that no person shall be arrested whilst actually on board any aircraft or ship in the service of a foreign state or country.

209.—(1) A person commits an offence if—

Penalty
for false
declara-
tions, etc.
3/2001
S. 8.

(a) in any matter relating to the customs, or under the control or management of the Commissioner, he—

(i) makes or subscribes or causes to be made or subscribed, any false declaration; or

(ii) makes or signs or causes to be made or signed, any declaration, certificate or other instrument, required to be verified by signature, which is false in a material particular;

(b) he makes or signs any declaration made for the consideration of the Commissioner, on any application presented to him, which is false in a material particular;

(c) where required by the customs laws to answer questions put to him by an officer acting in the execution of his duty—

(i) he refuses to answer such questions; or

(ii) he gives any answer which is false;

(d) he counterfeits or falsifies—

- (i) any document required by the customs laws or by or under the directions of the Commissioner; and
 - (ii) any instrument used in the transaction of any business or matter relating to the customs;
- (e) he wilfully uses any such document which is counterfeited or falsified;
- (f) he alters any document or instrument after it has been officially issued;
- (g) he counterfeits the seal, signature, initials or other mark of or used by, any officer for any purpose in the conduct of business relating to the customs or under the control or management of the Commissioner; or
- (h) on any document or instrument required for the purposes of the customs laws, he counterfeits or imitates the seal, signature, initials or other mark of or used by any other person, whether with or without the consent of that other person.

(2) A person who commits an offence under subsection (1) shall be liable to a penalty not exceeding five hundred thousand dollars or treble the value of the goods to which the offence relates, whichever is the greater.

210.—(1) Every person who shall import or bring, or be concerned in importing or bringing into the Island any prohibited goods, or any goods the importation of which is restricted, contrary to such prohibition or restriction, whether the same be unloaded or not, or shall unload, or assist or be otherwise concerned in unloading any goods which are prohibited, or any goods which are restricted and imported contrary to such restriction, or shall knowingly harbour, keep or conceal, or knowingly permit or suffer, or cause or procure to be harboured, kept or concealed, any prohibited, restricted or uncustomed goods, or shall knowingly acquire possession of or be in any way knowingly concerned in carrying, removing, depositing, concealing, or in any manner dealing with any goods with intent to defraud Her Majesty of any duties due thereon, or to evade any prohibition or restriction of or applicable to such goods, or shall be in any way knowingly concerned in any fraudulent evasion or attempt at evasion of any import or export duties of customs, or of the laws and restrictions of the customs relating to the importation, unloading, warehousing, delivery, removal, loading and exportation of goods, shall for each such offence incur a penalty of not less than treble the import duties payable on the goods nor more than treble the value of the goods; and all goods in respect of which any such offence shall be committed shall be forfeited.

Penalty
for evading
customs
laws
regarding
imported or
exported
goods

35/1997
S. 2.

(2) Where any person has been arrested or detained in respect of an offence against the provisions of subsection (1) and has been brought before a Justice, and it shall appear to such Justice that the value of such goods in respect of which such person has been so arrested or detained does not exceed ten thousand dollars, such Justice may proceed to deal summarily with the case, without requiring any information to be laid, and convict such person of such offence, and adjudge that such person shall, in lieu of any other penalty, forfeit any sum not

35/1997
S. 2.

less than the single value nor more than treble the value of such goods, including the duties of importation due thereon, and in default of payment of such sum of money, order the imprisonment of that person for any period not exceeding one month.

Penalty in
relation to
concealed
goods, &c.

211. If any person shall import or export, or cause to be imported or exported, or attempt to import or export any goods concealed in any way, or packed in any package or parcel (whether there be any other goods in such package or parcel or not) in a manner calculated to deceive the officers of customs, or any package containing goods not corresponding with the entry thereof, such package and the goods therein shall be forfeited, and such person shall incur a penalty of not less than treble the import duties payable on the goods contained in such package nor more than treble the value of such goods.

35/1997
S. 2.

Power of
Commissioner to
purchase
goods in
certain cases.
3/2001
S. 9 (a).

212.—(1) Notwithstanding the provisions of section 211, if, upon the examination of any imported goods which are chargeable with duty upon the value thereof, it appears to the Commissioner that the value of such goods as declared by the importer and according to which duty is sought to be paid is not the true value thereof, the Commissioner shall act in accordance with subsection (1A).

3/2001
S. 9 (a).

(1A) The Commissioner may give notice in writing to the importer that—

- (a) the goods may be released upon payment by the importer of the amount of the estimated duty on the goods together with a deposit of not less than one-half of that amount within the time specified in the notice; and

(b) failing receipt of the amounts as aforesaid, the goods shall be detained.

(1B) The amount of estimated duty referred to in subsection (1A) shall be brought to account as revenue. 3/2001
S. 9 (a).

(1C) Notice may be given under subsection (1A) by— 3/2001
S. 9 (a).

(a) delivering the notice personally; or

(b) transmitting the notice by post to the importer's place of abode or business, as stated in the entry.

(1D) The sum deposited as aforesaid shall be brought to account as revenue unless the importer, within three months or such further period as the Commissioner may in any special circumstances allow— 3/2001
S. 9 (a).

(a) produces to the Commissioner satisfactory evidence of the value; and

(b) makes final entry of such goods,

in which case so much of the sum deposited as shall be necessary shall be brought to account as revenue and the balance returned to the person who deposited the same.

(2) The Commissioner shall, within fifteen days after the detention of such goods, determine either that the goods are or may be correctly entered according to the value declared by the importer and permit the same to be delivered, or to retain the 12/1985
Sch.

same for the public use of the Island, in which latter case he shall cause the value at which the goods were declared by the importer and the duties already paid to be paid to the importer in full satisfaction for such goods; or he may permit such person, on his application for that purpose, to enter the goods according to such value and on such terms as he may direct.

(3) Such goods, if retained, shall be disposed of for the benefit of the Island, and if the proceeds arising therefrom, in case of sale, exceed the sums so paid, and all charges incurred by the Island, such surplus shall be disposed of as the Minister may direct.

Offering
goods for sale
under pre-
tence that
they are
smuggled.

213. If any person shall offer for sale any goods under pretence that the same are prohibited, or have been unloaded and removed without payment of duties, all such goods (although not liable to any duties, nor prohibited) shall be forfeited.

General
provision as
to forfeiture.

214. Subject to the provisions of section 195, all aircraft, ships and carriages, together with all animals and things made use of in the importation, attempted importation, landing, removal, conveyance, exportation or attempted exportation of any uncustomed, prohibited or restricted goods, or any goods liable to forfeiture under the customs laws shall be forfeited; and all aircraft, ships, carriages and goods together with all animals and things liable to forfeiture, and all persons liable to be detained for any offence under the customs laws or under any law whereby officers are authorized to make seizures or detentions, shall or may be seized or detained in any place either upon land or water, by any person duly employed for the prevention of smuggling, or by any person having authority

from the Commissioner to seize or detain the same, and all aircraft, ships, carriages, and goods together with all animals and things so seized, shall forthwith be delivered into the care of the Commissioner; and the forfeiture of any aircraft, ship, carriage, animal or thing shall be deemed to include the tackle, apparel and furniture thereof, and the forfeiture of any goods shall be deemed to include the package in which the same are found and all the contents thereof.

12/1985
Sch.

215.—(1) Whenever any seizure shall be made, unless in the possession of or in the presence of the offender, Master or owner, as forfeited under the customs laws, or under any law by which officers are empowered to make seizures, the seizing officer shall give notice in writing of such seizure and of the grounds thereof to the Master or owner of the aircraft, ship, carriage, goods, animals or things seized, if known, either by delivering the same to him personally, or by letter addressed to him, and transmitted by post to, or delivered at his usual place of abode or business, if known; and all seizures made under the customs laws or under any law by which officers are empowered to make seizures shall be deemed and taken to be condemned, and may be sold or otherwise disposed of in such manner as the Minister may direct, unless the person from whom such seizure shall have been made or the Master or owner thereof, or some person authorized by him shall within one calendar month from the day of seizure give notice in writing to the Commissioner that he claims the same, whereupon proceedings shall be taken for the forfeiture and condemnation thereof; provided that if animals or perishable goods are seized, they may by direction of the Commissioner be sold forthwith by public auction, and the proceeds thereof retained to abide the result of any claim that may legally be made in respect thereof.

Procedure
on seizure.

12/1985
Sch.

12/1985
Sch.

(2) Where proceedings are taken as aforesaid for forfeiture and condemnation, the court may order delivery of the aircraft, ship, carriage, goods, animals or things seized to the claimant, on security being given for the payment to the Commissioner of the value thereof in case of condemnation.

12/1985
Sch.

Disposal of
seizure.

216. All seizures whatsoever which shall have been made and condemned under the customs laws, or any other law by which seizures are authorized to be made by officers, shall be disposed of in such manner as the Minister may direct.

Limit of
penalty.

217. Where a penalty is prescribed for the commission of an offence under this Act or any regulations made thereunder such offence shall be punishable by a penalty not exceeding the penalty so prescribed; provided that where by reason of the commission of any offence the payment of any customs duty has or might have been evaded the penalty imposed shall, unless the court for special reasons thinks fit to order otherwise, and without prejudice to the power of the court to impose a greater penalty, be not less than treble the amount of duty payable.

Governor-
General
may restore
seizure, &c.

218. When any seizure shall have been made, or any fine or penalty incurred or inflicted, or any person committed to prison for any offence against the customs laws, the Governor-General may direct restoration of such seizure whether condemnation shall have taken place or not, or waive or compound proceedings, or mitigate or remit such fine or penalty, or release such person from confinement either before or after conviction on any terms and conditions, as he shall see fit.

Commis-
sioner may
mitigate
penalty.
12/1985
Sch.

219. Subject to the approval of the Minister (which approval may be signified by general directions to the Commissioner) and notwithstanding anything contained in section 217, the Commissioner may mitigate or remit any penalty or restore anything seized under the customs laws at any time prior to the commencement of proceedings in any court against any person for an offence against the customs laws or for the condemnation of any seizure.

Rewards.
12/1985
Sch.

220. The Commissioner may, with the approval of the Minister, reward any person who informs him of any offence against the customs laws or assists in the recovery of any fine or penalty.

221. Where under the customs laws any special procedure is prescribed in regard to steamships, and where the owner of any steamship is not resident in the Island, it shall be the duty of the Master or owner of such steamship to appoint an agent in the Island for the purpose of performing any act which may under the customs laws be performed by the agent of the Master or owner of a steamship; and if the Master or owner of any steamship shall fail to appoint an agent as aforesaid, and until such agent be appointed or if such agent shall not give security when so required to the satisfaction of the Commissioner for the due observance of the customs laws, then such steamship shall be subject to the requirements of the customs laws applicable to ships other than steamships, and on failure or omission to perform any such requirement, the owner or Master shall be liable in respect of such failure or omission to all penalties that might be imposed upon them or either of them under the customs laws if such ship were not a steamship.

Steamship
agents

12/1985
Sch

222. Every document submitted to the Commissioner or his officers for the purposes of the customs laws shall be in such form as may be prescribed, if any, and shall contain the particulars required by such form or indicated therein.

Documents,
form of
12/1985
Sch.

223.—(1) The importer, exporter or any person concerned in the importation or exportation of any goods shall, on the request of any officer made at any time within three years of the date of importation or exportation, as the case may be, or of the date of delivery to the proper officer of an entry for such goods, if the same have been entered, produce for the inspection of such officer the invoices, books of account and any other documents of whatever nature relating to such goods which the officer shall require, and shall answer such questions and make and subscribe such declarations regarding the weight, measure, strength, value, cost, selling price, origin and destination of such goods, and the name of the place whence or where any imported goods were consigned or transferred

Documents,
produc-
tion of.

from one aircraft or ship to another, as shall be put to him by the officer, and shall produce such evidence as the officer may consider necessary in support of any information so furnished; and if the importer or exporter or other person concerned as aforesaid shall neglect or refuse to carry out any of the provisions of this section, he shall incur a penalty not exceeding five hundred thousand dollars, and subject to section 212, the Commissioner may, on such neglect or refusal, refuse entry or delivery or prevent shipment of the goods, or may allow entry, delivery or shipment of the goods upon such terms and conditions, and upon deposit of such sum, pending the production of the proper documents and declarations, as he shall see fit to impose or require.

3/2001
S. 10 (a).

(2) The deposit made in accordance with subsection (1) shall be forfeited unless within three months of the time of deposit, or such further period as the Commissioner may allow, the person making the deposit shall produce the required documents or declarations to the Commissioner.

12/1985
Sch.

(3) In this section a reference to “any person concerned” or “other person concerned” includes a reference to—

3/2001
S. 10 (b).

(a) an insurance company which has issued a policy of insurance covering the goods in question; and

(b) any person referred to in section 17G (3) of the Revenue Administration Act.

224. Where any person is required to submit any report, entry, declaration, or other form for the purpose of the customs laws, the Commissioner may require such person to submit as many copies thereof as he may deem necessary; and where the Commissioner shall require invoices or certificates of origin, or both to be produced for any goods imported or exported, he may require such invoices or certificates of origin, or both, to be submitted in duplicate and may retain the duplicates, or, if such invoices or certificates of origin, or both, are not submitted in duplicate, he may retain the originals.

Copies of
documents
to be sub-
mitted.

12/1985
Sch.

225. Where any document required for the purposes of the customs laws contains any words not in the English

Translation.

seizure or act, then the plaintiff shall recover any things seized or the value thereof without costs of suit, but no conviction shall be recorded against the defendant.

PART XI. *Proofs in Proceedings*

250.—(1) In any prosecution under the customs laws, the proof that the proper duties have been paid in respect of any goods, or that the same have been lawfully imported or exported, or lawfully put into or out of any aircraft or ship, or lawfully transferred from one aircraft or ship to another aircraft or ship shall lie on the defendant.

Onus of proof on defendant in certain cases.

(2) The averment that the Commissioner has elected that any particular penalty should be sued for or recovered, or that any goods thrown overboard, staved or destroyed were thrown overboard, staved or destroyed to prevent seizure, or that any person is an officer, or that any person was employed for the prevention of smuggling, or that the offence was committed, or that any act was done within the limits of any port, or in the waters of the Island, or over the Island, or where the offence is committed in any port or place in the Island, the naming of such port or place in any information or proceedings, shall be deemed sufficient, unless the defendant in any such case shall prove the contrary.

12/1985 Sch.

251. If upon any trial a question shall arise whether any person is an officer, his own evidence thereof shall be deemed sufficient, and every such officer shall be deemed a competent witness upon the trial of any suit or information on account of any seizure or penalty, notwithstanding such officer may be entitled to any reward upon the conviction of the party charged in such suit or information.

Evidence of officers.

252.—(1) In all cases where any penalty the amount of which is to be determined by the value of any goods is sued for under the customs laws, such values shall, as regards proceedings in any court, be estimated and taken according to the price for which goods that are of the same class or kind as the goods in respect of which the penalty is being sued for were sold in the Island in the open market at or about the time of the commission of the offence giving rise to those proceedings.

Valuation of goods for penalty.

3/2001 S. 11.

35 1997
S. 2.

(2) A certificate under the hand of the Commissioner of the value of such goods and the import duties payable on such goods shall be accepted by the Court as *prima facie* evidence of the value thereof and of the duties payable thereon.

Copies of
documents
valid.

253. In case any book or document required by the customs laws be required to be used as evidence in any court as to the transactions to which it refers, copies thereof certified by an officer shall be admissible for that purpose without production of the original; and certificates and copies of official documents purporting to be certified under the hand and seal or stamp of office of any of the principal officers of Customs and Excise in the United Kingdom, or of any Comptroller of revenue in any Commonwealth country, or of any Jamaican or British Consul or Vice-Consul in a foreign country shall be received as *prima facie* evidence.

Proof of
order of
Government.

254. If upon the trial of any issue touching any seizure, penalty or forfeiture, or other proceedings under the customs laws or incident thereto, it may be necessary to give proof of any order issued by the Government, or any person in the employment of the Government, the order, or any letter or instructions referring thereto, shall be admitted and taken as sufficient evidence of such order, if any such document purports to be signed by any such functionary, or shall appear to have been officially printed or issued unless the contrary be proved.

Certificate of
condem-
nation.

255. Condemnation by any court under the customs laws may be proved in any court, or before any competent tribunal, by the production of a certificate of such condemnation purporting to be signed by the officer of such court.

PART XII. *Miscellaneous and Repeal*

Effect of Air
Navigation
Orders-in-
Council.

256. Where in any Order-in-Council made applicable to the Island in accordance with the provisions of the United Kingdom Air Navigation Acts, 1920 and 1936, or any amending Act, or in any regulations made under any such Order-in-Council, any provision shall be made contrary to the customs laws, such provision shall have effect to the exclusion of the corresponding provision contained in the said laws.

257. The Minister may make regulations for the better carrying out of the provisions of the customs laws and for the prevention of frauds on the revenue and may in such regulations prescribe fees, rents or charges to be paid in respect of any matter therein referred to; and all such regulations shall be published in the *Gazette*.

Regulations
4/1991
S 3

258. Subject to the provisions of this Act and any regulations made thereunder, the Commissioner may from time to time prescribe forms required to be used for the purposes of the customs laws and any such forms so prescribed, shall be published in the *Gazette* one month before such forms shall be required to be used.

Forms
12/1985
Sch

259. The Commissioner may permit the entry, unloading, removal and loading of goods, and the report and clearance of aircraft and ships in such form and manner as he may direct to meet the exigencies of any case to which the customs laws may not be conveniently applicable.

Discretionary
power to
Commissioner in
special
circumstances
12/1985
Sch.

260. With respect to the laws now repealed the following provisions shall apply—

Provisions
relating to
repeals.

- (a) all offices, appointments, proclamations, rules, regulations, by-laws, orders, warrants, seals, certificates, books, records, instruments, documents, proceedings, and generally all acts of authority which originated under any of the said laws or any law thereby repealed and are subsisting or in force on the commencement of this Act, shall enure for the purposes of this Act as fully and effectually as if they had originated under the provisions of this Act, and accordingly shall, where necessary, be deemed to have so originated;
- (b) where under any repealed law any act, matter or thing is authorized to be done such act, matter or thing may be done under this Act unless the same is inconsistent with the express provisions of this Act;

- (c) where in any enactment, or in any proclamation, rule, regulation, by-law, order, form or document whatsoever made under any enactment now repealed, reference is made to any former Customs Consolidation Law, or to the Customs Consolidation Law, 1877 (Law 18 of 1877) or any enactment amending that Law, or any customs law such reference shall be read and shall operate as if it had been made to this Act or the provisions of this Act corresponding thereto.

3/2001
S. 12.
Interpreta-
tion.

SCHEDULE

(Section 19)

1.—(1) In this Schedule—

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

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

“identical goods” means, subject to sub-paragraph (2), goods that the proper officer is satisfied—

- (a) are produced in the same country at or about the same time as the goods being valued; and
- (b) are the same in all respects as the goods being valued, notwithstanding minor differences in appearance;

“members of the same family”, as respects any person, means—

- (a) the person’s—
 - (i) husband or wife;
 - (ii) child, adopted child, step-child, grand-child or any other child wholly or mainly maintained by that person;
 - (iii) brother or sister;
 - (iv) uncle or aunt;
 - (v) nephew or niece;
 - (vi) mother, father or adoptive parents;
 - (vii) stepmother or stepfather; and
 - (viii) lineal ancestor or descendant; and
- (b) any person who is related by marriage to a person referred to in paragraph (a);

“produced” includes grown, manufactured and mined:

“seller” means a person who has the legal or beneficial interest in the goods at the time that the contract of sale is concluded and to whom the proceeds of sale will ultimately be paid, exclusive of any commission or fee:

“similar goods” means, subject to sub-paragraph (3), goods that the proper officer is satisfied—

- (a) are produced at or about the same time in the same country as the goods being valued; and
- (b) although not alike in all respects to the goods being valued, have like characteristics and like component materials which enable them to perform the same functions and to be commercially interchangeable.

(2) References in sub-paragraph (1) to “identical goods” and “similar goods” respectively, do not include references to goods which incorporate or reflect engineering, development, artwork, design work and plans and sketches for which no adjustment has been made under paragraph 8 (1) (b) (iv) on the ground that such engineering, development, artwork, design work and plans and sketches were undertaken in the Island.

(3) In determining whether or not goods are similar, the quality of the goods, their reputation and any registered trade mark in respect of those goods or a class of goods to which they belong are among the factors that may be taken into account.

(4) For the purpose of this Schedule—

- (a) a buyer and a seller of imported goods shall be deemed to be related only if—
 - (i) they are officers or directors of one another’s business;
 - (ii) they are legally recognized partners in business;
 - (iii) they are employer and employee;
 - (iv) any person directly or indirectly owns, controls or holds five per cent or more of the voting shares of both of them;
 - (v) one of them directly or indirectly controls the other;
 - (vi) both of them are directly or indirectly controlled by a third person;

- (vii) together they control, directly or indirectly, a third person; or
 - (viii) they are members of the same family;
- (b) one person shall be deemed to control another when the former is legally or operationally in a position to exercise restraint or direction over the latter,
 - (c) persons who are associated with one another in that one is the sole agent, sole distributor or sole concessionaire, however described, of the other shall be deemed to be related only if they fall within the criteria specified in sub-paragraph (a);
 - (d) an event shall be deemed to occur about the same time as another event if the first event occurs on the same day as the other event or within the forty-five days immediately preceding or immediately following the day on which the other event occurs.

Customs value, sequential application and the fallback method.

2.—(1) Where the conditions specified in paragraph 3 are fulfilled, the customs value of imported goods shall be determined under that paragraph.

(2) A declaration of customs value of imported goods shall be made by the importer and shall be supported by documentary evidence consisting of objective and quantifiable data that establishes the accuracy of that declaration.

(3) Subject to sub-paragraph (4), where the customs value of imported goods cannot be determined under paragraph 3, it shall be determined by proceeding sequentially through paragraphs 4 to 7, to the first such paragraph under which the customs value can be determined; but the order of application of paragraph 6 and 7 shall be reversed if the importer so requests and the Commissioner agrees.

(4) Except as provided in sub-paragraph (3), the provisions of the next paragraph in the sequence established by that sub-paragraph shall be applied only where the customs value of imported goods cannot be determined under a particular paragraph.

(5) Where the customs value of imported goods cannot be determined under paragraphs 3 to 7, then, it shall—

- (a) be determined using such means as are reasonable having regard to the principles and general provisions of this Schedule; and
- (b) be based, as far as practicable, on previously determined customs values.

(6) No customs value of imported goods shall be determined under sub-paragraph (5) on the basis of—

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

3.—(1) Subject to paragraphs 2 and 8, the customs value of imported goods determined under this paragraph shall be the transaction value, that is to say, the price actually paid or payable for the goods when sold for export to the Island, in the circumstances referred to in sub-paragraph (2) and adjusted in accordance with paragraph 8 or, where appropriate, paragraph 9.

Transaction
value

(2) The circumstances referred to in sub-paragraph (1) are that—

- (a) there are no restrictions as to the disposition or use of the goods by the buyer other than restrictions which—
 - (i) are imposed or required under any law;
 - (ii) limit the geographical area in which the goods may be resold; or
 - (iii) do not substantially affect the value of the goods;
- (b) the sale or price of the goods is not subject to any condition or consideration for which a value cannot be determined with respect to the goods being valued;
- (c) no part of the proceeds of any subsequent resale, disposal or use of the goods by the buyer will accrue directly or indirectly to the seller, unless an appropriate adjustment can be made in accordance with paragraph 8; and
- (d) the buyer and the seller are not related or, where they are related, the transaction value is acceptable for customs purposes under sub-paragraph (3).

(3) In determining whether the transaction value is acceptable for the purposes of sub-paragraph (1), in circumstances where the buyer and seller are related, the Commissioner shall—

- (a) take account of the circumstances of the sale; and
- (b) accept the transaction value stated, unless, on the basis of information provided by the importer or otherwise, he considers that there are grounds for believing that the relationship influenced the price.

(4) The Commissioner shall inform the importer in writing of the grounds referred to in sub-paragraph (3) and give him a reasonable opportunity to be heard.

(5) In a sale between related persons, the transaction value shall be accepted and the goods valued in accordance with sub-paragraph (1) if, subject to sub-paragraph (6), the importer demonstrates that such value closely approximates to one of the following values occurring at or about the same time—

- (a) the transaction value in sales of identical or similar goods for export to the Island between buyers and sellers who are not related in any particular case;
- (b) the customs value of identical or similar goods, as determined under paragraph 6;
- *(c) the customs value of identical or similar goods, as determined under paragraph 7.

(6) In applying any of the provisions of sub-paragraph (5) account shall be taken of—

- (a) demonstrated differences in commercial levels and quantity levels;
- (b) the matters specified in paragraph 8; and
- (c) costs incurred by the seller in sales in which he and the buyer are not related that are not incurred by the seller in sales in which he and the buyer are related.

*(7) For the purpose of sub-paragraph (1), the price actually paid or payable is, subject to sub-paragraphs (8) and (9), the total payment made, or to be made, for the imported goods by the buyer to, or for the benefit of, the seller.

(8) The payment referred to in sub-paragraph (7) may be made either directly or indirectly without necessarily taking the form of a transfer of money and shall include—

*Determination of value suspended w.e.f. 3.6.2002 to 10.3.2004 – L.N. 28/2002 refers.

- (a) all payment that, as a condition of sale of the imported goods, are made or to be made by the buyer to the seller or by the buyer to a third party to satisfy an obligation of the seller; and
- (b) any settlement by the buyer, whether in whole or in part, of a debt owed by the seller.

(9) Except to the extent allowed under paragraph 8—

- (a) any activities (including the marketing of imported goods) undertaken by a buyer on his own account shall not be regarded for the purpose of this paragraph as an indirect payment to the seller, whether or not such activities are of benefit to the seller or were undertaken by the buyer pursuant to an agreement with the seller; and
- (b) the cost of any such activity shall not be added to the price actually paid or payable in determining the customs value of the imported goods.

(10) The following charges or costs shall not be taken into account in determining the customs value of imported goods if such charges or costs may be distinguish from the price actually paid or payable for those goods—

- (a) charges for construction, erection, assembly, maintenance or technical assistance, undertaken after importation of goods such as industrial plant, machinery or equipment;
- (b) the cost of transportation after importation;
- (c) customs duties and other taxes payable in the Island by reason of the importation or sale of the goods.

4.—(1) Subject to paragraph 2 and sub-paragraph (2), the customs value of imported goods determined under this paragraph shall be the transaction value of identical goods sold for export to the Island at or about the same time as the goods being valued.

(2) The transaction value to be applied under sub-paragraph (1) is the transaction value of—

- (a) identical goods in a sale at the same commercial level and in substantially the same quantity as the goods being valued; or
- (b) in the absence of such a sale, identical goods sold at a different commercial level or in different quantities, or both, with such adjustments as are reasonable and necessary (whether resulting in an increase or a decrease in value) having regard to the differences attributable to commercial level or quantity, or to both.

Determina-
tion of
customs
value on
basis of
transaction
value of
identical
goods sold
for export.

(3) Where the costs and charges referred to in paragraph 8 (1) (e) are included in the transaction value, an adjustment shall be made to take account of differences in those costs and charges between the imported goods and the identical goods in question where those differences are attributable to differences in distances and modes of transportation.

(4) The following principles shall apply under this paragraph—

- (a) if more than one transaction value of identical goods are found, the lowest such value shall be used to determine the customs value of the imported goods;
- (b) a transaction value for goods produced by a different person shall be taken into account only when no transaction value can be found under sub-paragraph (1) for identical goods produced by the same person as the goods being valued;
- (c) a condition for adjustment because of different commercial levels or different quantities shall be that the adjustment shall be made only on the basis of evidence clearly establishing the reasonableness and accuracy of the adjustment.

(5) In this paragraph “the transaction value of identical imported goods” means a customs value previously determined under paragraph 3, adjusted as provided in sub-paragraphs (2) and (3) of this paragraph.

*Determina-
tion of
customs
value on
basis of
transaction
value of
similar
goods
sold for
export.*

5.—(1) Subject to paragraph 2 and sub-paragraph (2), the customs value of imported goods determined under this paragraph shall be the transaction value of similar goods sold for export to the Island and exported at or about the same time as the goods being valued.

(2) The transaction value to be applied under sub-paragraph (1) is the transaction value of—

- (a) similar goods in a sale at the same commercial level and in substantially the same quantity as the goods being valued; or
- (b) in the absence of such a sale, similar goods sold at a different commercial level or in different quantities, or both, with such adjustments as are reasonable and necessary (whether resulting in an increase or a decrease in value) having regard to the difference attributable to commercial level or quantity, or to both.

(3) Where the costs and charges referred to in paragraph 8 (1) (e) are included in the transaction value, an adjustment shall be made to take account of differences in those costs and charges between the imported goods and the identical goods in question where those differences are attributable to differences in distances and modes of transportation.

(4) The following principles shall apply under this paragraph—

- (a) if more than one transaction value of similar goods are found, the lowest such value shall be used to determine the customs value of the imported goods;
- (b) a transaction value for goods produced by a different person shall be taken into account only when no transaction value can be found under sub-paragraph (1) for similar goods produced by the same person as the goods being valued;
- (c) a condition for adjustment because of different commercial levels or different quantities shall be that the adjustment shall be made only on the basis of evidence clearly establishing the reasonableness and accuracy of the adjustment.

(5) In this paragraph "the transaction value of similar imported goods" means a customs value previously determined under paragraph 3, adjusted as provided in sub-paragraphs (2) and (3) of this paragraph.

6.—(1) Subject to paragraph 2, where the imported goods or identical or similar imported goods are sold in the Island in the same condition in which they are imported, the customs value of those goods shall be determined in accordance with sub-paragraph (2).

Value based on unit price of greatest aggregate quantity: (the deductive method).

(2) The customs value shall be based on the unit price at which the imported goods or identical or similar imported goods are sold in the greatest aggregate quantity, to persons who are not related to the seller at or about the time of the importation of the goods being valued, subject to deductions for the following—

- (a) subject to sub-paragraph (10), the commission usually paid or agreed to be paid or the additions usually made for profit and general expenses (including the direct and indirect costs of marketing the goods in question) in connection with sales in the Island of imported goods of the same class or kind;
- (b) the usual costs of transportation and insurance and other associated costs normally incurred within the Island; and
- (c) the customs duties and other duties or taxes payable in the Island by reason of the importation or sale of the goods.

(3) If neither the imported goods nor identical or similar imported goods are sold at or about the time of importation of the goods being valued, then, if the importer so requests, the customs value of the imported goods shall be based on the unit price at which the imported goods or identical or similar imported goods are sold in the Island in the same condition in which they were imported and at the earliest date after their importation, being a date not later than ninety days after the date of such importation, subject to the deductions specified in sub-paragraph (1).

(4) Subject to sub-paragraph (5), if neither the imported goods nor identical or similar imported goods are sold in the Island in the condition in which they were imported, then the Commissioner may determine that the value of the goods shall be based on the unit price at which the imported goods, after further processing, are sold in the greatest aggregate quantity to persons in the Island who are not related to the seller.

(5) In determining value under sub-paragraph (4), deductions shall be made in respect of—

- (a) the value added by such further processing, based on quantifiable data and calculated on the bases of usual formulae and methods and practices of the industry concerned; and
- (b) the matters specified in sub-paragraph (2) (a), (b) and (c).

(6) Subject to sub-paragraph (7), 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 of the goods is sold in sales made to persons who are not related to the seller, being sales occurring at the first commercial level after the importation at which the sales take place.

(7) In determining the unit price for the purposes of this paragraph, no account shall be taken of any sale in the Island to a person who supplies any goods or services specified in paragraph 8 (1) (b), directly or indirectly, free of charge or at a reduced cost, for use in connection with the production and sale for export of the imported goods.

(8) Subject to sub-paragraph (9), the amount allowable under sub-paragraph (2) (a) as a deduction for profit and general expenses shall be taken as a whole and shall be determined on the basis of figures and other information supplied by or on behalf of the importer.

(9) Where it appears to the proper officer that the figures or other information so supplied are not consistent with verifiable figures and information pertaining to sales of imported goods of the same class or kind, the proper officer may determine the amount allowable on the basis of figures and information other than those supplied.

(10) In determining for the purposes of sub-paragraph (2) (a) the commissions or the additions usually made for profit and general expenses, the question whether imported goods are of the same class or kind shall be decided on the facts of each particular case, having regard to all the circumstances, and taking into account, where possible, information pertaining to the sale of the narrowest group or range of imported goods of the same class or kind.

(11) A reference to goods of the same class or kind includes a reference to goods imported from the same country as the goods being valued and to goods imported from other countries.

(12) For the purposes of sub-paragraph (3), “the earliest date” means the date by which sales of the goods or of identical or similar imported goods are made in sufficient quantity to establish the unit price.

7.—(1) Subject to paragraph 2 and this paragraph, the customs value of imported goods shall be determined under this paragraph on a computed value consisting of the sum of—

Determina-
tion of
value based
on com-
puted
value.

- (a) the cost or value of the materials and processing used to produce the imported goods;
- (b) an amount for profit and general expenses equivalent to the amount usually reflected in sales of goods that are of the same class or kind as the goods being valued and that are made by producers in the country of exportation for export to the Island; and
- (c) the total of all costs and charges referred to in paragraph 8 (1) (e).

(2) The cost referred to in sub-paragraph (1) (a) shall include—

- (a) the costs referred to in paragraph 8 (1) (a) (ii) and (iii);
- (b) the value, duly apportioned, of such goods or services referred to in paragraph 8 (1) (b) as have been supplied, directly or indirectly, by the buyer for use in connection with the production of the imported goods;
- (c) the value of such goods and services referred to in paragraph 8 (1) (b) (iv) as are undertaken in the Island, to the extent only that they are charged to the producer,

and no cost or value as aforesaid shall be counted more than once in determining the computed value of imported goods.

(3) The cost or value referred to in sub-paragraph (1) (a) shall be determined on the basis of such commercial accounts supplied by or on behalf of the producer as relate to the production of the goods being valued and as are consistent with the generally accepted accounting principles applied in the country in which the goods are produced.

(4) For the purposes of sub-paragraph (1) (b)—

- (a) the amount for profit and general expenses shall, subject to sub-paragraph (b), be taken as a whole and shall be determined on the basis of figures or other information supplied by or on behalf of the producer;
- (b) where it appears to the proper officer that the figures or other information so supplied are not consistent with the figures or other information usually attributable to sales of goods that—
 - (i) are of the same class or kind as the goods being valued; and
 - (ii) are made by producers in the country of exportation for export to the Island.
 the proper officer may determine the amount for profit and general expenses on the basis of figures and information other than those supplied by or on behalf of the producer of the goods;
- (c) the question whether goods are of the same class or kind as other goods shall be decided on the facts of each particular case, having regard to all the circumstances and taking into account, where possible, information pertaining to the sales for export to the Island of the narrowest group or range of goods of the same class or kind as the goods being valued;
- (d) a reference to—
 - (i) “general expenses” is a reference to the direct and indirect costs of producing and selling the goods for export, being costs not included under sub-paragraph (1) (a); and
 - (ii) “goods of the same class or kind” means goods imported from the same country as the goods being valued.

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

Certain charges to be included in customs value

- (a) the following costs, to the extent that they are incurred by the buyer but are not included in the price actually paid or payable for the goods—
 - (i) commission and brokerage, except buying commission;
 - (ii) the costs of containers which, for customs purposes, are treated as one with the goods in question;
 - (iii) the cost of packing, whether for labour or materials;

- (b) the value, apportioned as appropriate, of the following goods and services where they are supplied, directly or indirectly, by the buyer free of charge or at a 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 that is to say—
 - (i) materials, components, parts and similar items incorporated in the imported goods;
 - (ii) tools, dies, moulds and similar items used in the production of the imported goods;
 - (iii) materials consumed in the production of the imported goods;
 - (iv) engineering, development, artwork and design work, as well as such plans or sketches as are done outside of the Island and are necessary for the production of the imported goods;
 - (c) royalties and licence fees, including payments in respect of patents, trademarks and copyright, related to the goods being valued payable by the buyer, either directly or indirectly, as a condition of sale of the goods being valued, to the extent that such royalties and fees are not included in the price actually paid or payable;
 - (d) the value of any part of the proceeds of any subsequent resale, disposal or use of the imported goods that accrues, directly or indirectly, to the seller;
 - (e) subject to any reduction of freight charges by the Commissioner in accordance with section 19 (7), the following costs and charges—
 - (i) the cost of transportation of the imported goods to the port or place of importation;
 - (ii) the loading, unloading and handling charges associated with the transportation of the imported goods to the port or place of importation; and
 - (iii) the cost of insurance.
- (2) In determining the customs value of imported goods—
- (a) no additions shall be made to the price actually paid or payable for those goods, except as provided in this paragraph; and

- (b) additions to the price actually paid or payable shall be made under this paragraph only on the basis of objective and quantifiable data: and
 - (c) the transaction value of the goods shall not be determined under paragraph 3 in the absence of such data.
- (3) Notwithstanding sub-paragraph (1) (c)—
- (a) in determining the customs value of imported goods, charges for the right to reproduce the goods in the Island shall not be added to the price actually paid or payable for those goods:
 - (b) payments made by the buyer for the right to distribute or resell those goods shall not be added to the price actually paid or payable for the goods if such payments are not a condition of the sale for export of those goods to the Island.

(4) In this paragraph—

“buying commission” means fees paid by an importer to his buying agent for the service of representing him abroad in the purchase of the goods being valued:

“buying agent” means a person who acts for a buyer of goods for reward or hire.

Interest
charges
to be
excluded.

9.—(1) Charges for interest under a financing arrangement entered into by the buyer and related to the purchase of imported goods shall not be included in the customs value determined under paragraph 3, if the requirements in sub-paragraph (2) are satisfied.

(2) The requirements referred to in sub-paragraph (1) are as follows—

- (a) the charges are distinguished from the price actually paid or payable for the goods;
- (b) the financing arrangement is in writing;
- (c) where required by the Commissioner, 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.

- (3) The provisions of sub-paragraphs (1) and (2) shall apply—
 - (a) whether the finance is provided by the seller, a bank or another person; and
 - (b) with such modifications as may be necessary in relation to any case where value is determined under a method other than the transaction value.

Shall be
 included
 in the
 value of
 data
 processing
 equipment.

10.—(1) Where the value of the data or instructions recorded on any carrier medium for data processing equipment is distinguished or distinguishable from the cost or value of the medium itself, then, in determining the transaction value of the carrier medium, no account shall be taken of the value of the recorded data or instructions.

- (2) For the purposes of this paragraph—
 - “carrier medium” shall not include integrated circuits, semi-conductors and similar devices or articles incorporating such circuits or devices;
 - “data or instructions” shall not include sound, cinematic or video recordings.