

ABILL

ENTITLED

AN ACT to Amend the Customs Act.

[]

BE IT ENACTED by The Queen's Most Excellent Majesty, by and with the advice and consent of the Senate and House of Representatives of Jamaica, and by the authority of the same, as follows:—

1.—(1) This Act may be cited as the Customs (Amendment) Act, 2015 and shall be read and construed as one with the Customs Act (hereinafter referred to as the “principal Act”).

Short title
and
commence-
ment.

(2) This Act or any of its provisions shall come into operation on a day or days to be appointed by the Minister by notice published in the *Gazette*.

Amendment
of principal
Act.
Schedule.

2. The principal Act is, in relation to the provisions specified in the first column of the Schedule, amended in the manner specified in the second column of the Schedule.

Repeal of
sections 17,
18, 18A, 19,
40, 41, 42,
43, 44, 58,
59, 179 and
236 of
principal
Act.

3. Sections 17, 18, 18A, 19, 40, 41, 42, 43, 44, 58, 59, 179 and 236 of the principal Act are repealed.

Saving.

4. Nothing contained in this Act shall be construed so as to affect the validity of anything done before the coming into operation of this Act under any provision of the principal Act.

SCHEDULE

(Section 2)

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Section 2

1. In subsection (1)—

- (a) delete the definition of “agent” and substitute the following definition—

““agent” means a person who is authorized in writing to transact business under this Act on behalf of another person; however, if no agent is so authorized, 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;”;

- (b) in the definitions of “approved place of unloading” and “approved place of loading”, insert immediately after the words “subsection (2)” the words “or by the Commissioner pursuant to a delegation under subsection (3)”;
- (c) in the definition of “boarding station”, insert immediately after the words “subsection (2)” the words “or by the Commissioner pursuant to a delegation under subsection (3)”;
- (d) delete the definition of “Commissioner” and substitute the following definition—
- ““Commissioner” means the Commissioner of Customs;”;
- (e) in the definition of “Customs area”, insert immediately after the word “subsection (2)” the words “or by the Commissioner pursuant to a delegation under subsection (3)”;

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- (f) delete the definition of "entered" and substitute the following definition—

"entered", in relation to goods imported, warehoused, exported or put on board an aircraft or a ship as stores, means compliance with all requirements under the customs laws, including—

- (a) the making of a declaration signed by the importer or exporter, and the submission of the required supporting documents and other information in the prescribed form and manner;
- (b) the acceptance and approval by the proper officer of the items referred to in paragraph (a), in the prescribed manner;
- (c) payment to the proper officer by the importer or exporter of all fees and other charges due to the Government in respect of the goods; and
- (d) in the case of dutiable goods (except for imported goods that are to be warehoused), the

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payment by the importer or exporter to the proper officer of—

- (i) the full duties due on the goods;
- (ii) where permitted, the deposit of a sum of money or giving of security for the duties, as provided by law; or
- (iii) 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;”;

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- (g) delete the definition of “goods” and substitute the following definition—
- “ “goods” means any kind of movable property, and includes animals;”;
- (h) in the definition of “name”, insert immediately after the word “aircraft” the words “or a ship”;
- (i) delete the definition of “officer” and substitute the following definition—
- “ “officer” includes—
- (a) any person employed in—
- (i) the Cus-
t o m s
Agency;
- (ii) the Rev-
enue Protec-
tion Depart-
ment estab-
lished by
section 6 of
the *Rev-
enue Ad-
ministra-
tion Act*;
- (b) any Constable; and
- (c) any person acting in the aid of any person mentioned in paragraph (a) or (b) acting in the execution of his office or duty;”;
- (j) in the definition “port”, insert immediately after the word “subsection (2)” the words “or by

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the Commissioner pursuant to a delegation under subsection (3), and includes a public bonded warehouse”;

- (k) delete the definition of “private warehouse” and substitute the following definition—

““private warehouse” means any warehouse other than a Queen’s warehouse;”;

- (l) delete the definition of “prohibited goods” and substitute the following definition—

““prohibited goods” means goods that are prohibited by law from being imported into, or exported from, the Island;”;

- (m) delete the definition of “proof” and substitute the following definition—

““proof”, as used in sections 30 and 40, means spirits that, at the temperature of 51 degrees Fahrenheit or its equivalent in centigrade, weigh 12/13ths of the weight of an equal measure of distilled water;”;

- (n) delete the definition of “proper officer” and substitute the following definition—

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

- (o) in the definition of “ship”, delete the words “as hereinafter defined;”;

- (p) in the definition of “special store”, insert immediately after the words “subsection (2)”

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the words “or by the Commissioner pursuant to a delegation under subsection (3)”;

- (q) in the definition of “sufferance wharf”, insert immediately after the words “subsection (2)” the words “or by the Commissioner pursuant to a delegation under subsection (3)”;

- (r) delete the definition of “Taxpayer Appeals Department”;

- (s) delete the definition of “warehoused” and substitute the following definitions—

“warehouse” means a private bonded warehouse, a public bonded warehouse and a Queen’s warehouse;

“warehoused” means deposited in a warehouse;” and

- (t) delete the definition of “waters of the Island” and substitute the following definition—

“waters of the Island” means the “internal waters”, the “archipelagic waters” and the “territorial sea” of Jamaica within the meaning of section 2 of the *Maritime Areas Act*”.

2. Insert in subsection (1) the following definitions in the appropriate alphabetical sequence—

“declaration”, in relation to the entry of goods, means a statement made, or an action taken, in a manner and form determined by the Commissioner, that—

- (a) indicates the customs procedure that the person making the declaration wishes to be applied to the goods; and

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- (b) provides the information necessary for the application of that procedure;

“entry”, in relation to goods imported, warehoused, put on board an aircraft or ship as stores or exported, means the process whereby the goods are entered;

“private bonded warehouse” means a warehouse or place that is—

- (a) occupied or used by a particular importer for the deposit of goods of the importer under bond; and
- (b) appointed by the Minister pursuant to subsection (2)(f) or by the Commissioner pursuant to a delegation under subsection (3);

“public bonded warehouse” means a warehouse or place that is—

- (a) occupied or used by a person for the deposit of goods of a number of importers under bond; and
- (b) appointed by the Minister pursuant to subsection (2)(g) or by the Commissioner pursuant to a delegation under subsection (3);

“Queen’s warehouse” means a warehouse or place that is—

- (a) occupied or used by the Government for the deposit of goods; and
- (b) appointed as such by the Minister pursuant to subsection (2)(e) or by the Commissioner pursuant to a delegation under subsection (3);

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“restricted goods” means goods that may be imported into, or exported from the Island, subject to conditions or restrictions imposed by law;

“Revenue Appeals Division” means the Revenue Appeals Division established under the *Revenue Appeals Division Act*;

“Revenue Court” means the Revenue Court established under the *Judicature (Revenue Court) Act*;

3. In subsection (2)—

(a) delete paragraph (b) and substitute the following—

“(b) appoint any station or place to be a boarding station to which aircraft or ships arriving at or departing from any port or place shall be brought for the boarding or landing of officers;” and

(b) in paragraph (e), delete the words “a private warehouse” and substitute the words “a Queen’s warehouse”;

(c) re-letter paragraphs (f) and (g) as paragraphs (h) and (i) and insert next after paragraph (e) the following—

“(f) appoint any building or place to be a private bonded warehouse;

(g) appoint any building or place to be a public bonded warehouse;”;

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4. Insert next after subsection (2) the following as subsections (3), (4) and (5)—

“ (3) The Minister may, by notice published in the *Gazette*, delegate to the Commissioner any or all of the Minister’s powers under section 2.

(4) Where under this Act a notice or document in writing is required to be issued or submitted, served upon or otherwise given or delivered to any person, the notice or document may be recorded and transmitted on paper or other physical medium or by electronic means.

(5) The Minister may, by notice published in the *Gazette*, specify within which of the categories set out in paragraphs (e), (f) or (g) of subsection (2) a warehouse which was the subject of an appointment by the Minister under subsection (2) prior to the coming into operation of section 2 of the Customs (Amendment) Act, 2015, shall fall.”

Section 3. Delete the words “officers of the Constabulary Force” and substitute the words “a Constable”.

Section 4. Delete section 4 and substitute the following—

“Acts on behalf of the Commissioner. 4.—(1) The Commissioner may authorize, assign or appoint any officer to exercise any of the powers conferred, or perform any of the duties imposed, on the Commissioner by this Act or by any other enactment, either in place of, or concurrently with, the Commissioner.

(2) 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 authorized, assigned or appointed by the Commissioner for such purpose,

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shall be deemed to be done or performed by, with, to or before the Commissioner.

(3) 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.

(4) Every act required by law at any time to be done by, with, to or before any particular officer nominated for such purpose, if done by, with, to or before any person authorized, assigned or appointed by the Commissioner to act for such particular officer, shall be deemed to be done by, with, to or before such particular officer.

(5) Every act required by law to be done at any particular place within any port, if done at any place within such port appointed by the Commissioner for such purpose, shall be deemed to be done at the particular place as required by law.”.

Section 4A. In subsection (2)(a), insert immediately after the word “person” the words “authorized by the Commissioner”.

Section 5. Delete subsection (2) and substitute the following as subsections (2) and (3)—

“ (2) Notwithstanding anything to the contrary, no import duty shall be payable upon any article, except a motor vehicle, imported into the Island, or taken out of bond in the Island, by a registered charitable organization and shown to the satisfaction

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of the Commissioner to be required for the charitable purposes of that organization.

(3) Notwithstanding anything to the contrary, no import duty shall be payable upon any article imported into Jamaica or taken out of bond in Jamaica by the University of the West Indies or the Council of Legal Education and shown to the satisfaction of the Commissioner to be required for the use of the University or Council.”.

Section 10. Insert immediately after the words “by order” the words “published in the *Gazette*”.

New sections 11A and 11B Insert next after section 11 the following as sections 11A and 11B—

“When goods subject to customs control. 11A.—(1) Goods are subject to the control of the Customs Agency from the time of importation until the time the goods are lawfully removed from a Customs area.

(2) For the purposes of subsection (1), goods that are removed from one Customs area to another Customs area continue to be subject to the control of the Customs Agency.

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

Time of importation etc. of goods. 11B.—(1) The time of importation of goods is—

- (a) in the case of goods brought by sea, the time when the ship carrying the goods enters the territorial sea of the Island; and

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(b) in the case of goods brought by air, the time when the aircraft carrying the goods lands in the Island.

(2) If any question arises upon the arrival of any aircraft or ship at any port or place in the Island in respect of any charge or allowance for such aircraft or ship, exclusive of cargo, the time of such arrival shall be deemed to be the time at which the aircraft or ship shall first be boarded by any person (other than the pilot) in the employment of the Government at such port or place.

(3) Subject to subsection (4), the time of exportation of any goods shall be deemed to be the time when the same are put on board the exporting aircraft or ship.

(4) In the case of goods prohibited to be exported, the time of exportation shall be deemed to be the actual time at which the aircraft or ship departed from its final position, anchorage or berth in the Island.”.

Section 14 1. In subsection (1)—

(a) delete from paragraphs (a) and (b), the word “first” wherever it appears; and

(b) paragraph (c) and substitute therefor the following—

“(c) in the case where goods that have been deposited in a Queen’s warehouse are to be removed by an importer, at the time when a

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declaration removing the goods from the warehouse is registered in the Customs System;

- (d) where goods have been deposited in a Queen's warehouse for auction, at the time when the goods are auctioned;
- (e) in the case of goods deposited in a private warehouse, at the time when a declaration removing the goods from the warehouse is registered in the Customs System; and ,
- (f) in any other case, at the time when the goods are entered, save in cases where special provision shall be made to the contrary.”.

2. Insert next after subsection (3) the following as subsections (4), (5) and (6)—

“ (4) Notwithstanding subsection (1), where a declaration in respect of goods has been registered in the Customs System but duty on the goods has not been paid, the rate of duty applicable to those goods shall be the rate which prevailed on the date of the payment of duty on the goods.

(5) For the purposes of subsection (1), any registration which has lapsed shall not be taken into account.

(6) For the avoidance of doubt it is declared that in circumstances falling within paragraphs (c), (d) and (e) of subsection (1), paragraph (1)(a) shall not apply.”.

Section 15.

In subsection (2), insert immediately after the word “Commissioner” the words “or within such period as the Commissioner may allow”.

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New sections Insert next after section 15 the following as sections 15A and 15B—
and 15B—

“Value of
goods.

Schedule.

15A.—(1) For the purposes of this Act, the value of imported 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) A person shall, upon making an entry of goods, declare the value of the goods as determined in accordance with subsection (1)—

(4) Where, in determining the value of goods under this section, it is necessary to establish the equivalent in Jamaican currency of any other currency, the rate of exchange between those currencies shall be that which is the applicable exchange rate for the calendar day on which the rate of duty for those goods is determined.

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

(6) 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

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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.

(7) 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.

(8) Where the value has been adjusted pursuant to subsection (7), the Commissioner shall demand the additional duty payable or shall refund the duty overpaid based upon the new value.

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

Schedule.

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

- (a) suspend or vary the operation of the Schedule, or any provision of it, in relation to any category of goods, for such period as may be specified in the order; and

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(b) specify how the value of goods to which the suspension or variation relates shall be determined during that period.

(11) In this section—

(a) the “applicable exchange rate” for a particular calendar day means the spot market weighted average selling rate that was calculated by the Bank of Jamaica on the immediately preceding business day; and

(b) “business day” means any calendar day other than a Saturday, Sunday or a day declared to be a Public General Holiday under section 2 of the Holidays (Public General) Act.

Assessment
of duty, etc.

15B.—(1) Unless otherwise provided in this Act, a declaration made under this Act shall constitute a binding representation by the importer or exporter to the Commissioner as to—

(a) the classification of the goods, the duty rate applicable to the goods, the value of the goods, and the appropriate customs procedure code for the goods; and

(b) any other matters stated in the declaration.

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(2) Where the Commissioner has reasonable cause to suspect that duties are payable on goods and no declaration has been made in respect of those goods, the Commissioner may assess the duties payable in respect of the goods at such amount as the Commissioner thinks proper, based on the provisions of this Act.

(3) The Commissioner shall advise the importer or exporter of goods of any assessment made under subsection (2), in respect of those goods.

(4) Subject to subsection (7), the Commissioner may make a reassessment with regard to any assessment made under this Act in respect of the goods, notwithstanding that—

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

(5) Where a reassessment made under subsection (4) has the effect of imposing a new liability or altering an existing liability for duty payable in respect of the goods, the Commissioner shall give written notice to the importer or exporter of the goods of the new or altered liability.

(6) An importer or exporter of goods who receives a notice under subsection (5) shall, within ninety days of receiving the notice or within such

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longer period as the Commissioner may allow, pay any additional duty that is payable in respect of the goods.

(7) The Commissioner may not make a reassessment after the expiration of seven years from the date on which the original assessment was made.”.

Section 23 Delete the words “It shall be lawful for the Minister by notice in the *Gazette* to specify, in gallons or fractions of a gallon,” and substitute the words “The Minister may, by notice in the *Gazette*, specify in the appropriate unit of measurement under the *Weights and Measures Act*,”.

Section 29 Delete the words “section 19” and substitute the words “section 15A”.

Section 32 Delete section 32 and substitute the following—

“Goods imported for a particular purpose or by a particular person.

32.—(1) The Minister may permit goods to be imported at a lower rate of duty than the rate ordinarily applicable, or free of duty, on any special conditions, or for use for a special purpose or by a particular person.

(2) If, at any time within three years after the date of entry of goods referred to in subsection (1)—

- (a) any conditions imposed under subsection (1) are not observed; or
- (b) the goods are used for any purpose other than the special purpose, or are sold or transferred by the particular person to another person,

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then, unless the full duties on the goods are paid, the goods shall be forfeited.

(3) The importer who contravenes subsection (2), and any other person who is knowingly involved in such contravention, shall incur a penalty that is the greater of—

- (a) treble the amount of import duties payable on the goods; or
- (b) treble the value of the goods.

(4) Where goods to which subsection (1) applies are delivered to any person, the Commissioner may, subject to such terms and conditions as he may think fit, permit the sale or transfer of the goods to another person who, if the goods were originally delivered to him, would have been entitled to the like treatment under subsection (1); and thereupon, subsections (2) and (3) and section 33 shall apply *mutatis mutandis* in relation to that other person as they applied in relation to the person to whom such goods were originally delivered.

(5) The Minister shall make regulations regarding the importation of goods under this section.”.

Section 33

Delete all the words appearing after the words “incur a” and substitute the following—

“penalty that is the greater of—

- (a) treble the amount of import duties payable on the goods; or

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(b) treble the value of the goods.”.

Sections 35
and 36

Delete sections 35 and 36 and substitute the following—

“Goods
imported
for
temporary
use.

35.—(1) Subject to section 37, goods may be imported into the Island without the payment of customs duties where the Commissioner is satisfied that the goods are imported for temporary use only.

(2) Subject to subsection (4), where goods are imported under subsection (1), the importer shall, prior to removal of the goods from customs control, deposit with the Commissioner the amount of duty on such goods or give security for the full amount thereof in a form acceptable to the Commissioner, at the election of the Commissioner, and the goods shall be exported—

- (a) where such goods are commercial samples, within six months of the date of permission; or
- (b) where the goods are not commercial samples, within three months of the date of permission.

(3) Goods imported pursuant to this section shall, upon a demand made by the proper officer, be produced or otherwise accounted for.

(4) Subject to subsection (5) and notwithstanding any provisions to the contrary, where goods are imported under this section, the Commissioner

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may waive the requirement for the duty to be deposited or security to be provided, in whole or in part, and may impose such terms and conditions as he deems fit.

(5) Where the Commissioner has waived under subsection (4), in whole or in part, the requirement for the duty to be deposited or security given, the Commissioner may, in his discretion, and on provision of additional security where he so requires, alter the terms and conditions originally imposed under subsection (4).

(6) Where any person contravenes a term or condition imposed by the Commissioner under subsection (4) the full duties in respect of the goods shall become due and payable immediately.

(7) Duty shall not be payable on goods temporarily imported in accordance with the provisions of any treaty, agreement, or arrangement concluded by the Government.

Disposal of
deposit.

36.—(1) If goods imported under section 35 are exported within the time specified in that section, the deposit shall be refunded or the security released.

(2) If any goods imported under section 35 are not exported within the time specified in that section, the deposit shall be forfeited or the security enforced, unless the default

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is explained to the satisfaction of the Commissioner.”.

Section 39 Delete section 39 and substitute the following—

“Minister may prohibit importation, carriage coastwise or exportation.

39.—(1) The Minister may, if he considers it necessary in the public interest, by order published in the *Gazette*, prohibit the importation, carriage coastwise or exportation of any goods whatsoever.

(2) An order under subsection (1) may—

- (a) prohibit the importation, carriage coastwise or exportation of any goods until the revocation thereof, or during such period as may be specified therein;
- (b) either absolutely prohibit the importation, carriage coastwise or exportation of any goods; or
- (c) may prohibit the importation, carriage coastwise or exportation of any goods, except on compliance with any conditions which may be specified in the order, or the importation from or the exportation to any particular place named in the order.

(3) An order under subsection (1) may make an exception for aircraft’s or ship’s stores or goods in transit and

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for the retention of some quantity of spirits and tobacco to remain on board as aircraft's or ship's stores.

(4) The Commissioner has the power to seize any goods in transit that are prohibited from transit under this section.

(5) The provisions of this section shall be additional to the provisions of any other enactment prohibiting the importation, carriage coastwise or exportation of any goods.”.

Section 50 Delete the words “two years” and substitute the words “one year”.

New PART IIA Insert next after section 50 the following as PART IIA—

“PART IIA. *Dispute Resolution*

Procedure in case of dispute as to assessment or valuation.

50A.—(1) Subject to subsection (3), if any dispute arises as to whether any or what duty is payable on any goods imported into or exported from the Island, including any dispute as to the valuation of the goods, the importer, consignee or exporter, or his agent, shall, prior to removing the goods from customs control, deposit with the Commissioner the full amount of the duty demanded by the Commissioner or give security to the Commissioner for the full amount thereof in a form acceptable to the Commissioner.

(2) Subject to subsection (3), in the case of any dispute referred to in subsection (1), the importer, consignee or exporter, or his agent may, within

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ninety days after paying the deposit or giving security in accordance with subsection (1) or, if a deposit or security has not been paid or given in accordance with subsection (1), within ninety days after the assessment, apply to the Commissioner by notice of objection in writing for a review under this section.

(3) If the deposit or security referred to in subsection (1) has not been paid or given, or if the dispute referred to in subsection (1) arises after the goods have ceased to be under customs control, the notice of objection to the Commissioner shall be accompanied by a deposit of not less than twenty-per cent of the duty demanded or by security for not less than that amount in a form acceptable to the Commissioner, failing which—

- (a) the notice of objection shall be void;
- (b) the duty demanded by the Commissioner shall be payable; and
- (c) it shall, for the purposes of subsection (10) (a), be deemed that no proceedings by way of a notice of objection have been brought within the time limit set for that purpose.

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(4) On the receipt of the notice of objection referred to in subsection (2), the Commissioner may—

(a) by notice, require the person who gave the notice of objection to—

(i) furnish such particulars as the Commissioner may deem necessary with respect to the assessment or valuation; and

(ii) produce all books or other documents in his custody or under his control relating to such assessment or valuation; or

(b) by notice, summon any person who he thinks is able to give evidence respecting the assessment or valuation to attend before him and examine the person on oath or otherwise.

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(5) A person commits an offence if he—

(a) without lawful excuse—

(i) refuses or neglects to attend or to give evidence in pursuance of a notice served on him under subsection (4);

(ii) refuses to produce any books or other documents which he is required to produce under subsection (4);

(iii) refuses to answer any lawful question relating to the matters under consideration; or

(b) knowingly or wilfully gives any false evidence before the Commissioner.

(6) The Commissioner shall, within ninety days after receipt of a

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notice of objection, make a decision in respect of the objection.

(7) The Commissioner shall, by notice in writing to the person who gave the notice of objection, inform that person of—

- (a) the decision and the reasons for the decision; and
- (b) the right of that person to appeal the decision to the Commissioner of Revenue Appeals under section 50B.

(8) Where a person who has objected to an assessment of duty or valuation subsequently agrees with the Commissioner as to the amount of the assessment or valuation, the assessment or valuation shall be amended accordingly.

(9) On payment of the deposit of duty on goods or the giving of security required by subsection (1), as the case may be, the Commissioner shall cause delivery or permit shipment of the goods.

(10) The following shall apply in respect of deposits paid and security given under subsections (1) and (3)—

- (a) if no proceedings by way of a notice of objection are brought within the time limit set for that purpose, or if, where proceedings by way of notice of objection

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are brought, it is determined that the duty demanded by the Commissioner is payable—

- (i) any deposit paid under subsection (1) shall be applied, or any security given under subsection (1) shall be enforced and the proceeds applied, towards the duty payable; or
- (ii) if, there being no sufficient deposit or security held by the Commissioner for this purpose, the duty demanded by the Commissioner is not paid in full on or before the expiration of that time limit or (where applicable) within thirty days of the

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determination or such longer period as the Commissioner may allow, any deposit paid under subsection (3) may be applied, and any security given under subsection (3) shall be enforced and the proceeds applied, towards the duty payable, and section 88 shall apply in relation to the goods;

- (b) if, where proceedings by way of notice of objection are brought, it is determined that a lesser duty than the amount of duty demanded by the Commissioner is payable—

- (i) any deposit paid under subsection (1) shall be applied, or any security

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given under subsection (1) shall be enforced and the proceeds applied, towards such lesser duty payable, and the excess thereof over the lesser duty shall be refunded to the importer, consignee, exporter or his agent; or

- (ii) if, there being no sufficient deposit or security held by the Commissioner for this purpose, the lesser duty is not paid in full within thirty days of the determination or such longer period as the Commissioner may allow, any deposit paid under

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subsection (3) shall be applied, or any security given under subsection (3) shall be enforced and the proceeds applied, towards the lesser duty payable, and section 88 shall apply in relation to the goods;

(c) if, where proceedings by way of notice of objection are brought, it is determined that a greater duty than the amount of duty demanded by the Commissioner is payable—

(i) any deposit paid under subsection (1) may be applied, or any security given under subsection (1) may be enforced and the proceeds applied, towards such greater duty payable, and

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the importer, consignee, exporter or his agent shall, within thirty days of the determination or such longer period as the Commissioner may allow, pay to the Commissioner the full amount of difference between the amount of the deposit or proceeds of the security and the greater duty determined to be payable; or

- (ii) if, there being no sufficient deposit or security held by the Commissioner for this purpose, the greater duty is not paid in full within thirty days of the decision

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or such longer period as the Commissioner may allow, any deposit paid under subsection (3) shall be applied and any security given under subsection (3) shall be enforced and the proceeds applied towards the greater duty payable, and section 88 shall apply in relation to the goods; and

- (d) all deposits paid and the proceeds of security given under this section in respect of goods shall be paid by the Commissioner to the Accountant-General.

(11) For greater certainty, it is declared that this section applies to an assessment, re-assessment or valuation under this Act made by the Commissioner at any time.

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Appeal to
Commissioner of
Revenue
Appeals.

50B.—(1) A person who has made an objection under section 50A and who is dissatisfied with the decision of the Commissioner under that section may appeal to the Commissioner of Revenue Appeals in accordance with the *Revenue Appeals Division Act*.

(2) If the Commissioner fails to make a decision in respect of an objection under section 50A within the time required by section 50A(6), for the purposes of the appeal, the failure of the Commissioner to make a decision is deemed to be a decision of the Commissioner rejecting the objection.

(3) In an appeal under this section, the onus of proving that the decision of the Commissioner should be set aside or varied is on the person who appeals.

Appeal to
Revenue
Court.

50C. A person who is aggrieved by a decision of the Commissioner of Revenue Appeals under section 50B may appeal to the Revenue Court in accordance with the *Revenue Appeals Division Act*.

Dispute
resolution
for other
matters.

50D. The Minister may make regulations, subject to affirmative resolution of the House of Representatives—

- (a) prescribing matters, other than assessment of duty and valuation of goods, that may be made the subject of a process for dispute resolution; and

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- (b) setting out the process for resolution of disputes regarding matters prescribed under paragraph (a), including making provision for any appeal regarding such disputes.”.

Section 51 Delete section 51 and substitute the following—

“Procedure
on arrival.

51. If any aircraft or ship arriving in the Island or the waters thereof—

- (a) shall not come to some port therein, or to such other place as may be allowed by the Commissioner in any special circumstances, without touching at any other place in the Island;
- (b) on arriving at any such port or place, shall not come as quickly up to the proper place of mooring or unloading as the nature of the port or place will admit, without touching at any other place;
- (c) in proceeding to such proper place, shall not bring to at the station appointed by the Minister by notice in the *Gazette* for the boarding of aircraft or ships;
- (d) after arriving at such proper place shall depart therefrom except directly

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to some other place of mooring or unloading approved of by the proper officer, or, with the authority of the proper officer, directly to some other port or to some place allowed by the Commissioner in any special circumstances as aforesaid in the Island, or directly on any flight or voyage to a place outside the Island in accordance with the provisions of the customs laws;

- (e) after departing as aforesaid on any flight or voyage to a place outside the Island shall bring to within the Island or the waters thereof, unless in accordance with the customs laws, or with the permission of the proper officer, or for some cause which the Master shall explain to the satisfaction of the Commissioner,

then the Master of the aircraft or ship shall incur a penalty of one million dollars.”.

Section 54 Renumber section 54 as subsection (1) of the section and insert next after subsection (1), as renumbered, the following as subsection (2)—

“ (2) If an officer is denied free access on board an aircraft or a ship in accordance with subsection (1) or if keys are withheld from an officer contrary to

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	that subsection, the Master of the aircraft or ship shall incur a penalty of one million dollars.”.
Section 55	Delete the words “shall incur a penalty of two hundred thousand dollars” and substitute the words “or his agent shall incur a penalty of one million dollars”.
Section 55A	Delete the words “two hundred thousand dollars” and substitute the words “one million dollars”.
Section 56	Delete all the words appearing after the words “incur a” and substitute the following— “penalty that is the greater of— (a) treble the amount of import duties payable on the goods; or (b) treble the value of the goods.”.
Section 57	1. Renumber section 57 as subsection (1) of the section and in subsection (1), as renumbered, delete the word “suppose” and substitute the word “suspect”. 2. Insert next after subsection (1), as renumbered, the following as subsections (2), (3), (4), (5) and (6)— “ (2) A female shall not be searched except by a female. (3) An internal body search shall be conducted by a registered medical practitioner. (4) Before being searched, a person may require that he be taken with all reasonable dispatch before a Justice of the Peace, or the Commissioner or a superior officer on duty at the time of the search. (5) The Justice of the Peace or the Commissioner or the superior officer before whom the person is taken, shall— (a) if he considers that there is no reasonable cause for the search, discharge the person; and

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	(b) if he considers that there is reasonable cause for the search, direct that the person be searched.”.
Section 60	Delete the words “fifty thousand dollars” and substitute the words “two hundred thousand dollars”.
Section 64	In subsection (2), delete the words “one hundred thousand dollars” and substitute the words “three hundred thousand dollars”.
Section 68	<p>1. Delete subsection (1) and substitute the following as subsection (1)—</p> <p style="padding-left: 40px;">“ (1) The Master of an aircraft or a ship, or the agent of the Master or owner of an aircraft or a ship that arrives in the Island shall, within forty-eight hours after all cargo has been discharged from the aircraft or ship, or such longer period as the Commissioner may allow, submit to the Commissioner an account of all cargo that has been discharged from the aircraft or ship, which account shall also specifically identify any differences between the cargo as discharged and the report submitted pursuant to section 65.”.</p> <p>2. Delete subsection (3) and substitute the following as subsections (3) and (4)—</p> <p style="padding-left: 40px;">“ (3) The Master or agent of an aircraft or ship, may, with the permission of the proper officer, within seven days after the completion of the discharge of the cargo, or such longer period as the Commissioner may allow, submit an amended account, in the prescribed form and manner, containing particulars of all cargo landed in excess or short of the quantity stated in the account submitted pursuant to subsection (1).</p> <p style="padding-left: 40px;">(4) A person who fails to comply with the provisions of subsection (1) or (3), or who provides false or misleading information in any account of cargo that is submitted under</p>

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subsection (1) or any amended account submitted under subsection (3), shall incur a penalty of one million dollars and all cargo not duly accounted for shall be forfeited, unless the failure to account for such cargo or otherwise to comply with the provisions of this section is explained to the satisfaction of the Commissioner.”.

Section 69 Delete the words “fifty thousand dollars” and substitute the words “one million dollars”.

Section 71 Delete the section and substitute the following—

“Master or agent to answer questions. 71.—(1) The Master of every aircraft or ship or the agent of the Master shall—

- (a) answer immediately all such questions relating to the aircraft or ship, its cargo, stores, baggage, crew, passengers and flight or voyage as may be put to the Master or agent by the proper officer;
- (b) produce all books and documents in their custody or control relating to the aircraft or ship, its cargo, stores, baggage, crew, passengers and flight or voyage as the proper officer may require; and
- (c) before any person (unless permitted by the proper officer) disembarks, deliver to the officer who boards such aircraft or

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ship on arrival at any port or place, a list containing the names of each passenger on board such aircraft or ship, and also, if required by such officer, the names of the Master, and of each officer and member of the crew.

(2) If—

(a) the list referred to in subsection (1)(c) is not correct and complete (unless the inaccuracy or omission is explained to the satisfaction of the Commissioner); or

(b) the Master or the agent of the Master does not observe any of the provisions of this section,

the Master or agent shall incur a penalty of five hundred thousand dollars in respect of each such breach or other non-observance.”.

Section 73

Renumber section 73 as subsection (1) of the section and insert next after subsection (1), as renumbered, the following as subsection (2)—

“ (2) A Master or agent who fails to deliver a clearance that has been required under subsection (1) shall incur a penalty of five hundred thousand dollars.”.

Section 74

Delete the words “Receiver of Wreck to be dealt with as prescribed by the Wreck and Salvage Law” and substitute the words “Principal Receiver of Wreck to be dealt with in accordance with the *Shipping Act*”.

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Provisions	Amendments
Section 76	<p>Delete paragraph (b) and substitute the following—</p> <p>“ (b) no goods shall be unloaded or removed from any aircraft or ship arriving from any place outside the Island on days or at times when such unloading or removal is prohibited by regulations;”.</p>
Section 78	<p>Delete section 78 and substitute the following—</p> <p>“Penalty for breach of sections 76 and 77. 78. If any goods shall be unloaded, removed from an aircraft or ship or otherwise dealt with contrary to the provisions of section 76 or 77 or to the terms and conditions contained in any written permission given by the Commissioner, the Master of such aircraft or ship or the agent of the Master shall incur a penalty of one million dollars and the goods shall be forfeited, unless the same shall be explained to the satisfaction of the Commissioner.”.</p>
Section 79	Delete the words “one hundred thousand dollars” and substitute the words “five hundred thousand dollars”.
Section 80	In subsection (1) delete the word “or” appearing immediately after the word “importer” and substitute the word “of”.
Section 81	<p>Delete subsections (6) and (7) and substitute the following—</p> <p>“ (6) Where an importer fails to produce the required documents or information pursuant to subsection (5)—</p> <p>(a) the Commissioner shall notify the importer in writing of the final assessment within two weeks of the date of such assessment; and</p>

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(b) no dispute shall be considered to have arisen until such time as the final assessment is made under subsection (7).

(7) Unless the importer appeals under section SOB within four months of the date on which the provisional assessment under subsection (1) is treated as the final assessment under subsection (5), the deposit paid shall be brought to account as revenue.⁵.

- Section 82
1. In subsection (4), delete the words “four months” and substitute the words “six months”.
 2. In subsection (6), delete the words “section 17” and substitute the words “section 50A”.
- Section 83
- Delete the word “certified”.
- Section 88
1. In subsection (1), insert immediately after the word “*Gazette*” the words “and a daily newspaper circulating in the Island”.
 2. In subsection (2)—
 - (a) delete the words “one month’s” and substitute the word “thirty days’ ”; and
 - (b) insert immediately after the word “*Gazette*” the words “and a daily newspaper circulating in the Island”.
 3. In subsection (3), delete the words “two years” and substitute the words “one year”.

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Section 93

Delete the section and substitute the following as section 93—

"Aircraft or ship may be detained until goods are landed.

93.—(1) Where any goods remain on board any importing aircraft or ship beyond the period of ten days after the arrival of the aircraft or ship, or beyond such longer period as the Commissioner may allow—

- (a) the aircraft or ship shall be detained by the proper officer until all expenses of watching or guarding the goods beyond the ten days, or the further time, if any, allowed, and of removing the goods or any of them to the Queen's warehouse, in case the officers shall so remove them, are paid; and
- (b) the *per diem* expenses for the watching or guarding of goods prescribed under subsection (2) shall be incurred and payable in respect of any derelict or other aircraft or ship coming, driven, or brought into the Island under legal process, by stress of weather, or for safety, when it is necessary to station any officer in charge, either on board the aircraft or ship or otherwise, for the protection of the revenue, while the officer so remains.

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<u>Provisions</u>	<u>Amendments</u>
	(2) The <i>per diem</i> expenses for the watching or guarding of goods under subsection (1) shall be prescribed by the Commissioner, by notice published in the <i>Gazette</i> ".
Section 94	In subsection (2), delete the words "shall be guilty of an offence and the Master or his agent shall incur a penalty of one hundred thousand dollars" and substitute the words "commits an offence, and the master or his agent shall incur a penalty of five hundred thousand dollars".
Section 96	Insert immediately after the words "officer" the words "while acting in the course of his duties".
Section 97	Insert immediately after the word "aforesaid" the words ", unless the damage occurs as the direct result of a wilful act or negligence of the Government or of an officer while acting in the course of his duty".
Section 98	In subsection (3), delete the words "or offence forfeit a sum not exceeding one hundred thousand dollars" and substitute the words "incur a penalty of five hundred thousand dollars".
Section 99	1. Delete the words "private Customs area" and substitute the words "Customs area occupied or used by a person other than the Government". 2. Insert immediately after the word "therefrom" the words ", unless the loss or damage occurs as the direct result of a wilful act or negligence of the Government or of an officer while acting in the course of his duty".
Section 100	1. Delete the words "The owner or occupier of any Customs area or a warehouse-keeper shall not by himself or by any person in his employ" and substitute the words "No person shall". 2. Insert immediately after the word "duty" the words "and a person who contravenes this section shall incur a penalty of five hundred thousand dollars".

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<u>Provisions</u>	<u>Amendments</u>
Section 101	Delete the words "The owner or occupier of any private warehouse or Customs area" and substitute the words "A warehouse-keeper".
Section 106	Delete the words "one hundred thousand dollars" and substitute the words "one million dollars".
Section 108	Delete the words "twenty-five thousand dollars" and "one thousand dollars" and substitute the words "one hundred thousand" and "twenty-five thousand dollars" respectively.
Section 109	In subsection (2), delete the words "one hundred thousand dollars" and substitute the words "two hundred thousand dollars".
Section 110	Delete the words "of two hundred thousand dollars" and substitute the words "of five hundred thousand dollars and all the goods shall be forfeited".
Section 111	Delete the words "two hundred thousand dollars" and "one hundred thousand dollars" and substitute the words "five hundred thousand dollars" and "two hundred thousand dollars" respectively.
Section 112	In subsection (2), delete all the words appearing after the words "Resident Magistrate," and substitute the words "to a fine not exceeding five million dollars or to imprisonment for a term not exceeding five years or to both such fine and imprisonment."
Section 119	Delete section 119 and substitute the following— <p style="margin-left: 40px;">"Removal to be subject to certain conditions. 119.—(1) Where any goods are taken from a warehouse for removal or for exportation or use as aircraft's or ships' stores, a person shall not—</p> <p style="margin-left: 80px;">(a) except with the authority or under the care of the proper officer, and in accordance with any regulations made under this Act and in such manner as the proper</p>

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officer shall permit or direct, remove or put the goods on board an aircraft or ship; or

- (b) illegally remove or carry away and put the goods on board an aircraft or ship for export.

(2) A person who contravenes subsection (1) shall incur a penalty of five hundred thousand dollars, and the goods and any bond relating thereto shall be liable to be forfeited.

(3) The amount of any bond that is forfeited under subsection (1), may be recovered in a Resident Magistrate's Court as a civil debt notwithstanding any limitation as to the amount recoverable under the *Judicature (Resident Magistrates) Act*.

- Section 122 Delete the words "two years" and substitute the words "one year".
- Section 132
1. In subsection (5), delete the words "two thousand dollars" and substitute the words "one million dollars".
 2. In subsection (9), delete the words "two hundred and fifty thousand dollars" and "five hundred thousand dollars" and substitute the words "five hundred thousand dollars" and "one million dollars", respectively.
 3. In subsection (10), delete the definition of "advertisement".
- Section 139 Delete the words "one hundred thousand dollars" and substitute the words "one million dollars".

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<u>Provisions</u>	<u>Amendments</u>
Section 144	Delete— <ul style="list-style-type: none"> (a) the marginal note and substitute the following— <ul style="list-style-type: none"> “Penalty for breach of section 143.”; and (b) the words “one hundred thousand dollars” and substitute the words “one million dollars”.
Section 145	Delete the words “on Sundays or public holidays, nor except between 8 o’clock in the morning and 4 o’clock in the afternoon on any other day,” and substitute the words “on any days or at any times prescribed by regulations.”.
Section 149	Delete the words “two hundred thousand dollars” and substitute the words “one million dollars”.
Section 150	Delete the words “fifty thousand dollars” and substitute the words “one million dollars”.
Section 151	Delete all the words appearing after the words “aforesaid acts,” and substitute the following— <ul style="list-style-type: none"> “the person commits an offence and all goods in respect of which the offence was committed shall be forfeited and the person shall incur a penalty of— <ul style="list-style-type: none"> (a) where the amount of import duties payable on the goods and the value of the goods can be ascertained, an amount that is the greater of— <ul style="list-style-type: none"> (i) treble the amount of import duties payable on the goods; or (ii) treble the value of the goods; and (b) where the amount of import duties payable on the goods and the value of the goods cannot be ascertained, two million dollars.”.

Amendments to Principal Act

<u>Provisions</u>	<u>Amendments</u>
Section 152	Delete the words "exported to and discharged at the place for which they are entered" and substitute the words "exported or transferred as aforesaid."
Section 153	Delete all the words appearing after the words "incur a" and substitute the words— "penalty that is the greater of— (a) treble the amount of import duties payable on the goods; or (b) treble the value of the goods."
Section 154	Delete all the words appearing after the words "incur a" and substitute the words— "penalty that is the greater of— (a) treble the amount of import duties payable on the goods; or (b) treble the value of the goods."
Section 155	Delete the words "one hundred thousand dollars" and substitute the words "one million dollars".
Section 156	Delete the words "one hundred thousand dollars" and substitute the words "five hundred thousand dollars".
Section 159	Delete section 159 and substitute the following— <div style="display: flex; align-items: flex-start; margin-left: 2em;"> <div style="margin-right: 1em;"> <p>"Loading of goods other than cargo or stores.</p> </div> <div> <p>159.—(1) Subject to subsection (2), any person who takes on board or attempts to take on board an aircraft or a ship any goods, contrary to the customs laws, shall incur a penalty of one million dollars and the goods shall be forfeited.</p> <p>(2) Notwithstanding subsection (1) and any other provision of the customs laws, and subject to any</p> </div> </div>

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regulations made under this Act, the Commissioner may—

- (a) permit the loading of passengers' baggage; and
- (b) permit any person to take on board any aircraft or ship any goods for sale or delivery to the passengers, officers, or crew of such aircraft or ship, or for such other purpose as the Commissioner may allow,

under such conditions as he may either generally or in any particular case direct.

Section 162 Delete the words "one hundred thousand dollars" wherever they occur and substitute the words "one million dollars".

Section 163 1. In subsection (2), delete the words "one hundred thousand dollars" and substitute the words "five hundred thousand dollars".

2. In subsection (3), delete—

- (a) the words "twenty-four hours (or such longer period as the Commissioner may allow) after the time of departure" and substitute the words "the time of departure (or such longer period as the Commissioner may allow)"; and
- (b) the words "one hundred thousand dollars" and substitute the words "five hundred thousand dollars".

Section 164 1. Renumber the section as subsection (1).

2. In subsection (1) as renumbered, delete—

- (a) the words "or by notice under his hand addressed to the Commissioner" ;

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- (b) the words "one hundred thousand dollars" and substitute the words "one million dollars".
3. Insert next after subsection (1), as renumbered, the following as subsection (2)—
- “ (2) The Minister may, by notice published in the *Gazette*, delegate to the Commissioner his power under subsection (1).”.
- Section 167 Delete the words "one hundred thousand dollars" and substitute the words "one million dollars".
- Section 168 Delete all the words appearing after the words "incur a" and substitute the following—
- “penalty that is the greater of—
- (a) treble the amount of import duties payable on the goods; or
- (b) treble the value of the goods.”.
- Section 169 Delete all the words appearing after the words "incur a" and substitute the following—
- “penalty that is the greater of—
- (a) treble the amount of import duties payable on the goods; or
- (b) treble the value of the goods.”.
- Section 170 Delete the words "one hundred thousand dollars" and substitute the words "five hundred thousand dollars.”.
- Section 171 Delete the words "one hundred thousand dollars" and substitute the words "one million dollars.”.
- Section 173 Delete the words "fifty thousand dollars" and substitute the words "one million dollars.”.
- Section 175 Delete the words "ten thousand dollars" and substitute the words "two hundred thousand dollars.”.

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| Section 176 | <p>Delete section 176 and substitute the following—</p> <p style="margin-left: 40px;">“Coasting aircraft or ship to take only coastwise cargo. 176.—(1) No person shall carry goods in any coasting aircraft or ship except goods that are loaded at some port or place in the Island to be carried coastwise.</p> <p style="margin-left: 80px;">(2) No person shall transfer goods from a coasting aircraft or ship to an aircraft or ship departing the Island except with the authorization of the Commissioner.</p> <p style="margin-left: 80px;">(3) A person who contravenes subsection (1) or (2) shall incur a penalty of one million dollars.”.</p> |
| Section 177 | Delete the words “four hundred thousand dollars” and substitute the words “one million dollars”. |
| Section 178 | Delete the words “two hundred and fifty thousand dollars” and substitute the words “one million dollars”. |
| Section 180 | Delete the words “one hundred thousand dollars” and substitute the words “one million dollars”. |
| Section 182 | <p>1. Insert immediately after the word “forfeited” where it first occurs the words “and the Master of the aircraft or ship shall incur a penalty of five hundred thousand dollars”.</p> <p>2. Delete the words “one hundred thousand dollars” and substitute the words “five hundred thousand dollars”.</p> |
| Section 183 | Delete the words “one hundred thousand dollars” and substitute the words “five hundred thousand dollars”. |
| Section 184 | Delete the words “one hundred thousand dollars” and substitute the words “one million dollars”. |
| Section 185 | Delete the words “one hundred thousand dollars” and substitute the words “five hundred thousand dollars”. |
| Section 187 | Delete the words “one hundred thousand dollars” and substitute the words “five hundred thousand dollars”. |

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Section 189	Delete the words "one hundred thousand dollars" and substitute the words "five hundred thousand dollars, and the aircraft or ship may be seized by any officer and detained until the penalty is paid".
Section 191	Delete the words "one hundred thousand dollars" and substitute the words "two hundred thousand dollars".
Section 193	<p>1. Delete the words "two hundred and fifty thousand dollars" and substitute the words "five hundred thousand dollars".</p> <p>2. Delete all the words appearing after the words "shall be forfeited;" and substitute the words "unless the Commissioner is satisfied that the person was not concerned in or privy to the contravention of this section".</p>
Section 195	<p>Delete subsection (1) and substitute the following—</p> <p style="padding-left: 40px;">“ (1) With regard to any aircraft or any ship of or exceeding 250 tons burden, on board or in respect of which any contravention of section 193 has occurred, the aircraft or ship shall not be forfeited for such offence; however, subject to subsection (3), where the Commissioner is satisfied that a responsible officer of the aircraft or ship has wilfully or by his neglect committed or facilitated the contravention, the Master or owner of the aircraft or ship shall incur a penalty of one million dollars instead of the penalty specified in section 193.</p> <p style="padding-left: 40px;">(2) A master or owner who is aggrieved by the imposition of the penalty under subsection (1) may appeal to the Minister to set aside or vary the penalty; however, the Commissioner may require, as a condition of the appeal proceeding, the payment to the Commissioner of a deposit of an amount determined by the Commissioner, not exceeding the amount of the penalty, by way of security for payment of the penalty in the event that the appeal is dismissed or varied on terms whereby an amount remains payable by way of a penalty.”.</p>

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<u>Provisions</u>	<u>Amendments</u>
Section 196	<ol style="list-style-type: none"> 1. Renumber section 196 as subsection (1) of the section. 2. In subsection (1), as renumbered, delete the words "Her Majesty's service" and substitute the words "Government service". 3. Insert next after subsection (1) as renumbered, the following as subsection (2)— <ol style="list-style-type: none"> " (2) If a ship does not bring to in accordance with subsection (1) or if any person on board the ship throws overboard any part of the ship's contents or staves or destroys any part of the ship's contents contrary to that subsection, the Master of the ship shall incur a penalty of one million dollars."
Section 197	Delete the words "ten thousand dollars" and substitute the words "one million dollars".
Section 198	<ol style="list-style-type: none"> 1. In subsection (1), delete— <ol style="list-style-type: none"> (a) the words "aircraft or ship" and substitute the words "aircraft, ship or carriage"; and (b) the words "with or without hard labour". 2. In subsection (2), delete the words "with or without hard labour for any term not exceeding five years" and substitute the words "for any term not exceeding fifteen years". 3. In subsection (3), delete the words "with or without hard labour". 4. In subsection (4), delete the words "one hundred thousand dollars" and substitute the words "one million dollars". 5. Delete subsection (5) and substitute the following— <ol style="list-style-type: none"> " (5) Any person who, not being an officer, takes or assumes the name, designation, appearance or character of an officer for the purpose of thereby obtaining admission into any aircraft, ship, house or other place, or of doing or procuring to be done any act which he would not be entitled to do or procure

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to be done of his own authority, or for any other unlawful purpose, commits an offence and shall be liable on summary conviction in a Resident Magistrate's Court to a fine not exceeding one million dollars or to imprisonment for a term not exceeding one year or to both such fine and imprisonment."

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| Section 200 | <p>1. Delete the marginal note and substitute the following—</p> <p style="padding-left: 20px;">"Offence of interfering with custom gears".</p> <p>2. Delete all the words appearing after the words "the customs," and substitute the following—</p> <p style="padding-left: 20px;">"commit an offence and shall be liable on summary conviction in a Resident Magistrate's Court to a fine not exceeding one million dollars or to imprisonment for a term not exceeding one year or to both such fine and imprisonment."</p> |
| Section 201 | Delete the words "two thousand dollars" and substitute the words "one million dollars". |
| Section 202 | Delete the words "uncustomed or prohibited" and substitute the words "uncustomed, prohibited or restricted". |
| Section 203 | <p>1. In subsection (1)(a) and (b), delete the words "or prohibited" and substitute the words ", prohibited or restricted".</p> <p>2. In subsection (3), delete the words ""seventy-two hours" and substitute the words "seven days".</p> |
| Sections 204 | <p>In subsection (1)—</p> <p>(a) delete the words "or prohibited" and substitute the words "prohibited or restricted"; and</p> <p>(b) delete the words " one hundred thousand dollars" and substitute the words "one million dollars".</p> |

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Section 205	Insert immediately after the word “building” the words “outside a Customs area”.
Section 206B	In subsection (5) insert immediately after the words “any other authorized user” the words “, subject to such modification as may be prescribed”.
Section 207	Delete the words “ten thousand” and insert the words “five hundred thousand”.
New section 208A	<p>Insert next after section 208 the following as section 208A—</p> <p style="margin-left: 40px;">“Duty to declare cash as goods.</p> <p style="margin-left: 40px;">208A.—(1) A person who transports, or causes the transportation of, a relevant amount of cash into or out of the Island, shall make a declaration with respect thereto in like manner as if the cash were goods for the purposes of this Act, and if he fails to do so the cash shall be liable to be forfeited.</p> <p style="margin-left: 80px;">(2) The provision of section 209 shall apply to a declaration under this section.</p> <p style="margin-left: 80px;">(3) In this section—</p> <p style="margin-left: 40px;">(a) “cash” includes bank notes and bearer negotiable instruments denominated in any currency; and</p> <p style="margin-left: 40px;">(b) “relevant amount” means any amount exceeding ten thousand dollars in United States currency or its equivalent in any other currency, or such other amount as may be prescribed.</p> <p style="margin-left: 80px;">(4) The provisions of this section are without prejudice to section 101 of the <i>Proceeds of Crime Act</i>.”.</p>

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Section 209	In subsection (2), delete the words “five hundred thousand dollars” and substitute the words “one million dollars”.
Section 210	<p>Delete subsection (1) and substitute the following—</p> <p>“ (1) A person commits an offence if the person—</p> <ul style="list-style-type: none"> (a) imports or brings, or is concerned in importing or bringing into the Island any uncustomed, prohibited or restricted goods contrary to such prohibition or restriction, whether or not the goods are unloaded; (b) unloads, or assists or is otherwise concerned in unloading any goods that are prohibited or restricted and are imported contrary to such prohibition or restriction; (c) knowingly harbours, keeps or conceals, or knowingly permits or suffer, or causes or procures to be harboured, kept or concealed, any prohibited, restricted or uncustomed goods; (d) knowingly acquires possession of or is in any way knowingly concerned in carrying, removing, depositing, concealing, or in any manner dealing with any goods with intent to evade the payment of any duties due on the goods, or to evade any prohibition or restriction of or applicable to the goods; or (e) is in any way knowingly concerned in any fraudulent evasion or attempt at evasion of any customs or excise duties, or of the customs laws and restrictions relating to the importation, unloading, warehousing, delivery, removal, loading and exportation of goods. <p>(1A) If a person commits an offence under subsection (1), all goods in respect of which the</p>

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offence was committed shall be forfeited and the person shall incur a penalty of—

- (a) where the amount of import duties payable on the goods and the value of the goods can be ascertained, an amount that is the greater of—
 - (i) treble the amount of import duties payable on the goods; or
 - (ii) treble the value of the goods; or
- (b) where the amount of import duties payable on the goods and the value of the goods cannot be ascertained, two million dollars.”.

Section 211 Delete all the words appearing after the words “incur a” and substitute the following—

“penalty that is the greater of—

- (a) treble the amount of import duties payable on the goods; or
- (b) treble the value of the goods.”.

Section 213 Delete the words “twenty-five thousand dollars” and substitute the words “one hundred thousand dollars”.

New section 222A Insert next after section 222 the following as section 222A—

“Power of Commissioner to require production of documents and records. 222A.—(1) The Commissioner may, by notice in writing, require a person to produce for inspection by any officer, documents or records that the Commissioner considers necessary or relevant to an investigation or audit under this Act.

(2) A person who, pursuant to a notice under subsection (1), is required to produce documents or

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records shall do so within sixty days of the date on which the notice is given or received or within such extended period as the Commissioner may allow.

(3) A person who fails to comply with a requirement under this section shall incur a penalty of two million dollars.”.

Section 223 1. In subsection (1), delete the words “three years” and substitute the words “seven years”.

2. In subsection (1), delete the words “incur a penalty not exceeding” and substitute the words “incur a penalty of”

New sections 239A, 239B, 239C, 239D and 239E Insert next after section 239 the following as sections 239A, 239B, 239C, 239D and 239E—

“Keeping of records. 239A.—(1) Every importer, exporter, agent, broker, carrier, warehouse keeper, operator of a Customs area, airport manager, port manager any person concerned with the coasting trade and any other person who conducts business under any customs laws, shall keep or cause to be kept in the Island, whether in electronic form or otherwise, all documents, books, records, and any other information relating to the transaction of such business in the form and manner prescribed by regulations for a period of seven years from the date of the transaction.

(2) A person who makes a declaration under section 15B shall—

(a) keep the documents, books, records and information in respect of

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that declaration in such manner as is required in this Act and for the period specified in subsection (1); and

- (b) when required by an officer, produce those documents, books, records and information for the purpose of establishing the accuracy of the declaration.

(3) A person who fails to comply with this section commits an offence and shall incur a penalty of five hundred thousand dollars, unless the failure is explained to the satisfaction of the Commissioner.

(4) The Minister may make regulations in relation to the form and manner in which documents, books, records and any other information required to be kept under this Act shall be kept.

Access to records.

239B.—(1) A person to whom section 239A applies shall, within thirty days or within such longer period as the Commissioner may allow, after being required by a proper officer—

- (a) make available and give access to the documents, books, records, or any other information that the person is required to keep;
- (b) give access to the documents, books, records, or

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other information in any form and manner prescribed;

- (c) ensure that the proper officer has access to the documents, books, records, or other information at all reasonable times;
- (d) answer any question relevant to matters arising under this Act asked by a proper officer in respect of those documents, books, records or other information;
- (e) provide working space and personnel to assist the proper officer in the performance of his duties; and
- (f) provide copies of the documents, books, records or other information to the proper officer.

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

(3) A person, who fails without reasonable cause to comply with subsection (1) or (2), incurs a penalty of two million dollars.

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Retention of
records by
Commissioner.

239C.—(1) The Commissioner may take possession of and retain any document, book, record or other information presented in connection with any entry or required to be produced under this Act.

(2) Where the Commissioner takes possession of a document, book, record or other information under subsection (1), the Commissioner shall, at the request of the person otherwise entitled to the document, book, record or other information provide that person with a copy of the document certified under the seal of the Commissioner as a true copy.

(3) Every copy so certified is admissible as evidence in all courts or tribunals as if it were the original.

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

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

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Audit or
examination
of records.

239D.—(1) Subject to section 203, a proper officer may, at all reasonable times, enter any premises or place where documents, books, records or other information are kept pursuant to section 239A and audit or examine them either in relation to specific transactions or to assess the adequacy and integrity of the manual or electronic system by which they are created and stored.

(2) For the purposes of subsection (1), a proper officer shall, subject to section 203, have full and free access to all lands, buildings and places, and to all documents, books, records or other information whether in the custody or under the control of the licensee, importer, exporter, or any other person, for the purpose of inspecting any documents, books, records or other information and any property, process, or matter that the officer considers—

- (a) necessary or relevant for the purpose of collecting any duties due under any customs laws for the purpose of carrying out any function lawfully performed by a proper officer; or
- (b) likely to provide any information otherwise required for the purposes of enforcing any customs laws.

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(3) The proper officer may make extracts from or copies of any documents, books, records or other information referred to in this section.

(4) An officer shall not enter any private dwelling except with the consent of the occupant or owner or pursuant to a special warrant under section 203.

(5) A person who fails to comply with a request made under this section shall incur a penalty of five hundred thousand dollars, unless the non-compliance is explained to the satisfaction of the Commissioner.

Provisions of relevant information and copies of documents.

239E.—(1) Any person which is subject to regulatory supervision by the Bank of Jamaica or the Financial Services Commission under any enactment, shall provide to the Commissioner under any enactment, such relevant information, and copies of such relevant documents, books or records, as the Commissioner may request in writing.

(2) For the purposes of subsection (1), “relevant information” and “relevant documents, books or records”, respectively, mean information, documents, books or records that—

- (a) relate to one or more specific transactions which the Commissioner is investigating under this Act; and

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- (b) are in the possession or control of the person referred to in subsection (1).

(3) The information and the copies of documents, books or records referred to in subsection (1) shall be provided to the Commissioner within thirty days of the date on which the request is delivered to the person under subsection (1), or within such longer period as the Commissioner may allow.

(4) A person who fails to comply with a request made under this section shall incur a penalty of five hundred thousand dollars unless the noncompliance is explained to the satisfaction of the Commissioner.”

Section 242 Delete all the words appearing after the word “imprisoned” and substitute the words “for a term not exceeding three years.”.

Section 243 Delete section 243 and substitute the following—

“Imprisonment for subsequent offence.

243. Notwithstanding any other provision of this Act, if a person—

- (a) has previously been convicted by a court an offence against any customs law for which a fine or other monetary penalty was imposed; and
- (b) is convicted by a court of a subsequent offence against a customs law for which a fine or other monetary penalty may be imposed,

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then the court may, instead of ordering a fine or other monetary penalty, order the person to be imprisoned for a term not exceeding five years.”.

New section
255A

Insert next after section 255 the following as section 255A—

“Additional
enforce-
ment
measures.

255A.—(1) Without prejudice to the provisions of this Act or the provisions of any other enactment, the Commissioner has the same power to enforce payment of amounts owing under this Act as the Commissioner General has under sections 40B to 40F of the *Tax Collection Act*.

(2) Sections 40B to 40E of the *Tax Collection Act* apply, with the necessary modifications, to the enforcement of payment of amounts owed by persons under this Act, including the following modifications—

- (a) references to the Commissioner General in sections 40B to 40E of the *Tax Collection Act* are references to the Commissioner; and
- (b) references to a tax debtor in sections 40B to 40E of the *Tax Collection Act* are references to a person who owes an amount under this Act.”.

MEMORANDUM OF OBJECTS AND REASONS

One of the primary pillars of Jamaica's Economic Reform Programme is the enhancement of the country's global market competitiveness.

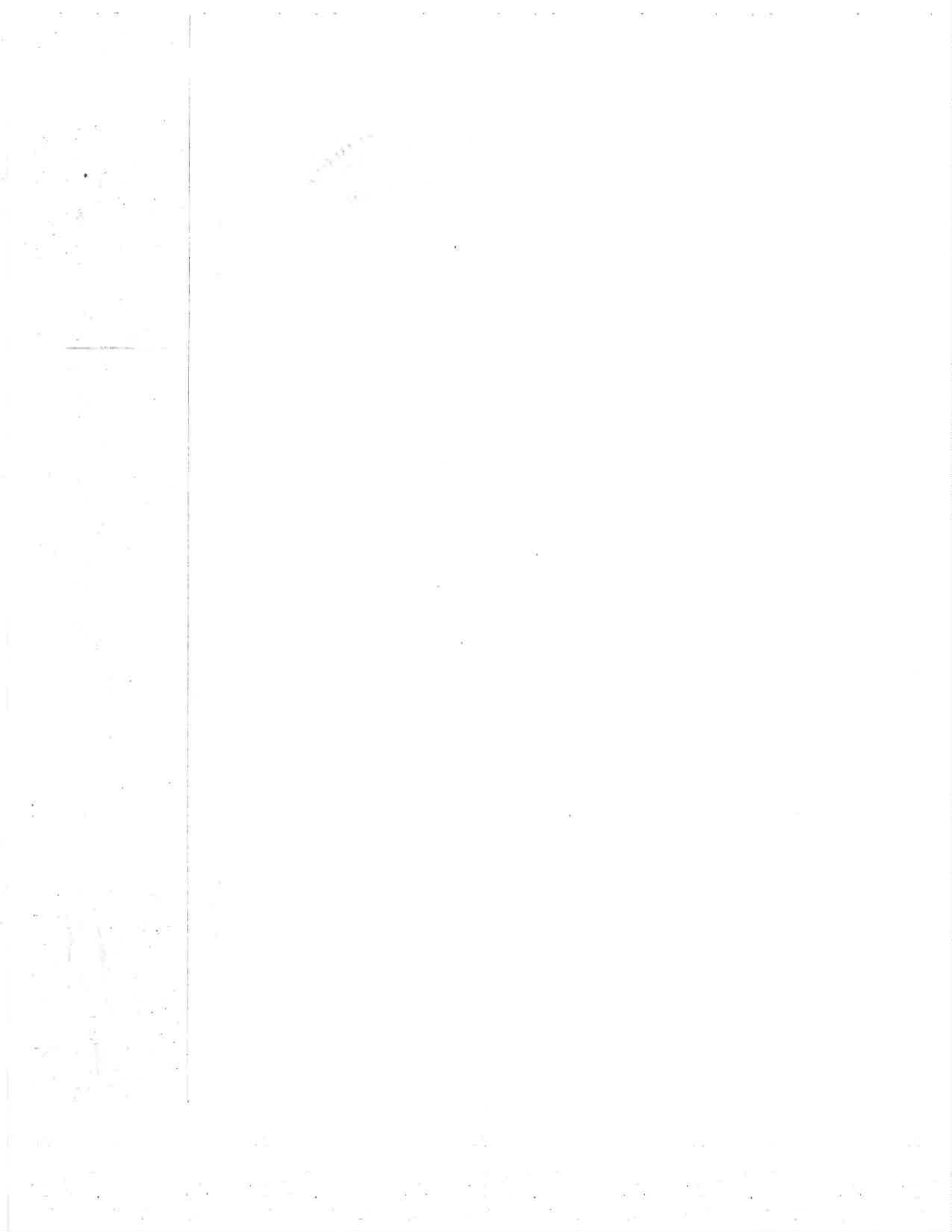
The Customs Act was first passed in 1941. Since that time, several amendments have been made to the Act, for example, in 1964, 1985, 2001 and 2004. Nevertheless, the Act in its present form continues to have an adverse effect on trade facilitation and operations relating to the shipping and aviation industries.

The proposed amendments to the Act will facilitate the Jamaica Customs Agency's observance and implementation of international best practices and standards, and will assist in providing a framework for the efficient movement of goods through the ports in anticipation of a logistics-centred Jamaican economy.

These amendments are intended to ensure that importers and exporters will be able to conduct legitimate business in a more efficient environment, and that effective penalties are imposed on persons who operate contrary to the customs laws.

In addition, the current amendments seek to further support the operation of the Automated System for Customs Data (ASYCUDA World), which was established by the Customs (Amendment) Act, 2014.

PETER D. PHILLIPS, M.P.
Minister of Finance and Planning.





ABILL

ENTITLED

AN ACT to Amend the Customs Act.

**As introduced by the Honourable Minister of
Finance and Planning.**

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