



**REPORT OF THE DELIBERATIONS OF THE JOINT SELECT COMMITTEE TO  
CONSIDER AND REPORT ON THE BILL SHORTLY ENTITLED  
THE CUSTOMS ACT, 2020**

**1. ESTABLISHMENT, COMPOSITION AND POWERS OF THE COMMITTEE**

Members of the Honourable House are reminded that on January 12, 2020, the Honourable Nigel Clarke, Minister of Finance and the Public Service, having obtained suspension of the Standing Orders, moved:

**BE IT RESOLVED** that this Honourable House appoint a Select Committee comprising the following Members:

Hon. Nigel Clarke, MP - **Chairman**  
Hon. Fayval Williams, MP  
Mrs. Marlene Malahoo Forte, Q.C. MP, JP  
Hon. Norman Dunn, MP  
Mr. Julian Robinson, MP  
Mr. George Hylton, CD, MP  
Mr. Hugh Graham, MP

to sit jointly with a similar Committee to be appointed by the Senate to consider and report on a Bill entitled “An Act to Repeal and Replace the Customs Act, and to provide for connected matters.”

Members of the Honourable Senate are also reminded that on January 15, 2020, the Honourable Kamina Johnson Smith, Minister of Foreign Affairs and Foreign Trade, having obtained suspension of the Standing Orders, moved:

**BE IT RESOLVED** that this Honourable Senate appoint a Select Committee comprising the following Members:

The Honourable Senator Kamina Johnson Smith  
The Honourable Senator Aubyn Hill  
Senator Donald Wehby, CD  
Senator Sophia Frazer Binns  
Senator Damion Crawford

On April 13, 2021, the Honourable Edmund Bartlett, Minister of Tourism and the Leader of the House, having obtained suspension of the Standing Orders, moved:

**BE IT RESOLVED**, with reference to the Select Committee appointed by this Honourable House on the 12<sup>th</sup> day of January 2021, to sit jointly with a similar Committee appointed by the Senate to consider and report on a Bill shortly entitled, “The Customs Act, 2020”, that the Committee be allowed to hold virtual meetings, whether wholly virtual or partly virtual and partly physical, utilising available information and communication technologies in the manner more specifically outlined below:

Preserving the rights, powers and privileges including voting rights, normally accorded to a Member of a Committee, the Committee is empowered to:

1. Convene and hold meetings in virtual spaces created using information and communications technologies which shall be considered committee meetings for the purposes of its mandate;
2. Allow access and participation from remote locations as are enabled by means of information and virtual technologies, by Members and other persons authorized by the Committee;
3. Include Members accessing and participating from remote locations as a part of its quorum;
4. Receive, consider, deliberate on, and respond to feedback and submissions in formats, modes and media, and via platforms, modes and media enabled by means of information and communications technologies, from any person; and
5. Consider any and all information generated, communicated and received via formats, platforms, modes or media as enabled by means of information and communications technologies, as forming a part of the record of these committee meetings.

Members are also reminded that Senate Standing Orders 74(b) and (c) allow for Members of the Senate to participate in meetings held in a virtual space created using information and communications technologies (ICT).

On the 4<sup>th</sup> day of June 2021, the Honourable Kamina Johnson Smith, Minister of Foreign Affairs and Foreign Trade, having obtained suspension of the Standing Orders, moved:

**BE IT RESOLVED** with reference to the Resolution approved by this Honourable Senate on the 15<sup>th</sup> day of January, 2021, appointing a Select Committee to sit jointly with a similar Committee appointed by the House of Representatives to consider and report on a Bill shortly entitled “The Customs Act, 2020”, that the name “Sophia Frazer Binns” be deleted and the name “Janice Allen” substituted therefor.

Members are further reminded that on the 1<sup>st</sup> day of February, 2022, the Minister of Tourism and Leader of the House, having obtained suspension of the Standing Orders moved a carry-over motion to enable the Committee to continue its work from the stage reached prior to the prorogation of Parliament. A similar motion was moved by the Minister of Foreign Affairs and Foreign Trade and Leader of Government Business in the Senate on February 4, 2022.

Your Committee first appointed in October 2019 to consider and report on the Act received written submissions from the following groups and individuals:

1. Jamaica Lands;
2. Airports Authority of Jamaica;
3. Customs Brokers and Freight Forwarders Association of Jamaica;
4. Chancellor Hall Committee;
5. The Shipping Association of Jamaica;
6. The Montego Bay Airport Authority Limited;
7. PAC Kingston Airport Limited;
8. Revenue Appeals Division (RAD) at the Ministry of Finance and the Public Service;
9. Tonilicious Fashions;
10. Miss Kadian Mundell;
11. Mr. Sy Moore;
12. Dr. Keisha Barwise;
13. Miss Denise Clarke; and
14. Mr. Mike Jamie.

At the first meeting held on February 11, 2021, this Committee agreed to adopt the written submissions made to the previous Committee. Additional submissions were made by Tiana Powell, Tedecia Bloomfield, Neila Ebanks, Gian Thomas and J. Heminie following a second public notice requesting written submissions.

Your Committee heard oral presentations from the various organisations named above. Technical assistance was received from the Ministry of Finance and the Public Service, the Jamaica Customs Agency, the Office of the Parliamentary Counsel, the Attorney General's Chambers and the Legal Reform Department.

## **OVERVIEW**

In an effort to modernise customs practices and procedures in Jamaica, a decision was taken to repeal and replace the existing Customs Act, which was first enacted in 1941. This thrust towards modernisation is anticipated to facilitate trade and simplify the procedures for doing business. It will also improve customs clearance and revenue collection processes and, in so doing, make the operations of the Jamaica Customs Agency more efficient.

## FINDINGS AND RECOMMENDATIONS

Your Committee, after extensive review of the Bill, now has the honour of presenting its findings and recommendations.

### *Part I – Preliminary*

#### **Clause 1 - Short title and commencement**

*Your Committee recommends that the provision remain as is.*

#### **Clause 2 - Interpretation**

##### ***Definition of Agent***

Your Committee does not agree with the proposal made by stakeholders that the definition of the term “agent” should be broadened. *The Members are of the view that the definition is adequate and fit for purpose and should therefore remain as is.*

##### ***Definition of Declarant***

In their submission to the Committee, representatives of the Customs Brokers and Freight Forwarders Association recommended that the definition of “declarant” be amended to make it clear that it does not include a customs broker. *Your Committee reviewed the proposal and is of the view that the definition should remain as is, however, an adjustment is to be made at clause 270 to address the concerns of stakeholders.*

##### ***Definition of Exporter***

Whilst your Committee took note of the concerns expressed by stakeholders about certain groups being held liable if they were to be defined as an “exporter,” *the Members are of the view that the definition should remain as is because those concerns would be addressed by another provision of the Act.*

##### ***Definition of Goods***

During the deliberations, there was a question of whether the definition of “goods” should include money. *There is consensus among the Members that the clause should be amended to make it clear that the definition of “goods” should include money.* It is to be noted that there was consultation with representatives of Tax Administration Jamaica (TAJ) and the Tax Policy Division within the Ministry of Finance and the Public Service who indicated that they were not opposed to the recommendation.

##### ***Definition of Sufferance Wharves***

*Your Committee agrees that the definition should be amended to make it clear that goods must be owned by the operators of sufferance wharves.*

#### **Clause 3 - Imposition of customs duty**

Your Committee noted that there was an existing scheme under the *Charities Act* for which items intended for charity could be imported without the payment of duty. It was highlighted that that

Act provided a rules-based mechanism which could be reformed to address any issue that may arise pertaining to the importation of such items. It was further noted that under clause 3(2)(b) of the Customs Act, there was a requirement to provide proof to the Commissioner of Customs in cases where items were intended for charity. The view was expressed that this could be problematic given that the provision was not rules-based. ***Your Committee therefore recommends that clause 3(2)(b) be deleted.*** Paragraph (c) would then be renumbered as paragraph (b).

***Clause 4 - Interim orders and Clause 5 - Resolution regarding interim order***

During the deliberations, your Committee took note of the concerns expressed by stakeholders that it was not clear when an order would expire. Representatives of the Revenue Appeals Division (RAD) submitted that based on clause 4(4), an order would expire after 21 days of being laid in the House. However, under clause 5(2) there would be 30 days to confirm or amend the order. It was clarified that provisional orders could be confirmed within 30 sittings of the House or approximately six (6) months. ***Having considered the matter, your Committee recommends that the words “or amended under section 5(3)” be replaced with the words “amended or revoked under section 5(2).”***

***Clauses 6 - 10***

***Your Committee agrees that these clauses should remain as is.***

***Clause 11 - Responsibility for payment of duty***

In their presentation to the Committee, the representatives of the Customs Brokers and Freight Forwarders Association submitted that the responsibility for the payment of duty should not be that of a customs broker whose principal is disclosed, and is under express contractual obligation to pay the imposed duty as the importer. With respect to sub-clause (6), it was highlighted by your Committee that there would be no complicity in cases where service providers or licensed importers were unaware that their clients did not intend to meet their obligations. However, Members are of the view that service providers or licensed importers should have knowledge of their customers. ***Your Committee recommends that the provision be amended to insert the word “reasonably” after the word “ought” to make the provision more balanced and consistent with clause 11(3).***

***Clauses 12 - 19***

***Your Committee agrees that these clauses should remain as is.***

***Clause 20 - Determination of value of goods, Second Schedule***

***Clause 20(3)***

***Your Committee notes and agrees to the recommendation of the RAD that the Commissioner should have the power to set aside values. The provision should therefore be amended to reflect the foregoing.***

***Clauses 21 - 28***

***Your Committee agrees that these clauses should remain as is.***

**Clause 29 - Customs controlled airport**

Your Committee recalled the view expressed by some stakeholders that they would incur significant unexpected costs if the Minister of Finance were to arbitrarily designate any area as a customs controlled airport. Your Committee is of the view that the power of the Minister should not be fettered. It was, however, highlighted that whilst the Minister would have the power to designate the area, there would be consultation with the requisite stakeholders. ***Your Committee recommends that the provision be reworded as follows:***

***For the purpose of subsection 1(a), “airport” means any of the prescribed airports under the Airports Authority Act, or any aerodrome as defined in section 2 of the Civil Aviation Act.”***

**Clause 30 - Designation of places by Commissioner for customs purposes**

**Clause 30(1)(a)**

In relation to sub-clause (1)(a)(i), concern was expressed about the Commissioner having the power to designate places for the loading and unloading of goods, and the question of whether that power should be given to the Minister arose. It was initially recommended that there should be a consultation process before a decision is taken, however, your Committee learned that the provision was related to operations, and it would be more efficient for the power to be given to the Commissioner as was done in other jurisdictions. As it relates to the power to designate areas for embarkation and disembarkation, it was noted that the responsibility for the designation of same should be that of the Minister responsible for immigration. ***Your Committee recommends that the provision be amended to make it clear that the Commissioner would only be responsible for designating authorised places for loading or unloading of goods.***

**Clause 31 - Access to customs controlled areas**

**Clause 31 (2)(a)**

Your Committee took note of the view expressed by stakeholders that the provision required clarity because the term “any means” was subject to the interpretation of a customs officer and could facilitate rank abuse of authority. ***Your Committee underscores the need for customs officers to have adequate access in order to carry out certain functions effectively and recommends that the provision remain as is.***

**Clause 32 - Entering or remaining in customs controlled area without permission**  
***Your Committee recommends that the clause remain as is.***

**Clause 33 - Application of custom control**

Regarding sub-clause (1), it was noted that the word “cleared” was inappropriately used. It was further noted that the term was usually utilised in relation to customs procedures and this was the only context in which it was used in relation to free circulation. ***Your Committee therefore recommends that the words “cleared for” be replaced by the words “authorised to be in.”***

**Clauses 34 - 51**

*Your Committee recommends that these clauses remain as is.*

**Clause 52 - No-loading notice**

*Your Committee agrees that the provision should be amended to make it clear that the notice under sub-clause (1) would be issued within a timeframe to be prescribed by Rules.*

**Clauses 53 - 55**

*Your Committee recommends that these clauses remain as is.*

**Clause 56 - Other reports in respect of cargo**

It was highlighted that the term “cargo” had a limited definition and excluded stores as well as accompanied and mishandled baggage. *Your Committee recommends that the term be replaced by the word “goods” which had a more general meaning.* It is to be noted that the objective is to have a catch-all provision in the event that something was not provided for, and there was a need to have a reporting regime in future.

**Clauses 57 - 62**

*Your Committee recommends that these clauses remain as is.*

**Clause 63 - Duration of temporary storage**

*Your Committee agrees that subsections (1) and (2) should be amended by inserting the words “or such longer period as the Commissioner may allow” after the word “Jamaica” to empower the Commissioner to extend the periods specified in the provisions.*

**Clauses 64 to 86**

*Your Committee recommends that these clauses remain as is.*

**Clause 87 - Deemed clearance**

*Your Committee is of the view that it is redundant to have the words “while under that procedure” because it was clearly stated in the Chapeau that the provision was in relation to goods declared for home use. It is therefore recommended that they be deleted from sub-clause (1)(b).*

**Clauses 88 - 94**

*Your Committee recommends that these clauses remain as is.*

**Clause 95 - Clearance of goods for trans-shipment**

Your Committee agrees that the words “*or such longer period as may be prescribed in regulations*” should be deleted from clause 95(2) because the provision would be inconsistent with the amendment made at clause 63(2), which provides for the time for trans-shipment to be extended to such longer periods as the Commissioner may allow.

***Clauses 96 - 98***

Your Committee recommends that these clauses remain as is.

***Clause 99 - Goods to be warehoused in import packaging***

***During the deliberations, it was noted that the word “quay” was archaic and was not mentioned in the Interpretation Section of the Act. Your Committee recommends that the words “on the quay” in sub-clause (2) be replaced by the words “in a customs-controlled area.”***

***Clauses 100 - 103***

***Your Committee recommends that these clauses remain as is.***

***Clause 104 - Records and accounts***

***It was proposed that the words “at the quay” in paragraph (a) be replaced by the words “in a customs-controlled area.”***

***Clauses 105 - 114***

***Your Committee recommends that these clauses remain as is.***

***Clause 115 - Publication of list of goods for disposal***

In their submission to the Committee, the Customs Brokers and Freight Forwarders Association pointed out that the clause provided for the name of a customs broker or declarant to be included in any advertisement of the ‘list of disposable goods.’ The Association proposed that customs brokers be excluded as the goods were not owned by these individuals, and the owner/importer was usually known. To add, it was submitted that there was no legal basis to attach the name of the customs broker. ***Having considered the recommendation, your Committee is of the view that the words “the custom broker or” should be deleted from 115(2)(f).***

***Clauses 116 - 120***

***Your Committee recommends that these clauses remain as is.***

***Clauses 121 - Manner of sale***

Your Committee took note of the recommendation made by stakeholders that where an auction of goods occurs, the application of the proceeds of sale should be known to all parties who have an interest. ***Having considered the matter, your Committee recommends that the words ‘or private treaty’ be deleted. It was also agreed that reference should be made to clause 110(4) in the provision to make it clear that all goods to be sold under clause 110(4) should be sold by public auction.***



**Clause 122 - Application of proceeds of sale**

**Your Committee recommends that the word “unpaid” be replaced by the word “unclaimed” in sub-clause 2(b)).** Your Committee has made this recommendation in light of the fact that clause 122(3) provides that a claim shall be made within one (1) year of the date of sale of goods. The amendment will ensure that the provision would not operate unfairly to individuals who made an application for the proceeds of a sale, although the actual payment had not yet been made.

**Clauses 123 - 131**

**Your Committee recommends that these clauses remain as is.**

**Clause 132 - Proof of re-export of goods under temporary admission**

**During the deliberations, it was proposed that the clause be expanded to ensure that the burden/responsibility would not only fall on the declarant but on any other individual responsible for complying with the temporary admission procedure. Your Committee agrees that the words “and any other person responsible for complying with the temporary admissions procedure” should be added after the word “declarant.”**

**Clause 133 - Contravention of import conditions or failure to re-export within time**

**Your Committee recommends that this clause remain as is.**

**Clause 134 - Temporary admission pursuant to international agreement**

It was highlighted that presently Jamaica was not under the carnet system, which was an international regime whereby the various chambers of commerce cooperated to provide security. It was further highlighted that this system would allow for the movement of goods under temporary admission. It is to be noted that this clause was intended to be the provision that would enable Jamaica to accommodate the system in the event the country becomes part of the regime in future. Your Committee recommends that the clause remains as is.

**Clauses 135 - 167**

**Your Committee recommends that these clauses remain as is.**

**Clause 168 - Clearance of postal articles**

Your Committee recommends that the provision be amended to indicate that the term “post office” would have the meaning assigned to it under the Post Office Act.

**Clause 169 - Customs examination of postal articles**

It was proposed that clear language be inserted in the Act to impose an obligation on the Postmaster General to ensure that before the arrival of postal articles in Jamaica, or before the departure of postal articles from Jamaica, a report should be provided to the Commissioner detailing the estimated time of arrival or departure, the customs control area where the postal articles will arrive in or depart from Jamaica, and any other information prescribed by Rules. To add, it must be clear that the information should be provided to the Commissioner within the timeframe specified by Rules. **Your Committee recommends that the provision be amended to reflect the foregoing.**

***Clauses 170 - 176***

***Your Committee recommends that these clauses remain as is.***

***Clause 177 - Notification of goods damaged, destroyed or unaccounted for***

***Your Committee agrees with the proposal that the word “Rules” in subclause (1) should be replaced by the word “regulations” to indicate that the cause was to be prescribed in regulations and would be consistent with clause 87(1)(b). Your Committee also recommends that the word “justifiable” be deleted from clause 177(3). The amendment will allow for consistency between the provisions and the avoidance of uncertainty which could arise from the use of the word ‘justifiable.’***

***Clause 178 - 183***

***Your Committee recommends that these clauses remain as is.***

***Clause 184 - Suspension or revocation of authorisation***

Your Committee agrees that the list of criteria should be amended by adding two (2) additional bases for suspension/revocation. The view was expressed that the Commissioner should be permitted to revoke an authorisation if an applicant failed to provide the security required by the Commissioner for the authorisation. It was also proposed that a catch-all provision be inserted to allow the Commissioner to revoke authorisations in accordance with Rules made under the Act.

***After further consideration of the provision, your Committee proposed that 90 days or such longer period not exceeding an additional 60 days, be given for applicants to become compliant before an authorisation is revoked on the grounds outlined in sub-clause 2(f).***

During the discussions, it was highlighted that *there was no separation between the circumstances under which the Commissioner may revoke or suspend authorisations. Your Committee, having considered this matter, was of the view that the provision should be amended to reflect same especially given that there was a clear distinction between revocation and suspension in that the former was considered more serious and would occur following a more aggravated action.* It was noted that provision would be made to ensure that the Commissioner would be properly guided and the aggrieved person would know the reason for the revocation or suspension. It is recommended that the issues be addressed in the Rules.

***Clause 185 - Procedure for the refusal of authorisation or suspension or revocation of authorisation***

***Your Committee recommends that this clause remains as is.***

***Clause 186 - Immediate suspension or authorisation***

***Your Committee took note of the fact that a time period was not given for when a notice to suspend authorisation is to be provided by the Commissioner. It is proposed that sub-clause (3) be amended to indicate that the notice should be provided promptly, that is, no later than seven (7) days from the date on which the suspension would take effect.***

**Clause 187 - 217**

***Your Committee recommends that these clauses remain as is.***

**Clause 218 - Power of entry and search**

***During the deliberations, concerns were raised about the power of search and warrants. The view was expressed that it would be necessary to insert a provision dealing with legal professional privilege based on recent case law. It was highlighted that there was an attempt by the courts to ensure that where there were search and seizure powers; documents to which legal professional privilege apply, would be protected through a legislative framework. Your Committee is in agreement that the provision be amended to reflect that recommendation.***

**Clauses 219 - Access to means of transport**

***Your Committee recommends that this clause remain as is.***

**Clause 220 - Powers during Search of Premises or other places, or means of transport**

***Your Committee recommends that the word “vessel” be replaced with the words “means of transport” in sub-clauses 220(1)(c) and 220 (2).***

**Clause 221 – 234**

***Your Committee recommends that these clauses remain unchanged.***

**Clause 235 - Power to detain goods**

***Your Committee agrees that it was unnecessary to have the provisions be subjected to affirmative resolution. It is therefore recommended that the words “subject to affirmative resolution” in paragraph (c) be deleted.***

**Clauses 236 - 244**

***Your Committee recommends that these clauses remain as is.***

**Clause 245 - Disposal of Confiscated Goods**

***It was proposed that the word “direct” replace the word “prescribe.” Your Committee has agreed to this recommendation. This will allow for disposal to be made in accordance with instructions issued from time-to-time rather than the requirement for disposal to be prescribed in law.***

**Clauses 246 - 253**

***Your Committee recommends that these clauses remain as is.***

**Clause 254 - Administrative Penalties (Fourth Schedule).**

***With respect to sub-clause (8), it was noted that the payment record of an accused person would become admissible in evidence; however, it was not stated that it would be admissible as *prima facie* evidence as was the case under clause 255(3)(b). Given the omission, your Committee recommends that the clause be amended to include the words ‘*prima facie*.’***

***In subsection (11), your Committee recommends that the words “subject to affirmative resolution” be placed after the words “make regulations.”***

***Clauses 255-259***

***Your Committee recommends that these clauses remain as is.***

***Clause 260 - Regulations***

***Your Committee agreed to the insertion of paragraph (f) to include the forms of warrants to be issued under section 218 including the minimum content of any directions that may be issued under section 218(14).***

***Clause 261 - Rules***

Your Committee is of the view that it must be clearly indicated that all rules must be in accordance with the policy direction of the Minister. With respect to clause 261(1), your Committee recommends that the chapeau be amended to include the words ***‘with the approval of the Minister.’***

***Clause 262 - Publications***

During the deliberations, it was noted that this provision, which stipulated that there should be a publication of rules and regulations before they are brought into operation, could have unintended consequences which need to be addressed. Accordingly, your Committee recommends that the existing sub-clause (3) be deleted and be replaced with a new sub-clause which would read as follows:

***(3) The person responsible for making the regulations or rules (as the case may be) shall consider the comments submitted under subsection (2) and make such revisions (if any) as that person considers appropriate before the rules or regulations are brought into operation.***

It was proposed that the Committee consider the varying circumstances under which rules/regulations could be made under the Act, and it was found that in the majority of instances, the rules/regulations were related to operational procedures (for example, the release, movement and clearance of goods) and could be subject to public consultation. There were, however, other circumstances under which it would be inappropriate. As examples, it was pointed out that the Minister’s power to designate ports and customs control areas as well as the power to prohibit or restrict the import of certain goods under clause 249(4)(a) were executive in nature and should not be subject to public consultations.

It was brought to your Committee’s attention that Article 2 of the World Trade Organization (WTO) Agreement on Trade Facilitation made reference to the requirement for public consultation but it was not as broad or as far reaching as the provision in this Act. In light of the foregoing, it was proposed that limiting words be included in the provision. Members of the Committee agreed that there were events or decisions which should not be subjected to full-scale public consultation, however, there was a need for balance and transparency. As such, there should be a thrust towards public consultation as part of the move towards a modern piece of legislation. Your Committee was reminded that regulations would usually be referred to Parliament and therefore there would be transparency when matters are debated. The point was made that there were instances when decisions had to be taken in short order and a 21-day wait period could be an encumbrance. ***Having considered the matter at length, your Committee is of the view that the circumstances under which public consultation should not be allowed would be listed in the provision.***

***In light of the fact that there is a distinction between public emergency as defined under the Constitution, and public disaster as defined under the Disaster Risk Management Act, your Committee agrees that sub-clause (4) should be amended to include public disaster.***

Your Committee recommends that there be a new sub-clause (5) to indicate that subsections (2) and (3) shall not apply to:

- (a) a notice under section 27(1) or section 30(1) or an order under section 29(1);
- (b) any rules or other regulations empowered to be made under this Act –
  - (i) in respect of rates of duty or rates of tariff;
  - (ii) restricting or prohibiting the importation of goods;
  - (iii) that have a relieving effect;
  - (iv) the effectiveness of which would be undermined as a result of compliance with subsection (2) or (3);
  - (v) in respect of measures applied in urgent circumstances;
  - (vi) in respect of the internal administration of the Customs Agency;
  - (vii) in respect of the delegation of any function under this Act; or
  - (viii) effecting amendments that are minor in nature.

***Clause 263 - Records of customs business***

In their submission to the Committee, the Shipping Association of Jamaica, in reference to subsection (1), pointed out that the definition of ‘airport manager’ was not clear. The view was also expressed that the definition of ‘operator of a customs controlled area’ was wide enough to include an airport operator. ***After considering the submission, your Committee has agreed that the references to “airport manager” and “port manager” should be deleted.***

***Clauses 264 and 265***

***Your Committee recommends that these clauses remain as is.***

***Clause 266 - Retention of documents by Commissioner***

With regard to sub-clause (2), your Committee recommends that the reference to seal be deleted. It was explained that documents were usually certified and stamped, and not necessarily sealed. It was also highlighted that there might be administrative challenges with sealing documents particularly when the Jamaica Customs Agency (JCA) was dealing with a high volume of documents. It was further highlighted that the proposed amendment would make the provision more consistent with clause 255 (3)(b) where reference was made to copies of official documents certified to be true copies under the hand and seal or stamp of the office of certain officers.

***Clauses 267 - 268***

***Your Committee recommends that these clauses remain as is.***

***Clause 269 - Form of documents***

During the deliberations, it was noted that there might be documents which contained words that were not in the English Language. However, one would not want to request an English translation unless it was necessary to do so. It was further noted that the Revised Kyoto Convention standard 3.19 stipulated that Customs shall not require a translation of the particulars of supporting documents save when necessary for processing goods declarations.

Having considered the matter, your Committee recommends that the provision be amended to make it clear that the Commissioner may only require an English translation under circumstances prescribed in Rules.

Your Committee agrees that the words *“person required to provide the document shall, in accordance with Rules, provide with the document a correct translation of those words into the English Language”* should be deleted from sub-clause (2) and be replaced by the words *“Commissioner may only require an English Language translation in the circumstances prescribed in Rules.”*

***Clause 270 - Appointment of Agents***

Your Committee agrees that the word “Rules” in sub-clause (4) should be deleted and the word “regulations” be substituted therefor.

In reviewing the clause, it was highlighted that the stakeholders from the Customs Brokers and Freight Forwarders Association, and the Shipping Association of Jamaica had raised concerns about the issue of liability. Your Committee is of the view that there would be no issue with liability, and therefore the concern of the stakeholders about agents being held liable was unwarranted. *Your Committee agrees that sub-clause (6) should be amended to indicate the types of customs transactions that could be carried out by the different categories of agents.* Additionally, it is the Committee’s recommendation that the provision be amended to indicate that an agent would not be held liable once he or she had made the appropriate disclosures for duties, taxes, expenses and penalties. Your Committee further recommends that the references to “customs broker” in sub-clauses 10 and 11 should be removed and be replaced with the words “an agent.”

In relation to sub-clause (11), your Committee agrees that the word “or” should be deleted at the end of paragraph (a); that paragraph (b) be renumbered as paragraph (c), and the new paragraph (b) would read as follows:

*“(b) the agent fails to comply with subsection (7); or”*

***Clauses 271 - 275***

*Your Committee recommends that these clauses remain as is.*

***Clause 276 - Acts on behalf of Commissioner***

*Your Committee recommends that the word “Minister” in subsection (2) be replaced by the word “Commissioner.” It was noted that the power to delegate powers to other persons, Ministries, public bodies et cetera is rightly that of the Commissioner.*

***Clause 278 - Delegation by Minister***

*Your Committee recommends that this clause remain as is.*

**Clause 279 - Confidentiality**

***Your Committee agrees that the words “or control over” in subsection 1(b) should be deleted and be substituted with the words “of, or control over”. Additionally, the Members are of the view that it should be clear that even after an officer demits office at the Jamaica Customs Agency, he or she would be required to keep certain sensitive information confidential. Your Committee recommends that the provision be amended to reflect same.***

**Clause 280 - Amendments to Other Enactments**

With regard to sub-clause 2(c), it was noted that the value US\$60,000 in the new section 1A(a) should be changed to US\$60,000. It was noted that given the amendments to the *Proceeds of Crime Act* which occurred subsequent to the tabling of the Customs Act, the provision under sub-clause (3) would need to be revised. The references to ‘paragraph 19’ should therefore be changed to ‘paragraph 21,’ and the reference to ‘paragraph 20’ would be changed to ‘paragraph 22.’ In sub-clause 3(c), the numerals “40 (5)” are to be replaced by the numerals “40(1).”

***First Schedule***

**First Schedule (Customs Tariff)**

During the deliberations, it was noted that the objective was to place all components of the Act, including the Schedules, in one place. It was further noted that in the process of ensuring that there was consolidation, there were items which were inadvertently omitted, and other items which were placed in incorrect sections. In light of that, it was proposed that the First Schedule be adjusted (See Appendix 2). With respect to the List of Total or Partial Exemptions, it was proposed that item 5 (Clothing for Indigent School Children) be deleted because it was already included under the Fiscal Incentives Act. It was also proposed that item 25 (leaf of tobacco) be deleted because there were provisions that dealt with manufacturing activities. ***Your Committee agrees to this recommendation.***

With respect to the rearrangement of items within Part 1 (List of Total Exemptions), it was noted that this amendment was being proposed to preserve existing benefits. It was pointed out that there were certain benefits that were enjoyed by returning residents and after consultation it was felt that those benefits should be extended to Foreign Service Officers. Additionally, the aim was to also extend the categories of individuals designated as Foreign Service Officers. It was highlighted that individuals permanently employed to the Government or those on contract for a minimum of three (3) years, who were stationed overseas, would now be included in this category. It was further highlighted that currently, there was no tax relief provision in the Act to enable goods belonging to Jamaican diplomatic missions located overseas to be repatriated to the country. The view was expressed that it was time consuming to make an application for tax waivers and provide proof of eligibility each time hence the need for the adjustment.

Given the implementation of the new Customs Tariff, 2022, it was noted that further amendment would have to be made to the First Schedule (see Appendix 2).

### ***Definition of Personal Effects***

It is recommended that the following definition of “personal effects” be inserted in the Act: ***‘all articles which a passenger would require for his or her personal use during the journey taking into account all the circumstances of the journey.’***

It was explained that the definition, which was adopted from Annex J of the revised Kyoto Convention would provide clarity and would signal a step towards modernising the legislation in order for it to be consistent with treaties which had been signed.

### ***Definition of Consumption***

With respect to Part 7 under Section B of the First Schedule, which was related to Goods Imported for Meetings, Incentives, Conventions and Exhibitions (M.I.C.E.), there was the question of whether a definition of “consumption” should be included to provide clarity. Your Committee agrees that in the absence of a definition the word should be taken to mean the use of resources.

### **Updated Tariff Headings**

During the deliberations, it was highlighted that there was a list of goods which were subject to a 5% rate of duty before April 1, 1994 but were excluded from exemption under this Schedule. Your Committee agrees that the items previously listed be deleted and an updated list be included. This proposal was being made in light of the fact that there were errors with the tariff codes. The revised list is attached (**see Appendix 2**).

### ***Table 3***

It was noted that there were additional items (six (6) cuts of meat) to be added to facilitate the sector based on an approval given by the Cabinet (**see Appendix 2**).

### **Part 4**

#### ***Productive Inputs Relief for the Production of Primary Products and the Manufacture of Goods***

Your Committee agrees that paragraph (e) should be adjusted to ensure that it would be consistent with the existing framework. It is to be noted that at the time of drafting the provision, there was a Jamaica Export Free Zones Act but that Act had been repealed and was replaced by a Special Economic Zones Act.

### ***Second Schedule***

#### ***(Valuation of Goods)***

With respect to the definition of “***customs value of imported goods***” in paragraph 1(1), your Committee agrees that the words “***means the***” should be deleted and be substituted with the words “***means, unless otherwise specified, the transaction***”.

Your Committee took note and agreed with the recommendation of the representatives of the RAD that there was a need to make an amendment to the Act to treat with Decision 6.1 of the WTO Technical Committee on Valuation. Your Committee recommends that the Second Schedule be amended to insert language that indicates that *when a goods declaration has been presented and the Commissioner has reason to doubt the truth or accuracy of the particulars or documents produced in support of this goods declaration, the Commissioner may ask the declarant to provide further explanation, including documents or other evidence that the declared value represents the total amount actually paid or payable for the imported goods, adjusted in accordance with the*



*provisions of paragraph 8 of the Second Schedule. If, after receiving further information, or in the absence of a response, the Commissioner still has reasonable doubt about the truth or accuracy of the declared value, it may, subject to the right of the declarant who appealed, be deemed that the Customs value of the imported goods cannot be determined under the provisions of paragraph 3, of the Second Schedule.*

Your Committee agrees that a new paragraph be added. The new paragraph (Paragraph 11) would read as follows:

11. - (1) Notwithstanding anything in the other paragraphs of this schedule, where a goods declaration is submitted to the Commissioner and the Commissioner has reason to doubt the truth or accuracy of anything contained in the declaration or contained in any document submitted in support of the declaration, the Commissioner may require the declarant to provide such further information or evidence as may be necessary to establish that the declared value of the goods represents the total amount actually paid or payable for the goods (adjusted in accordance with paragraph 8).
- (2) If, after receiving the further information or evidence (as the case may be) submitted pursuant to sub-paragraph (1), the Commissioner still has reason to doubt the truth or accuracy of the declared value of the goods concerned, then, subject to any right of the applicant to appeal, it shall be deemed that the customs value of the goods cannot be determined under paragraph 3.
- (3) Before determining that there is still reason for doubt as mentioned in sub-paragraph (2), the Commissioner shall communicate to the declarant, the grounds for doubting the truth or accuracy of the declared value of the goods, and shall give the declarant a reasonable opportunity to respond.
- (4) Upon arriving at a determination as to the status of any declared value pursuant to this paragraph, the Commissioner shall communicate the determination in writing to the declarant, including the reasons therefor.

During the deliberations, the question of whether Decision 6.1 of the WTO was adopted by the World Customs Organization (WCO) and was included in the WCO's Valuation Compendium arose. It was highlighted that Decision 6.1 of the WTO was implemented in several countries globally, represented best practice and was included in the WCO's Valuation Compendium.

### **Third and Fourth Schedules**

It is to be noted that both the Third and Fourth Schedules are new additions to the Act. With respect to the Third Schedule, your Committee agrees that the words "or restricting" should be inserted after the words "law prohibiting" in item 1(a) of Column 1.

## **ACKNOWLEDGEMENTS**

Your Committee wishes to express gratitude to all individuals and organisations that made written and or oral presentations. Your Committee also wishes to thank the representatives of the Ministry of Finance and the Public Service, Jamaica Customs Agency, the Office of the Parliamentary Counsel, the Attorney General's Chambers and the Legal Reform Department who provided guidance throughout the course of the deliberations. Thanks are also extended the Clerk to the Houses and staff for their administrative and other support.

*Houses of Parliament  
September, 2022*

**APPENDIX 3  
ATTENDANCE RECORD  
Fourteen (14) Meetings**

<b>Name of Member</b>	<b>Present</b>	<b>Absent</b>	<b>Absent with Apology</b>
Dr. Hon. Nigel Clarke, MP	14	-	-
Hon. Fayval Williams, MP	1	6	7
Hon. Marlene Malahoo Forte, Q.C., M.P., JP	9	3	2
Hon. Dr. Norman Dunn, MP	11	2	1
Mr. Julian Robinson, MP	12	1	1
Mr. George Hylton, CD, MP	13	1	-
Mr. Hugh Graham, MP	1	10	3
Sen. the Hon. Kamina Johnson Smith	5	4	5
Sen. the Hon. Aubyn Hill	6	2	6
Senator Donald Wehby	9	-	5
Senator Frazer Binns +	4	-	1
Senator Damion Crawford	6	8	-
Senator Janice Allen*	9*	-	-

+ Senator Sophia Frazer Binns was replaced by Senator Janice Allen by way of a motion moved in the Senate on June 4, 2021.

\*Could only attend a maximum of nine (9) meetings.