

Naghti l-kunsens tiegħi.

(L.S.)

GUIDO DE MARCO
President

6 ta' April, 2001

ATT Nru. XII ta' l-2001

ATT biex jemenda l-Ordinanza tad-Dwana, Kap. 37.

IL-PRESIDENT, bil-parir u l-kunsens tal-Kamra tad-Deputati, imlaqqgħa f'dan il-Parlament, u bl-awtorità ta' l-istess, hareġ b'liġi dan li ġej:-

1. It-titolu fil-qosor ta' dan l-Att hu l-Att ta' l-2001 li jemenda l-Ordinanza tad-Dwana, u għandu jinqara u jinftiehem haġa wahda ma' l-Ordinanza tad-Dwana, hawnhekk iżjed 'il quddiem imsejha "il-liġi prinċipali".

Titolu fil-qosor.

Kap. 37.

2. Fl-artikolu 7 tal-liġi prinċipali, minnufih wara s-subartikolu (4) tiegħu, għandu jiżdied is-subartikolu ġdid li ġej:

Emenda ta' l-artikolu 7 tal-liġi prinċipali.

“(5) Minkejja id-dispożizzjonijiet l-oħra li hemm fis-subartikoli ta' qabel f'dan l-artikolu, il-Kontrullur ikollu d-dritt li jżomm il-hruġ jew ir-rilaxx ta' xi oġġetti mill-post ta' żbark sakemm il-kaptan tal-bastiment li jkun impurtahom jew l-aġent tas-sid ta' dan il-bastiment f'Malta jkun għamel rapport ta' l-oġġetti żbarkati jew li se jkunu żbarkati kif hu preskritt f'dan l-artikolu.”.

3. Fl-artikolu 8A tal-liġi prinċipali minflok is-subartikolu (5) tiegħu għandu jidhol dan li ġej:

Emenda ta' l-artikolu 8A tal-liġi prinċipali.

“(5) (a) Ebda persuna ma għandha tneħhi, tibdel, tikser jew tiddistruggi jew tipprova jew iġġieghel jew thalli li jitnehhew, jinbidlu, jinkisru jew jiġu distrutti, xi sigilli jew sokor iehor imwahnin ma xi *container* hliet quddiem u taht l-istruzzjonijiet tal-Kontrullur; u malli jiġi pprezentat, kif

mehtieg bid-disposizzjonijiet ta' din l-Ordinanza, lill-Kontrullur, il-manifest ta' l-oġġetti ta' dak il-*container* jew id-dikjarazzjoni jew id-dikjarazzjonijiet relattivi ta' l-oġġetti dwar l-oġġetti mgħobbija fih, skond il-każ, iffirmati kif imiss mill-Kontrullur:

Iżda l-Kontrullur jista' jawtorizza lill-importatur jew l-aġent tiegħu biex jikser xi sigilli jew sokor iehor imwahhlin ma' xi *container* wara li dan il-*container* ikun ġie rilaxxat mid-Dwana:

Iżda wkoll il-Kontrullur iżomm id-dritt u s-sahha li qabel, waqt u wara l-hatt ta' l-oġġetti mgħobbija fil-*container* jagħmel dawk l-ispezzjonijiet u kontrolli li hu jhoss li jkunu mehtieġa u li jimponi dawk il-kundizzjonijiet, inklużi l-issigġillar mill-ġdid tal-*container* u li jkunu prodotti d-dokumenti tad-Dwana ta' l-importazzjoni relattivi, biex jiżgura illi l-hatt tal-*container* isir taht l-awtorità u l-kontroll tal-Kontrullur.

(b) Ebda *container* ma jista' jinhatt f'xi indirizz ghajr f'dak indikat bil-miktub, mill-importatur jew l-aġent tiegħu, lill-Kontrullur qabel ma l-*container* ikun ġie mahruġ jew rilaxxat mill-post ta' żbark.”.

Emenda ta' l-
artikolu 8B tal-liġi
prinċipali.

4. Minnufih wara s-subartikolu (4) fl-artikolu 8B tal-liġi prinċipali għandu jiżded is-subartikolu ġdid li ġej:

“(5) (a) Minkejja kull awtorità jew permess li l-Kontrullur jista' jkun ta lill-kunsinnatarju ta' oġġetti importati biex dan il-kunsinnatarju jkun jista' jikkonsenja xi oġġetti importati lill-importatur rispettiv jew lill-aġent ta' dak l-importatur, il-Kontrullur ikollu d-dritt li jimponi f'kull waqt dawk il-kundizzjonijiet relatati mal-konsenja, tagħbija jew garr ta' dawk l-oġġetti u li jagħmel dawk l-ispezzjonijiet u kontrolli u li jiehu kull azzjoni ohra li hu jqis mehtieġa bil-ghan li jiżgura li ebda oġġett importat bhal dak ma jkun twarrab jew jista' jkun imwarrab abbużivament minn xi mahżen approvat jew imsemmi, post ta' sigurtà, post ta' żbark jew mezz ta' trasport.

(b) Kull persuna li tonqos milli thares dawk il-kundizzjonijiet jew li ma tkunx trid thalli jew li tfixkel dawk l-ispezzjonijiet jew kontrolli, mitlubin mill-Kontrullur kif provdut fil-paragrafu (a) ta' dan is-subartikolu, tista', b'zieda ma' kull piena li tista' tehel taht din il-liġi jew xi liġi ohra, tehel multa ta' mhux inqas minn mitt lira iżda mhux iżjed minn elf lira.”.

5. L-artikolu 8Ċ tal-liġi prinċipali għandu jkun emendat kif ġej: Emenda ta' l-artikolu 8Ċ tal-liġi prinċipali.

(a) minflok in-nota marginali tiegħu għandu jidhol dan li ġej:

“Ksur ta’ sigilli u hatt ta’ oġġetti minn *containers* illegalment”; u

(b) fis-subartikolu (1) tiegħu, minnufih wara l-kliem “jew sokor imwahhlin ma’ xi *container*” għandu jidhol il-kliem “jew thott l-oġġetti minn xi *container*,”.

6. Fl-artikolu 59 tal-liġi prinċipali, minnufih wara subartikolu (3) tiegħu, għandu jiżdied is-subartikolu (4) ġdid li ġej: Emenda ta' l-artikolu 59 tal-liġi prinċipali.

“(4) Jekk xi oġġetti mniżżlin f’dan il-manifest jinstabu li jkunu tnehhew mill-post fejn ikunu ġew issigillati mid-Dwana jew li jkunu tnehhew jew inhargu mill-pakkett originali li kienu fih meta ttehd u abbord qabel l-ispedizzjoni tal-bastiment, il-kaptan jehel multa ta’ mhux anqas minn mitt lira Maltija iżda mhux aktar minn elf lira Maltija.”

7. Fl-artikolu 61 tal-liġi prinċipali, minnufih wara s-subartikolu (3) tiegħu, għandhom jiżdiedu ż-żewġ subartikoli ġodda li ġejjin: Emenda ta' l-artikolu 61 tal-liġi prinċipali.

“(4) Meta sabiex jiġi stabbilit jekk xi oġġetti humiex differenti minn dawk li jkunu jidhru fuq il-fattura tal-fornitur jew li jkunu dikjarati mill-importatur jew mill-aġent tiegħu, tkun tinhtieg li ssir xi analiżi xjentifika jew perizja teknika, il-konklużjonijiet milhuqa mid-Dwana dwar ix-xorta, il-kontenut jew karatteristiċi ohra ta’ l-oġġetti jistghu jiġu biss kontestati f’xi proċedimenti jekk jintwera illi dawk il-konklużjonijiet huma tali li ebda persuna raġonevoli ma kienet tasal għalihom.

(5) (a) Minkejja kull dispożizzjoni li hemm f’dan l-artikolu, il-Kontrullur jista’ jagħzel li jagħti lura l-oġġetti kkonfiskati lill-importatur meta dan jaqbel li jhallas dak id-depożitu jew dawk id-depożiti lil, u kif ikun determinat mill-Kontrullur, sakemm il-Kontrullur jikkalkula l-prezz attwali li jrid ihallas l-importatur għall-oġġetti u f’dan il-każ il-prezz li jrid jithallas għal dawn l-oġġetti ma jistax jaqbeż is-somma totali ddepożitata mill-importatur.

(b) Kull meta xi każ ikun trattat skond id-dispożizzjonijiet tal-paragrafu (a) ta’ dan is-subartikolu, id-deċiżjoni tal-Kontrullur dwar il-prezz li jrid jithallas għall-oġġetti tkun finali u konklużiva.”.

Emenda ta' l-artikolu 62 tal-liġi prinċipali.

8. Fl-artikolu 62 tal-liġi prinċipali minflok il-kliem "jew priġunerija għal żmien ta' mhux iżjed minn sentejn jew dik il-piena u priġunerija flimkien" għandhom jidhlu l-kliem "jew għal dik il-multa flimkien ma' priġunerija għal żmien ta' mhux iżjed minn sentejn".

Emenda ta' l-artikolu 72 tal-liġi prinċipali.

9. L-artikolu 72 tal-liġi prinċipali għandu jiġi emendat kif ġej:

(a) is-subartikolu (2) tiegħu għandu jiġi emendat kif ġej:

(i) il-proviso relattiv għandu jithassar;

(ii) minflok il-kliem "fin-nuqqas ta' dan il-jedd fuq din il-haġa jitqies li ġie mitluq;" għandhom jidhlu l-kliem "fin-nuqqas ta' dan il-jedd fuq din il-haġa jitqies li ġie mitluq."; u

(b) minnufih wara s-subartikolu (2) tiegħu għandhom jidhlu dawn is-subartikoli li ġejjin:

"(3) Meta oġġett maqbud bis-saħħa ta' dan l-artikolu jkun xi bastiment jew biċċa tal-baħar jew ikun ta' xorta li tithassar jew li tista' issofri, fil-fehma tal-Kontrullur, telf sostanzjali fil-valur wara li jgħaddi ż-żmien minn fuqha, jew ikun animal haj, dan l-istess oġġett jista', b'ordni tal-Kontrullur, jinbiegħ u l-prezz li jgħib jinżamm biex jagħmel tajjeb għal kull jedd li jista' jintalab fuqu skond il-liġi u għall-fini ta' kull proċedimenti li jsiru taht din l-Ordinanza dwar oġġetti maqbuda, dak il-prezz għandu jirrappreżenta u jissostitwixxi l-oġġett maqbud msemmi.

(4) Meta qbid magħmul skond dan l-artikolu jiġi kontestat skond is-subartikolu (2) tiegħu, il-Kontrullur jista', f'kull żmien, jekk jidhirlu li jkun hekk xieraq u minkejja li jkunu għadhom għaddejnin l-proċedimenti li fihom ikun qed jiġi kontestat, jikkunsinna kull oġġett maqbud lil kull min jagħmel talba b'jedd li hekk kif dan iħallas lill-Kontrullur dik is-somma li l-Kontrullur jidhirlu li tkun adegwata u li ma tkunx taqbeż dik li, fil-fehma tal-Kontrullur, tkun tirrappreżenta l-valur tal-oġġett, magħdud kull dazju, imposta jew taxxa li jridu jithallsu fuqu u li ma jkunux thallsu jew hekk kif dan jagħti lill-Kontrullur dik il-garanzija aċċettabbli għall-istess Kontrullur għall-ħlas ta' dik is-somma. Dik is-somma jew garanzija, skond il-każ, għandha tinżamm biex tagħmel tajjeb għal kull pretensjoni li jista' jintalab dwarha skond il-liġi u għall-fini ta' kull proċedimenti meħuda taht din l-Ordinanza dwar l-oġġetti maqbuda, għandha tirripreżenta u tissostitwixxi l-oġġetti maqbuda msemmija."

10. Minflok l-artikolu 74 tal-liġi prinċipali għandu jidhol dan li ġej:

Sostituzzjoni ta' l-artikolu 74 tal-liġi prinċipali.

"Kumpens għal oġġetti mhux soġġetti għal konfiska.

"74. (1) Meta, fejn xi haġa tkun ikkunsinnata jew mibjugha skond l-artikolu 72 ta' din l-Ordinanza jew tkun meqruda skond xi wahda mid-dispożizzjonijiet ta' din l-Ordinanza jew ta' xi liġi oħra, jitqies fi proċedimenti li jkunu mehuda taht din l-Ordinanza illi l-haġa ma kellhiex tkun konfiskata fi żmien il-qbid tagħha, il-Kontrullur għandu, bla hsara għal kull tnaqqis permess taht is-subartikolu (2) hawn aktar 'l quddiem, fuq talba bil-miktub minn min għandu l-jedd joffri lil dan:

(a) ammont daqs kull somma mħallsa minnu jew il-garanzija minnu mogħtija taht is-subartikolu (4) ta' l-artikolu 72; jew

(b) meta huwa jkun biegh il-haġa, ammont li jkun daqs ir-rikavat mill-bejgh; jew

(c) fejn huwa jkun qered il-haġa, l-ammont daqs il-valur fis-suq tal-haġa fiż-żmien meta din tkun inqerdet.

(2) Meta l-ammont li jkun offrut taht il-paragrafi (a), (b) jew (c) tas-subartikolu (1) hawn aktar qabel jew il-garanzija mogħtija jkunu jinkludu xi somma dovuta minhabba xi dazju, imposta jew taxxa li tithallas fuq il-haġa u li ma kinitx thallset qabel il-qbid tagħha, il-Kontrullur jista' jnaqqas daqstant minn dak l-ammont jew garanzija daqs kemm ikun dak id-dazju, imposta jew taxxa.

(3) Jekk min jagħmel it-talba jaċċetta kull ammont offrut lilu taht is-subartikolu (1) hawn aktar qabel, huwa ma jkollu ebda dritt li jsostni xi azzjoni li ssir minhabba fil-qbid, żamma, bejgh jew qerda tal-haġa jew ta' kull kwistjoni oħra li titnissel minnhom.

(4) Għall-fini tal-paragrafu (c) tas-subartikolu (1) hawn aktar qabel, il-valur fis-suq ta' xi haġa fiż-żmien tal-qbid tagħha għandu jitqies li jkun dak l-ammont li dwaru l-Kontrullur u min jagħmel it-talba jistgħu jaqblu dwaru jew, fin-nuqqas ta' qbil, kif jista' jiġi deċiż minn perit li jiġi mahtur mill-Qorti tal-Maġistrati fuq talba tal-Kontrullur jew ta' min ikun għamel it-talba, u d-deċiżjoni tiegħu tkun finali u konkluziva; u l-proċedura dwar riferenza tal-każ f'idejn perit għandha tkun hekk kif tista' tiġi stabbilita mill-perit jew hekk kif jista' jiġi ordnat mill-Qorti tal-Maġistrati."

Emenda ta' l-artikolu 76 tal-liġi prinċipali.

11. Minflok il-paragrafi (b) u (ċ) tas-subartikolu (2) ta' l-artikolu 76 tal-liġi prinċipali ghandu jidhol dan li ġej:

“(b) f'kull każ iehor fi żmien sitt snin mid-data tal-kommissjoni tar-reat.”.

Sostituzzjoni ta' l-artikolu 78 tal-liġi prinċipali.

12. Minflok l-artikolu 78 tal-liġi prinċipali ghandu jidhol l-artikolu ġdid li ġej:

“Kif jinqies il-valur.

78. Fil-każi kollha fejn il-valur ta' l-oġġetti huwa relevanti biex tiġi determinata xi penali, dak il-valur, fejn jirrigwarda proċeduri fil-qorti, ghandu jkun determinat skond ir-regoli li jinsabu fit-Tielet Skeda u l-Annex tagħha, li hemm ma' l-Att dwar id-Dazju ta' Importazzjoni.”.

Kap 337.

Żieda ta' l-artikolu 80A ġdid mal-liġi prinċipali.

13. Minnufih wara l-artikolu 80 tal-liġi prinċipali ghandu jiżdied l-artikolu ġdid li ġej:

“Sehh li jinghata lil arrangamenti reciproki.

80A. Bil-ghan illi jiġu esegwiti obbligi li johorġu minn xi ftehim bilaterali jew multilaterali jew minn xi arrangamenti ohra, il-Kontrullur ghandu jikkoopera ma' servizzi tad-Dwana ohra fuq materji li jolqtu wiehed lill-iehor u jista' għal dak il-ghan:

(a) iġib fis-seħh, skond dawk l-arrangamenti li hu jista' jordna jew li l-Ministru responsabbli għad-Dwana jista' b'regolamenti jistabilixxi, kull hteġa jew Prattika dwar il-garr ta' oġġetti bejn pajjiżi u iehor; u

(b) iġib fis-seħh kull arrangament reciproku magħmul ma' servizzi tad-Dwana ohra sabiex jiżgura, bi bdil ta' tagħrif jew xort'ohra, l-amministrazzjoni xierqa tal-liġijiet tad-Dwana tagħhom u l-prevenzjoni jew il-kxif ta' frodi jew evazzjoni.”.

Emenda ta' l-Att dwar id-Dazji ta' l-Importazzjoni, Kap 337.

14. Minnufih wara l-artikolu 20 ta' l-Att dwar id-Dazji ta' Importazzjoni, ghandu jiżdied dan l-artikolu ġdid li ġej:

“Rifużjoni ta' dazju mhallas.

20A. (1) Minkejja l-provvedimenti ta' l-artikoli 1012 sa 1028 tal-Kodici Ċivili, ghandu jiġi mifhum li d-dazju mhallas skond dikjarazzjoni pprezentata lill-Kontrullur mill-importatur jew xi persuna awtorizzata biex tagħmel dik id-dikjarazzjoni f'isem l-importatur, ikun ġie mhallas kif imiss u li kien dovut u ma ghandu jkun hemm ebda rifużjoni tiegħu.

(2) Bla hsara ghall-provvedimenti tas-subartikolu (1) ta' dan l-artikolu, persuna tista' titlob skond il-ligi r-rifużjoni ta' dazju li jkun thallas ghall-importazzjoni ta' xi prodott, sakemm:

(a) fil-waqt li jsir il-hlas il-Kontrullur jigi mgharraf bil-miktub li tkun qieghda tigi kkontestata l-legalità ta' dak il-hlas; u

(b) it-talba ghar-rifużjoni ta' dak id-dazju tigi notifikata lill-Kontrullur mhux aktar tard minn sena wara r-rilaxx ta' l-oġġetti importati; u

(c) talba ghar-rifużjoni tad-dazju ssir permezz ta' protest ġudizzjarju jew ta' ittra ufficjali li tigi notifikata lill-Kontrullur mhux aktar tard minn sentejn mir-rilaxx ta' l-oġġetti importati; u

(d) meta dik it-talba ghar-rifużjoni tkun ibbażata fuq pretensjoni li d-dazju mhallas fuq il-prodott ma' sarx skond klassifikazzjoni tajba, il-klassifikazzjoni ta' l-oġġetti moghtija mill-Kontrullur tkun wahda żbaljata b'mod ċar.

(3) L-ebda persuna m'ghandu jkollha, jew titqies li qatt kellha, xi dritt li titlob ir rifużjoni ta' xi dazju li, għalkemm dan seta' thallas żejjed, ikun ġie, jew wiehed jista' jissopponi li jkun ġie, miġbur minn dik il-persuna bhala parti mill-prezz ta' l-oġġetti li fuqhom ikun thallas dak id-dazju, meta dawk l-oġġetti jkunu nbieghu lil haddiehor.

(4) Għall-fini ta' dan l-artikolu "dazju" tinkludi kull dazju fuq l-importazzjoni, sisa, jew kull taxxa ohra li għandha tigi mhallsa lil, jew miġbura mill-Kontrullur meta jigu impurtati xi oġġetti.

(5) Il-provvedimenti tas-subartikolu (3) ta' dan l-artikolu, li jirreferu għal xi żmien qabel ma' jkun dahal fis-sehh dak is-subartikolu, huma sempliċement dikjaratorji biex jitnehha kull dubju dwar l-interpretazzjoni tal-ligi kif kienet qabel ma jkun dahal fis-sehh dak is- subartikolu."

Mghoddi mill-Kamra tad-Deputati fis-Seduta Nru. 525 tat-2 ta' April, 2001.

ANTON TABONE
Speaker

RICHARD J. CAUCHI
Skrivan tal-Kamra tad-Deputati

I assent.

(L.S.)

GUIDO DE MARCO
President

6th April, 2001

Act No. XII of 2001

An Act to amend the Customs Ordinance, Cap. 37.

BE IT ENACTED by the President, by and with the advice and consent of the House of Representatives, in this present Parliament assembled, and by the authority of the same, as follows:—

Short title.

Cap.37.

1. The short title of this Act is the Customs Ordinance (Amendment) Act, 2001, and shall be read and construed as one with the Customs Ordinance, hereinafter referred to as “the principal law”.

Amendment to
article 7 of the
principal law.

2. In article 7 of the principal law, immediately following subsection (4) thereof, there shall be added the following new subsection:

“(5) Notwithstanding the other provisions of the preceding subarticles of this article, the Comptroller shall have the right to withhold the despatch or release of any goods from the place of landing until such time as the master of the importing vessel or the agent of the owner of such vessel in Malta makes a report of the goods landed or to be landed as prescribed in this article.”.

Amendment to
article 8A of the
principal law.

3. In article 8A of the principal law, for subarticle (5) thereof, there shall be substituted the following:

“(5) (a) No person shall remove, alter, break or destroy, or attempt or cause or permit to be removed, altered, broken or destroyed, any seals or fastenings affixed on any container except in the presence and under the instructions of the Comptroller, and on presentation, as required by the

provisions of this Ordinance, to the Comptroller, of the goods manifest of such container or of the appropriate bill or bills of entry in respect of the goods loaded therein, as the case may be, duly signed by the Comptroller:

Provided that the Comptroller may authorise the importer or his agent to break any seals or fastenings affixed on any container after such container has been released by Customs:

Provided further that the Comptroller shall retain the right and power to carry out before, during or after the unstuffing of the goods carried in such a container, such inspections and controls as he may deem necessary and to impose such conditions, including the resealing of such container and the production of the relative Customs importation documents, to ensure that the unstuffing of the container is carried out under the Comptroller's authority or control.

(b) No container loaded with goods shall be unstuffed at any address other than that indicated in writing, by the importer or his agent, to the Comptroller before the container is duly despatched or released from the place of landing.”

4. Immediately following subarticle (4) in article 8B of the principal law there shall be added the following new subarticle:

Amendment of article 8B of the principal law.

“(5) (a) Notwithstanding any authority or permission which the Comptroller may have given to the consignee of any imported goods allowing such consignee to deliver any imported goods to the respective importer or to the agent of such importer, the Comptroller shall have the right to impose at any time such conditions relating to the delivery, loading or carriage of such goods and to carry out such inspections and controls and to take such other action as he deems necessary for the purpose of ensuring that no such imported goods have been or will be abusively removed from any approved or appointed warehouse, place of security, landing place or means of transport.

(b) Any person who fails to comply with such conditions, or who refuses to allow or obstructs such inspections or controls, imposed by the Comptroller as provided in subparagraph (a) of this subarticle, shall in addition to any punishment to which he may be liable under this or any other law, be liable, to a fine (*multa*) of not less than one hundred liri but not exceeding one thousand liri.”

A 1086

Amendment to
article 8 C of the
principal law.

5. Article 8C of the principal law shall be amended as follows:

(a) for the marginal note thereto, there shall be substituted the following:

“Illegal breaking of seals and unstuffing of containers”; and

(b) in subarticle (1) thereof, immediately following the words “or fastening affixed on any container” there shall be inserted the words “or unstuffs any container.”.

Amendment of
article 59 of the
principal law.

6. In article 59 of the principal law, immediately following subarticle (3) thereof, there shall be added the following new subarticle (4):

“(4) If any goods contained in such contents are found to have been removed from the place where they have been sealed by Customs or to have been removed or unpacked from their original packing when taken on board prior to the vessel’s clearance outwards, the master shall be liable to a fine (*multa*) of not less than one hundred Maltese liri but not exceeding one thousand Maltese liri.”.

Amendment of
article 61 of the
principal law

7. In article 61 of the principal law, immediately after subarticle (3) thereof, there shall be added the following subarticles:

“(4) Where the determination as to whether any goods are different to those appearing on the supplier’s invoice or declared by the importer or his agent requires scientific analysis or technical expertise, the conclusions reached by customs as to the nature, contents or other characteristics of the goods may only be impugned in any proceedings if it is shown that such conclusions are such that no reasonable person would have reached them.

(5) (a) Notwithstanding any other provision under this article, the Comptroller may elect to hand back the forfeited goods to the importer upon the latter agreeing to pay such deposit or deposits to, and as determined by, the Comptroller, pending the assessment by the Comptroller of the actual price to be paid by the importer for the goods and in such a case the price payable for such goods shall not exceed the total sum deposited by the importer.

(b) Whenever a case is settled in terms of the provisions of paragraph (a) of this subarticle, the decision by the Comptroller on the price to be paid for the goods shall be final and conclusive.”.

8. In article 62 of the principal law for the words “or to imprisonment for a term not exceeding two years or to both” there shall be substituted the words “or to such fine together with imprisonment for a term not exceeding two years.”.

Amendment of article 62 of the principal law.

9. Article 72 of the principal law shall be amended as follows:

Amendment of article 72 of the principal law.

(a) subarticle 2 thereof shall be amended as follows:

(i) the proviso thereto shall be deleted; and

(ii) for the words “in default of which the claim shall be taken to be abandoned:” there shall be substituted the words “in default of which the claim shall be taken to be abandoned.”; and

(b) immediately after subarticle (2) thereof, there shall be inserted the following subarticles:

“(3) When any thing seized in accordance with this article is a ship or vessel or is of a perishable nature or is, in the opinion of the Comptroller, likely to suffer very substantial loss of value by the lapse of time, or consists of a living creature, the same may, by direction of the Comptroller, be sold, and the proceeds thereof retained to abide the results of any claim that may be legally made in respect thereof and for the purpose of any proceedings taken under this Ordinance in respect of the seized goods, such proceeds shall represent and substitute the said seized goods.

(4) Where a seizure made in accordance with this section is contested in accordance with subarticle (2) thereof, the Comptroller may, at any time, if he sees fit and notwithstanding the pendency of the proceedings wherein the seizure is contested, deliver anything seized to any claimant upon his paying to the Comptroller such sum as the Comptroller thinks proper, not exceeding that which in the opinion of the Comptroller represents the value of the thing, including any duty, levy or tax chargeable thereon, which has not been paid or upon giving to the Comptroller such security acceptable to the said Comptroller for the payment of such sum. Such sum or such security, as the case may be, shall be retained to abide the result of any claim that may be legally made in respect thereof and shall for the purpose of any proceedings taken under this Ordinance in respect of the seized goods represent and substitute the said seized goods.”.

Substitution of section 74 of the principal law.

10. For article 74 of the principal law and the marginal note thereto there shall be substituted the following:

“Compensation for goods not liable to forfeiture.

74. (1) If, where anything is delivered or sold in accordance with article 72 of this Ordinance or is destroyed in accordance with any of the provisions of this Ordinance or of any other law, it is held in proceedings taken under this Ordinance that the thing was not liable to forfeiture at the time of its seizure, the Comptroller shall, subject to any deduction allowed under subarticle (2) below, offer on demand in writing by the claimant to him:

(a) an amount equal to any sum paid by him or the security given by him under subarticle (4) of article 72; or

(b) where he has sold the thing, an amount equal to the proceeds of the sale; or

(c) where he has destroyed the thing, an amount equal to the market value of the thing at the time of its seizure.

(2) Where the amount to be tendered under paragraphs (a), (b) or (c) of subarticle (1) above or the security tendered includes any sum on account of any duty, levy or tax chargeable on the thing which has not been paid before its seizure, the Comptroller may deduct so much of that amount or security as represents that duty, levy or tax.

(3) If the claimant accepts any amount tendered to him under subarticle (1) above, he shall not be entitled to maintain any action on account of the seizure, detention, sale, or destruction of the thing or of any other matter consequential thereto.

(4) For the purpose of paragraph (c) of subarticle (1) above, the market value of anything at the time of its seizure shall be taken to be such amount as the Comptroller and the claimant may agree or, in default of agreement, as may be determined by a referee appointed by the Court of Magistrates upon the application of the Comptroller or the claimant, whose decision shall be final and conclusive; and the procedure on any reference to a referee shall be such as may be determined by the referee or directed by the Court of Magistrates.”.

11. For paragraphs (b) and (c) of subarticle (2) of article 76 of the principal law there shall be substituted the following: Amendment to article 76 of the principal law.

“(b) in any other case within six years from the day of the commission of the offence.”.

12. For article 78 of the principal law there shall be substituted the following new article: Substitution of article 78 of the principal law.

“How value is to be ascertained.” 78. In all cases where the value of the goods is relevant for the determination of any penalty, such value shall, as regards proceedings in court, be determined in accordance with the rules contained in the Third Schedule to the Import Duties Act, and the Annex thereto.”. Cap 337.

13. Immediately following article 80 of the principal law there shall be added the following new article: Addition of new article 80 A to the principal law.

“Giving effect to reciprocal arrangements.” 80A. For the purpose of implementing obligations in pursuance of bilateral or multilateral agreements or other arrangements, the Comptroller shall co-operate with other customs services on matters of mutual concern and may for that purpose:

(a) give effect, in accordance with such arrangements as he may direct or as the Minister responsible for customs may by regulations prescribe, to any requirements or practice as to the movement of goods between countries; and

(b) give effect to any reciprocal arrangements made with other customs services for securing, by the exchange of information or otherwise, the due administration of their customs laws and the prevention or detection of fraud or evasion.”.

14. Immediately after article 20 of the Import Duties Act there shall be added the following new article: Amendment to the Import Duties Act, Cap. 337.

“Refund of duty paid.” 20A. (1) Notwithstanding the provisions of articles 1012 to 1028 of the Civil Code, duty paid in accordance with a declaration made to the Comptroller by the importer or by a person authorised to make such a declaration on the importer’s behalf, shall be deemed to have been properly paid and to have been due and shall not be refundable.

(2) Subject to the provisions of subarticle (1) above, it shall be lawful for any person to demand the refund of any duty paid in respect of the importation of any product, provided that:

(a) at the time of payment the Comptroller is informed in writing that the legality of such payment is contested; and

(b) the demand for the refund of any such duty is notified to the Comptroller not later than one year from the release of the imported goods; and

(c) a claim for the refund of the duty is made in a judicial protest or a judicial letter served upon the Comptroller not later than two years from the release of the imported goods; and

(d) where said claim for a refund is based on a claim to the effect that the product was not charged according to the correct classification, the classification of the goods made by the Comptroller is manifestly erroneous.

(3) No person shall have, or be deemed to have ever had, a right to claim the refund of any duty which, although having been paid in excess, has been, or can reasonably be presumed to have been, collected by such person as part of the price at which the goods in respect of which such duty was paid were sold to others.

(4) For the purpose of this article "duty" shall include any import duty, excise duty, or any other tax payable to or collected by the Comptroller upon the importation of any goods.

(5) The provisions of subarticle (3) above, which refer to the time prior to the coming into force of the said subarticle, are simply declaratory for the avoidance of doubt as to the interpretation of the law as it stood prior to the coming into force of the said subarticle."

Passed by the House of Representatives at Sitting No. 525 of the 2nd April, 2001.

ANTON TABONE
Speaker

RICHARD J. CAUCHI
Clerk to the House of Representatives