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.".

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