

Chapter 12: Law Enforcement and Justice		
Document	Report Reference	Page
Attorney General Position Statement (undated)	Paragraph 12.2 footnote 1	See Chapter 1
House of Commons Foreign Affairs Committee: Fifteenth Report of Session 2017-19: Global Britain and the British Overseas Territories: Resetting the Relationship (HC 1464) (21 February 2019)	Paragraph 12.4 footnote 4	See Chapter 1
Director of Public Prosecutions Position Statement (15 June 2021)	Paragraph 12.5(iv) footnote 5	See Chapter 1
Commissioner of Police Position Statement (undated)	Paragraph 12.7 footnote 7	See Chapter 1
Commissioner of Police Report on Law Enforcement and Security in BVI: Recommendations for Improvement from the COI (8 December 2021)	Paragraph 12.7 footnote 7	See Chapter 1
Letter Commissioner of Police to the COI: "Police Act, the Suggested/Anticipated Amendments and Additions" (3 January 2022)	Paragraph 12.7 footnote 7	1 – 8
Governor Position Statement (undated)	Paragraph 12.9 footnote 12	See Chapter 1
Email from the Superintendent of HMP Balsam Ghut to the COI (21 December 2021)	Paragraph 12.39 footnote 63	9 – 10
HMC Commissioner Position Statement	Paragraph 12.43 footnote 70	11 – 26
Attorney General's Submissions on the Legal Basis for the Partial Payment Programme (15 September 2021)	Paragraph 12.59 footnote 96	27 – 30
Attorney General's Further Submissions on the Legal Basis for the Partial Payment Programme (5 November 2021)	Paragraph 12.59 footnote 96	31 – 32
The Auditor General's Report, Office of the Auditor General Examination of HM Customs – Import Duty Partial Payment Plan (18 April 2015)	Paragraph 12.60 footnote 98	33 – 46
IAD Final Report: Her Majesty's Customs Partial Payment Programme and Courier Clearance Operations (December 2020)	Paragraph 12.61 footnote 100	47 – 122
HMC Commissioner Response to COI Warning Letter No 1 (13 September 2021)	Paragraph 12.78 footnote 125	123 – 165
Chief Immigration Officer Position Statement (undated)	Paragraph 12.85 footnote 144	See Chapter 1
Attorney General's Response to Enumerated Questions in COI Letter of 19 May 2021 in respect of the Legislative Programme on Governance (3 June 2021, updated 10 February 2022) and accompanying bundle of draft and finalised measures	Paragraph 12.119 footnote 197	See Chapter 4

Speech from the Throne delivered by Governor Jaspert (5 November 2020)	Paragraph 12.127 footnote 212	166 – 176
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**THE ROYAL
VIRGIN ISLANDS
POLICE FORCE**

**Commissioner of Police
POLICE HEADQUARTERS
P. O. Box 64
Main Street
Road Town
Tortola, B.V.I.**

Sensitive

03rd January 2022

Mr. Steven Chandler
Secretary
British Virgin Islands Commission of Enquiry
Tele: [REDACTED]

Dear Mr. Chandler,

Re: Police Act, the Suggested/Anticipated Amendments and Additions.

The captioned matter refers.

Pursuant to the request made by Commissioner, Sir Gary Hickinbottom, kindly see the information as under, as well as, the supporting attachments.

The parent Police Act was assented to on August 1st, 1986. Since then, the Act underwent three (3) amendments, dated 2001, 2013 and 2018. Please see the parent Act and all (3) amendments as attached.

Presently, a review of the parent Act is being conducted. The review process began in 2018, culminating in the Bill receiving its first reading and becoming a public document. Notations for consideration were made and Governor Augustus Jaspert, the Attorney General, and all other stakeholders reviewed the draft. The Bill returned to the House of Assembly (HOA) for further debate, but was not passed. The Bill returned to the HOA for its second reading on 10 July

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2020. The debate was then suspended and a decision made to have further consultations. The Bill was again placed on the Order Paper of the HOA for 2021, but was not debated.

During 2021, over a period of four (4) weeks several consultations were convened across the Territory and on 8th November 2021, in consultation with myself, Mark Collins, Detective Insp. Kenrick Davis, the present Governor, His Excellency John Rankin, Deputy Premier, Hon. Natalio Wheatley, Permanent Secretary Ms. Sharlene DaBreo, Ms. Vicki Francis and Ms. Geraldine Ritter-Freeman both from the Governor's office, and the Director of Public Prosecutions, Mrs. Tiffany Scatliffe- Esprit; further notations were made.

It is anticipated that the Bill will be returned to the parliament in 2022 and might therefore be passed.

The information below are issues that were discussed for amendment and/or addition to the expected Act

- Sections 13(6) and (7): All serving as well as joining officers should be required to have their fingerprints and DNA taken and recorded. Updated photographs officers should be taken and recorded every five years.
- Section 14(2): the stated requirements should be made part of the application process to join the Police Service.
- Section 21: agreed that this should be subject to the instructions and written consent of the DPP.
- Section 22(1): agreed that the immunity for acts carried out under warrant should be qualified by the section 190 requirement to use only reasonable force.

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- Section 28(3): agreed that law enforcement should be able to hold photographs and samples for a specified time.
- Section 31: agreed that the need for consent to take intimate samples should be deleted, consistent with section 19 of the Constitution.
- Section 38: agreed that a warrant should not be required to search the premises of a person under arrest, consistent with section 19 of the Constitution.
- Section 45: amend to make consistent with curfew legislation (curfew for Governor to impose, not Police Commissioner)
- Section 55: agreed no need to define “reasonably grounds”, which should be for the courts to determine.
- Section 56(1)(g)(h) and (i): Remove 8pm-5am language (which reflects outdated UK Victorian legislation)
- Section 60: Remove power of Police to delay access to a solicitor
- Section 75: the twenty-hour requirement for rendering evidence to the DPP is too short and should be amended to 48 hours (DPP agreed)
- Section 134(6) (d): delete “of the opposite sex”
- Section 105(d): delete reference to a junior officer striking a senior officer, which is unnecessary and lacking in reciprocity. The Criminal Code already deals adequately with assaults which should apply irrespective of seniority.

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- Section 107(2): a person arrested should be taken into custody as per the normal law, not to the Commissioner or Deputy Commissioner
- Section 141: replace “fifty five” with “upon retirement” as some officers will retire before attaining the age of 55. Medical treatment should be available on retirement up to age 65. The same should apply in Section 157 which deals with continued medical benefits for Auxiliary Police Officer
- Section 143: this should be modernised to ensure consistently with the freedom of assembly and association in Section 24 of the Constitution
- Section 148: delete requirement for members of the Auxiliary Service to be under age 55 and reside in the Territory
- Section 168: delete “shall be subject to negative resolution of the House of Assembly” given the Governor’s responsibility for policing under the Constitution. Provisions from RIPA should be inserted to cover covert operations.
- Section 187: the right to silence should be retained. But this provision should be amended in line with Section 34 of the UK Criminal Justice and Police Order Act 1994, which allows an inference to be drawn if a suspect is silent when questioned under caution prior to charge and subsequently relies upon a relevant fact at Court, which he or she could reasonably have been expected to mention when questioned. Just because a suspect declines to answer questions does not automatically mean that an adverse inference can be drawn. It is only when he or she later seeks to put forward an account or explanation that the adverse inference provision is triggered. The wording of caution should be amended to reflect this provision,
- Section 188: as per section 187 above

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- Provision should be made for a Secretary for the Police Service Commission (the current single part time administrative staff cannot provide the requisite support, which seriously hinders the effective work of the Commission).
- Provisions should be made to limit the carry-over of annual leave, similar to that which applies in the BVI Public Service, to avoid accumulation of unreasonably large periods of leave
- Provision should be made for an officer who has been demoted to apply for promotion.
- The use of Bodycams and similar technology should be covered in the legislation and associated regulations.

Further, Governor Rankin intimated that the under points be explored in further discussion with a view to have additional amendments made. The under mentioned are those points, from the Police perspective:

1. Under Sec 5, insertion of a sub section to make the RVIPS the primary law enforcement agency for the Virgin Islands. *(This should not be left to guess work especially with joint deployments/operations with other agencies)*
2. Sec 4 speaks gives the Service “a Deputy Commissioner” whereas the current has speaks to “any such number of Deputy Commissioners”. This is an opportunity to provide for the ACP post and decide how many DCP we will have.
3. A new provision to allow for integrity testing *(polygraphs, DV or other similar means)*
4. Dismissal should be after due process *(to avoid unnecessary judicial review and lawsuits, as well as to keep in line with the letter and spirit of the constitution)*

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5. Requirement for members to provide collect fingerprints, footprints, DNA, and other unique identifiers at recruitment, or any other stage during service (*An enlargement of Sec 13 (6) is required*)
6. Insert a provision for all firearms used by the Service to be test fired, and the empty casings and warhead collected, and stored. (*This is currently done as voluntary best practice but is not provided for in our laws*).
7. Signing of search warrants Superintendents and above (*the Act should make them Justices of the Peace for this and other role related reason*)
8. Code of Practice for the treatment of detained persons (*include as an annex*)
9. A provision to inform detainees of their rights and to be served with a copy. Insert the nine (9) rights via an annex
10. ID parades (*we could borrow from the provisions in Code D of PACE; no need to reinvent the wheel*)
11. Governor/CoP approving devices for covert and overt aerial patrol and surveillance (drones and other similar apparatus)
12. Provision to treat with body worn cameras and other forms of recording devices
13. Provisions to deal with Police CCTV coverage of the Virgin Islands (in a future-focused sub-subsection that addresses the potential of public-private partner for integration of CCTV systems)
14. Create offences for tampering, damaging, destroying, hacking Police CCTV system

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15. Covert policing (authorization of deployment of covert devices, approval of covert equipment)
16. Evidencing material obtained from covert operations (we could borrow from Part II of RIPA)
17. A Section to define the role/function of Police Service Commission (PoSC)
18. Establishing a secretariat for the PoSC (the current single admin staff cannot provide the requisite support, and this has been shown to seriously retard the work of the PoSC)
19. Sec 186 the right to silence and (insert the actual wording of the caution as an annex)
20. Sec 105 (1) a junior officer striking a senior officer. (Should be removed- unnecessary and lacking in reciprocity. The Criminal Code already treats copiously with assaults)
21. Sec 107 arrest of police officer for breach of discipline-take to CoP or DCP (should be removed; unconstitutional- the purpose of arrest is to take the person to Court)
22. 2nd Schedule- Oath of Office to the people of the Virgin Island could be added to HRM the Queen.
23. Serving past Retirement- Link the Retirement Age Act with Police Act –(The how of it, length of extension, rank, role, during extension, who has the authority to make the decision)
24. Sec 24 of the principal Road Traffic Act 1988) exempts fire, ambulance and police vehicles from speed limit, but does not specifically say under what circumstances. Sec 38 (19) of the principal Road Act 1988 indicates that motorists should pull over at sound of siren from ambulance, fire services or Police department. Sec 48 (17) (a & b) of the

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Road Traffic (Regulation) 2009, requires motorist to pull over for fire engines and ambulances. Police vehicles are not mentioned at all.

25. This new Police Act should make it very clear that vehicles used by police are emergency vehicles, the circumstances when they are to be so considered, what are the obligations of other motorists, what are the obligations of the police.
26. Sec 141 provides for the Government to continue to be responsible for the medical expenses of police officers who retire at 55, for 10 years until they can access their Social Security benefits at age 65. This should be revamped, replacing "55" with "upon retirement" as some officers will retire before attaining the age of 55. In addition, the same provision should be mirrored in Sec 157, which deals with continued medical benefits for Auxiliary Police Officers.
27. The current pension provisions (as outlined in Sec 122 to Sec 139) are archaic and unrealistic. We could borrow from the provisions in the East Caribbean Supreme Court Judicial Officers Pension Act 2021, which, inter alia, allows for pensions to increase without having to revert to the House of Assembly, and for pension to be calculated both salaries and certain allowances.
28. A Provision for the CoP to establish a Grievance Board and procedures

Regards,



QPM, BSc., FCIM
Commissioner of Police
Royal Virgin Islands Police Force
P.O. Box 64
Road Town, Tortola
British Virgin Islands
Tel: 
Email: mcollins@rvipolice.vg

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COMMISSIONER OF POLICE**

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Fax: (284)-494-6141

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From: Guy Hill [REDACTED]
Sent: 21 December 2021 20:21
To: Rhea Harrikissoon (Sensitive)
Subject: Re: Letter to Superintendent of HM Prison

Staffing and resources at Her Majesty's Prison as of 21st December 2021.

- The current number of staff vacancies:
- According to our last submitted budget 2022, the vacancies at HMP are as follows:
 -
 - Deputy Superintendent 1 vacancy
 -
 - Principal Officer 1 vacancy
 -
 - Counselor 1 vacancy
 -
 - Prison Officer I/II 3 vacancies
 -
 - Cook 1 vacancy
 -
 - Teacher III 1 vacancy

- The fact that these vacancies having being raised by you with the Ministry for Health and Social Development.

I have asked questions about the vacancies from my inception into the Prison service.

 -
- That there have been delays in recruiting due to money not being readily available.

This is what I was told by persons in the Ministry.

 -
- That you have been told by the ministry that there is no money available for overtime.

To the best of my knowledge there were no funds for

 - overtime payment prior to me taking up this assignment.
 -
- That of the six principal officers in post, two have been suspended for 30 months whilst being investigated for misconduct and a further principal officer has recently been suspended pending investigation.

This is correct.

Guy-Michel Hill

From: Rhea Harrikissoon (Sensitive) [REDACTED]
Sent: Tuesday, December 21, 2021 7:09 AM
To: Guy Hill [REDACTED]
Cc: Steven Chandler (Sensitive) <steven.chandler@bvi.public-inquiry.uk>; Juienna Tasaddiq (Sensitive) <juienna.tasaddiq@bvi.public-inquiry.uk>
Subject: RE: Letter to Superintendent of HM Prison

Dear Superintendent,

I write on behalf of the Commissioner in relation to your role as Superintendent of Her Majesty's Prison.

The Commissioner requests your assistance in relation to information concerning staffing resources at HMP Balsam Ghut.

In particular, could you please confirm the following information, to which the Commissioner wishes to refer in his report:

- The current number of staff vacancies, understood to be six prison officers and two principal prison officers.
- The fact of these vacancies having been raised by you with the Ministry for Health and Social Development.
- That there have been delays in recruiting due to money not being readily available.
- That you have been told by the Ministry that there is no money available for overtime.
- That of the six principal officers in post two have been suspended for 30 months whilst being investigated for misconduct and a further principal officer has recently been suspended pending investigation.

The Commissioner would be grateful if you could please provide that confirmation by **4pm on Thursday 23rd December 2021**.

Thank you for your continuing assistance.

Kind regards,

Rhea Harrikissoon

Rhea Harrikissoon | Solicitor to the British Virgin Islands Commission of Inquiry

Email: rhea.harrikissoon@bvi.public-inquiry.uk
Address: Room RB 1.11, 22 Whitehall, London SW1A 2EG

You can contact and submit information to the Commission of Inquiry team through the Commission's website at www.bvi.public-inquiry.uk



**POSITION STATEMENT OF MR. WADE SMITH
BRITISH VIRGIN ISLANDS COMMISSION OF INQUIRY**

1. How is the Customs system organised in the BVI?

1.1 The answers provided herein are based on the assumption that “Customs system” in your questions refers to Her Majesty’s Customs Department (“**Customs Department**”).

1.2 The Customs Department is a Department within the Ministry of Finance, Government of the Virgin Islands. It operates as a department under the direct supervision and control of the Ministry of Finance. The Customs Department is unique in that, although it is a department within the Government of the Virgin Islands, it is governed also by the Customs Management and Duties Act, 2010 (S.I. No. 6 of 2010) (“the Customs Act”). The Customs Act replaced the Customs Ordinance (Cap 104) and the Customs Duties Ordinance (Cap 105). The Customs Act established the role of Commissioner of Customs and outlines the duties of the Commissioner therein.

1.3 The vision of the Customs Department is to serve the Government of the Virgin Islands and the public with professionalism, fairness, and integrity by, providing quality service, maximizing the collection of revenue, protecting our Territorial borders and facilitating legitimate trade efficiently, effectively and economically in order to safeguard the well-being and security of the entire British Virgin Islands. With a clear and well-articulated vision, the Customs Department is committed to providing essential services to the persons whom we serve and with whom we interact, in any context. The Customs Department’s commitment is as follows:

- To render polite and courteous service;
- To operate with the greatest degree of fairness and equity;
- To handle each individual’s affair with strict confidence;
- To perform our duties professionally at all times;
- To fulfill reasonable requests promptly and accurately;
- To collect only the proper amount of revenue due in accordance with the law; and
- To operate with the greatest degree of transparency and integrity

1.4 The Customs Department is a dynamic environment consisting of various units, ten (10) stations and nine (9) ports with the responsibilities of revenue collection and enforcement. The Customs Department serves as a blueprint, offering important directions and indispensable guidance. The Units of the Customs Department also utilizes the principles that are directly correlated with the revised Kyoto Convention.

1.5 The Customs Department is comprised of the following Units:

(1) Administration Unit, which includes:

(a) **Accounts-** responsible for budget preparations, refunds, and account payables;

(b) **Human Resources** – manages, plans, coordinate and direct the administrative functions of the Customs Department. The Unit oversees work performance, recruitment, interviewing, training, development, and consults with the Commissioner of Customs on strategic and succession planning. The Unit is the link between the Department of Human Resources and the Human Resources Manager of the parent Ministry (Finance);

(2) **Enforcement Unit** responsible for enforcing Customs laws other laws and regulations of the Virgin Islands and liaising with domestic, regional and international counter parts to gather information used in the fight against local, regional and transnational crimes. The Enforcement Unit also serves as a liaison between the Attorney General’s Chambers, Office of the Director of Public Prosecution, Financial Investigative Agency, Royal Virgin Islands Police Force, Immigration, Airport Authority, BVI Ports Authority, Virgin Islands Shipping Registry, Conservation and Fisheries and other private stakeholders (**charter companies, shipping companies, courier services etc.**). This arm of the Customs Administration provides guidance to the Flex Team, Marine Task Force, K-9 Unit, Intelligence Unit, Fuel and Concession Unit, Operations Unit, Assurance Unit and the Customs Automated Processing Systems (“CAPS”) Unit.

- (3) **Flex Team** – a mobile unit whose primary function is to manage the inspection of cargo/freight containers entering and leaving the Territory. The Flex Team conducts on-site supervision and inspection of containers to prevent illicit activities. This specialized mobile unit is staffed with highly skilled officers (**captains, engineers, and mechanics**), who are crossed trained and capable of assisting at any port of entry or on any other enforcement unit within the Customs Department including the Marine Task Force and the K-9 Unit.
- (4) **Marine Task Force** – is responsible for protecting the territorial borders, and to fight against transnational crime (human trafficking, human smuggling, drug and weapon interdiction, an smuggling commercial goods etc). In addition to the border security function the Unit enforces other Virgin Islands Laws (Commercial Recreational Vessel Licenses, Cruising Permits Ordinance, National Parks and Trust, Conservation and Fisheries Legislation and Virgin Islands Shipping Registry Legislation), assists with emergency search and rescue and provides training and technical assistance for other local and regional administrations in the development and maintenance of their own marine capabilities.
5. **K-9 Unit** – This Unit was established in 2003 and is one of the most successful K-9 Units in the region. This Unit provides assistance in the search of contrabands, among other objectives. Due to the sensitive nature of the role of this Unit, its full capabilities are not outlined in this position statement. This highly trained Unit also provides assistance and technical training to local and regional counterparts in the development and maintenance of their own K-9 capabilities.
6. **Intelligence Unit** - Utilizes the entire Department's IT databases (**Overseas Territory Regional Central Intelligence Systems (OTRCIS), Regional Clearance Systems (RCS) and Customs Automated Processing Systems (CAPS)**) and liaise with local, regional, and international counterparts in gathering and disseminating intelligence, which is effective in the fight against local and cross border crimes. This Unit works closely with the Financial Crime Unit of the Royal Virgin Islands Police Force and the Financial Investigative Unit. It monitors cross border movement of bulk cash and other monetary instruments. This cooperation is especially important as it helps to provide

mutual protection for the participating countries. In this way, what is beneficial to them is also reciprocally helpful to the BVI.

7. **Fuel and Concession Unit** – responsible for ensuring policies and procedures are followed for the importation of petroleum products and monitoring all duty-free concessions (**Hotel Aid, Pioneer Status and the Virgin Islands Tourist Duty Free Concession Acts**) at the Cyril B. Romney Pier Park. As it relates to hotel aid and pioneer status, the Unit liaises with Office of the Premier and is responsible for the clearance processes of the cruise industry.
8. **Operations Unit** – responsible for managing and maintaining all nine (9) Customs ports of entries within the Territory, securing borders and maximizing collection of revenue by ensuring all stakeholders are in compliance with the laws and policies of the Customs Department and other key Government entities (**bonds, commercial licenses, cruising permits, National Parks & Trust fees, environmental levy fees etc.**). The Unit also liaises with the Enforcement Units (K-9, Flex Team and the Intelligence) and ensures facilitation of legitimate trade.
9. **Assurance Unit** – This unit ensures compliance with the laws of the Customs Department and the effectiveness of revenue collection within the organization. Its main aim is to improve of financial management, establish and maintain sound accounting procedures and reporting structures for CAPS, Trader Declaration Unit, and the National Risk Assessment Implementation Team.

a. Internal Audit Unit

There is no relation to the Office of the Auditor General. This Unit is responsible for the implementation of recommendation made by the Auditor General or the Office of the Director of Internal Audit.

- ✓ monitors the effectiveness of the internal controls and Officers to mitigate opportunities for corruption (theft, fraud, abuse of powers etc.);
- ✓ gather and disseminate information for the Central Statistics Unit to assist the decision making of the powers that be;
- ✓ Assist enforcement with compliance checks to ensure stakeholders are in compliance with Customs laws and policies;

- ✓ Assist with revenue recovery and post audits; and
- ✓ Reviews refund applications, processing and collection of partial payments, internal audit and ensure compliance of laws.

b. **Customs Automated Processing Systems (CAPS) Unit** – This Unit automates the receiving of Customs Declarations, which includes all imports, exports and bonded goods processes. The structure which was developed through the Customs Reform and Modernization Programme, 2000 continues to evolve and reform in line with the principles of the revised Kyoto Convention that was entered into force on February 3rd 2006. This International Convention on the simplification and harmonization of Customs procedures (as amended), is the blueprint for modern and efficient Customs procedures in the 21st century. The revised Kyoto Convention promotes trade facilitation and effective controls through its legal provisions that details the application of simple yet efficient procedures. The Convention elaborates on several key governing principals such as:

- Transparency and predictability of Customs actions;
- Standardization and simplification of the goods declaration and supporting documents;
- Simplified procedures for authorized persons;
- Maximum use of information technology;
- Minimum necessary Customs control to ensure compliance with regulations;
- Use of risk management and audit based controls;
- Coordinated interventions with other border agencies; and
- Partnership with trade.

The CAPS unit is comprised of IT professionals (Programmers and Data Entry Clerks etc) for monitoring and developing the system, giving network support to stakeholders, maintaining and upkeep of IT equipment in collaboration with the Department of Information Technology and assists the department with the implementation of new systems.

10. Trader Declaration Unit is responsible for reviewing all entries through CAPS and ensures declarations are made and proper revenues calculated.

11. National Risk Assessment Implementation Unit - implements recommendations made to systems to help improve effectiveness in combatting money laundering, terrorist financing, proliferation and corruption.

1.2 What processes and systems are in place to monitor effectiveness of the Customs Systems?

2.1. The Internal Audit/Assurance Unit monitors the effectiveness of the Customs Department. Once information is referred to the Internal Audit/ Assurance Unit through the Commissioner of Customs, it will review the complaints/allegations against the requirements of the Customs Department and develop, where necessary, a Post Audit Team to investigate the /complaint. These complaints/allegations can include allegations of corruption, fraud, and irregularities, the Internal Audit/Assurance Unit also conducts compliance audits, as part of the annual audit plan and develops post audit strategies, which ensures the protocols of Public Financial Management Act, 2004 are followed and observed. To monitor the effectiveness of officers in carrying out their duties, review is conducted of the strategic plan, output budgeting, role profiles and performance appraisals. All officers are also guided by the Customs Act. Where the Internal Audit/Assurance Unit discovers evidence of corruption, fraud irregularities etc. being investigated this is reported to the Financial Secretary, the Attorney General's Chambers and or the Director of Public Prosecutions, depending on the nature of the evidence discovered.

2.2 To monitor the effectiveness of officers in carrying out their duties this Unit reviews the strategic plan, output budgeting, role profiles and performance appraisal. All Officers are guided by the Customs Act. In addition, if further support is required during investigative processes, this Office will seek the assistance of the Office of the Director of Internal Audit Department and the Office of the Auditor General.

2. What particular responsibilities do you have, as the Commissioner of Customs, in the BVI?

3.1 As the Commissioner of Customs in the BVI my duties are outlined under Part I of the Customs Management Act. The Commissioner is charged with the following responsibilities:

- (a) the management, supervision and control of Customs;
- (b) the collection and accounting of customs revenue;
- (c) the care of public and other property under customs control, but without having to account for loss thereof unless the loss is due to the Commissioner's personal default;
- (d) any other enactments relating to any assigned matter.

3.2 Within the overall structure of Government, the Customs Department is also responsible for the collection and security of the revenues along with the control of all imports and exports to and from the Territory. The primary responsibility of the Commissioner of Customs is border protection and to ensure that the Department meets its goals and targets of revenue collection annually. This is accomplished by ensuring that there are systems in place to secure and protect Government revenues. In conjunction with this, the department assesses and make the appropriate collection of import duties, ensures that commercial licenses are up to date and discourages and safeguards against illicit activities and violators of the Act. For Border Security, the Customs Department liaises closely with all other law enforcement agencies in the BVI (**Police, FIA Immigration, Fisheries**) and work closely with the BVI regional and international counterparts to prevent transnational crimes and monitor cross border movement of vessels, goods and people.

3. What particular responsibilities do you have, as the Commissioner of Customs in respect of detecting and investigating corruption, abuse of office or other serious dishonesty that may have taken place in public office within the Customs system in recent years?

4.1 My responsibilities are to ensure that the systems utilized by the Customs Department to detect corruption (when Officers engage in dishonest or fraudulent activities), abuse of office (using the office to advance matters for personal gain) and other serious dishonesty etc are confidential, effective, and trustworthy to encourage the flow of information by Officers, domestic whistle blowers and external intelligence. When officers, whistle blowers or other stakeholders bring matters such as potential corruption, abuse of office or other serious dishonesty, that may have taken place in the Customs Department to my attention, or where I

observe this firsthand, my responsibility is to ensure that the assurance unit is made aware of this expeditiously to gather relevant information from the IT systems and disseminate for further investigation.

3.2 Secondly, depending on the nature of the suspicious activity the Enforcement Unit will be asked to assist by investigating the activity, which will then be passed to the Commissioner of Customs for review. Any complaint of misconduct, abuse of office, corruption or other serious dishonesty will be forward to the Attorney General Chambers, Royal Virgin Islands Police Force, Office of the Director of Public Prosecutions, Financial Investigative Agency for further investigation.

3.3 Further, any allegation of misconduct, abuse of office, corruption or other serious dishonesty made against a Customs Officer, it will be my responsibility in accordance with the General Orders 3.6 and 3.7, Service Commissions Act, 2011, Service Commission Regulations 2014 and Devolution Regulations, 2008 to forward to the Department of Human Resources through the parent Ministry (Finance) headed by the Financial Secretary for further action.

4. What processes and systems are in place to detect and investigate matters relating to corruption, abuse of office or other serious dishonesty that may have taken place within the Customs system in recent years?

5.1 The processes and systems that are in place to detect matters relating to corruption, abuse of office or other serious dishonesty that may have taken place within the Customs Department in recent years include:

1. segregation of duties using the Customs Automated Processing Systems (**CAPS**);
2. Regional Clearance Systems (**RCS**);
3. Overseas Territory Regional Central Intelligence Systems (**OTRCIS**)
4. whistle blowing procedures for other Officers or the Public; and
5. rotation of Customs Officers at the various ports of entries and Units;
6. revenue audits of all stations and teams (random and investigative audits);
7. compliance audits of all stations and teams (ensuring Officers and stakeholders adhere to all laws and policies);
8. reporting and disclosure of interests (in accordance with Section 8 of the CMDA), which include:

- (a) owns, either in whole or in part, any vessel or aircraft engaged in trade,
- (b) acts on behalf of the owner of any vessel or aircraft engaged in trade,
- (c) imports or is concerned in the importation of any merchandise for sale, or
- (d) acts on behalf of an importer or an importer's agent in the preparation of an entry or any other document required under this Act in respect of the importation of goods, commits an offence and is liable on summary conviction to a fine not exceeding ten thousand dollars;

9. Training on various sections of laws (CMDA and the Money Laundering and Terrorist Financing Act, and FATF 40 recommendations).

5.2 The Customs Department has a zero-tolerance approach and operates transparently. Once corruption and abuse of office or other serious dishonesty is detected using the monitoring systems mentioned above, the matter is referred to Internal Audit/Assurance and Enforcement Units for further investigation. Any type of business conducted outside regular operational procedures will be identified, flagged, investigated and forwarded to relevant agencies.

5. What, if any, challenges have there been/are there in relation to detecting and/or investigating matters relating to corruption, abuse of office or other serious dishonesty that may have taken place within the Customs System in recent years?

6.1 The challenges include limited investigative resources and limited human resources. The Customs Department is forced to rely on other agencies (AG Chambers, RVIPF, FIA and DPP etc) with specific skill sets, who may not view Customs matters as priorities because those agencies have their own challenges/cases and/or may not be familiar with the Customs Act, systems and other Laws. The Customs Department continues to be challenged with respect to succession planning, completion of strategic objects and goals due to the loss of several Customs officers due to retirement and relocation after Hurricanes (Irma and Maria, 2017) coupled the external hiring moratorium,

6. What do you, as the Commissioner of Customs, consider to be the strengths and weaknesses of the Customs system in the BVI?

7.1 Strengths:

- The department operates within the framework of transparency;
- Expertise of human resources (institutional knowledge of Customs Officers);
- Legal framework;
- IT system (CAPS, RCS);
- International/Domestic representation and relationships;
- Maritime Assets, Automobiles and IT;
- Confidence the stakeholders has in this organization;
- In house Customs certified Trainers (post audit, K-9, captains, engineers, management etc.);
- High morale;
- Cadre of local employees very familiar with our territory;
- Cadre of local employees intimately familiar with our culture and traditions;
- A number of employees who wish to make the profession a lifetime career;
- Genuinely dedicated employees;
- Commissioner's willingness to accept and respond to constructive observations or criticisms and adopt to change.

7.2 Weaknesses:

- IT Infrastructure;
 - Shared IT servers;
 - Network connectivity;
 - Shared IT expertise;
- Blanket policies by Ministry of Finance and The Human Resources Department restricts law enforcement without considering the structural and operational functionalities of this complex organisation with dual responsibilities (daily revenue collection and border security);
 - Lengthy processes due to stringent policies and handling of HR matters;
 - Lack of human resources information sharing to department heads in a timely manner;
 - Lack of uniformity of handling human resources matters;
- Budgetary restrictions which limits and delay the functions of the Customs Department;

- A lack of a locally based training academy or similar organization with particular focus on Customs specialties.

8. **What steps do you, the Commissioner of Customs, consider should be taken to ensure that the strengths and weaknesses you have identified can be maintained or remedied respectively?**

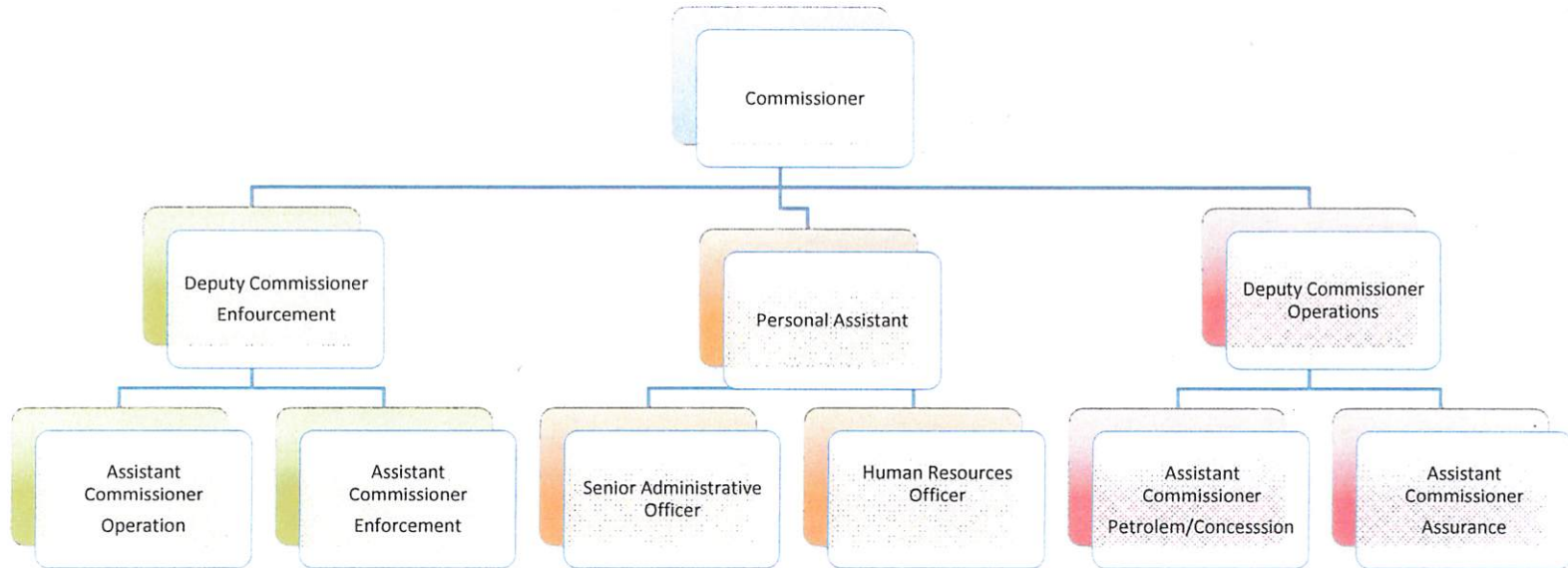
8.1 I consider the following steps should be taken to ensure maintenance of our strengths and the corrections of our weaknesses:

8.2 **Recommendations:**

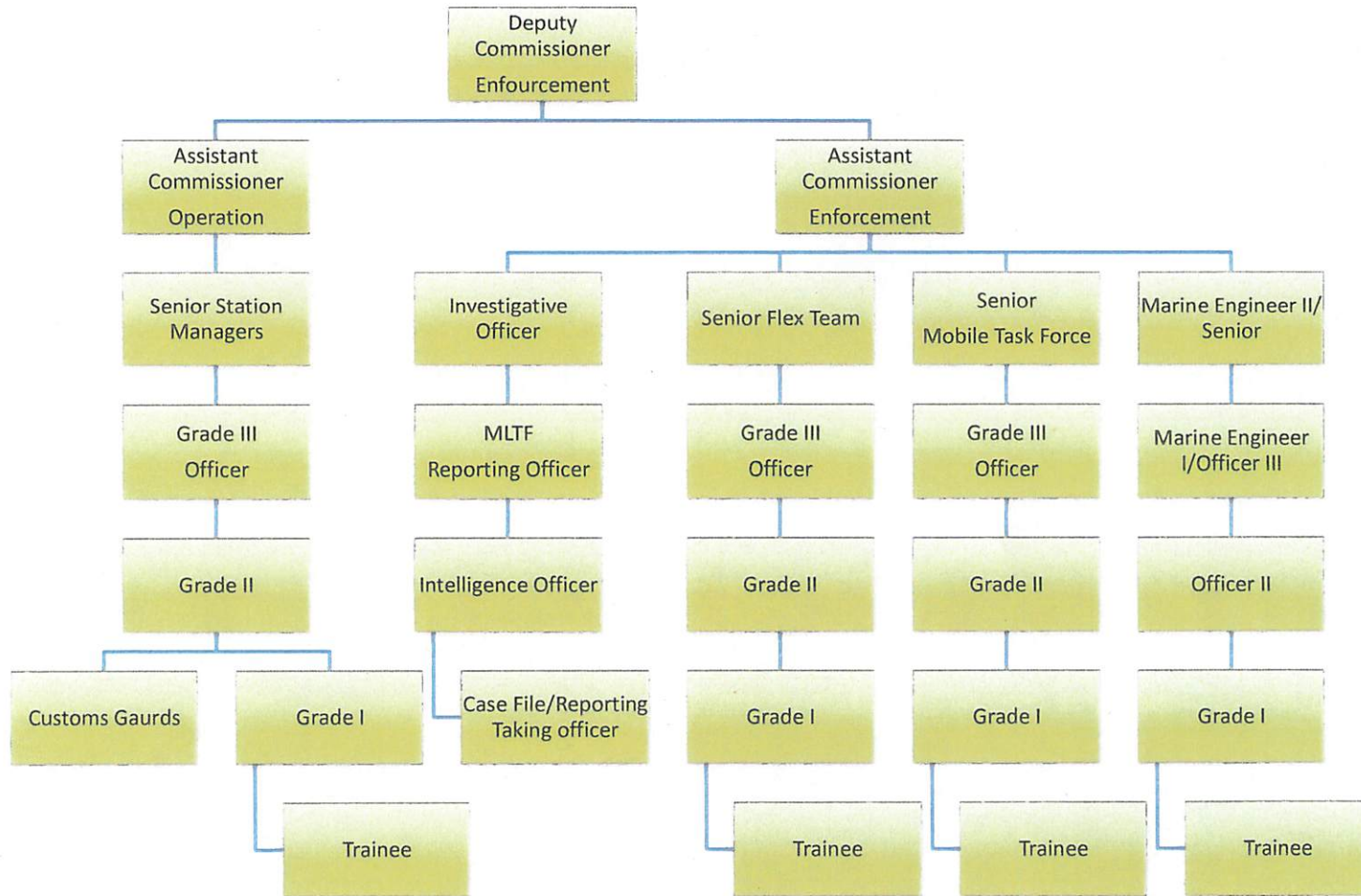
- Customs Department should be made a statutory body with board members consisting of the Attorney General, Financial secretary, Deputy Governor, Commissioner of Customs and Director of Financial Investigative Agency to ensure
 - Customs processes are handled timely;
 - eliminate the limitations of blanket polices;
 - In house legal counsel to give advice, assist with investigations and prosecute offenders timely.
- Modernization of outdated legal framework (Acts and Regulations);
- Continuous cross training to maintain expertise and encouragement of self-development;
- Independent network and servers to improve risk management and systems;
- Ability to lead our own law enforcement investigations;
- Proper in-house legal representative versed in Customs Laws;
- Continue to be the benchmark for the other regional agencies;
- Continue to be utilized as the pilot programme for many law enforcement initiatives identified through CCLEC;
- Continue to build local, regional and International relationships by information sharing;
- Continue to increase capabilities by capacity building;
- Continue to operate in a transparent environment in line with the vision and mission of the Customs Department;
- Ensure effective collection of revenue and proper inspection of imported goods;
- Continuous retraining in line with the succession plan.
- Some blanket policies should not apply to Law Enforcement Agencies;
- Human resources has too many restrictions which delays in hiring and disciplining;

- Ministry of Finance funding process/budgetary processes are lengthy;
- Ensure that the process of establishing a Customs Courier Cargo Distribution Center is completed in a timely manner so that the policies and procedures in place for collecting government revenues help to guarantee a smooth functioning;
- Develop the local Law Enforcement Training Academy for all Law Enforcement Agencies.

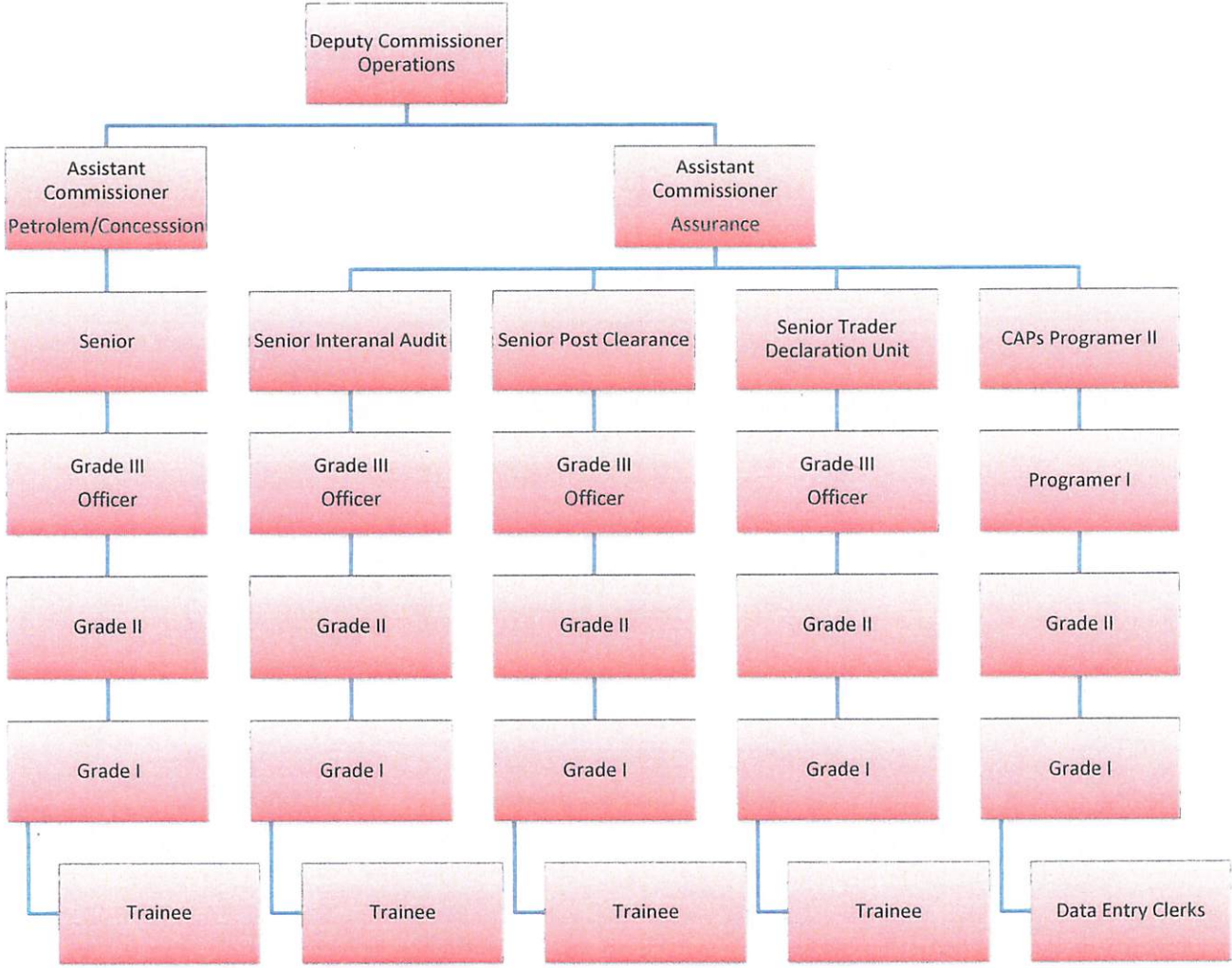
Management Team



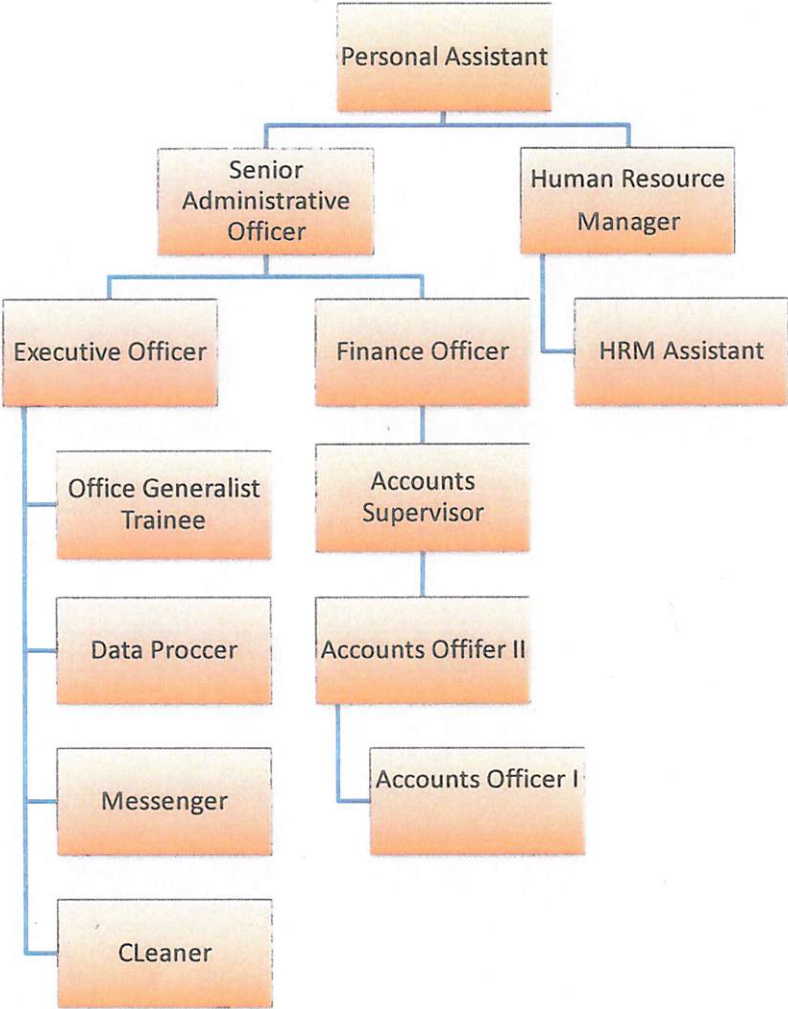
Enforcement Team



Operations Team



Administration



**IN THE MATTER OF THE TERRITORY OF THE VIRGIN ISLANDS COMMISSION OF INQUIRY 2021
AND THE COMMISSION OF INQUIRY ACT (CAP 237) ("the Act")**

**SUBMISSIONS: legal basis for the partial payment programme and interpretation of section
103 of the Customs Management and Duties Act 2010**

AND BUNDLE OF AUTHORITIES OF THE ATTORNEY GENERAL

**IN THE MATTER OF THE TERRITORY OF THE VIRGIN ISLANDS COMMISSION OF INQUIRY
2021
AND THE COMMISSION OF INQUIRY ACT (CAP 237) ("the Act")**

**Submissions: legal basis for the partial payment programme and interpretation of section
103 of the Customs Management and Duties Act 2010**

1. These submissions have been prepared on behalf of the Attorney General in response to the letter from the Commission dated 6 September 2021 (the 'Warning Letter').
2. The specific questions raised by the Commission are addressed in turn below. References to the accompanying bundle are given by Tab and page number as follows **[Tab/Page]**.

Question 1 As a matter of law on what legal basis or under which legislative provisions(s) was the partial payment programme introduced and what date;

3. Based on the instructions received by the Commissioner of Customs, we are unable to accurately state the date on which the partial payment programme ("the Programme") was introduced.
4. Prior to the proclamation of the Customs Management and Duties Act 2010 (See Statutory Instrument No 6 of 2011) **[Tab 6/Page 163]**, the legal basis for the Programme appears to be derived from sections 17,18 and 64 of the Customs Act Cap 104 Revised Laws of the Virgin Islands 1991**[Tab 4/Page 123-151]**. For ease of reference, the sections are set out as follows:

17. Subject to such conditions as may be prescribed by way of bond and otherwise, Customs may give an importer permission to move uncustomed goods within the area of any port or from any port to any specified place within the Virgin Islands.

18. Subject to the provisions of section 17, imported goods shall not be released from the port of their arrival until such goods have been entered and-

- (a) found not liable to duty; or
- (b) full duty thereon has been charged and paid; or
- (c) security has been given in prescribed form

....

64. Whenever the payment of any duty or other Customs charge in respect of any goods is for any reason deferred upon any condition or the happening of any event, Customs may require from the importer or owner of such goods, delivery of a bond in such form as may be prescribed, securing the payment of such duty or charge upon the same becoming payable.

Question 2 As a matter of law on what legal basis or under which legislative provisions(s) has the partial payment programme operated since its introduction through to date;

5. After the introduction of the Customs Management and Duties Act 2010 (“the Act”) [**Tab 5/Page 152-162**], the legal basis for the Programme appears to be sections 51 and 103 of the Act which for ease of reference which provides that

51. Without prejudice to any other provision of this Act, the Commissioner may authorise the removal of goods from a warehouse subject to any conditions and restrictions the Commissioner may think fit to impose, without payment of duty, but where any condition or restriction imposed under this section is contravened or not complied with, the goods are liable to forfeiture.

103. (1) Without prejudice to any express requirement as to security provided for by or under any other customs enactment, the Commissioner may, if he or she considers fit, require a person to give security by bond or otherwise in the form and manner the Commissioner may direct, for the observance of any condition or restriction in connection with an assigned matter. (2) A bond taken for the purposes of an assigned matter (a) shall be taken on behalf of the Government; and (b) may be cancelled at any time by the Commissioner or by the order of the Commissioner

Question 3 In section 103 of the Customs Management and Duties Act 2010, what is meant by the terms “security by bond or otherwise” and “for the observance of any condition or restriction in connection with an assigned matter”.

6. The Act does not contain any specific definition of the term “security by bond or otherwise”. However, it is settled law, that a useful starting point in the interpretation of statutes is to examine and interpret the words in their natural and ordinary sense. The court can only depart from the literal rule where the outcome of its strict application is one of absurdity. (see Duport Steels Ltd & Others v Sirs & Others [1980] 1 All ER 529 at 541) [**Tab 2/Page 14-39**].
7. The Oxford Concise Dictionary (9th Edition) [**Tab 7/Page 164-165**] defines the word “security” as “a thing deposited or pledged as a guarantee of the fulfilment of an undertaking or the repayment of a loan, to be forfeited in case of default”. It is submitted that the term “security” in the context of section 103 of the Act should be given this interpretation.
8. It is further submitted that the meaning of the term “security by bond or otherwise” is to be interpreted with reference to the ejusdem generis rule of statutory interpretation.
9. This rule applies where a statutory provision or written instrument particularises two or more species of persons or things and all of the particularise species share essential characteristics from which a common genus can be identified, if the particular words

which particularise the species are followed by general words, this is usually an indication of a legislative or contractual intention to confirm the general words to persons or things of the same species as those particularised.

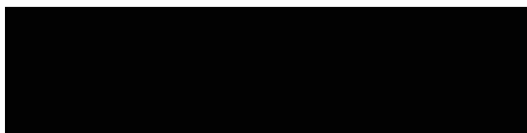
10. As per Lord Diplock in Quazi v Quazi [1980] AC 744 at pages 807,808 [**Tab 3/Page 40-122**].

“As the Latin words of the label attached to it suggest, the rule applies to cut down the generality of the expression “other” only where it is preceded by a list of two or more expressions have more specific meaning and sharing some common characteristics from which it is possible to recognise them as being species being to a single genus and to identify what the essential characteristics of that genus are. The presumption then is that the draftsman’s mind was directed only to the genus of things indicated by the specific words’ and that he did not by his addition of the word “other” to the list, intend to stray beyond its boundaries, but merely to bring within the ambit of the enacting words, those species which complete the genus but have been omitted from the preceding list either inadvertently or in the interests of brevity.”

It is submitted that the ejusdem generis rule applies in the instant case even though one is attempting to deduce a genus or class of items from a single item mentioned in the legislative provision.

11. Alternatively, if the ejusdem generis rule does not strictly apply, in view of the structure of section 103, refers to 'security' of which a 'bond' is one type. Other examples of security should therefore fall 'within the same area' as a bond (see Director of Public Prosecution v Jordan [1976] 3 all ER 775 at 780) [**Tab 1/Page 1-13**].
12. In accordance with the principles laid down in Quazi and Jordan it is submitted the term “security by bond or otherwise” should be read to render the provision applicable to the provision of other forms of security of a similar nature.
13. Applying the literal rule of interpretation to the term, “for the observance of any condition or restriction in connection with an assigned matter” seems to refer to the conditions or restrictions that may be imposed by the commissioner for the purposes of enforcing the bond obligation or security.

Dated this 15th day of **September** 2021



Fiona Forbes Vanterpool (Mrs.)
Principal Crown Counsel
for Attorney General

IN THE MATTER OF THE TERRITORY OF THE VIRGIN ISLANDS COMMISSION OF
INQUIRY 2021
AND THE COMMISSION OF INQUIRY ACT (CAP 237) ("the Act")

Further Submissions: legal basis for the partial payment programme

1. These submissions have been prepared on behalf of the Attorney General following the hearing on 22 September 2021 (the "Hearing") at which the Commissioner of Customs, Mr Wade Smith, gave evidence in relation to the Partial Payment Scheme. They supplement the Attorney General's Legal Submissions on 15 September 2021.
2. During the course of the hearing, the Commissioner remarked that the Attorney General's view as to the partial payment scheme was 'no higher' than that there was an *argument* that there was a lawful basis for the scheme. For the avoidance of doubt, the Attorney General considers that ss 103 and 51 of the Customs Management and Duties Act 2010 (the "Act") provide a clear legal basis for the scheme.
3. It is noted that the Auditor General's Report dated 18 April 2015 in relation to the Partial Payment Scheme stated that the *"Customs Department was unable to provide any official authorization, supporting legislation or regularisation legitimising the practice"*, which might be taken as suggesting that the Customs Department was not aware of a legal basis for the scheme.
4. However, the Auditor General's Report does not state what was requested in this regard, or to whom any such request was made. Certainly, Mr Smith's positive evidence was that he did not think any such request had been made to him, whether by the Auditor General or his staff who were dealing with the audit (see Day 38, page 14, line 21). The Attorney General is not aware of any documentary evidence to demonstrate that such a request was made and went unanswered, and to her knowledge the Auditor General has not provided disclosure of underlying documents on this point. Furthermore, Mr Smith gave clear evidence as to what he considered to be the basis for scheme (see Day 38, page 15 onwards).
5. As well as considering that ss. 51 and 103 provide a legal basis for the scheme, Mr Smith was also of the view that the following sections provided legal authority for the Partial Payment Scheme:
 - a. Section 20(1): *"The Commissioner may give general or specific directions as to the manner, conditions and restrictions that goods to which this section applies are to be moved within the limits of a customs port, approved wharf, customs airport or customs area, between any of them, or between any of them and any other place."*
 - b. Section 54(1): *"The Commissioner shall raise, levy or collect on goods... "* (emphasis added).
6. Furthermore he cited the following sections as demonstrating that there must be a power to release goods without having first required payment, because the Act envisages scenarios where actions for recovery are required:

- a. Section 58(5): *"Without prejudice to any other provision of this Act, an amount due by way of customs duty is recoverable as a debt due to the Government"*.
 - b. Section 60: *"an Amount due and not paid to the Commissioner under a Customs enactment may be recovered by the Commission in a Court of competent jurisdiction"*.
7. Mr Smith also made reference to s.19(3) of the Interpretation Act, which states that where a person is empowered by an enactment to do any act, such powers are given as are reasonably necessary to do acts that are incidental to that act (albeit reference to the Interpretation Act is unnecessary, because s.51 of the Act explicitly contains the power to run the Partial Payment Scheme).
8. It is reasonable to assume that had Mr Smith been asked by the Internal Auditor, he would have cited ss 51, 103, 20(1), 54(1), 58(5) and 60 as a basis for the scheme.

Dated 5 November, 2021



Attorney General



Office of the Auditor General Examination of the Customs Department – Import Duty Partial Payment Plan



Office of the Auditor General
Government of the Virgin Islands
18 April 2015

Contents

Executive Summary..... 2

Audit Scope, Objective and Methodology 3

Background 3

The Process 4

Debt Collection 5

Commercial Clients 6

Conclusion..... 6

Recommendations 7

Appendices..... 8

Executive Summary

1. Customs Management and Duties Act 2010 (the Act) provides a tariff under which all imports fall. Duties payable under the Act have to be paid to Customs before the goods are released to the importer.
2. The partial payment system was introduced on an unofficial and piecemeal basis to accommodate importers who had difficulty paying the full amount of duty assessed. This was initially done by referral of the Financial Secretary and at times elected representatives. Currently all applications are made directly to the Commissioner of Customs who approves or denies the request.
3. Importers who are approved are required to sign an agreement which outlines terms of repayment and provisions for recovery in the case of a default.
4. Although the provision for partial payments is not publicized, there has been a steady increase in its use. The facility is being used by private individuals and established companies.
5. There has been a steady rise in delinquent payments over the years. At the time of the audit examination an amount of \$486,125 was over ninety days past due.
6. Several importers pay only the initial down payment required to release the goods then refuse to honour the installment payments to amortize the balance of the import duties. In other cases importers commence payment of the installment amounts but do not complete payment of the debt.
7. Importers with delinquent accounts have been granted additional credit terms on other imports without being required to clear their prior debt.
8. The Department has been faced with challenges in securing collection as reminders are ineffective and no legal action has been pursued to effect recovery.

Audit Scope, Objective and Methodology

1. The audit comprised of a review of the partial payment system for import duties in operation at the HMS Customs Department.
2. The objective of this audit is to examine how the program was started, the process of granting a payment plan, and whether the program is being used for its intended purpose.
3. In carrying out our investigation we obtained information from:
 - i. Interviews with key staff at the Customs Department.
 - ii. Accounts files and computer data held at the Customs Department
 - iii. Ministry of Finance
 - iv. Premier's Office
 - v. JDE System and Treasury Accounts

Background

4. The Customs Department is tasked with the dual role of border defense and revenue collection.
5. All goods which are imported to, or exported from, the territory must be declared to Customs. The imports are required to be declared using the Computer Automated Processing System (CAPS) Custom's Trade Declaration form (HMC12). This requirement does not apply to postal parcels and goods classified as passenger's baggage. Imports are subject to the conditions and tariffs set out in the Customs Management and Duties Act 2010 (the Act).
6. Duties payable are provided in Schedule 4 of the Act and exemptions in Schedule 5. There are, in addition, other legislation under which certain specified imports are allowed entry duty-free. These include:
 - i. Cap 297 Pioneer Status – This grants exemption from import duties on items used in the operation of a pioneer service or enterprise for ten years.
 - ii. Hotel Aid Ordinance Cap 290 – Grants exemption from duties for building materials and hotel equipment, as specified in a license granted to a hotel, for use in the construction, expansion, and operation of the hotel.
 - iii. The Customs Management and Duties (Amendment) Act, 2011 – Grants exemption on import duties of certain building materials to first time home and office builders, hotels, and villas investors.
7. Duties assessed under the Customs Management and Duties Act 2010 must be paid to Customs at the port of entry before the items are released to the importer.
8. The system of partial payments for import duty was introduced in 1998 by the Department to facilitate individuals and companies with demonstrated difficulties in meeting the full amount of duties assessed on imported items. The Customs Department was unable to provide any official authorization,

supporting legislation or regulation legitimizing the practice. The files however point to directives from the Financial Secretary and elected representatives instructing the Department to provide this assistance to named individuals.

9. As the demand for this facility increased the Department found it necessary to implement a process to monitor collections and safeguards to protect against revenue losses.

The Process

10. An importer who wishes to use this facility is required to make a direct (verbal) request to the Commissioner of Customs. There is no standard application form. The T-12 is submitted to the Commissioner to evidence the amount of duty assessed. The Commissioner endorses the importer's T-12 to signify approval and refers the individual to the Customs Internal Audit Unit which is responsible for administering the partial payment accounts.

11. The Customs Internal Audit Unit prepares a "Request for Duty Amortization" agreement which details the amount of duty to be paid, monthly payments and other terms of the arrangement. This agreement, among other things, authorizes Customs to put a lien on the importer's estate in the event that the individual dies before the debt is repaid in full. The agreement has to be signed by the importer, the Commissioner and a witness.

12. Where the transaction involves a vehicle or heavy equipment a "Record of Interest" letter is also prepared to be signed by the parties. This is intended to give the Department of Motor Vehicles the authority to block any transfer if the importer cannot produce a Customs certification that the import duties have been paid in full.

13. The importer is required to make a down payment of the assessed duties (50% requested) and the balance is amortized in the agreement over a 6 to 12 month period.

14. After the paperwork is completed and the deposit is paid the importer takes the stamped documents to Customs' office at Port Purcell and the goods are released.

15. As a general rule, the partial payment facility applies only for identifiable items like vehicles and heavy equipment. These usually carry a vehicle identification number (Vin #) that makes it easy to identify if a seizure has to be implemented. Other large or expensive items like elevators and walk-in freezers have also been allowed.

16. At the time of the audit review there were approximately one hundred and fifteen customers on the import duty partial payment plan. Government employees are requested to sign a salaries deduction consent form that allows for deductions to be made directly from their salaries and applied to the debt. Notwithstanding, the list of delinquent importers include a number of public servants, indicating that salary deductions were not applied across the board. Other individuals pay cash/cheque directly to the Customs Internal Audit Unit and established businesses are asked to pay using post-dated cheques to cover the payment period. All funds collected from these transactions are deposited to Account No. 2330-415110 – Import Duties.

Debt Collection

17. Since inception, the popularity of the program has steadily increased as has the number of delinquent accounts. Customs Internal Audit Unit is responsible for collecting payments, issuing receipts, updating client records and generally administering the accounts.

Debt Monitoring System

18. Initially an excel spreadsheet was used to manage the outstanding client balances but since 2004 the unit has been using an independent module of the JDE Government's Computerised Accounting System for this purpose. The excel spreadsheet is still being updated and kept parallel to the JDE records.

19. Examination of the two systems revealed several discrepancies in the records which are shown in Appendix 1. These included:

- i. Differences between the outstanding balances recorded in JDE and those shown on spreadsheet for several importers;
- ii. Accounts which were shown as paid off on the spreadsheet but carried outstanding balances in JDE records;
- iii. Several accounts with negative balances in the JDE records indicating possible overpayment or, more likely, incomplete recordings;
- iv. Individuals with duplicate accounts in the JDE records.

Delinquent Accounts

20. Delinquent customers were comprised of businesses, businessmen, government workers and private individuals. Each is issued a reminder initially by telephone, then later in writing. The department has not to date pursued any court action to enforce payment of delinquent accounts.

21. The delinquent accounts were caused by:

- i. Importers who paid only the down payment to release the goods, and never honored the agreed payment plan for the outstanding balance. Appendix 2 refers.
- ii. Importers who commenced the installment payments but did not follow through to complete payment of the debt. Appendix 3 refers.
- iii. Importers with existing delinquent accounts who were granted additional credit terms on other imports without being required to cover their prior debt. Appendix 4 refers.

22. In addition to the foregoing, there were two importers who had been granted a payment plan on the premise of a pending application for pioneer status. No pioneer status was granted and duty was still outstanding. Another two individuals refused to make payments claiming that the outstanding import duty should be set off against amounts owed to them by the Government.

23. Difficulty in securing collections was at times compounded by importers selling the items thus rendering the seizure option impracticable. Customer accounts established between 2004 and 2008 do not have the necessary authorization forms to enable seizures.

24. The pervasiveness of client non-payment suggests that the programme is being abused and possibly being used as a method to evade paying full duty.

25. At the time of the audit examination a total of \$there was more than \$300,000 owed on delinquent accounts.

Commercial Clients

26. The programme began as an initiative to accommodate individuals and small businessmen by facilitating payment of substantial import costs via installment payment. It now includes a number of established businesses. In some of these cases outstanding balances are so substantial that the Customs Department can be said to be financing business activities rather than securing government revenue. Some of these can be seen in the appendices previously mentioned.

Conclusion

27. The partial payment facility for import duty was introduced without any legislative or regulatory authority and has grown as a financing tool for importers. The facility has suffered a number of delinquent accounts from private individuals and businesses alike resulting in a loss of a substantial amount of revenue to the Government. There are, in addition, indications that persons may be using it to avoid full payment of import duty. There is a need to regularize the process which would allow for better vetting of applicants for eligibility and provide other enforceable collection routes.

Recommendations

1. The partial payment system for import duty needs to be reviewed, and if considered beneficial, it should be developed and standardized with respect to:
 - a. Application and approval process;
 - b. Terms for repayment;
 - c. Security and collateral;
 - d. Procedures for recovery of delinquent balances;
 - e. Commercial and personal applications;
 - f. Interest rate applied to balance (not currently done);
 - g. Other special cases (eg. Companies claiming pioneer status)
2. It should then be regularized through the Ministry of Finance with the guidance and assistance of the Attorney General Chambers.
3. Government employees with delinquent balances should have the amounts deducted from their salaries in regular installments. Payment by salary deductions should be made standard for public servants.
4. No additional facility should be granted to importers with delinquent accounts. Importers should be required to clear their existing balance before another facility is approved.
5. Only items that can be impounded, repossessed and resold should be the subject of a partial payment facility. This includes readily identifiable items like vehicles, heavy equipment, boats and the like.
6. The Customs Department should intensify efforts to recover delinquent amounts. Where necessary, the balances should be referred to the Attorney General's Chambers for advice and action.
7. The partial payment facility should not be used as a financing tool for established businesses or others. This deprives the government of funds needed for development and results in an understatement of import duty in the records.
8. Inconsistencies and duplications in the JDE module that is being used to record and manage the outstanding balances and payments should be corrected, if necessary, with the assistance of the government's Department of Information and Technology. Improved accuracy is required for reliable reports.

Sonia M Webster
Auditor General
British Virgin Islands
18 April 2015

Appendix 1**Importer Accounts with Balance Discrepancies**

Name	JDE	Spreadsheet	Difference
Allen, Ronnie	3,595.80	-	3,595.80
Baptist, Avery	524.35	-	524.35
Baronville, Denver	550.00	-	550.00
Benjamin, Charles	3,194.58	-	3,194.58
Billy, Marva	2,011.40	2,111.40	100.00
Bobby's Market Place	26,971.53	7,971.53	19,000.00
Bougainvillea Clinic Ltd	-	1,513.39	1,513.39
Bougainvillea Clinic Ltd	-	9,359.42	9,359.42
Buck's Food Market	2,280.04	-	2,280.04
Chalwell, Brandon	3,452.54	-	3,452.54
Chinnery, Darlene	910.60	-	910.60
Christopher, Nadia	455.40	-	455.40
Christopher, Selvin	338.00	638.00	300.00
Compurich Printing Services	-	276.63	276.63
Crabbe, Dion	49,402.80	32,000.60	17,402.20
Dawson, Kieran	6.00	-	6.00
Dawson, Stanley	1,050.00	-	1,050.00
Donovan, Erlene	2,663.97	2,263.97	400.00
Donovan, Kisha	175.00	-	175.00
Douglas, Carlwell	410.00	240.05	169.95
Edwards, Ishma	5,769.40	-	5,769.40
Fahie, Brian	250.00	-	250.00
Frett, Wilton	227.04	-	227.04
George, Clifford	750.00	-	750.00
George, Rudy	-	2,573.08	2,573.08
George, Rudy	-	6,946.33	6,946.33
Georges, Elton	4,112.07	-	4,112.07
Georges, Jameal	127.83	-	127.83
Green, Alicia	4,025.50	-	4,025.50
Hodge, Claudia	1,198.00	-	1,198.00
Leonard, Richard	2,206.90	-	2,206.90
Lettsome, Ashford	-	401.92	401.92
Lettsome, Ashford	-	1,859.00	1,859.00
Lettsome, Leslie	-	2,480.00	2,480.00
Lettsome, Leslie	-	3,547.48	3,547.48
Lettsome, Quincy	2,935.34	-	2,935.34
Levons, Joel	587.33	-	587.33
Martin, Yvette	-	400.00	400.00

Name	JDE	Spreadsheet	Difference
Mitchell, Donna	271.66	-	271.66
O'neal, Wayne	4,735.72	-	4,735.72
Penn's Heavy Equipment	2,426.67	-	2,426.67
Pickering, Kimball	1,697.47	1,247.48	449.99
Richardson, Wilbert	276.63	-	276.63
Rosan, Joseph	3,989.43	-	3,989.43
Rosewood	18,335.83	-	18,335.83
Rymer, Suzanne	1,000.00	-	1,000.00
Scatliffe, Armenio	3,967.68	-	3,967.68
Scatliffe, Chantal	898.80	-	898.80
Scatliffe, Darwin	18,960.17	7,709.17	11,251.00
Sebastian's Transport	-	3,000.00	3,000.00
Smith, John	6,000.00	-	6,000.00
Smith, Lester	199.34	-	199.34
Smith, Mario	1,000.00	-	1,000.00
Sprint Courier Services	13,673.90	18,900.00	5,226.10
Stoutt, Dariel	2,510.92	2,321.85	189.07
Stoutt, Elvin	2,300.00	-	2,300.00
Stoutt, Ileta	16.66	-	16.66
Thomas-Christopher, M	1,773.17	-	1,773.17
Thompson, Alford	530.80	-	530.80
Triple "L" Heavy Equipment	6,027.48	-	6,027.48
Vanterpool, Vernon	300.00	-	300.00
Virgin Islands Motors	29,512.32	-	29,512.32
Walters, Franklyn	1,958.50	-	1,958.50
Wattley, Byrtil Bern	121.11	-	121.11
West End Car Rental	3,163.81	-	3,163.81
Wilkins,Huggins, Stacia	2,395.40	-	2,395.40

Source: Government Computerised Accounting System (JDE System) and Customs Records

Appendix 2

No Payments Made after Initial Down-Payment

Importer Name/no.	Date	Original Amt	Down payment	Outstanding balance
Bernier Kent	12/24/2013	1,867.21	667.21	1,200.00
Choucotou Jr. Marlon	05/10/2013	13,378.00	1,378.00	12,000.00
Christopher Alvin	10/09/2013	8,044.80	3,044.80	5,000.00
D & B Trucking Co.	08/02/2007	66,263.65	11,100.00	55,163.65
Elmo Connor/Ricky	12/15/2004	5,809.10	2,000.00	3,809.10
Forbes Vern	7/19/2007	5,549.13	3,500.00	2,049.13
Frett Clifton	11/11/2013	1,459.24	250	1,209.24
Green Alicia	1/19/2009	4,025.50	-	4,025.50
Ground Works BVI	06/08/2010	8,539.50	2,674.86	5,864.64
Harrigan Patrick	12/16/2013	400.83	100.83	300
Hodge Omar	11/08/2013	11,585.00	5,000.00	6,585.00
James Austin	7/21/2008	2,972.85	1,054.21	1,918.64
Lettsome Lucia	7/23/2007	8,882.80	2,739.08	6,143.72
Liburd Kelvin	8/22/2013	5,021.75	1,021.75	4,000.00
Nibbs Cayma	06/06/2011	5,000.00	4,000.00	1,000.00
Parker Lovell	07/01/2008	2,324.86	1,225.00	1,099.86
Penn's Heavy Equip.	10/01/2011	4,240.00	1,813.33	2,426.67
*Pickering	8/27/2012	6,910.80	3,710.80	3,200.00
Walters Franklyn	6/18/2013	4,458.50	2,500.00	1,958.50
Walters Wayne	3/24/2010	6,904.53	835	6,069.53
Wards Electrical	08/10/2007	1,639.85	139.85	1,500.00
Wilkins-Huggins Stacia	5/22/2013	2,395.40	-	2,395.40
World Furniture	08/10/2007	5,689.02	336.69	5,352.33

**Incomplete Name in Records*

Source: Government Computerised Accounting System (JDE System)

Appendix 3

Commenced Payments But Did Not Complete

Customer Name/ No.	Date	Ori. Amt	Down Payment	Other Payments	Balance
Allen Ronnie	03/08/2006	6,533.00	1,738.60	1,198.60	3,595.80
Auto Sales & Parts	7/07 -11/13	558,565.92	105,243.11	447,322.81	6,000.00
Blyden Brian	12/07/2006	11,149.00	990.00	7,000.00	3,159.00
Baptiste Avery	1/25/2012	2,048.70	1,000.00	524.35	524.35
Baronville Denver	05/04/2011	8,008.40	1,941.90	2,766.50	3,300.00
Billy Marva	12/17/2007	6,430.94	2,669.55	1,050.00	2,711.39
Brathwaite Juliet	10/20/2006	5,896.24	1,302.24	3,370.40	1,223.60
Bucks Food Market	10/20/2011	6,040.05	3,000.00	760.01	2,280.04
Christopher Selvin	5/23/2005	10,694.99	3,394.75	5,644.48	1,655.76
Crabbe Titus	10/15/2004	4,728.07	1,728.07	2,000.00	1,000.00
Carter Leonise	07/02/2007	1,068.67	400.00	100.00	568.67
Chalwell Clyde	9/23/2008	74,442.41	14,442.41	51,500.00	8,500.00
Chalwell Brandon	05/08/2012	7,687.05	1,000.00	2,120.00	4,567.05
Chinnery Sendrick	09/12/2013	11,052.21	656.84	7,895.37	2,500.00
Chinnery Darlene	11/08/2011	3,910.60	500.00	2,500.00	910.6
Choucotou Marlon	7/29/2009	10,705.29	3,000.00	1,205.29	6,500.00
Collins Annette	09/04/2007	3,066.15	1,135.15	1,823.60	107.4
Corea Derrick	02/11/2009	7,954.20	504.2	2,500.00	4,950.00
Dion Crabbe	10/04/2010	91,007.13	21,384.11	17,220.22	52,402.80
Donovan Erlene	3/22/2005	5,213.97	1,500.00	1,450.00	2,263.97
Davis Brian	05/03/2013	1,636.61	400.00	300.00	936.61
Edwards Ishma	10/24/2012	10,269.40	2,000.00	2,500.00	5,769.40
Elite Superette	1/14/2008	5,928.20	500.00	3,656.92	1,771.28
Enos Car Rental	7/29/2011	6,025.57	525.57	4,500.00	1,000.00
Evans Khoy	01/04/2012	10,841.60	5,081.60	3,380.00	2,380.00
Francis Michiko	7/19/2007	6,378.60	500.8	5,700.00	177.8
Fahie Jasin	01/12/2010	8,762.55	2,204.55	5,851.33	706.67
Frett Bettito	02/01/2007	6,978.75	560.75	100.00	6,318.00
George Cheryl	06/11/2008	9,234.51	860	6,787.65	1,586.86
George De Antonio	2/15/2012	5,625.98	1,625.98	3,700.00	300
Georges Jameal	6/17/2011	4,734.00	3,200.00	1,406.17	127.83
Griffin Scherrie	6/13/2008	7,653.01	3,200.00	2,477.78	1,975.23
Harrigan Ashburn	7/15/2013	12,306.00	3,306.00	6,000.00	3,000.00
Herbert Rodney	5/24/2013	7,108.00	1,500.00	2,000.00	3,608.00
Hodge Denny	7/23/2007	2,421.00	321.00	1,300.00	800.00
Hodge-Rodriquez M	7/31/2012	105,929.77	23,504.35	35,925.42	46,500.00
Hodge Gregory	8/27/2007	4,563.00	300.00	900.00	3,363.00

Customer Name/ No.	Date	Ori. Amt	Down Payment	Other Payments	Balance
Jones Seanelle	03/10/2011	1,202.90	202.90	200.00	800
Lennard Carvahlo	9/26/2013	4,649.33	1,000.00	891.66	2,757.67
Leonard Richard	08/03/2007	12,632.58	4,657.38	5,768.50	2,206.70
Lettsome Leslie	7/24/2007	11,193.48	2,490.00	100.00	8,603.48
Lettsome Wakimba	7/24/2007	1,529.00	770.00	189.75	569.25
Levons Joel	10/20/2011	1,713.57	626.24	500.00	587.33
Lewis Trevon	7/24/2007	5,462.48	1,000.00	2,260.92	2,201.56
Lil Bit Cash & Carry	09/09/2009	4,343.00	500.00	1,000.00	2,843.00
Maddox Glen	12/18/2012	1,871.70	171.70	450.00	1,250.00
Maduro Yvette	8/22/2013	7,399.00	1,500.00	4,500.00	1,399.00
Malone Kay	08/02/2007	5,327.10	2,216.00	2,900.00	211.1
Malone Keith	12/28/2007	18,378.98	2,676.29	10,702.69	5,000.00
Matthew Sheldon	7/31/2007	4,907.80	1,000.00	1,727.80	2,180.00
Mitchell Donna	08/10/2011	1,915.00	1,100.00	543.34	271.66
Nicholls Kerry	11/05/2013	3,189.40	350.00	473.23	2,366.17
O'Neal Wayne	09/03/2007	16,275.00	9,121.42	2,417.86	4,735.72
Penn Cecil	7/25/2007	113,229.00	22,427.00	49,802.00	41,000.00
Penn Marlon	06/05/2012	10,195.51	2,195.51	5,000.00	3,000.00
Penn Wesley	7/25/2007	1,214.20	404.74	600.00	209.46
Pickering Kimball	11/12/2007	7,947.48	1,000.00	5,450.00	1,497.48
Richardson Wilbert	5/31/2013	876.63	200.00	400.00	276.63
Robinson Pauline	9/16/2013	1,718.08	500.00	812.06	406.02
Scatliffe Chantal	12/22/2011	8,508.80	510.00	6,000.00	1,998.80
Scatlfiffe Darwin	3/18/2013	11,251.00	2,000.00	1,541.83	7,709.17
Shabazz Abdul	08/09/2007	4,873.00	800.00	350.00	3,723.00
Shirley John	06/07/2013	41,531.67	5,000.00	3,044.41	33,487.26
Simmonds Rodney	6/17/2011	25,298.76	4,662.75	8,000.00	12,636.01
Skelton Jeffrey	11/23/2007	7,706.40	347.00	3,682.00	3,677.40
Smith Ira A	08/09/2007	6,978.00	3,978.00	1,000.00	2,000.00
Smith Irene	08/01/2013	5,062.54	1,865.14	800.00	2,397.40
Smith-Maduro Elvia	2/22/2013	4,822.03	2,822.03	1,900.00	100
Smith Ganeicia	7/30/2008	2,623.28	369.93	950.00	1,303.35
Sprint Courier Service	3/15/2013	27,266.10	5,266.10	1,500.00	20,500.00
Stoutt Grethel	08/02/2007	5,683.48	3,000.00	948.63	1,734.85
Thomas Christine	8/16/2007	3,196.08	300.00	1,380.00	1,516.08
Todman Jamaal	7/16/2013	1,771.60	700.00	821.60	250
Triple L Heavy Equip	8/14/2007	30,525.41	9,995.50	1,131.24	19,398.67
Vanterpool Karen	5/18/2012	5,237.54	237.54	2,550.00	2,450.00
West End Car Rental	7/18/2007	66,375.65	15,754.32	47,457.52	3,163.81
Warner Ashley	11/07/2008	12,226.83	3,564.65	3,711.50	4,950.68
Warner Phoenicia	08/10/2007	4,310.00	2,200.00	200.00	1,910.00

Source: Government Computerised Accounting System (JDE System)

Appendix 4

New Arrangement Approved Before Existing One Paid Off

(Customers with multiple plans)

Year	Name	ACC. #	T 12#	PAY OFF DATE	ORIGINAL AMT.	PMT TO DATE	BALANCE	LAST PMT.DATE
2014	Auto Sales And Parts	100001	1404	02/28/14	5,635.34	-	5,635.34	
2014	Auto Sales And Parts	100001	1391	02/20/14	6,432.00	-	6,432.00	
2013	Crabb, Dion (Island Concrete)	149972	1320	09/30/13	13,368.70	3,368.70	10,000.00	05/22/13
2013	Crabb, Dion (Island Concrete)	149972	2013382	11/30/13	23,599.00	1,598.40	22,000.60	05/22/13
2013	Hodge, Rodriguez, Miriam	652914	1270	12/30/13	68,299.71	23,299.71	45,000.00	04/02/13
2013	Hodge, Rodriguez, Miriam	652914	1276	12/30/13	3,905.73	2,405.73	1,500.00	04/02/13
2009	Lettsome Ashford		2816	9/3/2009	1,859.00	-	1,859.00	
2009	Lettsome Ashford		2815	9/3/2009	401.92	-	401.92	
1996	Lettsome, Leslie	100047	2377	5/30/1996	3,250.00	770.00	2,480.00	2/9/1996
2005	Lettsome, Leslie	100047	868	9/30/2005	5,047.48	1,500.00	3,547.48	3/18/2005
2012	Lettsome, Leslie	100047	1127	01/30/12	2,896.00	320.00	2,576.00	02/03/12
2012	Penn, Cecil	100030	1560	12/15/07	58,047.10	50,802.00	7,245.10	09/19/12
2012	Penn, Cecil	100030	594	12/30/05	55,181.90	21,427.00	33,754.90	02/07/07
2013	Simmonds, Rodney	150295	1119	09/30/11	9,356.00	2,356.00	7,000.00	06/17/11
2013	Simmonds, Rodney	150295	232425	06/30/12	15,942.76	10,306.75	5,636.01	12/19/13
2011	Smith, Ganiecia	149016	3810	4/30/2009	1,846.20	900.00	946.20	12/7/2011
2011	Smith, Ganiecia	149016	3020	10/30/2008	580.09	222.94	357.15	6/25/2009
2007	Triple L Heavy Equipment	100048	309	8/14/2007	18,182.15	9,132.21	9,049.94	8/14/2007
2007	Triple L Heavy Equipment	100048	1612	8/16/2007	6,058.79		6,058.79	5/19/2007
2009	Triple L Heavy Equipment	100048	4462	5/2/2009	4,066.13	1,319.53	2,746.60	12/10/2009
2009	Triple L Heavy Equipment	100048	4352	12/5/2009	1,668.34	125.00	1,543.34	12/5/2009
2010	Walters, Wayne	149796	101831	10/30/2010	3,841.53	600.00	3,241.53	5/14/2010
2010	Walters, Wayne	149796	101138	10/1/2010	3,063.00	235.00	2,828.00	3/24/2010
2012	Warner, Ashley	148769	1	30/06/09	6,679.78	4,676.15	2,003.63	01/09/14
2012	Warner, Ashley	148769	4156	05/02/09	5,547.05	3,000.00	2,547.05	12/09/08
Total					324,755.70	138,365.12	186,390.58	

Source: Customs Records



Ref.: IAD/FAR1/3

To: Commissioner, Her Majesty's Customs

From: Director of Internal Audit

Date: December 17, 2020

Re: Final Internal Audit Report – Her Majesty's Customs – Partial Payment Programme and Courier Clearance Operations

The Final Internal Audit Report on Her Majesty's Customs - Partial Payment Programme and Courier Clearance Operations is enclosed for your record and action.

As part of the audit reporting process, you were given an opportunity to acknowledge the audit findings, advised to take note of the various recommendations and asked to provide this office with a written response. Your management response was received on December 15, 2020 and is attached to the final draft of the report.

As communicated, a management response is crucial in the audit reporting process because it offers a balanced view to the content of the report. Furthermore, it forms part of the final report and demonstrates your commitment to taking corrective action towards resolving the issues identified. In your response, you indicated your agreement with twelve (12) of the fourteen (14) audit recommendations provided under the Courier Trader Declaration Processing Section, seven (7) of the eight (8) audit recommendations provided under the Customs Automated Processing System Section and seven (7) of the eight (8) audit recommendations provided under the Partial Payment Programme Section and you also provided your timetable for implementation. As a result to your disagreement with four (4) of the audit recommendations, a Director's Response is provided and is attached as part of this final report to ensure that all issues are resolved. The corrective action plans proposed indicates that you have agreed, to some degree, with the recommendations and you have accepted the responsibility for taking corrective action in resolving the issues and concerns identified in the report.

To ensure that the issues articulated in the report are resolved in a reasonable timeframe, a follow-up review will be conducted to which further communication will be provided to you.

Government of the Virgin Islands | Thrid Floor, Ashley Ritter Building | Wickham's Cay I | Road Town
TORTOLA, VG1110 | BRITISH VIRGIN ISLANDS

Tel: (284) 468-4771 | **Fax:** (284) 468-2558 | **Email:** info@internalaudit.gov.vg | **Website:** www.bvi.gov.vg

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*Memorandum to Commissioner, Her Majesty's Customs
Re: Final Internal Audit Report. Her Majesty's Customs – Partial Payment Programme and Courier Clearance
Operations
December 17, 2020
Page 2*

The Internal Audit Department thanks you for the opportunity to provide this value added service and look forward to providing the same in the future. Please feel free to contact me if you require further services.

Sincerely,


Dorea T. Corea (Mrs.)
Director of Internal Audit
Department of Finance
BRITISH VIRGIN ISLANDS



DTC/rg

cc: Deputy Governor
Financial Secretary
Auditor General

Attachment: Final Internal Audit Report – Her Majesty's Customs – Partial Payment Programme and Courier Clearance Operations



HER MAJESTY'S CUSTOMS

COURIER CLEARANCE OPERATIONS AND PARTIAL PAYMENT PROGRAMME

Audit Report

December 2020

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Internal Audit Department

3rd Floor, Ashley Ritter Bldg.
Road Town, Tortola,
British Virgin Islands

Telephone: (284) 468-4771

FINAL REPORT

Table of Contents

INTRODUCTION.....	3
Background	3
Audit Objectives and Scope	4
Audit Limitation	4
Audit Methodology.....	4
Audit Criteria.....	4
Audit Approach	4
Statement of Assurance	5
Acknowledgements	5
FINDINGS AND RECOMMENDATIONS	5
CONCLUSION	24

APPENDIX I

APPENDIX II

MANAGEMENT RESPONSE

DIRECTOR'S RESPONSE

INTRODUCTION

Background

Her Majesty's Customs (HM Customs/Customs Department) is one of the Government of the Virgin Islands primary revenue collecting departments, responsible for collecting and accounting for a substantive portion of the Territory's annual revenue. The Department is also engaged in the protection of society by the prevention and interdiction of restricted and prohibited goods from entering the Virgin Islands.

The Customs Department is also actively engaged in the facilitation of legitimate trade. In addition to its primary functions, the Department also performs agency duties for other Government departments and statutory bodies such as the Department of Agriculture, Civil Aviation, Ports Authority and Postal Service. The Department is governed by the Customs Management and Duties Act, 2010 and its amendments.

The Department's mission is to serve the Government and the public with professionalism, fairness and integrity by, providing quality service, maximizing the collection of revenue, protecting the Territories borders and facilitating legitimate trade efficiently, effectively and economically in order to safeguard the well-being and security of the Territory.

Two (2) specific areas that fall under the remit of the Customs Department were reviewed for this audit exercise, namely, the Partial Payments Programme and the Courier Clearance Operations. The first area the Partial Payment Programme focused on the administration of a programme whereby customers who desire to import large valued items, are allowed to make installment payments over a certain period of time for the duties calculated on these items. The customer applies to the Commissioner of Customs, who in turn either approves or denies the request. The Deputy Commissioner and Assistant Commissioners can also approve requests for partial payment. Then over the approved installment payment period the customer's account is managed until all calculated duties have been paid in full.

The second area deals with the facilitation of trade for courier companies operating in the territory. Currently, there are numerous courier companies operating in the BVI that provide courier services through air and sea shipments. These courier companies are required to register with Her Majesty's Customs in order to conduct business. Several sections of the Customs Management and Duties Act, 2010 and its amendments govern the administration of these operations.

In an effort to ensure prompt reporting of findings and due to the anticipated length of time the area pertaining to courier clearance operations was estimated to require, the Internal Audit Department agreed to report the facts and findings discovered under the partial payment area in a memorandum after field work was completed. This report was provided to the management of HM Customs on October 7, 2019. The memorandum is attached as Appendix II in this report. The findings outlined in the body of this report address the second area of Courier Clearance Operations administered by Her Majesty's Customs.

Audit Objectives and Scope

The objectives were as follows:

1. To determine whether Her Majesty's Customs has adequate system of internal controls in place for the administration of its operations related to courier clearance procedures.
2. To determine whether Her Majesty's Customs has adequate controls in place for its Partial Payment Programme to ensure that all requisite revenues are assessed, collected and remitted in a timely manner.

The scope covered the year 2019 for both areas, however, for the Partial Payment Programme, review of information relating to this area encompassed activities of outstanding accounts since their inception.

Audit Limitation

The Customs Automated System (CAPS) utilized in the processing of courier trader declarations was utilized in reviewing couriers' deposit and adjustment declarations. However, during the course of the audit exercise the auditors were informed that customs officers have not been utilizing CAPS in the manner in which it should be used and as such the system contains a number of trader declarations that have possibly been processed (adjustment declaration prepared and subsequent payment made) but for which no entry clearing the deposit declaration was entered into the system. This has occurred due to officers accepting and processing manual adjustment declarations without entering the information in CAPS thereafter.

Audit Methodology

The audit methodology involved understanding and documenting the processes under review and the internal controls governing those processes, performing risk assessment to identify and evaluate potential risks and key controls, and developing an audit programme to test whether those controls were operating as intended.

Only findings of internal control weaknesses that could affect the adequacy and effectiveness of management systems have been reported; however, the audit's conclusion is based on our overall assessment of the control procedures against the audit objectives.

Audit Criteria

The results of the audit criteria tested are reported in Appendix I of this report.

Audit Approach

The audit's approach and methodology was risk-based, and consistent with the requirements of the international practice of internal auditing and the Internal Audit Act, 2011.

The following audit steps were performed in the execution of the exercise:

Planning Phase: Internal Audit conducted a risk assessment to determine the audit's objective and scope. Based on the risk assessment an audit program was developed for use in the audit's conduct phase.

Document Review: Internal Audit assessed key documentation to obtain an understanding of the processes and operations of Her Majesty's Customs.

File Review: Internal Audit selected and reviewed a sample of relevant files related to the scope of the audit.

Interviews: Internal Audit conducted interviews with members of Her Majesty's Customs management and staff.

The conduct phase of the audit commenced in September 2019 for the Partial Payment Programme area and October 2019 for the area relating to the Courier Clearance Operations.

Statement of Assurance

In my professional judgment as Director (Chief Audit Executive), sufficient and appropriate audit procedures have been conducted and evidence gathered to support the accuracy of conclusions reached.

This audit was conducted in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. The assurance is based on a comparison of the conditions, as they existed at the time, against pre-established audit criteria that were agreed upon with management. The assurance is applicable to the policies and processes examined.

Acknowledgements

We would like to thank the management and staff of Her Majesty's Customs for their cooperation and assistance provided to the audit team throughout the engagement.

FINDINGS AND RECOMMENDATIONS

Courier Trader Declaration Processing General Findings

Customs trader declarations are used by importers, or licensed customs brokers acting on their behalf, to clear imported goods from customs control into the commerce (home consumption) or into a licensed warehouse. Generally, all goods imported into the British Virgin Islands are liable for duties and taxes unless an exemption or concession applies. An Import Trader Declaration is a statement made by the importer (owner of the goods), or their agent (licensed customs broker), to provide information about the goods being imported. There are three (3) specific types of declarations an importer uses when importing cargo into the territory, an **import trader declaration** that is used for all cargo being directly imported into the territory, a **deposit trader declaration** which is used for the importation cargo of cargo under the following circumstances: (i) where at the time of importation sufficient information is not available to make a complete and true declaration or (ii) for perishable cargo or cargo with time constraints, importers are however required at all times to make a complete and true declaration even when utilizing this type of

declaration to import their cargo and an **adjustment trader declaration** which is needed once you have declared cargo using a deposit trader declaration in order to clear and settle the deposit. The Import Trader Declaration collects details on the importer, how the goods are being transported, the tariff classification and customs value. In the BVI, there has been an emergence of significant amount of imports through the use of courier services (third party) such as ██████████ and ██████████ etc. With the proliferation of the use of this method of importation, HM Customs has implemented processing procedures to facilitate the processing of imports through couriers. The audit found the following deficiencies in the processing of imports through these courier services:

1. The audit could not establish that written agreements and bonding mechanisms (insurance, banking arrangement, etc.) exist for all couriers that are allowed to operate under the standing deposit scheme. Agreements and supporting documents (bonding instruments) were provided for only two (2) couriers. Furthermore, although standing deposits were established for these couriers, the audit found that the Department has not put in place adequate controls to monitor the balances of these deposit accounts.

Recommendation 1 – Courier Trader Declaration Processing

It is recommended that HM Customs ensure that written agreements and bonding mechanisms are in place for all courier services utilizing the standing deposit scheme. It is further recommended that the Department implements a system whereby these agreements and bonding mechanisms are continuously monitored to ensure that they are kept current.

2. The Department has not established documented guidelines for the processing of declarations. As a result, there is no consistent approach to the processing of declarations within CAPS from officer to officer and from station to station. Furthermore, officers are allowed to select, on a discretionary basis, which declaration they process. The audit is concerned that this situation exposes the Department to two (2) significant risks:
 - a. First, the situation promotes an environment for inappropriate relationships to be fostered, where officer(s) can offer preferential treatment to importers in the processing of their declaration which may include the offer of gifts and/or payments.
 - b. Second, given that it is alleged that a number of customs officers provide brokerage services, whether legitimately or illegitimately, as a private interest for supplemental income, poses a significant conflict in that officers may be reviewing and releasing declarations for which they had a direct involvement in the preparation or at least may have significant influence in the processing of such declarations. Absent of appropriate controls to monitor, manage and minimize this conflict, the current process is ripe for fraud.

Recommendation 2 – Courier Trader Declaration Processing

It is recommended that HM Customs establish and publish to the Public guidelines for the clearance of imports entering the territory. Furthermore, it is recommended that the Department develops internal processing guidelines for its officers in administering their duties as it relates to the processing trader declarations and the clearance of imports. These guidelines should consider how each type of declaration is to be processed and ensure that appropriate processing controls are in place, such as segregation of duties, user accessibility considering roles and responsibilities, etc.

3. Based on research, CAPS is capable of only accepting Deposit declarations once the system has validated that there is sufficient credit within the Importer's "Deposit" account to allow the declaration to be released. However, due to this system control not currently functioning, Importer Deposit accounts are not monitored by the system. In the absence of such, the audit found that Deposit declarations are being accepted and approved without verification that there are sufficient balances in deposit accounts, as the Department has not implemented any compensating control to ensure that these accounts are properly monitored and in good standing.

Recommendation 3 – Courier Trader Declaration Processing

It is recommended that HM Customs reactivates the system control or implements a manual system to accurately monitor the use of each courier's standing deposit account. This will require that correct information outlining the agreed standing deposit account limits is in place and that CAPS reflects these amounts. This information within CAPS should be updated regularly to reflect the agreement and bonded amount for each courier utilizing the scheme. This control, whether automated or manual, is important to ensure that Government's interest is protected at all times.

4. Due to the lack of adequate monitoring, the Department could not provide the current standing deposit balances for the couriers participating in the scheme, although this information should be considered in determining whether a declaration will be released against the deposit or immediate payment would have to be made. The establishment and monitoring of standing deposit accounts is an integral mechanism to safeguard public revenues as imports/cargo is released without payment of customs duties and the standing deposits is the primary mechanism to ensure that Government's interest is adequately represented. The lack of monitoring of these accounts exposes the Public purse to significant risk of collection once the imported items are distributed to the individual importer. In addition, the lack of monitoring could also risk importers/couriers exceeding their bonding facility. Furthermore, the audit found numerous instances where declarations are being processed and merchandise released without any indication that the appropriate estimated duties were even calculated for the declaration, as the estimated duties on the Deposit declaration are zero rated.

Recommendation 4 – Courier Trader Declaration Processing

It is recommended that in reviewing deposit declarations that HM Customs ensure that sufficient amounts are available in deposit accounts before approving the declaration and releasing the imported goods. In addition, it is recommended that appropriate estimated duties are calculated and charged against standing deposits for all Deposit declarations.

5. Based on our research, Deposit declarations were intended to be used to facilitate the processing of imports where the importer did not have sufficient information to make a full declaration. This declaration type allows for the importation of goods as “bonded goods”, while securing Government’s interest. Although all information (invoices and descriptions) are unavailable at the time the declaration is being made, importers are still required to make fully detailed declarations (proper classification and rates) and highlight areas where sufficient information is lacking. An Adjustment declaration would be submitted with complete details (missing information) at a later date to clear/correct the corresponding Deposit declaration and to make payment. However, it was found that Deposit declarations are being used in a manner that both circumvents the requirement for the proper classification of imports and also in a manner that fails to adequately identify and assess Government’s risk exposure (revenue from duties). Furthermore, the audit found that corresponding Adjustment declarations are also submitted and processed in a similar manner. Consequently, Government’s operational objectives for the implementation of GAPS are not being achieved while being exposed to significant risk to revenues.
6. The audit also found that freight charges on Deposit declarations are significantly understated in comparison to the same charges on the corresponding Adjustment declaration, therefore, significantly reducing the amounts that are charged against the standing deposits. Table 1 below provides a sample of fifteen (15) deposit and adjustment declarations and shows the gross discrepancy between the freight charges applied on the deposit and adjustment declarations, the highest a difference of twenty-two thousand four hundred and five dollars and sixty-nine cents (\$22,405.69). This practice negates the Department’s goal of ensuring that Government’s revenues are protected as the 15% rate applied against the standing deposit would be grossly understated when compared to the adjustment declaration. For this sample of fifteen (15) declarations, Government had unsecured revenues of twenty-six thousand five hundred and forty-two dollars and six cents ($\$33,635.72 - \$7,093.65 = \$26,542.06$) in total.

Table 1: Discrepancy between freight charges applied on a sample of 15 Deposit TDs and their corresponding Adjustment Declaration

Deposit TD #	Deposit TD Freight	15% Standing Deposit Charge	Adjustment TD #	Adjustment TD Freight	15% Standing Deposit on Adjustment TD	Difference
1309913	\$ 2,563.60	\$ 384.54	1355650	\$ 21,273.64	\$ 3,191.05	\$ 18,710.04
1650860	\$ 1,664.82	\$ 249.72	1661719	\$ 10,726.64	\$ 1,609.00	\$ 9,061.82
1538222	\$ 1,388.90	\$ 208.34	1565621	\$ 11,236.62	\$ 1,685.49	\$ 9,847.72
1513068	\$ 4,040.00	\$ 606.00	1539683	\$ 13,115.57	\$ 1,967.34	\$ 9,075.57
1445972	\$ 3,005.00	\$ 450.75	1487974	\$ 10,511.02	\$ 1,576.65	\$ 7,506.02
1234426	\$ 1,756.10	\$ 263.42	1308626	\$ 13,324.10	\$ 1,998.62	\$ 11,568.00
1101757	\$ 6,647.00	\$ 997.05	1157510	\$ 12,421.42	\$ 1,863.21	\$ 5,774.42
1054865	\$ 3,850.00	\$ 577.50	1135987	\$ 15,451.80	\$ 2,317.77	\$ 11,601.80
1053214	\$ 4,200.00	\$ 630.00	1135177	\$ 19,152.97	\$ 2,872.95	\$ 14,952.97
1044635	\$ 4,200.00	\$ 630.00	1094846	\$ 22,222.89	\$ 3,333.43	\$ 18,022.89
1029081	\$ 4,250.00	\$ 637.50	1094788	\$ 26,655.69	\$ 3,998.35	\$ 22,405.69
1003516	\$ 3,460.00	\$ 519.00	1030451	\$ 9,534.75	\$ 1,430.21	\$ 6,074.75
948927	\$ 3,270.08	\$ 490.51	972604	\$ 19,609.76	\$ 2,941.46	\$ 16,339.68
872887	\$ 1,585.76	\$ 237.86	893743	\$ 10,234.60	\$ 1,535.19	\$ 8,648.84
853002	\$ 1,409.76	\$ 211.46	878330	\$ 8,766.64	\$ 1,315.00	\$ 7,356.88
Total	\$ 47,291.02	\$ 7,093.65		\$ 224,238.11	\$ 33,635.72	\$ 176,947.09
Difference between 15% standing deposit rate applied on Freight Charges on Deposit TDs and their corresponding Adjustment TD (Government's Unsecured Revenue for this sample)					\$ 26,542.06	

Recommendation 5 – Courier Trader Declaration Processing

It is recommended that HM Customs make it mandatory for all importers to make proper declarations for all entries, even when a Deposit declaration is being made. Items should be properly classified and correct duty rates applied. In instances where sufficient information is not available, this should be clearly stated on the declaration. The mandatory requirement to make proper declarations would better enable HM Customs to calculate the appropriate amount of duty to be charged against the standing deposit to protect Government's interest while also realizing the objective of CAPS implementation.

7. Besides serving as a revenue generating entity within the Government, HM Customs is also engaged in the protection of society by the prevention and interdiction of restricted and prohibited goods from entering the Virgin Islands. The audit found that in the processing of courier services, particularly at the Beef Island station, due to various constraints, such as space and human resources, the Department (officers) has minimized this aspect of its mandate in an effort not to hamper trade (slow down the importation of goods) within the territory. A review of the duty rosters and through direct observation, it is apparent that the station lacks the requisite human resources to properly conduct compulsory tasks in fulfilling their mandate, as only two to three (2-3)

officers are assigned to a shift. This issue is further illustrated by the fact that majority of cargo is released without officers, even on a random basis, inspecting packages for restricted or illegal items. For example, observation of the process revealed that in some instances packages are loaded directly from the plane into the delivery van of the courier service without the seals on the bags ever being broken by a customs officer. In addition, the deposit declaration's supporting documentation was not reviewed before the goods were released. When inquiry was made into the declaration in CAPS, it was revealed that the entry was sent back to the courier to be adjusted, however, the imported goods were still released without the completed entry. This practice increases the probability that contraband and illegal items are entering the territory undetected which may have a negative impact on society.

8. Furthermore, the turnaround time for submission of declarations and the clearance of cargo for couriers does not allow for adequate review of declarations for couriers. The audit found that deposit declarations are usually submitted the day prior to the cargo's arrival and clearance, giving HM Customs less than 24 hours to review the declaration. As a result, there is potential for revenue to be lost due to incorrect classification of imported goods which results in incorrect duty rates being applied.

Recommendation 6 – Courier Trader Declaration Processing

It is recommended that HM Customs take a multi-step approach in resolving the issues identified in 6 and 7. The recommendations are contingent on the Department establishing appropriate policies and procedures for the processing of imports by couriers:

- **First, it is recommended that the Department establishes minimum documentation and processing standards for the processing of courier declarations with realistic timeframe. This should be done with both the Department's and couriers' objectives in mind.**
- **Second, it is recommended that the Department undertakes an assessment of its current capacity to meet the established standards and evaluate both the human resources and space needed to meet the established standards. The human resource component of the assessment should be done on the basis the Department has equipped officers (training and tools) to operate at an optimal capacity. This would ensure that any addition in human resources would be derived from a genuine need and not compensating for lack of performance by current resources.**
- **Third, it is recommended that the Department establishes and properly staff a centralized processing unit, similar to the CAPS unit, to process all electronic declarations. This Unit can be staffed by both clerical/administrative personnel as well as Customs Officers. This centralized unit will aid the**

Department in establishing appropriate segregation of duties while also allowing officers at the ports to focus on cargo inspection and enforcement.

- **Finally, it is recommended that the Department undertakes regular assessments (e.g. annually) of their clearance process to ensure that they remain at pace with the growing demands of this sector of the economy.**

9. Upon collection of cargo, courier services are required to present additional supporting documentation in the form of all invoices bearing the name of the importer, description of the item(s) being imported and the cost of cargo manifested on the airway bill document for cargo being collected. The audit found that due to the lack of standards and guidelines the following issues pertaining to invoices submitted by couriers exist. These issues pose a challenge to Customs Officers and others in ensuring that items are properly classified, correct rates are applied and correct revenues are collected:

- a. Invoices of a poor quality (ink is faded or barely visible) are accepted. These invoices in some instances lack proper description of the imported item(s), value(s) and supplier(s).
- b. Invoices are written in foreign languages making it difficult to understand what exactly is being imported and the cost in BVI currency.
- c. Invoices are illegible, thereby creating a challenge in accurately matching the imported item to the specific invoice to which it relates.

In addition, invoices are not organized in a coherent manner that would promote ease of review by the officers at the port. This situation could be a further deterrent as the process to find the supporting documents for a specific record on the declaration may be time consuming therefore creating a bottleneck in the clearance process.

Recommendation 7 – Courier Trader Declaration Processing

It is recommended that HM Customs implements standards within their guidelines for the acceptance of supporting documentation from importers. Furthermore, such guidelines should be provided to importers (couriers) as to the standard by which information should be submitted.

10. Given the voluminous nature of the declarations and supporting documentation, recordkeeping at the Department has been problematic. Couriers are required submit documentation both electronically and physically, however, the Department has not put in place adequate systems to manage the physical documents in an organized and easily retrievable manner. Presently, documents are boxed and stored. In addition, due to storage limitations, all documents are not stored electronically within CAPS which makes retrieval all the more difficult if future scrutiny is required.

Recommendation 8 – Courier Trader Declaration Processing

It is recommended that the Department implements an organized and easily retrievable system for their records pertaining to import clearance. This may require an upgrade to the CAPS server capacity so that all supporting information can be attached and stored

electronically. Consideration should be given to purging the system for attachments accompanying deposit declarations once the corresponding adjustment declarations have been finalized and appropriate documentation is attached.

11. The audit found that there is a general lack of understanding of the requirements for processing courier entries in CAPS or unwillingness by seasoned Customs Officers to adapt to changes in service delivery. It was admitted by officers, particularly at [REDACTED] that only [REDACTED] officers have a working knowledge of the system. Senior officers at the station indicated that they have not been adequately trained on the use of the system and are reluctant to utilize CAPS. As a result, they have not shown any initiative to fully become familiar with the functionality of the system and maintain an unsubstantiated viewpoint that the system is not fit for purpose. Consequently, the processing of courier packages is done with little to no oversight or supervision which has allowed the processing of couriers to descend into a chaotic state.

Recommendation 9 – Courier Trader Declaration Processing

It is recommended that HM Customs trains all Customs Officers on the proper usage of CAPS and develops internal guidelines to guide them in the processing of imports.

12. The audit found that CAPS is poorly and under utilized by the Department. Although the system was implemented in order to collect statistical information, the audit found that a significant amount of information/declarations have not entered the data stream. Upon inquiry with management, auditors were informed that we should not place significant reliance on the information derived from CAPS as information is missing or incomplete. In addition, auditors were informed that entries that were initiated in CAPS may have been completed manually but the information never entered into CAPS; however, due to the poor record management practices at the Department, the audit could not validate this assertion. In addition, some couriers were allowed by management to submit manual declarations that were never entered into CAPS. This has further degraded the quality of the information derived from the system.

Recommendation 10 – Courier Trader Declaration Processing

It is recommended that HM Customs undertakes an overhaul of CAPS to bring the system current. Subsequent to this, it is further recommended that the Department utilizes CAPS in the appropriate manner where ALL transactions (declarations) are processed in CAPS.

13. Furthermore, although one of the implementation objectives of CAPS was to facilitate reporting, the audit found that the reporting suite within the software is currently nonfunctional. To rectify this issue, the audit team was informed that the Department is currently in the process of procuring an additional reporting programme, however, the audit finds that based on the poor use of CAPS, the significant amount of missing data and the acknowledgement from HM Customs personnel about the reliability of the data currently in CAPS the additional expenditure to obtain reports will be of little benefit.

Recommendation 11 - Courier Trader Declaration Processing

It is recommended that the Department delay the purchasing of the reporting software and explore the reporting suite within CAPS once all the issues related to the deficiencies identified in this report are resolved and the system is functioning as it was intended to.

14. During the period under review, the processing of courier declarations was done at two (2) locations, within the CAPS Unit (centralized processing) and now at the port of entry where the cargo enters the territory. The audit found that when centralized processing was being conducted there was adequate segregation of duties within the process. However, there was a lack of continuity in the processing of the declaration in CAPS, once the process moved to the clearing of the physical good at the ports, as officers at the port did not update CAPS to show that the goods were released, in most instances. This could be as a result of equipment not being available at the ports. In addition, the audit found that there was a disconnect between the operations at the CAPS Unit and at the port of entry. Courier declarations are now processed at the port of entry; however, this has removed the key control of segregation of duties as the same officer(s) is/are now responsible for receiving and reviewing declarations as well as the inspection and release of the physical cargo. In addition, the processing of declarations at the ports also places additional burden on already diminished resources as the volume of cargo still being processed through this substation on a daily basis does not allow for the proper verification and reconciliation of Deposit declaration information submitted by couriers and subsequent validation of cargo released to couriers.

See recommendation provided after findings 6 and 7.

15. Once cargo is released via the Deposit declaration, the importer is required to submit an adjustment declaration within fifteen (15) days, however the audit found that there is a low compliance rate for this requirement. This will be expounded on further later in this report. Once adjustment declarations are submitted, the audit found that these declarations are also not properly reviewed or scrutinized by officers for accuracy of classification and rates and for completeness. Once submitted, a payment summary is generated and the importer is expected to remit payment to the Treasury cashier. However, there is no process in place to ensure that payments are actually remitted and there is a high risk for them going uncollected for extended periods. To verify that revenues were collected on payment summaries, HM Customs was provided with a sample of adjustment payment summaries to provide the receipt numbers on which the declaration was paid, of the forty-five (45) entries submitted correct receipts could only be provided for eight (8) of the entries. This is an unacceptable level of confirmation (18%).

Recommendation 12 – Courier Trader Declaration Processing

Given the human resources capacity within the Department, it is recommended that HM Customs undertakes an analysis to determine whether the 15 day timeframe is adequate for the submission and review of adjustment declarations. The timeframe for submission should be revised if the analysis reveals that the 15 day requirement is inadequate. Furthermore, it is recommended that monthly reconciliations of all deposit and adjustment declarations be conducted for all importers' utilizing deposit accounts to ensure that their accounts are kept current.

16. Inadequate physical resources at the [REDACTED] were found to be a factor for the inadequate processing and clearance of courier packages. Given the vast amount of packages that are now being processed by couriers through this station, it was found that the level of commerce has far exceeded the capacity of the station to conduct proper checks of the cargo being imported. Additionally, the station lacks a properly secured facility in which to warehouse packages/imports. Furthermore, the designated warehouse has been in a compromised state since the 2017 hurricanes and any seized goods stored therein may sustain damage, which would open the Government to unnecessary liability. The station also lacks appropriate equipment, such as a scanner, that would aid officers in scrutinizing goods entering the territory.

Recommendation 13 – Courier Trader Declaration Processing

Given the current space limitations, in the short term, it is recommended that the Department explores the feasibility of having couriers submit their declarations two (2) days in advance to allow HM Customs sufficient time for review. This review would allow for officers to select a sample of packages for review once the shipment arrives. Furthermore, the Department should implement equipment such as scanners to aid in scrutinizing the packages to ensure that contraband is not being imported.

17. The audit found that enforcement actions are seldom taken against couriers for noncompliance. As little scrutiny is placed on declarations before approval and no monitoring of the deposit accounts and payments is being conducted, which would serve as the basis for initiating enforcement actions, courier operations are still conducted without penalty even though the courier may be in breach of departmental policies or their deposit agreement. The lack of penalties to encourage compliance could foster or may have fostered an environment whereby couriers intentionally breach protocols or become complacent in fulfilling their obligations.

Recommendation 14 – Courier Trader Declaration Processing

It is recommended that HM Customs implements penalties for noncompliance in the submission of adjustment declarations. In addition, HM Customs should enforce its standing deposit requirements for couriers operating within the scheme. Finally, it is recommended that HM Customs initiate appropriate enforcement actions on couriers who are found to be intentionally breaching the Department's protocols when submitting

declarations (i.e. all entries should be made through CAPS; declarations should be accurate, etc.)

18. Wharfage charges are underpaid in some instances. A comparison of revenues collected by the BVI Ports Authority show that wharfage is calculated and paid on Deposit Declarations only. However, wharfage calculated on the corresponding Adjustment declarations are not submitted to BVI Ports Authority nor is the difference between the wharfage calculated on the two declarations remitted to the Authority. This practice has the potential to deprive the Authority of a significant amount of revenues. Table 2 illustrates the revenue loss for ten (10) declarations:

Table 2: Wharfage Charges applied on Deposit and Adjustment Declarations

Adjustment TD	ADJ. FOB	ADJ. Wharfage	Deposit TD	DEP. FOB	DEP. Wharfage	Wharfage Diff.
1383843	\$ 87,761.34	\$ 877.61	1363175	\$ 71,157.70	\$ 711.58	\$ 166.03
1340504	\$ 82,676.60	\$ 826.77	1284025	\$ 69,672.79	\$ 696.73	\$ 130.04
1539683	\$ 191,069.93	\$ 1,910.70	1513068	\$ 188,325.95	\$ 1,883.26	\$ 27.44
1530047	\$ 73,824.75	\$ 738.25	1505221	\$ 70,942.03	\$ 709.42	\$ 28.83
1720499	\$ 19,841.98	\$ 198.42	1699594	\$ 19,528.91	\$ 195.59	\$ 2.83
1488311	\$ 73,145.19	\$ 731.45	1448778	\$ 72,984.11	\$ 729.84	\$ 1.61
1373646	\$ 62,121.80	\$ 621.22	1335066	\$ 59,028.57	\$ 590.29	\$ 30.93
1340033	\$ 76,254.42	\$ 762.54	1271956	\$ 69,030.76	\$ 690.31	\$ 72.23
1602481	\$ 14,944.18	\$ 149.44	1594613	\$ 14,944.18	\$ 149.44	\$ 0.00
1614320	\$ 75,065.49	\$ 750.65	1599687	\$ 27,567.75	\$ 275.65	\$ 475.00
						\$ 934.94

19. A comparison of the wharfage charges reported on the Adjustment and Deposit trader declarations and the amounts paid to the BVI Ports Authority revealed discrepancies in the amounts reflected on these two declarations. Wharfage charges, for one particular courier, was made utilizing the calculated amount on the Deposit declaration. However, when the amounts were compared to the information on the Adjustment declaration the amounts in most instances varied. Further inquiry with the BVI Ports Authority revealed that Adjustment declarations are not submitted by the courier once they submit and clear their cargo on the Deposit declaration. Therefore, the BVI Ports Authority would not be aware as to whether there are monies due from courier. By utilizing Deposit declarations to make wharfage payments pose the risk of revenues being lost as the Adjustment declaration is the final declaration on which revenues are to be collected and the Deposit declaration is only a temporary facility to allow the importation of cargo to be done.

Customs Automated Processing System (CAPS)

On November 1, 2016, HM Customs rolled out the implementation of the Customs Automated Processing System (CAPS) which allowed all trader declarations to be completed and submitted electronically to the Department for processing. The implementation of CAPS was to facilitate the collection of accurate trade data, reduce the amount of time spent at a Customs port, and

expedite the clearance process of goods, efficiency in data mining for all stakeholders and risk profiling of non-compliant importers. Furthermore, the implementation of CAPS also assists in the development of accurate trade statistics in the classification of goods. The collection of trade statistics allows the Executive Branch of Government to make policy decisions on imports and/or export as incorrect classification results in flawed Government policy. All couriers are required to utilize CAPS to submit their declaration. Due to the evolving business structure of couriers' operations, particularly at the T. B. Lettsome International Airport, the Department has initiated standing deposits arrangements with some couriers in an effort to facilitate this business model. As a result, some couriers are allowed to submit a deposit declaration which is charged against the standing deposit and within 15 days of the cargo being released an adjustment declaration must be submitted along with the requisite payment. The audit found the following deficiencies and internal control weaknesses in the usage of CAPS to facilitate courier processing:

1. Based on information within CAPS, eight (8) couriers currently have standing deposits limits on their accounts, although not supported by any agreement or bonding mechanism. Furthermore, the balances on these accounts are not monitored, within CAPS or otherwise, to ensure that Government's interest is secured. The audit found that this issue presents a significant risk to the Government as the Department is unable to determine when a courier has exceeded its bonding arrangement. Additionally, this issue is further compounded based on the fact that other entities, outside of couriers, operate under similar arrangements.

Recommendation 1 – Customs Automated Processing System (CAPS)

It is recommended that HM Customs ensure that written agreements and bonding mechanisms are in place for all courier services utilizing the standing deposit scheme. It is further recommended that the Department implements a system whereby these agreements and bonding mechanisms are continuously monitored to ensure that they are kept current.

2. Although CAPS was intended to facilitate reliable trade statistics on which policy decisions can be based, the current usage of the system does not accomplish this intended goal. Based on our understanding, each declaration should be prepared in a manner that correctly classifies the imported items and based on the classification, the corresponding tariff to be applied. However, in reviewing a sample of declarations in CAPS, the audit found that items are not properly classified and incorrect tariff rates are being applied. One of the most egregious utilization of CAPS found during the audit is where multiple couriers are allowed to submit one record entry (TD) to process numerous transactions (records) without properly classifying the goods within CAPS. This practice is troubling for multiple reasons:
 - a. Because the imported goods are not classified in CAPS using the Harmonized Coding System, statistical information for CAPS will be inaccurate as the import is not captured in the system. Hence, policy decisions made based on the information from CAPS will be significantly skewed if not outright erroneous given the fact that a great deal of imports flow through these couriers on a weekly basis.

Recommendation 2 - Customs Automated Processing System (CAPS)

It is recommended that all declarations in CAPS be done utilizing the Harmonized Coding System so that accurate statistical information can be derived in order to achieve the main objective of implementing CAPS.

- b. Because proper, multi-record, declarations are not being made, the calculated duties reflected in CAPS is significantly different from the duties actually collected in the JD Edwards receipting systems. Upon inquiry, the auditors were informed that this practice was allowed to facilitate the volume of imports processed by these particular service providers, even though CAPS has the capability of accepting declarations via the file transfer protocol (FTP) directly from the courier's proprietary system once certain transfer protocols are met. This would enable full declarations to be captured while eliminating duplicity of efforts by the courier. Additionally, although no documentation could be provided to support the approval of this practice, one courier's payment summaries provided by HM Customs were altered to reflect the calculations and totals produced by the provider's proprietary system and not the payment summary approved by HM Customs. The following table illustrates the difference in revenue reported in the two (2) systems:

Table 3: Difference between revenues reported in JDE and CAPS

JDE		CAPS		Difference
Receipt #	Receipt Amount	Adjustment TD Number	Adjustment TD Amount (CAPS Pymt. Summary)	
270442599	\$ 331.70	1308972	\$ 287.53	\$ (44.17)
270442599	\$ 843.40	1308949	\$ 958.17	\$ 114.77
270442599	\$ 6,486.76	1308923	\$11,435.66	\$ 4,948.90
270442599	\$ 779.46	1308915	\$ 1,020.35	\$ 240.89
270442599	\$ 8,392.55	1308865	\$11,435.66	\$ 3,043.11
270442599	\$10,119.19	1341155	\$11,972.62	\$ 1,853.43
270442599	\$ 270.65	1340496	\$ 322.32	\$ 51.67
270442599	\$ 414.16	1340066	\$ 322.81	\$ (91.35)
270442599	\$ 275.79	1339944	\$ 226.63	\$ (49.16)
270442599	\$ 429.94	1339829	\$ 388.53	\$ (41.41)

These discrepancies are a result of the courier being allowed to apply a standard fifteen percent (15%) duty rate across the entire declaration in CAPS while applying the appropriate duty rate in its proprietary system. The practice of accepting one record entry not only skews any revenue report produced by CAPS but also makes it difficult to reconcile revenue collections across the two systems, CAPS and JDE.

Recommendation 3 - Customs Automated Processing System (CAPS)

It is recommended that HM Customs explore the possibility of conducting the revenue collection function in CAPS as opposed to JDE and transfer the revenue to JDE at the end of the day. This would create efficiency within the process as declarations would automatically be tied to the receipt eliminating the manual process that is currently being employed. In addition, requiring importers to make proper entries will eliminate the discrepancies between the two (2) systems.

3. Due to the lack of integration between CAPS, used to process the trade declarations, and the JDE System, used to collect the associated revenues, the Customs Department is required to manually update payment information derived from JDE into CAPS. This process is required to ensure that the requisite payment is made on all trade declarations. However, the audit found that approximately ninety percent (90%) of the trade declarations in CAPS were not updated with the payment receipt numbers showing that the trade declaration was in fact cleared. Furthermore, although the trader declaration number is listed on the payment receipts there is no reconciliation process in place to determine outstanding amounts. Monitoring of standing deposit balances is further complicated by this issue, as in practice, the amounts held against the standing deposit accounts are cleared once a payment summary has been issued against the adjustment trade declaration, when in reality the amount may not have been cleared.

The recommendation provided above also addresses this finding.

4. Although CAPS was implemented to enable the Government of the Virgin Islands to obtain accurate and reliable information to inform policy decisions, the audit found that the platform is severely limited in its reporting capabilities. When inquiries were made about specific reports such as a report detailing all deposit declarations without a corresponding adjustment declaration, we were told that such a report was not possible. In order to conduct audit tests on this area, the auditors had to obtain a database dump and perform the comparison via a spreadsheet. This scenario exposes a significant weakness in the current configuration/usage of CAPS as our manual process revealed **775** deposit trade declarations with a merchandise value of approximately **\$15,841,146.50 for 2019 with an estimated \$2.4 million in import duties at risk** (see table below) without corresponding adjustment declarations. Due to poor record management within the Department and the claim that some of the entries may have been completed outside of CAPS, the audit could not validate whether adjustment declarations were in fact completed and revenue collected on any of these deposit declarations. Some of these deposit declarations were several months delinquent. It is noteworthy to recognize that when a sample of the declarations were queried for one courier, the officer investigating found numerous other deposit declarations from prior years for which adjustment declarations were not submitted. This fact confirms the likelihood that there are a significant number of declarations in CAPS that were never completed. We suspect that this issue might be pervasive (as other entities outside of couriers also participate in the deposit scheme) and a multi-year issue.

Table 4: Deposit TDs with no Adjustment TDs within CAPS

Courier Name	No. of Deposit TD Outstanding with No adjustment	Merchandise Value
	345	\$ 11,343,768.53
	186	\$ 3,641,082.94
	209	\$ 798,862.57
	All 'Import' TDs	\$ -
	35	\$ 523,182.08
TOTAL	775	\$ 16,306,896.12
HELD AGAINST BOND (ESTIMATE)	15%	\$ 2,446,034.42

Recommendation 4 - Customs Automated Processing System (CAPS)

It is recommended that HM Customs works with the developers of CAPS to improve the reporting capabilities of CAPS. It is our understanding that HM Customs has purchased or is in the process of purchasing a reporting product from the developer; however, we implore the Department to first exhaust the existing reporting features. In addition, in any event, the Department must first ensure that controls are in place to ensure and validate the accuracy and completeness of the information in the database before any meaningful reporting is conducted. Purchasing reporting software at this time will yield little benefit if the information reported is incorrect or incomplete.

5. Based on the practice of utilizing Deposit and Adjustment declarations to facilitate the clearance process within CAPS, it is of paramount importance to have a rigorous reconciliation process to ensure that all Deposit declarations are cleared with a corresponding Adjustment declaration. The audit found no evidence that reconciliations are performed to ensure that all Deposit Declarations are cleared. Although it was communicated that [REDACTED] account was current as of October 2019, the audit team conducted a reconciliation of the account for the period January 2019 to November 2019 and selected fourteen (14) Deposit TDs for which corresponding Adjustment TDs were not processed. The merchandise value of these TDs totaled approximately \$500,000.00 which would have attracted an estimated payable duty of \$75,000.00 (15%) to be charged against the Standing Deposit, based on HM Customs practice. This sample was provided to HM Customs for confirmation with the courier, however, to date, confirmation has not been received that the appropriate duties were collected on these declarations. The absence of such reconciliation poses a significant risk that all Government revenues are being collected and accounted for. During the conduct of the audit and the submission of the above declaration for confirmation, monitoring of the current CAPS submissions reveal that one of the major courier operations was only now processing Adjustments entries for Deposits that dated as far back as 2018.

Recommendation 5 - Customs Automated Processing System (CAPS)

It is recommended that HM Customs conduct a full reconciliation of all deposit declarations to ensure that a corresponding adjustment declaration has been submitted and the associated revenues collected. The Department should immediately implement a process of manually tracking all deposit and adjustment entries going forward until the system and process issues are rectified which would allow this reconciliation and tracking to be completed in CAPS.

6. Customs Automated Processing System does not have the capability to track and monitor the compliance of submission of adjustment trade declarations. As a result, the audit found a low level of compliance with the 15-day requirement to clear the deposit declaration. To illustrate the level of non-compliance with the established submission timeframe, the auditors calculated the length of time from submission of a deposit declaration to an adjustment declaration to a receipt for twenty (20) declarations across three (3) couriers. This information is outlined in Table 5 below and highlights that, on average, it takes sixty-four (64) days from deposit declaration to adjustment declaration and one hundred and thirty-eight (138) days from adjustment declaration to payment (receipt). This issue poses a significant risk as established thresholds (security deposit) may be breached leaving Government vulnerable to losing revenues. Furthermore, the prevalence of the delinquencies also affects Government's financial position as the delay in collecting this revenue affects Government's cash flow and bank balances, which could reduce borrowing costs or provide investment opportunities.
-

Table 5: Number of Days it takes to submit an Adjustment Declaration for a sample of 20 Deposit Declarations

Receipt #	Courier	Receipt Amount	ADI#	DEP #	Deposit TD Date Received	Adjustment TD Date Received	# of days Deposit to Adjustment	Receipt Date	# of days Adjustment to Receipt
270442599		\$ 10,119.19	1341155	1291467	22-Nov-18	3-Jan-19	42	2/22/2019	50
270443394		\$ 12,008.26	1318708	1252501	19-Oct-18	13-Dec-18	55	3/14/2019	91
270443394		\$ 11,532.67	1373539	1330323	20-Dec-18	31-Jan-19	42	3/14/2019	42
270443394		\$ 11,513.97	1355874	1320183	13-Dec-18	17-Jan-19	35	3/14/2019	56
270443397		\$ 11,054.49	1355650	1309913	6-Dec-18	17-Jan-19	42	3/14/2019	56
270443691		\$ 10,390.87	1309004	1242262	11-Oct-18	6-Dec-18	56	3/18/2019	102
270443380		\$ 8,035.45	888222	870758	31-Jul-17	18-Aug-17	18	3/13/2019	572
270443380		\$ 7,779.14	878245	842062	5-Jul-17	5-Aug-17	31	3/13/2019	585
270443380		\$ 7,114.56	878298	847640	10-Jul-17	5-Aug-17	26	3/13/2019	585
270443394		\$ 9,252.22	1355668	1311554	7-Dec-18	17-Jan-19	41	3/14/2019	56
270447696		\$ 5,303.22	1494491	1315548	11-Dec-18	13-May-19	153	5/23/2019	10
270446448		\$ 2,191.16	1468744	1445246	2-Apr-19	16-Apr-19	14	5/2/2019	16
270446445		\$ 795.80	1463777	1452614	8-Apr-19	16-Apr-19	8	5/2/2019	16
270403309		\$ 2,124.47	1517739	1356625	17-Jan-19	3-Jun-19	137	9/16/2019	105
270403120		\$ 1,719.37	1574672	1439710	28-Mar-19	23-Jul-19	117	9/3/2019	42
270403120		\$ 1,385.83	1577923	1421502	14-Mar-19	25-Jul-19	133	9/3/2019	40
270446227		\$ 1,663.85	1349976	1334986	27-Dec-18	12-Jan-19	16	4/29/2019	107
270446227		\$ 1,698.46	1347525	1320530	14-Dec-18	10-Jan-19	27	4/29/2019	109
270403120		\$ 1,530.46	1576867	1436617	26-Mar-19	24-Jul-19	120	9/3/2019	41
270403309		\$ 1,953.08	1563147	1381888	7-Feb-19	12-Jul-19	155	9/16/2019	66
Total		\$119,166.52				Average	63.4	Average	137.35

7. Although it is required that all imports be processed through CAPS, the audit could not find regular entries in the system for some courier services, i.e., [REDACTED]. Upon inquiry it was indicated that these entities were allowed to submit manual declarations outside of CAPS, however, documentation could not be provided to support this arrangement. Again, this practice undermines the overall objectives for which CAPS were implemented. The audit was unable to verify whether all declarations were cleared due to poor record management practices within the Department.

Recommendation 6 - Customs Automated Processing System (CAPS)

It is recommended that it be made mandatory that all declarations (deposit, adjustment and imports) be processed in CAPS. Therefore, it is recommended that HM Customs and its developers collaborate with importers of large quantity of packages to be able to utilize the File Transfer Protocol (FTP) feature rather than the Web Trader option.

8. The audit found several instances where declarations were initially entered into CAPS as "DEPOSIT" declarations, but were subsequently changed and cleared as "IMPORT" declarations. This issue raises concern as the goods are released on Deposit declarations but payment is collected on the corresponding adjustment declaration. Goods for Import declarations are paid for at the time they are released from HM

Customs' control. Because of the difference in timing of the collection of revenue, clearing a **Deposit declaration** as an **Import declaration** may put revenues at risk as it might be assumed based on the declaration type that the revenues have already been collected when in fact they were not. It is our understanding that such a change could only be done at the database level requiring administrator access. Although, the audit team does not possess information technology capacity to validate this issue, we are concerned with the frequency with which this issue has occurred, the potential risks and the lack of a reason as to why such adjustments would be necessary.

Recommendation 7 - Customs Automated Processing System (CAPS)

It is recommended that all Deposit declarations be cleared with an Adjustment declaration. In addition, it is recommended that the department investigate these declarations in order to obtain an understanding as to why such manipulation at the database level was necessary and implement controls to avoid such future occurrences.

9. In processing declarations within CAPS, the system maintains a record of the status of the entry being processed. When the entry is started by the declarant the status code is recorded in the CAPS database as DEB (Entry Begun). Once the entry is submitted and passes the system validation process, the status code changes to VAL (Validated). Once the review process is completed the status code changes to REV (Reviewed). Finally, once the cargo is released from customs control the status code is updated to REL (Released) concluding the process of processing the declaration. The following table shows the status of declarations at the various stages of processing in CAPS by five (5) couriers in 2019. The following table further shows adjustment and import declarations for which a corresponding JDE receipt was not found. Due to the inconsistent manner (level of detail) in which receipts are issued for declarations we cannot conclusively state that revenue was not collected for all the declarations summarized in the following table.

Table 6: Status of declarations at the various stages of processing in CAPS for five (5) couriers in 2019

COURIER	TYPE OF RECORD							
	TOTAL	REV	DEB	VAL	REL	CAN	REC	
ADJ	46	18	25	2	0	1	0	
DEP	345	41	4	0	300	0	0	
IMP	28	23	2	0	2	0	1	
TOTAL	419	82	31	2	302	1	1	
	TOTAL	REV	DEB	VAL	REL	CAN	REC	
ADJ	91	34	19	30	8	0	0	
DEP	209	82	1	0	126	0	0	
IMP	4	2	2	0	0	0	0	
TOTAL	304	118	22	30	134	0	0	
	TOTAL	REV	DEB	VAL	REL	CAN	REC	
ADJ	19	5	8	5	1	0	0	
DEP	35	24	0	0	11	0	0	
IMP	161	129	28		4	0	0	
TOTAL	215	158	36	5	16	0	0	
	TOTAL	REV	DEB	VAL	REL	CAN	REC	
ADJ	63	0	0	0	63	0	0	
DEP	0	0	0	0	0	0	0	
IMP	0	0	0	0	0	0	0	
TOTAL	63	0	0	0	63	0	0	
	TOTAL	REV	DEB	VAL	REL	CAN	REC	
ADJ	0	0	0	0	0	0	0	
DEP	0	0	0	0	0	0	0	
IMP	19	17	1	1	0	0	0	
TOTAL	19	17	1	1	0	0	0	
ALL COURIERS	1020	375	90	38	515	1	1	

Note: Receipts are not issued on Deposit Declarations

- a. Of the 1020 declarations recorded in CAPS, 90 entries were started but were not reviewed, 37% (375) of the entries were reviewed but were not released and 38 were validated but not reviewed. Although the table above informs on the status of the entries in CAPS, the audit found that the statuses are not reflective of the actual state of the transactions in the processing stream. For example, based on the table, 147 deposit entries are recorded as reviewed but the system has not been updated to reflect that the imports related to these declarations have already been released from Customs' control.
- b. Customs declaration type '**Import**' requires the importer or declarant to pay the customs duties before the goods are released from customs control, as such, declarations are not secured against as security bond. The audit found 148 import declarations for which the status in CAPS is 'Reviewed'; however, the items were already released from customs control. In addition, a search of JDE did not yield a payment receipt for these declarations. Based on the manner in which information is processed within the two systems (JDE and CAPS) the audit could not definitively conclude that revenue was not collected on these declarations.

Recommendation 8 - Customs Automated Processing System (CAPS)

It is recommended that HM Customs utilizes the status codes within CAPS to reflect current state of processing of the declaration. For example, if the imported goods for a Deposit declaration has been released from customs control the status code should reflect "Released" and not still reflect "Reviewed" in CAPS.

CONCLUSION

It is our conclusion that Her Majesty's Customs does not have an adequate system of internal controls in place for the administration of its operations related to courier clearance procedures. The current process is void of clearly established guidelines for both customs officers and courier operators. Although CAPS was implemented to achieve specific objectives, the system is not being utilized in a manner that will achieve those objectives and in a manner that would ensure revenue maximization. The major concessions given to some operators in the manner in which trader declarations can be submitted and approved, lays waste to any meaningful reporting on import activities which will have a direct impact on policy decisions. The current use of standing deposits leaves Government exposed to an unnecessary and unacceptably high level of risk of loss revenues. We find that HM Customs have allowed courier operators to dictate the manner in which HM Customs processes are carried out and have become de factor customs officers servicing their business interests. We found the entire process to be starved of adequate resources, particularly at the [REDACTED] where the bulk of courier imports are processed, to effectively execute the clearance and monitoring function for this area. Overall, the facilitation of courier operations within HM Customs requires significant reform in order to be a value added service to the Government. **Finally, based on the significant number of issues highlighted in this report and their possible pervasiveness within the operations of Her Majesty's Customs, we find that other areas of the Department must be evaluated on an ongoing basis.**

APPENDIX I

No.	Criterion	Criterion Conclusion		
		Met	Partially Met	Not Met
COURIER CLEARANCE OPERATIONS				
1	There is a documented process to guide Customs Officers in the administration of Courier Services arrangement.			X
2	The Department has an adequate system for monitoring courier agents for compliance with Customs Duties Act.			X
3	The Department has an adequate system of reconciliation to ensure that all duties due and payable are paid by couriers.			X
4	The Department has adequate systems in place to ensure that contraband is not imported through the courier agents.			X
5	The Department has documented processes in place to guide Officers in initiating enforcement actions.			X
PARTIAL PAYMENT PROGRAMME				
1	There is a documented process to guide Customs Officers in the establishment of Partial Payment Agreements.			X
2	There is a documented process to guide Customs Officers in conducting enforcement actions.			X
3	There are adequate performance measures in place to monitor the performance of the programme.			X
4	There are adequate controls in place to ensure that all revenues outstanding are recoverable.			X

APPENDIX II



094

Ref.: IAD/FAR1/3

To: Acting Commissioner, Her Majesty's Customs

From: Director of Internal Audit

Date: October 7, 2019

Re: **Audit – Her Majesty's Customs – Partial Payment**

As you are aware the Internal Audit Department embarked upon an audit on the Partial Payment and Courier Operations of Her Majesty's Customs. We have concluded our fieldwork on the Partial Payment phase and will now move on to the Courier Operations. However, considering that the courier operations section of the audit exercise may require a much longer timeframe to complete the necessary testing and inquiries to fulfill the fieldwork requirements, we find it necessary to communicate our findings for the Partial Payment area at this stage.

The audit objective as it related to the Partial Payment area was to determine whether Her Majesty's Customs has adequate controls in place for its Partial Payment Programme to ensure that all requisite revenues are assessed, collected and remitted in a timely manner. In addition four criteria were developed and agreed upon which the operations of this area would be assessed. They were as follows:

1. There is a documented process to guide Customs Officers in the establishment of Partial Payment Agreements.
2. There is a documented process to guide Customs Officers in conducting enforcement actions.
3. There are adequate performance measures in place to monitor the performance of the programme.
4. There are adequate controls in place to ensure that all revenues outstanding are recoverable.

Background

The Customs Management and Duties Act, 2010 sets out the requirements by which Her Majesty's Customs (HMC/HM Customs/Customs) assesses and collects customs duties on behalf of the Government of the Virgin Islands. Over the years HM Customs has approved requests from importers to make payment of the assessed customs duties through partial payments on large valued items. Initially, this courtesy was only afforded to Government employees as repayment could be easily managed through salary deductions. However, the programme has evolved and now includes any importer who is approved by the Commissioner or an authorized officer to make custom duty payments through partial (installment) payments. A down-payment on the assessed duty is required and the balance is to be paid in installment payments over a

defined period. Once approval is given an agreement is to be entered into which sets out the terms and conditions governing the payment of the outstanding duty for the particular approved T-12. A file is created for the importer and accounts receivable record is set-up within the JDE System to manage repayment.

Facts and Findings

Over the years, HM Customs have operated the partial payment programme with varied level of success in terms of collecting all outstanding revenues. As at June 1, 2019 the programme had \$490,145.60 outstanding based on information provided by HM Customs. This outstanding balance spans the period 1996 to 2019. Although the Partial Payment Programme is generally provided for under Section 103 of the Customs Management and Duties Act, 2010 which empowers the Commissioner of Customs to grant security bonds or otherwise, in such form or manner as he directs for matters in respect of which he is required to discharge a duty under the Act, a review of the programme found the following issues in the management of the programme.

1. The Customs Department has not developed policies and procedures to guide the administration of the programme. As such, the programme is being poorly managed and at the discretion of the officer managing the file for the importer. For example, the programme lacks guidance in determining down payment amounts and payment terms. As such, the audit found broad inconsistencies in the amounts of the down payment required from importers and the timeframe given to importers for settling outstanding balances. We were told that such terms are usually determined on a case by case basis which potentially allows for bias to factor in the decision.
2. The approval of requests for customs duties to be made via partial payments lacks appropriate controls to guide approvers in arriving at a decision. The audit found that sufficient due diligence is not conducted or sufficient information collected to inform HM Customs' decision on the importer's ability to pay when deciding on requests. As the basis for the decision is not documented, from our review and through interviews, we have found that the decisions are arbitrarily made after personal representation from the importer and approvers are uninformed when making a decision on a request. A review of files revealed no formal request for partial payment arrangement for the importer which supports the information received that such request are usually made orally and usually in a hasty manner. In turn decisions made in this manner exposes the Government to significant financial risks as an importer can be approved who is unable to make the determined monthly installments.
3. To further illustrate the lack of due diligence carried out on requests for partial payment, our sample revealed that an employee who left the government's employ in [REDACTED] and defaulted on significant outstanding balances for both vehicle and personal loans was approved for partial payment in [REDACTED] of which he only made the down payment. The information on previous delinquencies is held within Government and is easily

retrievable but because due diligence was not performed this importer was allowed to enter into and default on a third agreement with the government.

4. The audit found that, in some instances, partial payments have been approved for multiple T-12s for the same importer. The decision to approve the subsequent partial payment was made even though the importer was delinquent in his payments of the previous agreement. Due to the lack of documented criteria for approvals the audit could not determine the reason for the approval, however, given the fact that the importer holds a senior position within the Custom's department may have influenced this decision and highlights the inequitable nature of the approval process. Unfortunately, no mechanisms were employed or conditions placed on the importer to ensure payment of the balances. Consequently, the importer defaulted on both T-12s (agreements).
5. Furthermore, inadequate information is collected on importers approved to make partial payments to aid in monitoring the installment payments. The Department usually only collects a telephone number and only recently began collecting forms of identification. In most instances, for the sample of files reviewed, no information was found that could accurately identify the importer, their place of employment and residence that would allow HM Customs to easily contact or locate the importer. Given the makeup of the importers utilizing the programme (individual importers rather than commercial importers), this may have significantly impacted any enforcement action pursued by the department.
6. Varying formats of partial payment agreements were found in the review of files. Some agreements reviewed gives Her Majesty's Customs the authority to seize the imported item while others omitted this condition. Furthermore, the agreement in its current format is ineffectually drafted as it does not consider penalties for default, interest and administrative fees to cover the costs which Government bears in facilitating payments through this method. Poorly written agreements such as these can give rise to the enforceability if the matter is subject to legal claim/dispute.
7. Agreements are not collateralized. In most instances, importers of vehicles are the ones that seek partial payment arrangements; however, given the risky nature of such imports it may be difficult for Government to recover the fees due if the importer suffers total loss of the imported item. Therefore, the Government stands to lose time and possibly revenue in having to resort to legal avenues to collect outstanding amounts. This scenario has already been evident as it was communicated that some importers have indicated that the imported item(s) were lost during the hurricanes of 2017 and therefore saw no need to continue to fulfill the agreement to settle outstanding balance.
8. The audit also found that in some cases, partial payments were initiated without having a signed agreement on file. Therefore, in the event of possible default on the outstanding duty, the Department can be challenged by the importer on the legitimacy of their claim. In other instances, the audit found where signed agreements containing errors were

replaced with new terms but was not re-executed. Instead what was done is that the new agreement was affixed to the old agreement which was deemed to have effectually corrected the error in the original agreement without requiring the importer to resign the agreement. This we found to be not only unenforceable but also unethical in the management of the programme. We were informed that such cases arose as a result of the importer failing to present themselves to sign the new agreement once the error is found.

9. Files reviewed evidenced that insufficient monitoring and enforcement is conducted on the terms and conditions of partial payment agreements for active files. The lack of adequate monitoring and enforcement was found to stem from the following:
 - a. No policies or procedures to guide monitoring and enforcement. For example, there is no policy that sets the standard timeframe for a determination to be made as to when an importer's account is deemed delinquent and what initial and subsequent actions are to be taken based on the level and duration of the delinquency.
 - b. Files are not monitored on a consistent basis, therefore, accounts fall into significant delinquency before any enforcement action is initiated which usually most times consists of a telephone call. This has resulted in importers with balances outstanding for approximately fourteen (14) years. Additionally, it was observed that on multiple accounts only the down payment was made and no further payment was made by the importer. From the files sampled, one (1) instance was identified where the importer made no down payment and no subsequent payment on the agreement.
 - c. Between 2004 to present, the programme has an average of 47 percent outstanding of duties to be collected. From 2004 through 2010, the programme suffered an average of 64 percent delinquency representing \$134,954.42 or 27 percent of the total outstanding balances. Given the duration of time that has elapsed, the nature of the imported items and the deficiencies in the agreements, it may be difficult for the IIM Customs to recover these outstanding balances. Based on the opinion of the Attorney General's Chambers, the recovery of outstanding balances may be limited by the Limitation Ordinance (Cap. 43) which "makes provision for the Limitation of action of contract, tort and certain other actions. Section 4, provides that such actions shall not be brought after the expiration of six (6) years from the date on which the cause of action accrued." Based on this opinion, the Government may be statute barred from recovering approximately two hundred and sixty-five thousand four hundred and eleven dollars and two cents (\$265,411.02).

To: Memorandum to Acting Commissioner, Her Majesty's Customs
 Date: October 7, 2019
 Re: Audit – Her Majesty's Customs – Partial Payment Operations
 Page 5 of 9

Period	Original Amount	Payments	Outstanding Balance	Percentage Outstanding
2004-2008	\$ 151,919.57	\$ 54,280.25	\$ 97,639.32	64%
2009	\$ 22,640.87	\$ 8,255.45	\$ 14,385.42	64%
2010	\$ 36,395.28	\$ 13,465.60	\$ 22,929.68	63%
2011	\$ 17,511.59	\$ 8,686.96	\$ 8,824.63	50%
2012	\$ 190,380.53	\$ 141,409.00	\$ 48,971.53	26%
2013	\$ 93,325.11	\$ 37,293.14	\$ 56,031.97	60%
2014	\$ 36,749.29	\$ 25,711.21	\$ 11,038.08	30%
2015	\$ 44,641.85	\$ 21,558.81	\$ 23,083.04	52%
2016	\$ 27,615.02	\$ 22,359.73	\$ 5,255.29	19%
2017	\$ 132,118.68	\$ 55,567.25	\$ 76,551.43	58%
2018	\$ 112,285.88	\$ 41,494.07	\$ 70,791.81	63%
2019	\$ 66,157.39	\$ 39,562.13	\$ 26,595.26	40%
Virgin Gorda	\$ 45,860.90	\$ 29,232.43	\$ 16,628.47	36%
Salary Deduction	\$ 31,688.20	\$ 20,268.53	\$ 11,419.67	36%
Total	\$ 1,009,290.16	\$ 519,144.56	\$ 490,145.60	47%
* Average outstanding balance				

- d. Government employees who have entered into agreements for the payment of customs duties by partial payment have left the service with unpaid balances. This is possibly due to the lack of communication or information sharing between the required agencies to ensure that the amount is recovered before or recoverable after the officer demits office.
- e. Additionally, it was observed that payments were made for some Government officers via salary deductions while others were allowed to make direct payment to the Customs Department. We found that in the second option, the department weakened its control over the probability of repayment by not mandating salary deductions. Furthermore, the audit found that even when the first option was employed employees were allowed to demit office without making alternate arrangements to settle balances. In such instances, payments just ceased when the employee salary from government ceased.
- f. Installment amounts and payment dates outlined in agreements are not adhered to or enforced. Based on discussions with HM Customs, the internal policy exists whereby in administering the programme the repayment term of six months has been established as the maximum or repayment terms are usually determined to allow for repayment within the calendar year. Monthly installment amounts are usually determined using these parameters without consideration for the importer's ability to pay the derivative amounts. This we found to be a contributing factor to the high level of delinquency within the programme as there are several instances where the importer does make regular payments that are below the agreed installment amount. Additionally, it is the audit's determination that in some instances, importers have entered into agreements with HM Customs

Accounts Outstanding 30 days as of 8/31/19	Customer accounts outstanding 30 days or less	2
Accounts Outstanding 31 - 60 days as of 8/31/19	Customer accounts outstanding more than 30 days or more	1
Accounts Outstanding 61 or more days as of 8/31/19	Customer accounts outstanding 90 days or more	47

Recommendations

1. Given the high default rate and the lack of a discernible business or economic value, it is recommended that the partial payment programme be discontinued. In addition, it is further recommended that the Commissioner of Customs seek advice from the Attorney General Chambers on the recoverability of delinquent balances and employ any advice given to develop a course of action to collect monies deemed recoverable and to take the necessary actions to write off balances that are determined to have a low probability of ever being collected.
2. In the event that it is determined that the programme serves a legitimate business or service delivery objective for the Government of the Virgin Islands, we offer the following recommendations that would strengthen the control environment and improve the overall administration of the programme:
 - a. It is recommended that Her Majesty's Customs develop and document policies and procedures for the administration of payment for customs duties by partial payment. Policies and procedures should govern, approval, monitoring and enforcement and close-out. Furthermore, criterion should be developed to guide approvers in making decisions on applications which would also bring some level of transparency to the decision making process. This criterion should also address the required information that should be collected and assessed before approval is given.
 - b. It is recommended that guidelines or a formula be developed and applied on a consistent basis for the determination of repayment period, down payment amount, installment amount and assessing the importer's ability to make the down payment and the monthly installment payments.
 - c. It is recommended that Her Majesty's Customs implement the attached Draft Agreement provided by the Attorney General's Chambers to govern partial payment relationships going forward. It is further recommended that Her Majesty's Customs do not allow any importer to remove the imported item or make any payment before an agreement has been duly executed.

- d. It is recommended that all public officers wishing to utilize a partial payment arrangement be made authorize such payment through salary deductions. Furthermore, this information should be communicated to the relevant agencies, Ministry of Finance, Department of Human Resources, the employee's department and the Treasury Department in order to minimize the risk of public officers leaving the Public Service without settling outstanding balances.
- e. It is recommended that Customs write to the Financial Secretary concerning the outstanding amounts for deceased importers so that a determination can be made to write-off the uncollectible debt.
- f. It is recommended that Customs develops an objective for the programme and in turn develop relevant performance indicators to monitor its performance in line with its objectives.
- g. It is recommended that an administrative fee and other appropriate interest and penalties be attached to all agreements for partial payments. This may require Cabinet's approval and amendment to the Customs legislation.

Conclusion

The current partial payment programme administered by Her Majesty's Customs lacks appropriate and effective controls to ensure that all requisite revenues assessed are collected and remitted in a timely manner. The programme is void of a strict management structure and systems to ensure compliance of importers, some of them being Government employees and Customs Officers. As a result, customs duties under this programme have been in arrears for lengthy periods (approximately fourteen years) without any definitive actions taken to collect the debt. It is our conclusion that the programme, as currently structured and managed, serves more of a social interest and detracts from the revenue collection mandate of the department. As a result, significant government revenue is at risk of being loss.

To: Memorandum to Acting Commissioner, Her Majesty's Customs
Date: October 7, 2019
Re: Audit – Her Majesty's Customs – Partial Payment Operations
Page 9 of 9

Results of Criteria

No.	Criterion	Criterion Conclusion		
		Met	Partially Met	Not Met
1	There is a documented process to guide Customs Officers in the establishment of Partial Payment Agreements.			X
2	There is a documented process to guide Customs Officers in conducting enforcement actions.			X
3	There are adequate performance measures in place to monitor the performance of the programme.			X
4	There are adequate controls in place to ensure that all revenues outstanding are recoverable.			X

If you have any questions, please feel free to contact me at extension 4771.

Regards,



DC/rg

Attachment

cc: Financial Secretary

AGREEMENT

This Agreement is made the _____ day of _____, 20__ BETWEEN the Commissioner of Customs, of the one part and _____ of _____ (hereinafter referred to as the importer) of the other part (both parts hereinafter collectively referred to as "the parties").

WHEREAS the importer understands that full duty is payable by the owner of the dutiable goods at the time of first importation, and until all duties are paid on any item, the Customs Department shall have an interest with regard to such outstanding duties and the item.

AND WHEREAS the importer request of the Commissioner of Customs to be allowed to pay by installments, duties on _____ (item) imported into the Territory on _____ (vessel) on _____ day of _____, 20__.

NOW THEREFORE in consideration of the foregoing terms and conditions set forth herein, it is agreed as follows:

Payment by Installments

1. The Commissioner of Customs grants the importer payment by installments on the dutiable goods, subject to a lien on the subject matter of the goods as follows:

Balance due to be paid in installments of \$ _____ each, beginning on _____ and each month thereafter until paid in full by the _____ day of _____, 20__.

Payments to commence as per schedule:

	Date	Amount
First Payment due on	_____	\$ _____
Second payment due on	_____	\$ _____
Third payment due on	_____	\$ _____

Discharge of Lien

2. Upon full and final payment of the amount owed the lien shall be discharged.

Modifications

3. There shall be no modifications to any part of this Agreement unless mutually agreed by the parties in writing.

Assignment

4. This Agreement or any of its rights or duties hereunder shall not be assigned by either party without the prior written consent of the other.

Entire Agreement

5. This Agreement constitutes the entire agreement between the parties, and supersedes any prior agreements with respect to the subject matter hereof.

Governing Law and Jurisdiction

6. This Agreement will be governed by and construed in accordance with the Laws of the Virgin Islands and each party hereby submits to such jurisdiction.

IN WITNESS WHEREOF the Parties to this Agreement hereby execute this Agreement as of the date and year first written above.

Signed by the Commissioner of Customs
in the presence of

Witness

Commissioner of Customs

Signed by Importer
in the presence of

Witness

Importer

MANAGEMENT RESPONSE



Customs Department

Richard Stoutt Building, Wickham's Cay 1
Road Town, Tortola, British Virgin Islands

Tel: 1-284-468-6800 Fax: 1-284-468-6825 Email: bvicustoms@gov.vg

Ref: IAD/FAR1/3

To: Director of Internal Audit

From: Commissioner, Her Majesty's Customs

Date: December 14, 2020

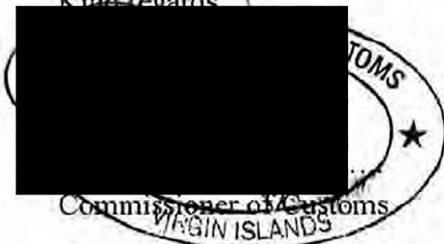
Re: **Response to Audit Findings – Courier Trader Declaration Processing, CAPS Processing and Partial Payment**

On behalf of the Customs Department, I would like to extend our sincere gratitude and to the Director of Internal Audit and her Team for taking the time out of their busy schedule to execute this timely, much needed, and time consuming exercise.

We are equally grateful for the opportunity to meet with the Financial Secretary and your good team to address the concerns outlined in your report. Through this exercise, we were able to identify our strengths and weaknesses, highlight opportunities to efficiently protect and collect revenues, and properly inspect goods while facilitating legitimate trade; all in accordance with our mandate. Moreover, there is the opportunity to mitigate our exposure to threats (Money Laundering and Terrorist Financing, smuggling, loss of revenue, commercial fraud) against our community.

In closing, after review of our attached response to the Audit Report, we look forward to further partnering with your good office as we strive to streamline our business operations to be more efficient and effective for the benefit of all Stakeholders.

Kind regards



Cc: Financial Secretary

Encl:



HER MAJESTY'S CUSTOMS COURIER CLEARNACE OPERATIONS

The following recommendations are provided to address the issues and concerns articulated in the Internal Audit Report on Her Majesty's Customs – Courier Clearance Operations.

Courier Trader Declaration Processing

1. **It is recommended that HM Customs ensure that written agreements and bonding mechanisms are in place for all courier services utilizing the standing deposit scheme. It is further recommended that the Department implements a system whereby these agreements and bonding mechanisms are continuously monitored to ensure that they are kept current.**

AGREE/DISAGREE

In response to this finding, it is to be recorded that bonds can be cash or a guarantee from approved financial institutions or insurance companies. All Couriers utilizing a financial institution or insurance company bond have a file with the details included, outlining the terms and conditions. Cash bond holders were recorded in a Cash Bond Register. This register was destroyed in Immaria and attempts have been made to retrieve information from the Treasury Department and Importers/Couriers (as a last resort). This department has been feverishly trying to vacate cash bond and encourage the guaranteed bonds.

We must agree that the Department has fallen short in monitoring and ensuring files are kept current. These shortcomings were also identified by the department and we are implementing measures and controls to correct short comings.

CORRECTIVE ACTION PLAN

1. Better utilization of the CAPs features- the bond amounts will be monitored by the system and no entries can be submitted once bond limits have been met.
2. Assign Officers, on a rotational basis, as **Port Account Managers** to upkeep the deposits and adjustments files to ensure duty is collected on a weekly basis as outlined in bond agreements.
3. Expand the Port Account programs to respective Ports of Entries.
4. Ensure that all bond agreements are reviewed and updated.
5. Have all bonds expire annually on December 31 to ensure that all couriers are current with Trade Licenses and other government obligations including fulfilling customs requirements.
6. Strictly enforce terms and conditions in bond agreements that include suspension and termination of bond agreements.

ANTICIPATED CORRECTIVE ACTION PLANNED COMPLETION DATE

The department will start corrective action plan mentioned above in the first quarter of 2021. Bonds are already being updated and Courier files are being brought current with outstanding balance for proper turnover of records.

NAME OF CONTACT PERSON(S) RESPONSIBLE FOR ACTION PLAN

Tashima Martin (Asst. Commissioner)

2. It is recommended that HM Customs establish and publish to the Public guidelines for the clearance of imports entering the territory. Furthermore, it is recommended that the Department develops internal processing guidelines for its officers in administering their duties as it relates to the processing trader declarations and the clearance of imports. These guidelines should consider how each type of declaration is to be processed and ensure that appropriate processing controls are in place, such as segregation of duties, user accessibility considering roles and responsibilities, etc.

AGREE/DISAGREE

We agree to the findings stated and we are confident that the above will correct concerns in this section. Although the department does not succumb to allegations we are aware of the temptations of participating in illegitimate (actions that may bring the Government into disrepute) brokerage services.

CORRECTIVE ACTION PLAN

We intent to prepare written documents to support the controls being implemented and include duties on job profiles of officers selected as Port Account Managers.

All staff of the Customs Department is made aware of the General Orders and repercussions that may be the result of bringing the Government in to disrepute. Currently the CAPs Senior Officer's job profile has been updated to reflect the task of assigning entries to be checked by officers on a daily basis.

ANTICIPATED CORRECTIVE ACTION PLANNED COMPLETION DATE

Ending of January 2021

NAME OF CONTACT PERSON(S) RESPONSIBLE FOR ACTION PLAN

Tashima Martin (Asst. Commissioner)

3. It is recommended that HM Customs reactivates the system control or implements a manual system to accurately monitor the use of each courier's standing deposit account. This will require that correct information outlining the agreed standing deposit account limits is in place and that CAPS reflects these amounts. This information within CAPS should be updated regularly to reflect the agreement and bonded amount for each courier utilizing the scheme. This control, whether automated or manual, is important to ensure that Government's interest is protected at all times.

AGREE/DISAGREE

We agree to the findings and recommendations stated.

CORRECTIVE ACTION PLAN

All relevant Team Leaders and Port Account Managers are required to update Seniors, and Seniors are required to report, on a monthly basis, on the Couriers' accounts status (Compliance level).

ANTICIPATED CORRECTIVE ACTION PLANNED COMPLETION DATE

Immediately

NAME OF CONTACT PERSON(S) RESPONSIBLE FOR ACTION PLAN

Tashima Martin (Asst. Commissioner)

4. It is recommended that in reviewing deposit declarations that HM Customs ensure that sufficient amounts are available in deposit accounts before approving the declaration and releasing the imported goods. In addition, it is recommended that appropriate estimated duties are calculated and charged against standing deposits for all Deposit declarations.

AGREE/DISAGREE

We agree to the findings and recommendations stated.

CORRECTIVE ACTION PLAN

The measures and controls mentioned above will address this concern.

ANTICIPATED CORRECTIVE ACTION PLANNED COMPLETION DATE

Immediately

NAME OF CONTACT PERSON(S) RESPONSIBLE FOR ACTION PLAN

Tashima Martin (Asst. Commissioner)

- 5. It is recommended that HM Customs make it mandatory for all importers to make proper declarations for all entries, even when a Deposit declaration is being made. Items should be properly classified and correct duty rates applied. In instances where sufficient information is not available, this should be clearly stated on the declaration. The mandatory requirement to make proper declarations would better enable HM Customs to calculate the appropriate amount of duty to be charged against the standing deposit to protect Government's interest while also realizing the objective of CAPS Implementation.**

AGREE/DISAGREE

We agree to finding with reasoning. Although this was allowed for a period to assist with the submission of large amounts of entries with each entry having an exhaustive list of records, reports were attached to reflect the true information and duty. At the time this was allowed because the CAPs system was not able to accept File Transfer Protocols (FTP) submissions and other issues. An Executive decision was made to deal with those issues in order to avoid any delay in shipments and revenue collection. The Department maintains International best practices and standards, and will facilitate legitimate trade and not be a barrier to trade.

Reference is made to the discrepancies and or inconsistencies with freight charges. It is important to note that these deposit entries are a quick release with limited information, hence the reason for bonds and adjustment entries (where all accurate information is to be provided). In addition, valuation for freight includes all expenses paid to get goods from supplier to the customer in the BVI. The reason for the large difference in freight is because at the point of importation the courier presents to customs the freight bill provided to them by the shipping company and when the adjustment is submitted, the freight presented is the cost the courier charges the customer. With the implementation of the new process mentioned, this transaction will be clear as the couriers bill is required as supporting documents.

CORRECTIVE ACTION PLAN

The issue with CAPS functions (accepting FTP files) are being rectified so all Couriers will be submitting proper adjustment entries. The department is currently reviewing the current Couriers declaration processing. Our intentions are to have an entry submitted per customer per shipment which would bring us in line with international standards in preparation for the Mutual Evaluation Exercise. This will eliminate the time it takes to review a 1000 plus record entry and it will enable the CAPS system to capture more accurate data (statistical and Intel) as per item being imported and the true importer.

ANTICIPATED CORRECTIVE ACTION PLANNED COMPLETION DATE

By the ending of second quarter 2021

NAME OF CONTACT PERSON(S) RESPONSIBLE FOR ACTION PLAN

Tashima Martin (Asst. Commissioner)

6. It is recommended that HM Customs take a multi-step approach in resolving the issues identified in 6 and 7. The recommendations are contingent on the Department establishing appropriate policies and procedures for the processing of imports by couriers:

- First, it is recommended that the Department establishes minimum documentation and processing standards for the processing of courier declarations with realistic timeframe. This should be done with both the Department's and couriers' objectives in mind.
- Second, it is recommended that the Department undertakes an assessment of its current capacity to meet the established standards and evaluate both the human resources and space needed to meet the established standards. The human resource component of the assessment should be done on the basis the Department has equipped officers (training and tools) to operate at an optimal capacity. This would ensure that any addition in human resources would be derived from a genuine need and not compensating for lack of performance by current resources.
- Third, it is recommended that the Department establishes and properly staff a centralized processing unit, similar to the CAPS unit, to process all electronic declarations. This Unit can be staffed by both clerical/administrative personnel as well as Customs Officers. This centralized unit will aid the Department in establishing appropriate segregation of duties while also allowing officers at the ports to focus on cargo inspection and enforcement.
- Finally, it is recommended that the Department undertakes regular assessments (e.g. annually) of their clearance process to ensure that they remain at pace with the growing demands of this sector of the economy.

AGREE/DISAGREE

It has to be on record that the Customs Department has been operating with limited resources (human, equipment and improper facilities). We are asked every year to do more with less. Never the less, the Customs Department inspects cargo on a risk base approach, which is guided by the World Customs Organization (WCO) framework of standards. To inspect all imported cargo on a daily basis is not practical. Hence, Risk Management and Intelligence are utilized for checks and balances. In addition, as a means of curtailing fraudulent activities and the smuggling of contrabands, K-9 inspections are conducted at the port and post checks are done at the couriers work site by our special units.

CORRECTIVE ACTION PLAN

In order to effectively and efficiently mitigate international security risk, smuggling, revenue loss and combat Money Laundering and Terrorist Financing, it was recommended that we the Customs Department establish a **Courier Cargo Distribution Center (HMC CCD Center)** that will house all couriers and the CAPs Trader Declaration Unit, Flex Team and Task Force. This will enable an

efficient and transparent process, while importers receive their goods in line with International Standards, which will no doubt, yield an immediate and substantial increase in revenue, while facilitating legitimate trade and eliminating unfair trade practices. This facility, which will be sufficiently spaced and well organized will ensure a smooth operation and allow for full inspections. Officers will be stationed at this new Customs Controlled Area and no goods will leave without being properly inspected and revenues secured. The new processes and procedures will complement the operation and function of this much needed facility.

ANTICIPATED CORRECTIVE ACTION PLANNED COMPLETION DATE

The **Courier Cargo Distribution Center (HMC CCD Center)** has been presented in Standing Finance and funding has been approved. Lease agreement is to be signed January 2021 as mentioned in memo from the Ministry of Finance (Development Project 2021).

NAME OF CONTACT PERSON(S) RESPONSIBLE FOR ACTION PLAN

Wade Smith (Commissioner of Customs)

- 7. It is recommended that HM Customs implements standards within their guidelines for the acceptance of supporting documentation from importers. Furthermore, such guidelines should be provided to importers (couriers) as to the standard by which information should be submitted.**

AGREE/DISAGREE

We have also identified these findings to be a challenge, hence the development of the new processes and facility mentioned above, which will ensure consistency and uniformity, while eliminating port shopping and creating a level playing field for all couriers.

CORRECTIVE ACTION PLAN

On completion of the new processes, officers and imported will be trained and informed.

ANTICIPATED CORRECTIVE ACTION PLANNED COMPLETION DATE

2021 Project

NAME OF CONTACT PERSON(S) RESPONSIBLE FOR ACTION PLAN

Tashima Martin (Asst. Commissioner)

8. It is recommended that the Department implements an organized and easily retrievable system for their records pertaining to import clearance. This may require an upgrade to the CAPS server capacity so that all supporting information can be attached and stored electronically. Consideration should be given to purging the system for attachments accompanying deposit declarations once the corresponding adjustment declarations have been finalized and appropriate documentation is attached.

AGREE/DISAGREE

We agree with findings and we are trying to eliminate manual filing of documents. The Ministry of finance storage facility in Purcell Tortola has been released because of mold issues.

CORRECTIVE ACTION PLAN

CAPS Programmers will purge the system of attachments to deposit entries on a quarterly basis.

The department has been slowly phasing out the need for keeping hard copies of entries, as electronic submissions are considered to be legally binding documents. A disclaimer will be added to the CAPS submission screen.

ANTICIPATED CORRECTIVE ACTION PLANNED COMPLETION DATE

By the ending of first quarter 2021

NAME OF CONTACT PERSON(S) RESPONSIBLE FOR ACTION PLAN

Tashima Martin (Asst. Commissioner)

9. It is recommended that HM Customs trains all Customs Officers on the proper usage of CAPS and develops internal guidelines to guide them in the processing of imports.

AGREE/DISAGREE

Findings have been acknowledged.

Since the development of the Trader Declaration Unit; a centralized unit that checks all entries submitted into CAPs, training other officers was not done due the specialized Unit.

CORRECTIVE ACTION PLAN

It has been agreed that going forward all stations will be responsible checking and processing of entries (utilizing CAPS) for goods being imported/exported. Training was conducted at Beef Island station with a focus of the courier processing and Road Town Station with fuel importation.

All officers will be trained as CAPS is extended to other stations. Will start with the Port Account Managers, and then extend to other officers.

- 3. It is recommended that HM Customs explore the possibility of conducting the revenue collection function in CAPS as opposed to JDE and transfer the revenue to JDE at the end of the day. This would create efficiency within the process as declarations would automatically be tied to the receipt eliminating the manual process that is currently being employed. In addition, requiring importers to make proper entries will eliminate the discrepancies between the two (2) systems.**

AGREE/DISAGREE

It was recommended in the past that we utilize JDE to avoid conflict between the two. However the CAPS developer (IBM) has indicated the cashiering feature in CAPS would be able to interact with JD Edwards.

CORRECTIVE ACTION PLAN

Seek approval from the Ministry of Finance and Treasury before implementation.

ANTICIPATED CORRECTIVE ACTION PLANNED COMPLETION DATE

Ending of second quarter 2021

NAME OF CONTACT PERSON(S) RESPONSIBLE FOR ACTION PLAN

Tashima Martin (Asst. Commissioner)

- 4. It is recommended that HM Customs works with the developers of CAPS to improve the reporting capabilities of CAPS. It is our understanding that HM Customs has purchased or is in the process of purchasing a reporting product from the developer; however, we implore the Department to first exhaust the existing reporting features. In addition, in any event, the Department must first ensure that controls are in place to ensure and validate the accuracy and completeness of the information in the database before any meaningful reporting is conducted. Purchasing reporting software at this time will yield little benefit if the information reported is incorrect or incomplete.**

AGREE/DISAGREE

Disagree. Because the reporting feature was a shelf product, the reporting capabilities did not meet the requirements of HM Customs. The Developers of CAPS are working on the final testing phase before presenting COGNOS reporting software. This system is designed to produce efficient reports and serve as a risk management tool.

CORRECTIVE ACTION PLAN

Ensure that this product meets the requirements of HM Customs before final payment is made.

ANTICIPATED CORRECTIVE ACTION PLANNED COMPLETION DATE

CORRECTIVE ACTION PLAN

The Department is confident that the answer is the **HMC CCD Center** previously described. It will address the challenges listed; inadequate facilities, limited space, lack of resources and equipment which is even highlighted after Irma, where facilities have been demolished and not rebuilt.

In addition, as mentioned above all Couriers will be assigned to a Port Account Manager that will be held accountable to ensure that couriers remain in compliance.

ANTICIPATED CORRECTIVE ACTION PLANNED COMPLETION DATE

Pending approved budget

NAME OF CONTACT PERSON(S) RESPONSIBLE FOR ACTION PLAN

Wade Smith (Commissioner of Customs)

Customs Automated Processing System (CAPS)

1. It is recommended that HM Customs ensure that written agreements and bonding mechanisms are in place for all courier services utilizing the standing deposit scheme. It is further recommended that the Department implements a system whereby these agreements and bonding mechanisms are continuously monitored to ensure that they are kept current.

2. It is recommended that all declarations in CAPS be done utilizing the Harmonized Coding System so that accurate statistical information can be derived in order to achieve the main objective of implementing CAPS.

AGREE/DISAGREE

Agreed

CORRECTIVE ACTION PLAN

Team has been put together to ensure all bond files are up to date, and adjustment entries are submitted properly. It's the Departments intent to change the current policies and procedures governing the couriers system (as mentioned before), which will create a more manageable process for submitting, reviewing and reconciling goods being imported via couriers.

ANTICIPATED CORRECTIVE ACTION PLANNED COMPLETION DATE

Ending of first quarter 2021

NAME OF CONTACT PERSON(S) RESPONSIBLE FOR ACTION PLAN

Tashima Martin (Asst. Commissioner)

CORRECTIVE ACTION PLAN

The CAPs Development Team is in consultation with management and IBM to find solutions tailor-made to meet the needs of the departments reporting requirements (COGNOS).

ANTICIPATED CORRECTIVE ACTION PLANNED COMPLETION DATE

The department will ensure that COGNOS is functioning as required before final payment is made.

NAME OF CONTACT PERSON(S) RESPONSIBLE FOR ACTION PLAN

Wade Smith (Commissioner of Customs)

- 12. Given the human resources capacity within the Department, it is recommended that HM Customs undertakes an analysis to determine whether the 15 day timeframe is adequate for the submission and review of adjustment declarations. The timeframe for submission should be revised if the analysis reveals that the 15 day requirement is inadequate. Furthermore, it is recommended that monthly reconciliations of all deposit and adjustment declarations be conducted for all importers' utilizing deposit accounts to ensure that their accounts are kept current.**
- 13. Given the current space limitations, in the short term, it is recommended that the Department explore the feasibility of having couriers submit their declarations two (2) days in advance to allow HM Customs sufficient time for review. This review would allow for officers to select a sample of packages for review once the shipment arrives. Furthermore, the Department should implement equipment such as scanners to aid in scrutinizing the packages to ensure that contraband is not being imported.**
- 14. It is recommended that HM Customs implements penalties for noncompliance in the submission of adjustment declarations. In addition, HM Customs should enforce its standing deposit requirements for couriers operating within the scheme. Finally, it is recommended that HM Customs initiate appropriate enforcement actions on couriers who are found to be intentionally breaching the Department's protocols when submitting declarations (i.e. all entries should be made through CAPS; declarations should be accurate, etc.)**

AGREE/DISAGREE

Agree

ANTICIPATED CORRECTIVE ACTION PLANNED COMPLETION DATE

By the ending of 2021

NAME OF CONTACT PERSON(S) RESPONSIBLE FOR ACTION PLAN

Tashima Martin and Gerald Fleming (Asst. Commissioners)

10. It is recommended that HM Customs undertakes an overhaul of CAPS to bring the system current. Subsequent to this, it is further recommended that the Department utilizes CAPS in the appropriate manner where ALL transactions (declarations) are processed in CAPS.

AGREE/DISAGREE

We agree with findings and recommendations.

CORRECTIVE ACTION PLAN

The department will streamline the manual processes to ensure information is captured in the system or otherwise. Currently we are in discussions of having an offline version of CAPs that can be uploaded when system goes down.

In addition the HMC CCD Center will provide a central location to standardize the courier processes and record keeping.

ANTICIPATED CORRECTIVE ACTION PLANNED COMPLETION DATE

Ending of second quarter 2021

NAME OF CONTACT PERSON(S) RESPONSIBLE FOR ACTION PLAN

Tashima Martin (Asst. Commissioner)

11. It is recommended that the Department delay the purchasing of the reporting software and explore the reporting suite within CAPS once all the issues related to the deficiencies identified in this report are resolved and the system is functioning as it was intended to.

AGREE/DISAGREE

A shelf system was provided by IBM. This system did not meet the needs or full filled the challenges of HM Customs.

By ending 2021

NAME OF CONTACT PERSON(S) RESPONSIBLE FOR ACTION PLAN

Greg Romney (Deputy Commissioner)

- 5. It is recommended that HM Customs conduct a full reconciliation of all deposit declarations to ensure that a corresponding adjustment declaration has been submitted and the associated revenues collected. The Department should immediately implement a process of manually tracking all deposit and adjustment entries going forward until the system and process issues are rectified which would allow this reconciliation and tracking to be completed in CAPS.**

AGREE/DISAGREE

Prior to the Audit Report, a team was assigned to reconcile all Couriers Accounts and collect outstanding. In addition, there are ensuring that all adjustment entries are released in the system so proper records can be produced.

CORRECTIVE ACTION PLAN

Ensure all deposits files are current before handing over to the perspective Port Account Managers.

ANTICIPATED CORRECTIVE ACTION PLANNED COMPLETION DATE

Ending of first quarter 2021

NAME OF CONTACT PERSON(S) RESPONSIBLE FOR ACTION PLAN

Tashima Martin (Asst. Commissioner)

- 6. It is recommended that it be made mandatory that all declarations (deposit, adjustment and imports) be processed in CAPS. Therefore, it is recommended that HM Customs and its developers collaborate with importers of large quantity of packages to be able to utilize the File Transfer Protocol (FTP) feature rather than the Web Trader option.**

AGREE/DISAGREE

Agreed

CORRECTIVE ACTION PLAN

Have all Couriers submit entries via Caps.

ANTICIPATED CORRECTIVE ACTION PLANNED COMPLETION DATE

By the ending of the first quarter 2021

NAME OF CONTACT PERSON(S) RESPONSIBLE FOR ACTION PLAN

Tashima Martin (Asst. Commissioner)

- 7. It is recommended that all Deposit declarations be cleared with an Adjustment declaration. In addition, it is recommended that the department investigate these declarations in order to obtain an understanding as to why such manipulation at the database level was necessary and implement controls to avoid such future occurrences.**

AGREE/DISAGREE

We understand the concerns but in my opinion the statement is not accurate. However, it clearly demonstrates that the post audit function is effective. In instances of a post audit check (examination of the CAPS data), reconciling bond accounts, there was a large outstanding list of deposits that had no adjustment entries. Through discussion with Importers, it was later revealed that payment was made on goods released on deposits. After verification, it was noticed that the importers did an import entry instead of an adjustment entry. In order for this to be corrected in the system, the CAPS Administrators therefore make changes for the entry to be reflected as an adjustment so the system can properly reconcile deposit entries.

CORRECTIVE ACTION PLAN

Moving forward, we will implement a disclaimer, which will have all importers held accountable and responsible for all entries submitted. The new processes for couriers processing, once implemented, will give the officers reporting capabilities to conduct daily to weekly reconciliation.

ANTICIPATED CORRECTIVE ACTION PLANNED COMPLETION DATE

By ending of the first quarter of 2021

NAME OF CONTACT PERSON(S) RESPONSIBLE FOR ACTION PLAN

Tashima Martin (Asst. Commissioner)

- 8. It is recommended that HM Customs utilizes the status codes within CAPS to reflect current state of processing of the declaration. For example, if the imported goods for a Deposit declaration has been released from customs control the status code should reflect "Released" and not still reflect "Reviewed" in CAPS.**

AGREE/DISAGREE

Status codes within CAPS are automatic codes that are generated after a procedure is complete. Utilizing CAPS feature to release cargo has been a challenge in the past due to processes at the Ports. We have recognized this to be a challenge prior Irma and this concern was addressed and rectified by constructing and equipping offices at the warehouses at the Port Purcell Cargo Port. Officers stationed at these offices and were trained. As we all know, September 7, 2017, as a result of category 5 hurricanes an entire warehouse was demolished. To date, there has been no

construction to rebuild the facility. The inadequate facility and equipment prevents us from performing this function.

CORRECTIVE ACTION PLAN

HMC Internal Audit Unit has made recommendations to ensure that the releasing function of CAPS is utilized. Additional training is needed and equipment to be provided.

ANTICIPATED CORRECTIVE ACTION PLANNED COMPLETION DATE

Once equipment is received, procedure will start immediately.

NAME OF CONTACT PERSON(S) RESPONSIBLE FOR ACTION PLAN

Tashima Martin (Asst. Commissioner)

**HER MAJESTY'S CUSTOMS
PARTIAL PAYMENT PROGRAMME**

The following recommendations are provided to address the issues and concerns articulated in the Internal Audit Report on Her Majesty's Customs – Partial Payment Programme.

1. Given the high default rate and the lack of a discernible business or economic value, it is recommended that the partial payment programme be discontinued. In addition, it is further recommended that the Commissioner of Customs seek advice from the Attorney General Chambers on the recoverability of delinquent balances and employ any advice given to develop a course of action to collect monies deemed recoverable and to take the necessary actions to write off balances that are determined to have a low probability of ever being collected.

Agree/Disagree	AGREE
Reason for Disagreement and Alternate Proposed Recommendation	N/A
Corrective action planned	Follow up with AG for assistance as discussed in 2019. A letter has been drafted, and Officers has been selected to be trained to assist with court proceedings.
Anticipated Corrective Action Planned completion date	Follow up with AG Chambers will be completed by ending of 1 st quarter 2021.
Names(s) of contact person(s) responsible for corrective action	Ms. Tashima Martin (Asst. Commissioner)

2. In the event that it is determined that the programme serves a legitimate business or service delivery objective for the Government of the Virgin Islands, we offer the following recommendations that would strengthen the control environment and improve the overall administration of the programme:

- a. It is recommended that Her Majesty's Customs develop and document policies and procedures for the administration of payment for customs duties by partial payment. Policies and procedures should govern, approval, monitoring and enforcement and close-out. Furthermore, criterion should be developed to guide approvers in making decisions on applications which would also bring some level of transparency to the decision making process. This criterion should also address the required information that should be collected and assessed before approval is given.

Agree/Disagree	AGREE
Reason for Disagreement and Alternate Proposed Recommendation	N/A
Corrective action planned	HM Customs will develop and document policies and procedure for administration of partial payments.
Anticipated Corrective Action Planned completion date	By Ending January 2021
Names(s) of contact person(s) responsible for corrective action	Ms. Tashima Martin (Asst. Commissioner)

- b. It is recommended that guidelines or a formula be developed and applied on a consistent basis for the determination of repayment period, down payment amount, installment amount and assessing the importer's ability to make the down payment and the monthly installment payments.

Agree/Disagree	AGREED
Reason for Disagreement and Alternate Proposed Recommendation	N/A
Corrective action planned	This will be included in the policies and procedures
Anticipated Corrective Action Planned completion date	By ending of January 2021
Names(s) of contact person(s) responsible for corrective action	Ms. Tashima Martin (Asst. Commissioner)

- c. It is recommended that Her Majesty's Customs implement the attached Draft Agreement provided by the Attorney General's Chambers to govern partial payment relationships going forward. It is further recommended that Her Majesty's Customs do not allow any Importer to remove the imported item or make any payment before an agreement has been duly executed.

Agree/Disagree	AGREED
Reason for Disagreement and Alternate Proposed Recommendation	N/A
Corrective action planned	Implement the Draft Agreement immediately
Anticipated Corrective Action Planned completion date	Immediately
Names(s) of contact person(s) responsible for corrective action	Ms. Tashima Martin (Asst. Commissioner)

- d. It is recommended that all public officers wishing to utilize a partial payment arrangement be made authorize such payment through salary deductions. Furthermore, this information should be communicated to the relevant agencies, Ministry of Finance, Department of Human Resources, the employee's department and the Treasury Department in order to minimize the risk of public officers leaving the Public Service without settling outstanding balances.

Agree/Disagree	AGREED
Reason for Disagreement and Alternate Proposed Recommendation	N/A
Corrective action planned	Currently this is being done. Will follow up with Salaries to ensure deductions can be viewed by IAT officers to update files and records.
Anticipated Corrective Action Planned completion date	By ending of January
Names(s) of contact person(s) responsible for corrective action	Tashima Martin (Asst. Commissioner)

- e. It is recommended that Customs write to the Financial Secretary concerning the outstanding amounts for deceased importers so that a determination can be made to write-off the uncollectible debt

Agree/Disagree	AGREE
Reason for Disagreement and Alternate Proposed Recommendation	N/A
Corrective action planned	Draft memo concerning the above
Anticipated Corrective Action Planned completion date	By ending of January 2021
Names(s) of contact person(s) responsible for corrective action	Tashima Martin (Asst. Commissioner)

- f. It is recommended that Customs develops an objective for the programme and in turn develop relevant performance indicators to monitor its performance in line with its objectives.

Agree/Disagree	AGREE
Reason for Disagreement and Alternate Proposed Recommendation	N/A
Corrective action planned	
Anticipated Corrective Action Planned completion date	End of 1 st Quarter 2021
Names(s) of contact person(s) responsible for corrective action	Tashima Martin (Asst. Commissioner)

- g. It is recommended that an administrative fee and other appropriate interest and penalties be attached to all agreements for partial payments. This may require Cabinet's approval and amendment to the Customs legislation.

Agree/Disagree	DISAGREE
Reason for Disagreement and Alternate Proposed Recommendation	This decision has to be done by the Financial Secretary.
Corrective action planned	
Anticipated Corrective Action Planned completion date	
Names(s) of contact person(s) responsible for corrective action	Wade Smith (Commissioner)



DIRECTOR'S RESPONSE



GOVERNMENT OF THE VIRGIN ISLANDS
INTERNAL AUDIT DEPARTMENT

AUDIT AREA: HER MAJESTY'S CUSTOMS
COURIER CLEARANCE OPERATIONS AND PARTIAL PAYMENT
PROGRAMME

DIRECTOR'S RESPONSE – AREAS OF DISAGREEMENT

The following responses are provided to address areas of disagreement stated in the Management Response provided.

Fact and Finding 13 – Courier Trader Declaration Processing

Furthermore, although one of the implementation objectives of CAPS was to facilitate reporting, the audit found that the reporting suite within the software is currently non-functional. To rectify this issue, the audit team was informed that the Department is currently in the process of procuring an additional reporting programme; however, the audit finds that based on the poor use of CAPS, the significant amount of missing data and the acknowledgement from HM Customs personnel about the reliability of the data currently in CAPS, the additional expenditure to obtain reports will be of little benefit.

Recommendation 11 - Courier Trader Declaration Processing

It is recommended that the Department delay the purchasing of the reporting software and explore the reporting suite within CAPS once all the issues related to the deficiencies identified in this report are resolved and the system is functioning as it was intended to.

<p>Agree/Disagree</p> <p><i>Please provide reason(s) for disagreement with proposed recommendation.</i></p>	<p>A shelf system was provided by IBM. This system did not meet the needs or fulfil the challenges of HM Customs.</p>
<p>Corrective action planned</p> <p><i>If action is dependent on any conditionality such as approval of higher authority or need of additional resources, state details.</i></p>	<p>The CAPs Development Team is in consultation with management and IBM to find solutions tailor made to meet the needs of the departments reporting requirement (COGNOS).</p>
<p>Anticipated completion date</p>	<p>The department will ensure that COGNOS is functioning as required before final payment is made.</p>
<p>Names(s) of contact person(s) responsible for corrective action</p>	<p>Wade Smith (Commissioner of Customs)</p>

Fact and Finding 4 – Customs Automated Processing System (CAPS)

Although CAPS was implemented to enable the Government of the Virgin Islands to obtain accurate and reliable information to inform policy decisions, the audit found that the platform is severely limited in its reporting capabilities. When inquiries were made about specific reports such as a report detailing all deposit declarations without a corresponding adjustment declaration, we were told that such a report was not possible. In order to conduct audit tests on this area, the auditors had to obtain a database dump and perform the comparison via a spreadsheet. This scenario exposes a significant weakness in the current configuration/usage of CAPS as our manual process revealed **775** deposit trade declarations with a merchandise value of approximately **\$15,841,146.50** for 2019 with an estimated **\$2.4 million in import duties at risk** (see table below) without corresponding adjustment declarations. Due to poor record management within the Department and the claim that some of the entries may have been completed outside of CAPS, the audit could not validate whether adjustment declarations were in fact completed and revenue collected on any of these deposit declarations. Some of these deposit declarations were several months delinquent. It is noteworthy to recognize that when a sample of the declarations were queried for one courier, the officer investigating found numerous other deposit declarations from prior years for which adjustment declarations were not submitted. This fact confirms the likelihood that there are a significant number of declarations in CAPS that were never completed. We suspect that this issue might be pervasive (as other entities outside of couriers also participate in the deposit scheme) and a multi-year issue.

Table 4: Deposit TDs with no Adjustment TDs within CAPS

Courier Name	No. of Deposit TD Outstanding with No adjustment	Merchandise Value
	345	\$ 11,343,768.53
	186	\$ 3,641,082.94
	209	\$ 798,862.57
	All 'Import' TDs	\$ -
	35	\$ 523,182.08
TOTAL	775	\$ 16,306,896.12
HELD AGAINST BOND (ESTIMATE)	15%	\$ 2,446,034.42

Recommendation 4 - Customs Automated Processing System (CAPS)

It is recommended that HM Customs works with the developers of CAPS to improve the reporting capabilities of CAPS. It is our understanding that HM Customs has purchased or is in the process of purchasing a reporting product from the developer; however, we implore the Department to first exhaust the existing reporting features. In addition, in any event, the Department must first ensure that controls are in place to ensure and validate the accuracy and completeness of the information in the database before any meaningful

reporting is conducted. Purchasing reporting software at this time will yield little benefit if the information reported is incorrect or incomplete.

<p>Agree/Disagree</p> <p><i>Please provide reason(s) for disagreement with proposed recommendation.</i></p>	<p>DISAGREE. Because the reporting feature was a shelf product, the reporting capabilities did not meet the requirements of HM Customs. The Developers of CAPs are working on the final testing phase before presenting COGNOS reporting software. This system is designed to produce efficient reports and serve as a risk management tool.</p>
<p>Corrective action planned</p> <p><i>If action is dependent on any conditionality such as approval of higher authority or need of additional resources, state details.</i></p>	<p>Ensure that this product meets the requirements of HM Customs before final payment is made.</p>
<p>Anticipated completion date</p>	<p>By ending 2021</p>
<p>Names(s) of contact person(s) responsible for corrective action</p>	<p>Greg Romney (Deputy Commissioner)</p>

Director’s Response: Recommendations 11 and 4

Based on your indication that the software is in the final stages of testing indicates that the purchase decision has already been made. Therefore, I implore HM Customs’ vigilance in ensuring that all its reporting needs are addressed to avoid additional costs in the future to address this issue. In addition, I further reiterate the need for HM Customs to address the data integrity issues that currently plagues the system prior to the deployment of the reporting software, as failure to address such issues will render the reporting software useless in meeting the desired objectives.

Fact and Finding 8 – Customs Automated Processing System (CAPS)

The audit found several instances where declarations were initially entered into CAPS as “DEPOSIT” declarations, but were subsequently changed and cleared as “IMPORT” declarations. This issue raises concern as the goods are released on Deposit declarations but payment is collected on the corresponding adjustment declaration. Goods for Import declarations are paid for at the time they are released from HM Customs' control. Because of the difference in timing of the collection of revenue, clearing a **Deposit declaration** as an **Import declaration** may put revenues at risk as it might be assumed based on the declaration type that the revenues have already been collected when in fact they were not. It is our understanding that such a change could only be done at the database level requiring administrator access. Although, the audit team does not possess information technology capacity to validate this issue, we are concerned with the frequency with which this issue has occurred, the potential risks and the lack of a reason as to why such adjustments would be necessary.

Recommendation 7 - Customs Automated Processing System (CAPS)

It is recommended that all Deposit declarations be cleared with an Adjustment declaration. In addition, it is recommended that the department investigate these declarations in order to obtain an understanding as to why such manipulation at the database level was necessary and implement controls to avoid such future occurrences.

Agree/Disagree	We understand the concerns but in my opinion the statement is not accurate. However, it clearly demonstrates that the post audit function is effective.
<i>Please provide reason(s) for disagreement with proposed recommendation.</i>	In instance of a post audit check (examination of the CAPs data), reconciling bond accounts, there was a large outstanding list of deposits that had no adjustment entries. Through discussion with Importers, it was later revealed that payment was made on goods released on deposits. After verification, it was noticed that the importers did an import entry instead of an adjustment entry. In order for this to be corrected in the system, the CAPs Administrators therefore made changes for the entry to be reflected as an adjustment so the system can properly reconcile deposit entries.
Corrective action planned	Moving forward we will implement a disclaimer which will have all importers held accountable and responsible for all entries submitted. The new processes for couriers processing once implemented will give officers reporting capabilities to conduct daily to weekly reconciliation.
<i>If action is dependent on any conditionality such as approval of higher authority or need of additional resources, state details.</i>	
Anticipated completion date	By ending of the first quarter of 2021
Names(s) of contact person(s) responsible for corrective action	Tashima Martin (Asst. Commissioner)

Director's Response – Recommendation 7

This recommendation was provided to address the issue related to the audit discovering that several declarations were initially entered into CAPs as "DEPOSIT" declarations, but were subsequently changed and cleared as "IMPORT" declarations and the fact that because of the timing of the collection of revenue, revenues may be at risk of being uncollected.

Mention was made of the HM Customs' post audit function being effective which involves examining the CAPs data and reconciling bond accounts, but the auditors did not observe evidence that this function is a regular and consistent process undertaken by HM Customs in reconciling trader declarations detailed in CAPs. HM Customs was not aware that this issue existed prior to this exercise and the fact that the Department had to rely on the importers and not on its own independent verifications indicates that the department's post audit function may not be effective. Furthermore, the fact that the system allows a Deposit Declaration to be cleared with an Import Declaration highlights a control weakness in the input controls within CAPS.

Recommendation 2g – Partial Payment Programme

It is recommended that an administrative fee and other appropriate interest and penalties be attached to all agreements for partial payments. This may require Cabinet's approval and amendment to the Customs legislation.

Agree/Disagree <i>Please provide reason(s) for disagreement with proposed recommendation.</i>	DISAGREE This decision has to be done by the Financial Secretary.
Corrective action planned <i>If action is dependent on any conditionality such as approval of higher authority or need of additional resources, state details.</i>	
Anticipated completion date	
Names(s) of contact person(s) responsible for corrective action	Wade Smith (Commissioner)

Director's Response – Recommendation 2g

While it is understood that the Financial Secretary, as the head of the Ministry of Finance, has to submit this request to Cabinet, the Department responsible for the new initiative (revenue or expenditure) has to propose and take lead in beginning the process for it to be submitted to Cabinet for consideration and approval. Therefore, Her Majesty's Customs through the Commissioner would have to take the lead in order for the process to commence to have these fees applied once the approved structure and relevant support mechanisms are in place to govern the Partial Payment Programme.

TAB	DOCUMENTS	APPENDICES
Letter to Col	Letter dated 13 th September from Mr. Wade Smith	Pages 1 through 21
Appendices A - O	Appendices A-O	
1	Copy of Correspondence dated 27 th August 2004 from the Governor to Head of the Internal Audit Unit	Appendix A
2	Copy of application for Partial Payment Form	Appendix B
3	Copy of Blank Request for Duty Amortization Form	Appendix C
4	Copy of Request for Duty Amortization in respect of ██████████ dated 4 th July 2017	Appendix D
5	Copy of Blank Bond Agreement	Appendix E
6	Copy of Record of Interest	Appendix F
7	Copy of Record of Interest lodged in respect of ██████████ on 23 rd August 2019	Appendix G
8	Copy of Correspondence dated 30 th July 2021 from ██████████ to the Financial Secretary dated 30 th July 2021	Appendix H

TAB	DOCUMENTS	APPENDICES
9	Copy of email correspondence dated 5 th August 2021 from the Financial Secretary	Appendix I
10	Copy of correspondence from Financial Secretary to Director of Internal Audit dated 18 th September 2008	Appendix J
11	Copy of correspondence dated 2 nd October 2008 from Financial Secretary to Comptroller of Customs (now Commissioner of Customs)	Appendix K
12	Copy of correspondence dated 12 th December 2019 from the Financial Secretary to the Acting Commissioner of Customs	Appendix L
13	Copy of correspondence 31 ST August 2020 from Financial Secretary to Commissioner of Customs	Appendix M
14	Copy of correspondence dated 13 th September 2021 from Detective Inspector Richards	Appendix N
15	Copy of page 7 of my Position Paper – Section 4	Appendix O



Customs Department
Richard Stoutt Building, Wickham's Cay I
Road Town, Tortola, British Virgin Islands
Tel: 1-284-468-6800 Fax: 1-284-468-6825 Email: hvicustoms@gov.vg

13th September 2021

Commissioner of Customs
The Rt Hon Sir Gary Hickinbottom
British Virgin Islands Commission of Inquiry
BVI International Arbitration Centre
3rd Floor, Ritter House
Wickham's Cay II
Tortola, BVI

Dear Commissioner

**Re: British Virgin Islands Commission of Inquiry ("COI") –
Warning Letter to Wade Smith No. 1**

Reference is made to the captioned matter and to correspondence dated 6th September 2021 (*the warning letter*), which was issued to me on your direction, regarding same. Your warning letter raised potential criticisms and invited me to address same, an opportunity for which I am grateful. Please now find my responses below.

In accordance with the instructions contained in the warning letter, a Microsoft Word version of this correspondence would be simultaneously provided. You also requested that my response not exceed 20 pages, including any annexes, appendices, or schedules. I have made every effort to summarize my responses so that, as far as possible, I would be within this limit. While I can guarantee that my correspondence in response is less than 20 pages, I seek your understanding in the event that my attachments exceed same. However, I thought it very important to provide a comprehensive reply to the potential criticisms raised; as a matter of fairness to me, as well as to ensure the integrity of the Commission of Inquiry.

Please be advised that, for your ease of reference, my responses to the matters raised in your warning letter follow the numbering outlined in your correspondence.



➤ **Legal Submissions to be Advanced by the Attorney General**

1. *As a matter of law on what legal basis or under which legislative provision(s) was the partial payment programme introduced and on what date;*
2. *As a matter of law on what legal basis or under which legislative provision(s) has the partial payment programme operated since its introduction through to date; and*
3. *In section 103 of the Customs Management and Duties Act 2010, what is meant by the terms "security by bond or otherwise" and "for the observance of any condition or restriction in connection with an assigned matter".*

1.1 With the exception of the date on which the partial payment programme was introduced, these are all legal questions which your warning letter has asked the Attorney General – my legal representative – to address. I would be grateful if you could confirm that my views were not also being sought in respect of the other matters. I would now, as best as I can, address the enquiry as to the date the programme commenced.

1.2 The partial payment programme was one which I met when I joined the Customs Department in December 2000. I am therefore unable to say from my personal knowledge when the partial payment programme was introduced.

1.3 However, veteran Deputy Commissioner of Customs, Mr. Leslie Lettsome, who began his Public Service Customs career in 1977 recalls the following: in 1978 the charter industry was in its embryonic stages and duty of 5% plus 1% wharfage was assessed on each vessel. That amount/tax was very difficult for the companies to pay at once. The then Comptroller of Customs therefore allowed the Customs duties to be amortized to facilitate the development of the charter industry and to facilitate trade. Initiatives such as this, Mr. Lettsome



believes, allowed the BVI to develop to a point that it is now referred to as the sailing capital of the world. As time passed and other industries evolved, the practice of permitting payment of duties in instalments continued in respect of goods associated with other industries and was extended to local residents.

- 1.4 Based on Mr. Lettsome's institutional knowledge, the Auditor's Report is therefore incorrect when it states that the programme started less than two decades ago. Rather it has been in place for upwards of 40 years.
- 1.5 This veteran Deputy Commissioner of Customs, with over forty (40) years of service, reassured me that, to the best of his knowledge, the partial payment/Amortization programme was implemented to provide relief to persons and businesses. This must all be set in the context of the realities of the Virgin Islands where 99% of goods are imported due to the virtual lack of a manufacturing sector. The commencement and continuation of the partial payment programme has therefore always been to assist residents of the Virgin Islands who, in large measure, have to rely on imports.

➤ **Potential Criticisms**

The Customs Management and duties Act 2010 ("ACT" provides a tariff under which all imports fall. Duties payable under the Act must be paid to Her Majesty's Customs ("Customs" before items are released to the importer.

The partial payment programme ("Programme") allows goods to be released by Customs to the Importer without paying the full amount of duty assessed. Under the Programme importers are allowed to pay duties assessed in installment plans.



Customs Department
Richard Stoutt Building, Wickham's Cay I
Road Town, Tortola, British Virgin Islands
Tel: 1-284-468-6800 Fax: 1-284-468-6825 Email: bvicustoms@gov.vg

On the available evidence, it appears that:

1. The Programme was introduced without any legislative or regulatory authority. Customs may therefore be acting unlawfully as ultra vires the Act or otherwise.
 - 1a. As previously stated, I am not personally aware of when the programme was introduced and would leave the issues concerning the legislative and regulatory authority as legal issues in respect of which the Attorney General would address the Commission.
 - 1b. I do wish to state that, during my tenure, the legal authority of the partial payment programme was discussed with former Counsel of the Attorney General's Chambers, who advised that the programme was supported under the provisions of the **Customs and Duties Management Act 2010** as well as the former customs legislation - the **Customs Ordinance Cap. 104**. To be transparent and for reporting purposes, the Customs Department's Partial Payment/ Amortization Programme is one that is approved by the Financial Secretary.
 - 1c. The Audit report indicated that it appeared that Customs "*may*" be acting unlawfully in respect of this programme. It is my respectful opinion that this was merely an opinion which should have been researched and supported by evidence before questioning the integrity of the organization's practices. A former Governor had expressed the view that auditors are expected to abide by high standards and their allegations backed by hard evidence: see the memorandum, dated 27th August 2004, from the then Governor to the Internal Audit Director [**Appendix A**]. Then Governor Macan stated the standards to be followed in auditors' reports, specifically in reference to non-factual statements that could damage one's reputation without sufficient evidence.



Customs Department
Richard Stoutt Building, Wickham's Cay I
Road Town, Tortola, British Virgin Islands
Tel: 1-284-468-6800 Fax: 1-284-468-6825 Email: hvicustoms@gov.vg

1.2 The Programme was set up without adequate/appropriate/effective processes, procedures, controls and safeguards.

1.2a Since, as explained above, I was not attached to the department at the time of the programme's inception, I am unable to indicate what processes, procedures, controls or safeguards were initially in place.

1.2b I can, however, speak to the measures implemented during my tenure. Over the years, processes have been refined and improved when shortcomings, difficulties or challenges were identified. These improvements were based on recommendations of former management members of the department, the Customs Internal Audit Unit and external auditing organizations. These changes were adopted to better secure and collect outstanding duties.

1.2c Some of the initiatives which were implemented during my tenure include the following measures:

(1) the use of formal, written application forms [see the Application for Partial Payment Plan form at **Appendix B**];

(2) the use of formal, written agreements detailing the manner in which the duty would be paid and permitting the seizure of the imported goods in question should any payment be outstanding [see a blank Request for Duty Amortization Form at **Appendix C** and a Request for Duty Amortization in respect of [REDACTED] [REDACTED] dated 4 July 2017 at **Appendix D**];

(3) imposing conditions to secure the outstanding balance due, such as automatic deductions on the salaries of Government



Customs Department
Richard Stoutt Building, Wickham's Cay I
Road Town, Tortola, British Virgin Islands
Tel: 1-284-468-6800 Fax: 1-284-468-6825 Email: bvicustoms@gov.vg

employees who participated in the programme which guaranteed payment of the instalments; and

(4) recording Custom's interest in motor vehicles under the programme with the Department of Motor Vehicles, which would prevent the transfer of the said vehicle until outstanding duties were paid [see a blank Record of Interest at **Appendix F** and a Record of Interest lodged in respect of [REDACTED] on 23 August 2019 at **Appendix G**].

1.2d These initiatives are separate and apart from the safeguards contained under the Customs Management and Duties Act or through the courts. The customs legislation provides for mechanisms to facilitate the recovery of outstanding sums. I have held discussions over the course of the last few years with Counsel attached to the Attorney General's Chambers with a view to exploring these options, including pursuing court proceedings in this respect. However, the demands of the Chambers, and the strain on their already limited resources, restrained the extent to which this course of action could have been actively pursued so far.

1.3. There is a significant risk to the public purse in that import duties have not been properly and/or fully collected and accounted for under the Programme.

1.3a It is incorrect to state that import duties have not been accounted for. The Customs Department has always maintained comprehensive and accurate records of all duties which are payable on imported goods. This was so even when permission was granted to defer the payment of such duties. We have always been able to provide a full and proper account of the sums due despite the existence of the programme.



Customs Department
Richard Stoutt Building, Wickham's Cay I
Road Town, Tortola, British Virgin Islands
Tel: 1-284-468-6800 Fax: 1-284-468-6825 Email: bvicustoms@gov.vg

- 1.3b While import duties have not always fully collected, I do not agree that the failure to collect same presents a significant risk to the public purse. First, it is necessary to put the sums which remain uncollected, to date, in their proper context. Over the past twenty-one years the Customs Department collected approximately five hundred million (\$500mil) dollars and the amount for partial payment owed is approximately four hundred and fifty thousand (\$450k) dollars which represents 0.09 of a percent. Bearing in mind that the programme was established over four decades ago where the Customs Department would have collected an estimated nine hundred million (\$900+mil) dollars further reducing the percentage to 0.05 of a percent. As indicated, these figures represent calculations of two (2) decades and calculations of four (4) decades to display the potential risk, which is far less than a one percent. It is therefore fair and reasonable to conclude that the percentage representing duties not recouped would be even less if the wider period were considered. It is therefore not fair nor accurate to describe the impact of the unpaid duties associated with this programme as "significant".
- 1.3c Moreover I have explained the various ways in which the programme has been evolving to meet the challenges and difficulties faced over the years and the several initiatives which have been implemented as a result. The Customs Department has been consistently taking strides to ensure that the outstanding duties are, or can be, recovered. These measures therefore serve to reduce any risk or negative effect the programme would have on the public purse and ensure that the balance is struck between residents of the Virgin Islands having reasonable access to goods, the majority of which they have no choice but to import and the Government fully collecting duties/revenue which are legally and properly due to it.



Customs Department

Richard Stouff Building, Wickham's Cay I

Road Town, Tortola, British Virgin Islands

Tel: 1-284-468-6800 Fax: 1-284-468-6825 Email: bvicustoms@gov.vg

1.4. The Financial Secretary and elected representatives appear to have authorized or otherwise instructed the Commissioner of Customs (either directly or indirectly via the Financial Secretary in the case of elected representatives) to allow named individuals to use the Programme.

1.4a The partial payment programme is one that has been administered in conjunction with the *Financial Secretary* for the purposes of transparency. For instance, see the correspondence dated 30th July 2021 from Aqua VI to the Financial Secretary dated 30 July 2021 [Appendix H] and the approval granted by the Financial Secretary, which was communicated to me via e-mail dated 5th August 2021 [Appendix I]. The role of the Financial Secretary is also seen in the correspondence issued by [REDACTED]

[REDACTED] on 18th September 2008 [Appendix J] and the subsequent correspondence by then-Financial Secretary to the Comptroller of Customs (as my post was then called) dated 2nd October 2008 [Appendix K].

1.4b In respect of the Financial Secretary, it should be noted that s. 84(1) of the *Customs Management and Duties Act, 2010* allows "*the Commissioner of Customs, with the approval of the Financial Secretary, to remit or authorise the refund of, the whole or a part, of import or export duty paid by a person in respect of any goods*". It is therefore my view that if the Financial Secretary has express authority to reduce or remove the duties payable, this includes the ability to authorize paying the total duty owed in instalments. The requests (and now based on one of my initiatives, the application forms) requesting to pay customs duties in instalments will therefore be processed through the Financial Secretary.

1.4c I categorically state that, during my tenure as Commissioner of Customs, I have never received any directive from an *elected representatives* concerning the partial payment programme. If any such instructions were directed through the



Customs Department

Richard Stoutt Building, Wickham's Cay I
Road Town, Tortola, British Virgin Islands

Tel: 1-284-468-6800 Fax: 1-284-468-6825 Email: bvicustoms@gov.vg

Financial Secretary, I wish to state that I have no knowledge of same and therefore it would wholly be unfair to criticize me in this respect.

1.5 Government employees have been permitted to participate in the Programme and a number have delinquent balances.

1.5a The partial payment programme was available to any individual who applied and was approved for this same. Government employees were no exception. Interestingly enough, the programme was recently restricted to government employees and commercial importers: see e-mail forwarded to then Acting-Commissioner of Customs Leslie Lettsome from the then-Financial Secretary Glenroy Forbes dated 12 December 2019 [Appendix L] and similar memorandum from the Financial Secretary to the Commissioner of Customs dated 31st August 2020 [Appendix M].

1.5b The difficulties experienced in recovering outstanding duties from Government employees led to an initiative, under my leadership, for deductions to be made directly from their salary This was implemented approximately ten 9(0) years ago.

1.5c I hope my responses clarify any uncertainty with the statements contained in the Internal Audit Department's report and shows that the Customs Department has always operated consistently with the principles of good governance. In addition, we continue to develop controls utilizing international standards and best practices to ensure transparency and accountability. The administration of this programme does not amount to information that corruption, abuse of office or other serious dishonesty in relation to Customs officials may have taken place.



Customs Department
Richard Stoutt Building, Wickham's Cay I
Road Town, Tortola, British Virgin Islands
Tel: 1-284-468-6800 Fax: 1-284-468-6825 Email: hvicustoms@gov.vg

2. The system Customs has in place for the collection of import duties lacks adequate/appropriate/effective processes, procedures, controls and safeguards.

On the available evidence, it appears that:

1. That there is a high probability that fraud has occurred in respect of missing payments of import duties in the sum of approximately \$265,000.
- 2.1 I wholeheartedly disagree with this suggestion. As outlined at section 4 of my position at [Appendix O], the systems that the Customs Department has in place are adequate, appropriate, and extremely effective. It is the very adequacy of these very systems which allows the Customs Department to detect, investigate and report the fraud in question. It is safe to say that systems and processes are hardly ever foolproof. What is crucial, however, is the ability to detect a potential breach in short order and then take any necessary further action. This is precisely the manner in which the existing Customs processes operated in this case.
 - 2.2 It is the Internal Audit Unit of the Customs Department which unearthed the suspicious activity and then proceeded to investigate and report same as it was required to do. The investigations conducted by the Customs Department led to the compilation of sufficient evidence which warranted further investigations. This is clear when one reads the Internal Audit Report dated November 2015, the unsolicited report to the Financial Secretary dated 28th October 2015 and the report of the Director of Internal Audit from the Customs Department dated 28th October 2015.



Customs Department

Richard Stoutt Building, Wickham's Cay I
Road Town, Tortola, British Virgin Islands

Tel: 1-284-468-6800 Fax: 1-284-468-6825 Email: bvicustoms@gov.vg

- 2.3 The report submitted by the Internal Audit Department dated **November 2015** was ultimately a verbatim copy of the report submitted to it by the Customs Department one month before. As a matter of fact, the original Customs report is produced in its entirety and heavily relied on in the report of the Internal Audit Department. The matters referenced in the report of the Internal Audit Department were not based on investigations it carried out but was the result of those conducted by the Internal Audit unit of the Customs Department.
- 2.4 The irony is that it appears that Customs is now being criticized, rather than praised, for diligently uncovering this apparently untoward activity in respect of missing payment (revenues) and bringing it to the fore.
- 2.5 When the apparent missing payments of import duties, in the sum of approximately \$265,000, was discovered by Customs the matter was investigated and forwarded to the Internal Audit Department. Upon their confirmation of our findings, the Internal Audit Department had the responsibility under **s. 16(1.4) of the Internal Audit Act, 2011** which states that "*the committee shall submit all information that has been submitted to it by the director to the Commissioner of Police for investigation*". They failed to do so because the said committee had not been established at the time. The failure to undertake further action in accordance with the law was not attributable to the Customs Department. It is also noteworthy that this is not the only matter of similar nature where the Internal Audit Department failed to report findings to the Commissioner of Police.
- 2.6 What is more is that the Customs Department was not satisfied with the failure of the Internal Audit Department to proceed with this matter and thus, of its own volition, referred the matter to the Commissioner of Police itself. The Department was later advised by the Royal Virgin Islands Police Force ("*RVIPF*") that, after consultation with the Director of Public Prosecutions ("*DPP*"), it was determined



Customs Department

Richard Stoutt Building, Wickham's Cay I
Road Town, Tortola, British Virgin Islands

Tel: 1-284-468-6800 Fax: 1-284-468-6825 Email: bvicustoms@gov.vg

that there was insufficient evidence to charge anyone in respect of this matter. This conclusion had been communicated to me by the RVIPF sometime during the course of 2015, however I am unable to retrieve a copy of same since the offices of both the Customs Department and the RVIPF were adversely affected during the passage of the category 5 hurricanes in 2017. Nonetheless Inspector Elvis Richards, who had conduct of this matter on behalf of the RVIPF recalls the matter and has confirmed that this was the case: see correspondence dated 13th September 2021 [Appendix N]. We are unaware of what was submitted to DPP and again made every conceivable effort to have the responsible persons prosecuted for the apparent offence(s). The failure or refusal to have this matter advance any further than our investigation, once again, cannot be attributed to the Customs Department.

- 2.7 At the end of the day, it is difficult to guarantee that perfectly foolproof systems are in place. Human beings would often find ways to breach same. However, it cannot be disputed that, in this instance, the Customs Department was able to detect the infraction, investigate and then made every effort to have the perpetrator(s) prosecuted. More importantly, we have now implemented measures which would prevent the recurrence of same. Measures such as verification process; separation of duties, where Treasury Department is solely responsible for the collection whether manually or electronically, as it relates to entry and payment of duties. Moreover, the inspection and release of cargo is completed by the warehouse officers (segregation of duties), who will go through another verification process of the authorized person for pickup, documentation, plus verification and authenticity of receipts and inspection of cargo prior the issuance of Customs release and the issuance of gate passes by BVI Ports Authority. The ability to detect infractions and take corrective measures, in my view, are the hallmarks of a properly functioning system and goes against the notion that this situation provides information that corruption, abuse of office or serious dishonesty in relation to Customs officials may have taken place.



Customs Department

Richard Stoutt Building, Wickham's Cay I

Road Town, Tortola, British Virgin Islands

Tel: 1-284-468-6800 Fax: 1-284-468-6825 Email: bvicustoms@gov.vg

3. Customs administration of its operation related to courier clearance/trader declaration procedures ("the system") lacks adequate/appropriate /effective processes, procedures, controls and safeguards.

3.1 There is a significant risk to the public purse in that import duties are not being properly and/or fully collected and accounted for under the System. In particular, imports/cargo is released without full payment of customs duties in circumstances where the standing deposit balances are not properly monitored.

3.1a It is not accurate to state that import duties under the "System" are not being properly or fully accounted for. The Customs Department maintains comprehensive and accurate records of all import duties; including the total sum payable, the amount paid and any outstanding balance. This is true of any duties under the System.

3.1b In terms of the collection of customs duties under the System, I wish to explain that there is an initiative within the Customs Department known as the Trusted Trader Programme (also known as the Authorized Economic Operators Programme) whereby a standing deposit system is utilized. This allows the release of imported goods on bond to "trusted traders", meaning reputable importers in the Virgin Islands with a high compliance record. By way of example, most of the Territory's major supermarkets participate in this programme. The bond which is used is usually either a cash bond or a bank/financial guarantee [see blank Bond Agreement at **Appendix M**].

3.1c the use of bond agreements in respect of imported goods which were released subject to the programme. In this vein, the foods would be released subject to the provision of a bank/cash/financial guarantee [see blank Bond Agreement at **Appendix E**];



Customs Department

Richard Stoutt Building, Wickham's Cay I
Road Town, Tortola, British Virgin Islands

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- 3.1d CAPS is an electronic system which is used to administer and monitor the Programme. Before the goods are released, the relevant paperwork is completed to properly account for same. A deposit entry is created via the Customs Automated Processing System ("CAPS"), which would contain the estimated CIF value as well as the estimated duty payable. Thereafter a customs officer reviews the documentation and records an adjustment entry, reconciling the estimated duty with the actual figures. The importer is then responsible for paying the latter. In the Virgin Islands,
- 3.1e It is first necessary to place this System in its proper context. The Trusted Trader Programme is one which conforms to international best standards and practices as developed by the World Customs Organization ("WCO"). The objective of such initiatives is to create Customs-to-business partnerships which would facilitate legitimate free trade and stimulate the local economy.
- 3.1f As mentioned above, the goods under the System are released on bond. Under ordinary circumstances, the standing deposit on the importer's account would not exceed the value of the bond. This ensures that the bond serves as security facilitating recovery should the outstanding duties not be paid.
- 3.1g However, there were challenges experienced in the administration of the System that was adversely affected from the immediate aftermath of Hurricanes Irma and Maria in 2017 until the accounts were brought up-to-date earlier this year. It is no secret that all customs' infrastructure had been completely destroyed or severely affected during the passage of the hurricanes. All ports and even the Customs headquarters sustained total destruction; communication and internet systems went down, and the Territory was without electricity for several months. Not only was the Department without proper facilities to conduct its operations, but this



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also meant that Customs was unable to electronically administer or monitor the Programme as was customary.

- 3.1h It was not feasible to suspend or abandon the Programme at this stage. As mentioned above, the Virgin Islands import 99% of its goods. The level of loss and destruction experienced after the hurricanes meant that there was a dire need to have goods brought in for the very survival of VI residents, especially where some of the Programme's participants include the larger supermarkets.
- 3.1i The Customs Department therefore had to resort to manual processes, which, you would appreciate, posed challenging as it did not lend itself to the ease which electronic systems provide. During this time, there were instances where the bonds were exceeded. This was occasioned by the need to adopt a softer approach as the Territory was in crisis as explained above and eventually the use of manual processes led a substantial backlog which impacted on how efficiently the System could be monitored. However, the electronic system was restored as soon as electricity was restored and the capability returned to the Department and as indicated, all accounts under this Programme are now up-to-date with the bonds no longer being exceeded.
- 3.1j I wish to make it abundantly clear, however, that I am unaware of any duties going entirely unpaid under the Trusted Trader Programme. Even when the hurricanes led to manual systems being implemented, all duties assessed by the Customs Department have been duly paid. There is a lapse of time, usually a few weeks at most, between the goods being released on bond and the account being reconciled. However, the amounts deemed payable has consistently been recovered. It is therefore not fair nor accurate to state that the System poses a significant risk to the public purse.
- 3.1k Moreover it must be remembered that there are several measures in place to safeguard against the inherent risk associated with the Trusted Trader



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Programme. The Customs Department has continuously implemented recommendations, controls and international best practices in line with the principles of the KYOTO Convention Framework of Standards. Some of these measures include:

- (1) the use of bond which serve as security;
- (2) electronic processing and monitoring of the Programme;
- (3) the conduct of post-audits by the Internal Audit Unit of the Customs Department;
- (4) the standardization and simplification of processes, such as standard templates being utilized for bond agreements as shown in Appendix M;
- (5) stipulating that bonds expire simultaneously with trade licenses to facilitate easier monitoring;
- (6) the ability to suspend bond facilities in respect of accounts which are past-due.

Once again, these initiatives are in addition to the ability of the Department to initiate litigation to recover outstanding sums as provided for under **s. 60** of the **Customs Management and Duties Act, 2010**.

3.2 The System has promoted an environment where inappropriate relationships may be fostered where Customs Officers can offer preferential treatment to importers in the processing of their declaration which may include the offer of gifts and /or payments.

3.2a I am not of the view that the System lends itself to inappropriate relationships. As to whether the importers participating in the Trusted Trader Programme are given preferential treatment, a necessary and important distinction must be made between preferential treatment which is acceptable and that which is unacceptable and thus inappropriate.



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- 3.2b There are many instances, within the context of custom operations the world over, of preferential treatment which is deemed acceptable. For instance, I have taken the time to explain (in as much detail as is possible given the page constraint imposed) the background and objectives associated with the Trusted Trader Programme. This Programme is an internationally recognized and accepted form of 'preferential treatment' which is encouraged.
- 3.2c Other examples would be the North American Free Trade Agreement which grants preferential movement and duties in respect of goods manufactured in the United States, Canada or Mexico. Closer to home, a similar arrangement exists under CARICOM.
- 3.2d I would also mention an initiative I hope to bring on stream within the Department called "port account management". Under this initiative, importers would have a pre-determined and identified customs official with whom they would liaise when dealing with customs matters. This is analogous to the concept of 'desk officers' which exists in various other Government Ministries and departments and is meant to improve the efficiency of the Department. To some extent, this may also be classified as acceptable 'preferential treatment'.
- 3.2e At the other end of the spectrum, there exists preferential treatment which is entirely unacceptable and simply cannot be condoned. Examples would include nepotism where an importer is favoured because of a familial relation. I wish to highlight that the Audit Report does not identify a single instance of unacceptable preferential treatment. The reference to "inappropriate relationships" appears to have been an opinion that was expressed without a shred of evidence to support same. In my humble view, the suspicious and negative manner in which the Trusted Trader Programme was treated in the Report stems from a failure to appreciate the international recognition given to the programme and its benefits.



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3.2f For completeness, I wish to indicate the several safeguards which appear to have served as a deterrent thus far and if any infraction is committed, could be deployed to adequately address same. These include proceeding against the offending Customs officer or official for disciplinary offences or pursuing criminal charges, depending on the nature of the infraction. Customs has also implemented numerous policies to mitigate the risks associated with such programmes; such as performing internal audits, continuously rotating officers, supervision of staff and detection as elaborated on at section 4 of my position statement at [Appendix O]

3.2g It is therefore necessary to distinguish between acceptable and unacceptable preferential treatment for the reasons given above. I reiterate that the existence of the System does not and cannot, without more, lead to inappropriate relationships or unacceptable preferential treatment.

3.3 The system has resulted in a number of Customs Officers providing brokerage services, whether legitimately or illegitimately, as a private interest for supplemental income and poses a significant conflict in that Customs Officers may be reviewing and releasing declarations for which they had a direct involvement in the preparation or at least may have significant influence in the processing of such declarations.

3.3a First and foremost I wish to indicate that there is absolutely no evidence that *"that Customs Officers may be reviewing and releasing declarations for which they had a directed involvement..."* or that officers are using the System to provide a Supplemental income. I am unaware of any such scenario and certainly none was identified in the Audit Report. We have asked for evidence of these allegations so that they could be fully investigated, and the matter be handled in accordance with Government's disciplinary policies and procedures, the Customs Management and Duties Act or the criminal law if necessary.



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3.3b I do not agree that the System has led to Customs officers providing brokerage services, whether legitimately or illegitimately. It is not uncommon across several disciplines, trades, and professions in the Virgin Islands, for persons to engage in multiple professions for which they have trade licenses. Some examples are the tax accessor providing tax services; police officers providing security services or lawyers providing legal services outside of the employer's remit. However, there are policies and approvals within the public service to address the potential conflicts of interest which arise in such scenarios. Such policies can only be activated if we are directed to actual or potential breaches which, I repeat, we have not been.

3.3c Moreover the Customs Department has built-in mechanisms which safeguard against any one individual having significant influence over the process. There is a multi-pronged manner in which import duties are assessed and goods released which prevents a single individual or entity from being able to corrupt or improperly tamper with same. The process involves preparation, review validation and release as now briefly explained: *The process of receiving and reviewing the entries takes place at the CAPs Declaration Center, where the Senior Officer distributes the workload based on experience and skills of his subordinates. Once the entries are reviewed and approved, a summary for payment is generated. The Importer then proceeds to the port of entry with the summary and make payment(s) to the Treasury and the BVI Ports Authority Cashiers for Customs Duty and other port charges respectively. Upon completion of payment, the Senior Customs Officers assigns one of their subordinates to inspect and release the cargo from customs charge and port custody. These systems therefore mitigate, and would allow for early and ready detection of, the risk of corruption and conflict.*

3.3d I am aware that the Customs Department faced challenges in the immediate aftermath of the hurricane. This was due to the lack of facilities as described above as well a lack of manpower. Everyone had suffered severe devastation,



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and this caused many officers to migrate with their families. This negatively impacted the multi-pronged approach described above. However, this situation has long since been rectified and the said safeguards thus restored.

- 3.3e While the Trusted Trader Programme was adversely affected in the post-hurricane period, there is simply no evidence that same presents a significant risk to the public purse, can foster in appropriate relationships or unacceptable preferential treatment with some of its processes. I therefore disagree with the notion that Customs has acted inconsistently with good governance and reiterate that no evidence whatsoever has been presented and thus there is no evidence that may amount to information that corruption, abuse of office or serious dishonesty in relation to officials may have taken place.





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Encl.

Appendix A: Correspondences dated 27th August 2004 from the Governor to Head of Internal Unit

Appendix B: Application for Partial Payment form

Appendix C: Blank Request for Duty Amortization Form

Appendix D: Request for Duty Amortization in respect of [REDACTED] dated 4 July 2017

Appendix E: Blank Bond Agreement

Appendix F: Blank Record of Interest

Appendix G: Record of Interest lodged in respect of [REDACTED] on 23 August 2019

Appendix H: Correspondence dated 30th July 2021 from [REDACTED] to the Financial Secretary dated 30 July 2021

Appendix I: e-mail correspondence dated 5th August 2021 approval granted to [REDACTED] by the Financial Secretary,

Appendix J: Memo from Financial Secretary to Director of Internal Audit dated 18th September 2008

Appendix K: Memo dated 2nd October 2008 from Financial Secretary to Comptroller of Customs

Appendix L: Correspondence from the Financial Secretary dated 12th December 2019 to Acting Commissioner of Customs

Appendix M: Correspondence dated 31st August 2020 from Financial Secretary to Commissioner of Customs

Appendix N: Correspondence dated 13th September 2021 From Detective Inspector Richards

Appendix O: Section 4 of my position paper

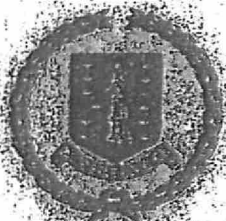
APPENDICES

A THROUGH O

WADE N. SMITH
13TH SEPTEMBER 2021



MEMORANDUM



Office of the Governor
Government House
P.O. Box 702
Road Town, Tortola
British Virgin Islands

Telephone: (284) 494-2345/70
Facsimile: (284) 494-5790

From: The Governor
To: Head of Internal Audit
cc: Financial Secretary
Comptroller of Customs
Date: 27 August 2004

CONFIDENTIAL

Ref: PSS/10

RE: INVESTIGATION OF FRAUD AT HM CUSTOMS

The Comptroller of Customs has drawn my attention to your useful investigation of malfeasance by [REDACTED] Customs Officer at West End.

In it, you make the observation that "the action of this young officer is indicative of the behaviour of Senior Officers in Customs". You subsequently make the observation that Government has "over the years put 'rat to mind cheese'".

As you know, I set and expect high standards in the public service. I deal severely with the type of fraudulent behaviour which [REDACTED] appears to have practiced.

Those high standards must apply not only in financial matters but also in the way that we write about each other, and any allegations that we make. If allegations are made, I expect them to be backed up by hard evidence.

I do not find that the observations that you make about "Senior Officers in Customs" or about "rats and cheese" fall into that category. If there are Officers misbehaving, I expect to see them identified and dealt with. But broad generalizations risk being damaging to innocent officers and the organisation as a whole.

I should therefore be grateful if you would expunge those two observations from your report.

[REDACTED]

Tom Macan
Governor



Customs Department

Richard Stoutt Building, Wickham's Cay 1
Road Town, Tortola, British Virgin Islands

Tel: 1-284-468-6800 Fax: 1-284-468-6825 Email: bvcustoms@gov.vg

APPLICATION FOR PARTIAL PAYMENT

Application Date: _____

SECTION A: PERSONAL INFORMATION.

Full Name: _____

Address: _____

Social Security Number: _____

Cellphone: _____ Telephone: _____

Are you employed with the Government of The Virgin Islands? YES NO

If Yes, Department/Ministry: _____ Position: _____

Employee Number: _____ Work (Extension): _____

Immigration Status: BVI Islander/Belonger Resident Work Permit

Occupation: _____ Employer: _____

TYPE OF GOODS _____ VALUE OF GOODS: _____
(Attach invoice)

(Please note a surety is needed if on work permit or not a Government Employee. Please Refer to Section C.)

SECTION B: BUSINESS INFORMATION.

Name of business: _____

Name of applicant on behalf of business: _____

Address: _____

Trade License No. (Attach): _____

Telephone: _____ Work: _____ Cellphone: _____

TYPE OF GOODS _____ VALUE OF GOODS: _____
(Attach invoice)

SECTION C: SURETY INFORMATION

Name of Surety: _____

Name of Applicant: _____

Social Security Number: _____ Employee Number: _____

Address: _____

Cellphone: _____ Home: _____ Work Ext: _____

Department/Ministry: _____ Position: _____

Immigration Status: BVI Islander/Belonger Resident Work Permit

Passport Number: _____ Exp. Date: _____

OR

Belonger Card Number: _____ Exp. Date: _____

Note: Completed Salary Deduction Authorization Form is required once application is approved

SIGNATURE OF APPLICANT: _____ DATE: _____

SIGNATURE OF SURETY: _____ DATE: _____

OFFICIAL USE ONLY

RECEIVED BY: _____ Date: _____

REVIEWED BY: _____ Date: _____

RECOMENDATION: APPROVED DENIED

REMARKS: _____

COMMISSIONER'S ASSESMENT:

Commissioner's Signature & Stamp



Customs Department
 Richard Stoutt Building, Wickham's Cay 1
 Road Town, Tortola, British Virgin Islands
 Tel: 1-284-468-6800 Fax: 1-284-468-6825 Email: bvicustoms@gov.vg

Date

Request for Duty Amortization

I, _____, understand that full duty is payable by the owner of goods at the time of first importation. I further understand that until all duties are paid on any item, the Customs Department still has an interest.

I, _____, request of the Commissioner of Customs to be allowed to pay _____ (US), in _____ installments of _____ (US) import duty on one _____ (description of goods) imported into the territory _____ (Date) on _____ (Vessel information)

I, _____, authorize the Customs Department to seize the items mentioned above or take other reasonable actions including placing a lien on my estate in order to recover any monies owed if this agreement is breached.

I, _____, request for amortizations of duty, and agree to the terms set out below:

Payments to commence as per schedule:
 Down payment of \$ _____ (US)

- First payment due on _____
- Second payment due on _____
- Third payment due on _____
- Fourth payment due on _____
- Final payment due on July 30, 2019

Contact Persons:
 Address:
 Contact #:
 Agreed to:

.....
 Signature Importer(s)

 Witness

.....
 Commissioner of Customs

 Dated



Customs Department
Richard Stovett Building

APPENDIX D

Road Town, Tortola, British Virgin Islands
Tel: 1-284-494-3475 Fax: 1-284-494-6906 BVICustoms@gov.vg

July 4th, 2017

Request for Duty Amortization

I, [REDACTED] understand that full duty is payable by the owner of goods at the time of first importation. I further understand that until all duties are paid on any item, the Customs Department still has an interest.

I, [REDACTED] request of the Commissioner of Customs to be allowed to pay \$30,147.99 (US) duty in nine (9) installments on three (3) vehicles; [REDACTED] and [REDACTED] imported into the territory on [REDACTED] on 28/06/17.

I, [REDACTED] authorize the Customs Department to seize the items mentioned above or take other reasonable actions including placing a lien on my estate in order to recover any monies owed if this agreement is breached.

I, [REDACTED] request for amortizations of duty, and agree to the terms set out below:

Balance \$30,147.99

Payments to commence as per schedule:

- First payment due on August 29th 2017
- Second payment due on September 30th 2017
- Third payment due on October 30th 2017
- Fourth payment due on November 30th 2017
- Fifth payment due on December 30th 2017
- Sixth payment due on January 30th 2018
- Seventh payment due on February 30th 2018
- Eight payment due on March 30th 2018
- Ninth payment due on April 30th 2018

- \$ 2500.00
- \$ 2500.00
- \$ 2500.00
- \$ 3774.66
- \$ 3774.66
- \$ 3774.66
- \$ 3774.66
- \$ 3774.66
- \$ 3774.69



Contact Persons: [REDACTED]

Address: [REDACTED]

Mobile: [REDACTED]

[REDACTED]

Signature Importer

[REDACTED]

Witness

7/4/17
Dated





Customs Department
Richard Stoutt Building, Wickham's Cay 1
Road Town, Tortola, British Virgin Islands
Tel: 1-284-468-6800 Fax: 1-284-468-6825 Email: bvicustoms@gov.vg

BOND AGREEMENT

This Bond Agreement is made on this ___ day of _____ 2021, between the Commissioner of Customs for and on behalf of Her Majesty's Customs situated at Richard Stoutt Building, Road Town, Tortola, Virgin Islands (hereinafter referred to as "the Commissioner") and _____, situated at Road Town, Tortola, British Virgin Islands (hereinafter referred to as "the Importer") on the following terms and conditions:

- 1. The Importer agrees to present to the Commissioner, a bank guarantee in the sum of _____, from a licensed bank operating in the Territory of the Virgin Islands.
2. The Commissioner shall on receiving a (Cash/Financial guarantee), permit goods imported by the importer in the normal course of its business operations, to be released on bond, prior to payment of import duties, taxes, and other fees.
3. The importer must ensure that all documents required for the release of goods are provided to Customs in the form and manner required.
4. Formal entries for goods released on bond shall be submitted within five working days after the goods have been released. In addition, formal entries for goods released on bond in any calendar month must be submitted to Customs by no later than the 5th day of the following month, and all outstanding taxes as of the end of each calendar month shall be paid by the 10th day of the following month.
5. The Commissioner reserves the right to inspect the company's inventory at any time to verify accuracy of imports and to ensure compliance with HMC regulations.
6. The Commissioner may direct how the goods are to be moved from the place of import to the Importer's place of business.
7. The Commissioner of Customs may suspend the conditions or terminate this agreement if the importer breaches any of the conditions herein.
8. This Bond Agreement shall be renewed annually on January 1st (Year) subject to compliance to the satisfaction of the Commissioner of Customs.

Signature of Importer: _____ Date: _____

Name (Print): _____

Position: _____

Signature of Witness: _____ Date: _____

Name: _____

For H.M. Customs:

Commissioner of Customs: _____ Date: _____



Customs Department
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 Road Town, Tortola, British Virgin Islands
 Tel: 1-284-468-6800 Fax: 1-284-468-6825 Email: bvicustoms@gov.vg

Record of Interest

Print Name of Owner: _____

Print Name of Importer _____

Importation Details: Date: _____ Carrier: _____ Mft#: _____

Details of Vehicle: Year: _____ Make: _____

Model: _____ Colour: _____

VIN#: _____

License Plate No/Other Details: _____

It has been agreed that the above mentioned vehicle is allowed to be registered, and a notice preventing any transfer of its title will be recorded at the Department of Motor Vehicles until it is certified that all obligations relating to The Customs Department has been met.

Declaration:

I, _____, declare that I understand and agree to the conditions stated above.

Signature of Owner _____ Date _____

Name of Witness _____ Date _____

Signature of Witness _____ Date _____

Commissioner of Customs _____ Date _____



Customs Department
Richard Stoutt Building, Wickham's Cay 1
Road Town, Tortola, British Virgin Islands
Tel: 1-284-468-6800 Fax: 1-284-468-6825 Email: bvicustoms@gov.vg

Record of Interest

Print Name of Owner: _____

Print Name of Importer: _____

Importation Details: Date: 20TH AUGUST 2019 Carrier: _____

Mft#: 751

Details of Vehicle: Year: 2002 Make: _____

Model: _____ Colour: WHITE&BLACK

VIN: _____

License Plate No/Other Details: _____

It has been agreed that the above mentioned vehicle is allowed to be registered, and a notice preventing any transfer of its title will be recorded at the Department of Motor Vehicles until it is certified that all obligations relating to The Customs Department has been met.

Declaration:

I, _____, declare that I understand and agree to the conditions stated above.

Signature of Owner: _____ Date Aug 23/19

Name of Witness: _____ Date 23/ Aug 19

Signature of Witness: _____ Date 23 Aug 19

Commissioner of Customs: _____ Date 23/08/2019





Mr. Jeremiah Frett
Financial Secretary
Ministry of Finance
Government of the Virgin Islands
Road Town, Tortola VG1110
Virgin Islands

July 30, 2021

Dear Mr. Frett,

RE: REQUEST FOR ASSISTANCE

We trust that this letter finds you well.

Per our telephone conversation earlier today, I hereby make a request for assistance in clearing two (2) containers off the Port Purcell Facility (Customs & Ports Authority).

The equipment in the containers is a state-of-the-art water purification and bottling plant. This plant would be the first of its kind in the Virgin Islands; of which the Government and all Virgin Islanders would be proud.

The water being produced will meet, and exceed international standards with over ten (10) stages of filtration and purification processes.

My situation is that due to the COVID-19 pandemic and its effects internationally, the manufacturer of the plant faced several months of lock-down restrictions resulting in significant delay in production and subsequently causing shipping delays as a result of. The blockage of The Suez Canal earlier this year, also caused a negative domino effect on the time-frame in which this matter has been handled.

The plant was scheduled to arrive in the territory (BVI) in December, 2020. As a result of this delay, I was challenged with paying for a warehouse space [REDACTED] for the past 9 months; total payments of which have amounted to US\$15,300.00 to date, which significantly depleted my financial resources; causing yet further financial set-back.

You would appreciate that; should the plant have been here in December, full commissioning and operation would have commenced and would have enabled me to be in a better financial position.





*Mr. Jeremiah Frett
Financial Secretary
Ministry of Finance
-Page 2-*

In addition to the above, please note that two (2) highly qualified technicians have already arrived in the territory and their expenses are also my responsibility, further adding to my current financial challenge.

I am hereby pleading for some form of financial assistance to have the equipment/plant removed from Ports/Customs prior to the fast approaching August public holidays, so that we may utilize the holiday Monday, Tuesday, Wednesday (2nd, 3rd, 4th August, 2021) to set up the plant fully for commission.

Please find enclosed a copy of the Payment Summaries received from BVI Customs (CAPS), as well as the Invoices received from [REDACTED]

I trust that you find favor in my request to further assist in making this project a reality.

Yours Sincerely,

[REDACTED]

[REDACTED]

Managing Director



From: Jeremiah Frett
Sent: Thursday, 5 August 2021 10:29 am
To: Wade N. Smith
Cc: Teshonda Thomas
Subject: Fw: Request for Assistance [REDACTED]

Mr. Smith,

See the email below.

Regards,

Jeremiah A. Frett
Financial Secretary (Ag.)
Ministry of Finance
Government of the Virgin Islands

Email: [REDACTED] Tel: 1-(284)-468-2144
Cell: [REDACTED]

From: Jeremiah Frett [REDACTED]
Sent: Saturday, July 31, 2021 12:36 PM
To: [REDACTED]
Cc: Wade N. Smith [REDACTED]; Teshonda Thomas [REDACTED]
Subject: Re: Request for Assistance - [REDACTED]

Dear [REDACTED]

I have reviewed your request and congratulations on your new business venture. However, I am not in a position to approve any exemption of custom's duty at this time. I am inclined to agree on a payment plan to which all outstanding duties would be paid before 31 December, 2021. This would be communicated on the Ministry's official letter head shortly and communicated to the Commissioner of Customs who will administer the arrangement.

Regards,

Jeremiah A. Frett
Financial Secretary (Ag.)
Ministry of Finance
Government of the Virgin Islands

Email: [REDACTED] Tel: 1-(284)-468-2144

Road Town, Tortola, British Virgin Islands

Email: [REDACTED]

Fax: [REDACTED]

September 18th 2008

Mr. Neal Smith
 Financial Secretary
 BVI Government
 Administration Complex
 Road Town, Tortola
 British Virgin Islands

Dear Neal,

Re: [REDACTED] - Customs

As per my many, many, conversations with yourself, Chief Minister's office, Fave Reese and other personnel regarding [REDACTED] for [REDACTED] Services no effort seems to have been made. It was on this premise that our [REDACTED] Crane was granted permission by the former government to be cleared duty free.

However, since that time nothing has happened and despite being assured, nothing has been forwarded to us confirming same. It has now come to a position where BVI Customs are now trying to collect this debt see copy of there letter dated August 22nd 2008 copied to the Attorney General's Chambers. I must say that we are disappointed with the path in which it has taken.

To this end I wish to bring to your attention the following debts owed to [REDACTED] by various governments departments.

Monies owed to [REDACTED]	
Public Works	\$140,662.30
Ministry of Communications & Works	\$11,235.04
Ministry of Natural Resource & Labour	\$9,690.00
Ministry of Health	\$12,100.00
Ministry of Finance	\$62,897.50
Ministry of Education	<u>\$6,946.50</u>
	\$243,531.34

Monies owed to [REDACTED]	
Ministry of Natural Resource & Labour	\$75,000.00 (over \$75,000.00)

Although I do sincerely wish that we can collect these outstanding debts we are willing to come to some amicable agreement. I trust that we can resolve this particular issue.

I look forward to hearing from you shortly.

Sincerely,

[Redacted signature]

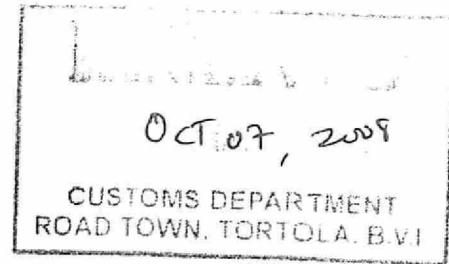
Office Manager

cc. Attorney General Chambers



MEMORANDUM

Ref. No.: FIN/C4/85
 TO: Comptroller of Customs
 FROM: Financial Secretary
 DATE: 2nd October, 2008
 SUBJECT: Outstanding Duty - [REDACTED]



33 Admin Drive
 Central Administration
 Complex
 Road Town, Tortola,
 British Virgin Islands

Telephone:
 (284) 494-3701
 ext. [REDACTED]

Fax:
 (284) 494-6180

ite:
 ce.gov.vg

Email:
 finance@gov.vg

The aforementioned caption refers.

I am aware of outstanding duties owed to the Government of the Virgin Islands (GBVI) by [REDACTED] to the amount of some one hundred and fifty-three thousand, two hundred and seventeen dollars and sixty-five cents (\$153,217.65), and your attempts to get these bills settled as soon as possible. However, I am also privy to claims by the same company to the GBVI that in fact we owe them in excess of some two hundred and forty-three thousand dollars (\$243K) (see attachment). In discussions that I have had in respect to these claims, I have been unable to substantiate beyond that of a few, with any degree of certainty, that these bills are either way without cause. The fact remains however that in some of the cases the work can be shown to be completed, yet I am in receipt of no verification from the executing agencies of the participation of [REDACTED]. This not to say that they are refuting the possibility of this company not doing the work, but instead that the individuals who would have been supervising the works are no longer available, or that they are unclear as to what exactly occurred.

Yet it would be inequitable, if we were to penalize them for import duties owed, while at the same time we owe them monies which they are adamant is owed to them. I am indicating therefore that failing us (GBVI) paying [REDACTED] for the monies they claim are owed to them, and until firm verification can be made of these claims, that we should, while acknowledging the funds owed, suspend any enforcement action until we ourselves are able to treat with the claims being made. I am also indicating that they should be given no further "duty breaks" even in view of these claims, save that given via a Cabinet decision, or some other legitimate means. I think it still goes without saying however that the duties are still owed to the GBVI, but in view of Section 43 of the Public Finance Management Act 2004, we can make an allowance for this case. The idea behind no further "breaks" being, that the difference between the sums they claim that we owe to them and the duty they owe to use, should serve as a safety net in favour of the GBVI, and also in order to be

From: Leslie Lettsome
Sent: Monday, December 16, 2019 5:14 PM
To: Glenroy A Forbes
Subject: Re: Audit - Her Majesty's Customs - Partial Payment

Good afternoon F.S.

I thank you for your email.

I would adhere to your directive. However, further clarification is needed as to who are considered to be Commercial Importers. I look forward to your response.

Regards,

Mr. Leslie H. Lettsome
Ag. Commissioner of Customs

-----Teshonda Thomas/government/VG wrote: -----

To: Leslie Lettsome/government/[REDACTED]
From: Glenroy A Forbes/government/VG
Sent by: Teshonda Thomas/government/VG
Date: 12/12/2019 05:17PM
Cc: Greg Romney/government/[REDACTED], Jeremiah Frett/government/[REDACTED], Roslyn Lettsome/government/[REDACTED]
Subject: Audit - Her Majesty's Customs - Partial Payment

Dear Commissioner,

I write with respect to the above captioned and the Director of Internal Audit's memorandum to you dated October 7, 2019.

I am advising that with the exception of Civil Servants and commercial importers, the system of partial payment should be discontinued until further notice.

Please be guided by the foregoing.

Kind regards,

Glenroy A Forbes
Financial Secretary
Ministry of Finance
Government of the Virgin Islands



Ref No.: FIN/C4/2
From: Financial Secretary
To: Commissioner of Customs
Date: 31st August, 2020
Subject: **General Moratorium on Partial Payment**

Further to our discussion during the Internal Audit Department's Exit Interview on Friday, 28th August, 2020, I wish to reiterate my position with respect to partial Customs' Duty payments by importers.

Based on information disclosed through the Internal Audit's investigation of the programme, that is, partial payment, it behooves our respective offices to stop and take stock of what has been happening with the execution and management of the programme. From all indications, there is a sizable amount of Government revenue that has been put on the street and remains on the street for far too long without any attempt to reconcile the records.

In light of the above, I am now directing that with immediate effect:

1. we cease any further granting of partial payments, unless or until my office gives instructions as to specific release and on what terms; and
2. Customs initiates an effort to collect/chase as much of the outstanding revenues as possible using its existing records.

Notwithstanding the above and for the avoidance of doubt, I am now stating that in fulfilment of (1) above, Customs should only refer to my office, any person(s) requesting partial payment who they deem as a worthy risk. With respect to Civil Servants, they should only receive partial payments once they agree to a direct deduction from salary. In all cases (Civil Servants/General Public), the period for repayment should not exceed six months and any lapse in payments for more than 2 months should empower Customs to repossess the imported assets as uncustomed goods.

I submit the above for your attention and guidance. If there is need for further clarification or further information, please do not hesitate to refer to my office.



/tt

attachment

cc: Director of Internal Audit
Accountant General
Budget Coordinator
Head, Policy Unit, MoF



THE ROYAL
VIRGIN ISLANDS
POLICE FORCE

Financial Investigations Unit
POLICE HEADQUARTERS
P.O. Box 64
Main Street
Road Town
Tortola, B.V.I.

APPENDIX N

September 13, 2021

To Mr. Wade Smith
Commissioner of HM Customs

Sir,

SUBJECT: Investigation on possible revenue loss involving [REDACTED]
and [REDACTED] conducted on behalf of HM Customs.

As requested during the month of July 2021, please find below a synopsis detailing the role of the Financial Investigations Unit, RVIPF in the investigation of the Report made by the Commissioner of Police 28th November 2015 and the outcome.

On the 28th November 2015, Commissioner of Customs Mr. Wade Smith filed a report concerning possible loss of revenue involving [REDACTED] and [REDACTED]
[REDACTED]

As a result a comprehensive investigation was launched by the Financial Investigation Unit of the RVIPF which included:

- review of the internal report and investigation previously conducted by the Customs department prior to the Police report 26/11/2015
- Examination of records at the Auditor general's and Internal Audit Departments
- Examination of the limited documents that was available at the Customs Department. search warrants were executed at the business premises of both entities
- search warrants were executed at the personal residence of the business owners and persons of interest connect with the businesses
- Financial searches were conducted at the banks, treasury and money transfer agencies and directly with the Ministry of Finance
- Conducted interviews with individuals

Outcome

As a result of the information received the Financial Investigation Unit RVIPF, submitted a case file to the Director of Public Prosecution for advice and direction as per protocol.

The Director of Public Prosecution deemed and certified that there was insufficient evidence to file a criminal case and or prefer charges against any of the persons of interest. As a result the FIU could not take the matter any further.

Yours Respectfully,

A solid black rectangular box redacting the signature of the sender.

Elvis Richards
Detective Inspector
Financial Crime Unit

Ordinance. **Border Security:** Liaises closely with all other law enforcement agencies in the BVI (Police, FIA Immigration, Fisheries) and work closely with our regional and international counterparts to prevent transnational crimes and monitor cross border movement of vessels, goods and people.

4. What particular responsibilities do you have, as the Commissioner of Customs in respect of detecting and investigating corruption, abuse of office or other serious dishonesty that may have taken place in public office within the Customs system in recent years?

4.1 My responsibilities are to ensure that the systems in place to detect corruption, abuse of office and other serious dishonesty are confidential, effective, and trustworthy to encourage a positive relationship with Officers, domestic whistle blowers and external intelligence. When Officers, whistle blowers or other stakeholders bring matters such as potential corruption, abuse of office or other serious dishonesty, that may have taken place in the Customs Department to my attention, or were I to observe them first hand, my responsibility is to ensure that the assurance unit is made aware of this expeditiously to gather relevant information from the IT systems and disseminate for further investigation.

4.2 Secondly, depending on the nature of the suspicious activity the Enforcement Unit will be ask to assist by investigating the activity, which will then be passed to the Commissioner of Customs for review. Any act of misconduct, abuse of office, corruption or other serious dishonesty will be forward to the Attorney General Chambers, Royal Virgin Islands Police Force, Office of the Director of Public Prosecutions, Financial Investigative Agency for further investigation.

4.3 Further, if any act of misconduct, abuse of office, corruption or other serious dishonesty is perpetrated by a Customs Officer, it will be my responsibility in accordance with the General Orders 3.6 and 3.7, Service Commission Act, 2011, Service Commission Regulations 2014 and Devolution Regulations, 2008 to forward to the Department of Human Resources through the parent Ministry (Finance) headed by the Financial Secretary for further action.

Speech From The Throne - Driving BVI Innovation Through Legislation

Statement

Premier's Office

Office of the Governor

House of Assembly

Topics: Coordination of Government Policy (/tags/coordination-government-policy), House of Assembly (/tags/house-assembly)

Release Date:

Thursday, 5 November 2020 - 1:45pm

**SPEECH FROM THE THRONE DELIVERED BY
HIS EXCELLENCY THE GOVERNOR MR. AUGUSTUS J.U JASPERT
First Sitting of the Third Session of the Fourth House of Assembly**

Save the Seed Complex

**Thursday, 5 November, 2020
10:00 a.m.**

DRIVING BVI INNOVATION THROUGH LEGISLATION

Mr. Speaker, Honourable Members of the House of Assembly, invited guests, those viewing online and listening via radio, good morning.

I stand in this Honourable House to present the second Speech from the Throne during this Administration.

I count it an honour and privilege as Governor of the Virgin Islands to deliver the Speech from the Throne on behalf of Her Majesty Queen Elizabeth II.

As is the tradition, and is the case in most Commonwealth countries and British Overseas Territories, the Speech from the Throne outlines the elected Government's Legislative Agenda to pursue in the Third Session of the Fourth House of Assembly.

The Speech from the Throne is prepared within the Premier's Office in consultation with Ministries. The Speech is then deliberated and approved by the elected Government of the Virgin Islands.



In this speech, I will refer to Her Majesty's Government as 'Our Government'.

During this Session, our Government will focus on introducing and amending different pieces of legislation under the theme: *Driving British Virgin Islands Innovation Through Legislation*.

Our Government will deliberate each piece of legislation within the context of *building a stable, diverse and competitive economy through trade, industries and the people of the Virgin Islands*.

The vision of our Government is to transform the Virgin Islands into a leading regional economy through innovation, entrepreneurship and local and foreign investment by 2025.

I will first share about those pieces of legislation focused on: A COMPETITIVE ECONOMY

Modern digital technology provides the opportunity to improve convenience and access to Government services and enhance the efficiency of the delivery of many Government services to the citizenry.

In this regard, our Government will bring forward a longstanding suite of electronic legislation to support the comprehensive digital transformation of the Public Service and improve e-payments for customers. The Bills include ***Data Protection, Electronic Filing, Electronic Funds Transfer, and Electronic Transactions***.

Following a review of the Virgin Islands ***Correctional Facilities Act*** that was passed in 2018, it was determined that individual sections were inconsistent with the provisions of the Virgin Islands Constitution Order 2007. Hence the Act has not been assented to.

The legislation will therefore be revised to align its provisions with the Virgin Islands Constitution while maintaining its original objectives to repeal and replace the ***Prison Ordinance (CAP.166)*** and modernise the Territory's legal framework with respect to the management and security of prisons, and the safe custody and rehabilitation of inmates.

The ***Emergency Call Handling Bill*** is needed at this time. Our Government has established a Next Generation 911 Emergency Call Handling Centre for the Territory of the Virgin Islands, which is designed to enable the sharing of valuable lifesaving emergency response and law enforcement information through the use of smart mobile and fixed communications.

A critical element to the full functioning of this Centre is the enactment of supporting legislation. Hence, 911 Emergency Call Handling Bill will be introduced to meet the aims and purposes of the Call Handling Centre.

The ***Disaster Management Bill*** provides for the more effective organisation of the efforts related to the mitigation of, preparedness for, and recovery from hazards affecting the Virgin Islands and other matters associated therewith. Additionally, it seeks repeal the current legal framework related to disaster management in the Virgin Islands and provides a comprehensive mechanism for disaster management in the Virgin Islands, and the rights and obligations of the Virgin Islands under the Agreement establishing the Caribbean Disaster Management Agency.

The ***Architects and Engineers Registration Bill*** remains in draft form and still to be approved by Cabinet for further processing. The proposed legislation will focus on the protection of health, safety and welfare of building occupants, guarantee safety, and all the while help to protect the integrity of

the professions.

I will now turn to those pieces of legislation focused on BUILDING THE PEOPLE OF THE VIRGIN ISLANDS

Education and higher education drives innovation and creativity. This is important to improve the training of our people. Our Government will continue to invest in its people.

Our Government is committed to educational development and is cognisant that in this era of the "New Regular," the education system must become more technology-driven and coherent with the established protocols. That is why there will be a focus on the **Education Act (2004)**, as amended, to bring this legislation in line with the technological requirements for learning, as well as the new physical standards for schools and classrooms, the placement of students and the establishment of stricter disciplinary and academic protocols.

Our Government remains committed to ensuring that students receive the best possible instruction and are also trained to become functional citizens within this Territory, despite the new challenges that are being faced. To realise this, our Government will aim to finalise the recently drafted **Discipline Policy** and the revised **Student Code of Conduct**.

For any developing country to rightfully take its place and remain on the global stage, its human resources must be adequately trained with the knowledge and skills necessary to move the country forward. Our Government remains committed to ensuring that educational opportunities are continuously available to the people of this Territory. As such, the **Virgin Islands Scholarship Programme Policy (2014)** will be revised to ensure that this programme remains sustainable and adequately supports the training and workforce needs of the Territory.

With respect to the H. Lavity Stoutt Community College, our Government wishes to put forth amendments to the **College Act of 1990** to bring this legislation up to date with contemporary norms for the governance of accredited tertiary institutions.

This year, our Government set out to revisit the **Virgin Islands National Youth Policy and Strategic Objectives (2014-2019)** in an effort to update the policy with the status quo of its young people. However, due to the COVID-19 pandemic related economic strain placed on this Territory, this project was not realised. We will bring this policy back into focus.

In recent years, local sportsmen and sportswomen have been performing remarkably well on the international stage, raising the profile of the Territory and inspiring us with their achievements. Our Government recognises that our current and aspiring athletes deserve support and an enabling environment to help them realise their potential. The introduction of the **Virgin Islands National Sports Council Bill** to provide for the establishment of a National Sports Council is in the early stages of stakeholder consultation. It is anticipated that a draft Bill will be before this Honourable House during the latter part of 2021.

Our Government will create **Children (Care and Adoption) Bill** so that it is in line with the **Organisation of Eastern Caribbean States Model Children (Care and Adoption) Bill** would serve to modernise and strengthen the laws to aid in the proper care and management of children in the Virgin Islands.

More specifically, the Bill provides a more comprehensive way to address matters relating to child abuse, neglect, exploitation, and other forms of violence against children. Its express intent is to ensure the safety, welfare, and well-being of the child and that any decisions taken are made in the child's best interest. The Bill would also modernise the laws relating to foster care and adoption procedures and the child's overall welfare.

The **Registration of Births and Deaths Bill 2020** will be repealed and will replace the **Registration of Births and Deaths Ordinance (CAP.276)** which has been in existence for over fifty-six years. It also seeks to modernise the Territory's procedures with respect to the registration of births and deaths,

and enable computerisation of the notification and registration process.

The archives and records of the Territory are very important to the history and identity of its people. The **Archives and Records Management Act 2010** is being amended to establish the Archives and Records Management Department and to provide for the preservation of public archives and records from an electronic perspective.

Following a 2017 consultancy through the United Kingdom's Foreign and Commonwealth Office to assess the **Labour Code 2010**, work now needs to be done to bring about a full revision of the legislation.

The overall purpose of the exercise is to establish a framework to enhance the effectiveness of employment laws and standards in place in the Territory.

The process for improving the effectiveness of our local labour law aims to reassert citizens' fundamental rights and align effectively with local standards and international norms and best practices.

The 2018 consultant's report outlines the way forward. Additional work will be done to ensure that the requisite measures are taken to establish the Labour Policy and amend the Labour Code, where applicable.

There will also be amendments to the **Social Security Board Act** seeking to bring the legislation in line with international best practice and ensure that the best decisions are taken regarding the benefits to be received by the people of the Virgin Islands. This also includes amendments to the National Health Insurance processes.

Our Government will seek to amend the **Immigration and Passport Act (CAP. 130)** to ensure that the Immigration Department as a frontline border agency has the requisite power to charge compound fees on persons who enter the country illegally without having to take them to court. This frees up the court system from dealing with smaller cases and allows the Immigration Department to expedite issues while sending a strong message to those attempting to enter illegally.

A general revision of the **Immigration and Passport Act (CAP. 130)** is also needed to bring it in line with international best practice and ensure that the legislation is in keeping with the transformation plan for that department.

The new border management system is to be enforced shortly and ensures that a number of systems become online systems to make the department more efficient and effective.

In addition, amendments to the **Immigration and Passport Act (CAP. 130)** will help to facilitate adjustments to the immigration policy to allow longer stay for investors in an effort to attract more business to the British Virgin Islands.

In order to bring greater awareness to the roles of Honourable Members as Legislators, their privileges and Powers as we keep on the path of institutional building **Legislative Council (Privilege, Immunities and Powers) Act**.

Government intends to stay current with modernising the House of Assembly, as such; the **Standing Orders** will be further updated, to keep the House of Assembly in line with ever-changing regional and international parliamentary best practice.

Our Government values public input and debate on Bills and will endeavour to increase public consultations on all legislation coming to and presented in this Honourable House.

In the last Session, our Government was hoping to have at least one Sitting per year on a few Sister Islands, so that members of the public can get further experience and exposure to the proceedings and to be a part of monitoring the progress of our Government's Legislative Agenda. However, due to the challenges with COVID 19 plans were changed to ensure that everyone remains safe.

Our Government during this First Sitting of the Third Session of the Fourth House of Assembly will be swiftly moving forward with some of the legislation mentioned in this Speech from the Throne.

In closing, our Government's Legislative Agenda has been laid out for this Session, and it will be monitored by the Premier's Office to ensure that it moves forward with fortitude and determination.

Notwithstanding, as the need arise, other pieces of legislation not mentioned will be considered from time to time.

Finally, as Governor, Honourable Speaker and Honourable Members of this House, visitors in the gallery, members of the public, I thank you.

The proposed **Sexual Offences Act** would provide a gender-sensitive legal framework relating to a broad range of sexual crimes, offer adequate measures to minimise secondary traumatising, and monitor and track sex offenders following their release into the community.

The **Jury Act (CAP.36)** will be addressed to seek to examine the powers of a Judge as it relates to jury trials. The review will explore the question as to whether some trials can be heard by a Judge without a Jury to allow the expediency of Justice in the Territory. The review will also be conducted to streamline and enhance the selection of Jurors and to establish a jury register.

The **Audio Visual Link 2017** will be amended to strengthen the legislation to ensure the effective continuity of the Courts, particularly as it relates to the social distancing guidelines that were implemented to suppress or prevent the spread of COVID-19 in the Territory. Additionally, the legislation will be strengthened to look at non-arrest matters.

The **Flexible Working Arrangements Bill**, supported by a policy will outline the criteria and process for undertaking a flexible working arrangement. The implementation of this policy will come at a time where officers and employees continue to manoeuvre through their personal hurricane recovery efforts and the challenges caused as a result of COVID-19.

Consistent with the national vision, our Government will mobilise and attract foreign and domestic investment to enhance economic development, reduce unemployment, grow entrepreneurship, accelerate growth, and diversify the economy through the proposed **BVI Investment Bill**.

Additionally, the **Incentive Legislation Bill** will be introduced to ensure the empowerment of local investors and local businesses in all sectors of the economy, inclusive of all, but not limited to tourism, health, entrepreneurship, agriculture and fisheries.

Our Government also proposes to revise the **Non Profit Organisations Act 2012**. In July 2016, the Financial Action Task Force (FATF) revised its recommendations on the supervision and monitoring of Non-Profit Organisations (NPOs). It was felt that the previous language led to overregulation and inappropriate restrictions on NPOs hampering their legitimate and essential work around the world.

The new FATF recommendation acknowledges that not all NPOs are at risk and directs countries to undertake a risk-based approach when considering terrorist financing measures. A new Non-Profit Organisations Act has therefore been drafted to engender a more targeted and risk-based approach to the regulation of NPOs, which would reduce the burden of compliance presently placed on those community groups that are not at high risk for abuse by terrorist organisations.

This new approach takes into account the differing types of NPOs that exist, the environment in which they operate, and the level of risk they are exposed to.

I will now turn to those pieces of legislation focused on: A STABLE AND DIVERSE ECONOMY

A number of pieces of legislation that are geared toward creating a more a stable and diverse economy will be brought forward in the upcoming year.

As our Government looks towards creating a more stable and diverse economy, food security is a priority area that also provides economic opportunities for the people of the Virgin Islands. The agriculture and fisheries sectors remain a part of the historical, economic and cultural identity of Virgin Islanders and will remain key elements of our Territory's increased emphasis on food security.

This is why ***The Virgin Islands Agriculture and Fisheries Marketing Authority Bill*** is being proposed, following a series of stakeholder contributions. This Bill will seek to establish a statutory authority to serve as the primary vehicle to coordinate the Territory's focus on food security, and is expected to be realised in early 2021.

Amendments will be made to the ***Customs Management and Duties Act*** encourage investments in Green SMART products like green energy, as well as export tax, among many other areas to stimulate the economy of the Virgin Islands and to increase revenues. Other amendments to this Act also include measures that will increase and reposition the Territory as the sailing capital of the world.

The ***Tobacco Products Control Act 2006 (No. 18 of 2006)*** will be amended to address various deficiencies and bring the legislation in line with international standards, more specifically to meet the basic provisions outlined in the World Health Organization (WHO) Framework Convention for Tobacco Control (FCTC). The FCTC aims to combat the global tobacco epidemic and protect present and future generations from the devastating health, social, environmental, and economic consequences of tobacco consumption and tobacco smoke exposure.

Our Government will introduce the ***Environmental Management & Climate Resilience Act*** to establish the legal mechanisms for the improved management of the environment and the conservation of biodiversity. It aims to provide for the sound and sustainable management of natural resources while establishing the institutional framework to manage the causes of and impacts from climate change.

The ***Liquor Licence Act (CAP.106)*** will be modernised in consideration of the changes in the industry so that legislation is aligned with modern day practices.

The introduction of a ***Waste Management Bill*** is essential to being a competitive economy, especially when we consider the role that the environment plays in the Territory's economy.

The team is finalising a comprehensive ***Waste Management Strategy*** and is proposing new legislation to reform the law regulating waste management, in accordance with the waste hierarchy.

A ***Waste Management Act*** will strengthen the legal framework for sustainable management of household waste, industrial waste, construction and demolition waste, and hazardous waste in order to protect health and the environment, while improving the aesthetics of the Territory.

We will move forward with the ***Plastic Litter Reduction and Container Deposit Bill***. The primary objectives of the proposed legislation are to reduce beverage container litter along roadsides, ghuts, coastal and marine areas, and on other public or private properties; and encourage recycling.

The ***Water Supply and Sewerage Bill*** remains in draft form and still to be approved by Cabinet for further processing. The proposed legislation will seek to expand on the ***Water Supply Ordinance (CAP.153)*** by encompassing the management of the public water supply, sewage collection, treatment and disposal, and the control of disposing of fats, oils and grease. The ***Water Supply Ordinance (CAP.153)*** would be repealed for a more modern and comprehensive legislation.

There will also be an amendment to the **BVI Health Services Authority Act (No. 14 of 2004)**. The proposed changes to the principal legislation aim to address the operations of the BVI Health Services Authority as it relates to effective governance and management of the Authority's mandate.

Strengthening Governance is important for having a stable economy. The **Integrity in Public Life Bill** will promote and enhance ethical conduct standards by consolidating laws relating to the prevention of corruption and the award, monitoring, and investigating government contracts and prescribed licences.

Additionally, it will establish a single body responsible for supporting the establishment and enforcement of integrity standards that will promote and strengthen measures for preventing, detecting, investigating, judging, sanctioning, and prosecuting acts of corruption, linking with law enforcement as appropriate.

Public safety and justice are essential for maintaining the stability of our economy and our society. The **Police Act (CAP.165)** will bring together an updated legislative basis for policing in the Territory and provides a strong constitutional and professional base for a modernised Police Force. It provides a real opportunity for the Royal Virgin Islands Police Force to emerge as a leading police force in the Caribbean.

Our Government will introduce the **Road Traffic Act (CAP.218) (Amendment)**. The amendment will seek to modernise the suite of traffic offences and fines intended to regulate and control road traffic more efficiently. Further, it is envisioned to reduce the number of traffic offences and accidents and act as a deterrent, thus improving compliance and public trust of the motoring public with the law, and overall road safety as better policing of the road traffic would be achievable.

Amendment to Section 2 of the **Explosives Act (CAP.124)** is being proposed to widen the use of the word explosives to include articles consisting of a cartridge case and various cartridges. The amendment will allow law enforcement to properly deal with serious criminal offenders and ensure the safety of citizens, residents and visitors.

The **Criminal Conduct (Amendment) Act** will be amended to ensure that the Proceeds of Criminal Conduct Act, 1997, to make provisions for unexplained wealth orders.

The proposed **Sexual Offences Act** would provide a gender-sensitive legal framework relating to a broad range of sexual crimes, offer adequate measures to minimise secondary traumatising, and monitor and track sex offenders following their release into the community.

The **Jury Act (CAP.36)** will be addressed to seek to examine the powers of a Judge as it relates to jury trials. The review will explore the question as to whether some trials can be heard by a Judge without a Jury to allow the expediency of Justice in the Territory. The review will also be conducted to streamline and enhance the selection of Jurors and to establish a jury register.

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Following a review of the Virgin Islands **Correctional Facilities Act** that was passed in 2018, it was determined that individual sections were inconsistent with the provisions of the Virgin Islands Constitution Order 2007. Hence the Act has not been assented to.

The **Witness Anonymity Legislation** will be brought forward to ensure the protection of witnesses and preserve their rights by providing a court to make a witness anonymity order to protect the safety of the witness and prevent property damage, and prevent real harm to the public interest. This would be an invaluable tool in assisting with combating serious crime, and at the same time, it would also help to re-establish public confidence in the criminal justice system.

The legislation will therefore be revised to align its provisions with the Virgin Islands Constitution while maintaining its original objectives to repeal and replace the **Prison Ordinance (CAP.166)** and modernise the Territory's legal framework with respect to the management and security of prisons, and the safe custody and rehabilitation of inmates.

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The process for improving the effectiveness of our local labour law aims to reassert citizens' fundamental rights and align effectively with local standards and international norms and best practices.

The 2018 consultant's report outlines the way forward. Additional work will be done to ensure that the requisite measures are taken to establish the Labour Policy and amend the Labour Code, where applicable.

There will also be amendments to the **Social Security Board Act** seeking to bring the legislation in line with international best practice and ensure that the best decisions are taken regarding the benefits to be received by the people of the Virgin Islands. This also includes amendments to the National Health Insurance processes.

Our Government will seek to amend the **Immigration and Passport Act (CAP. 130)** to ensure that the Immigration Department as a frontline border agency has the requisite power to charge compound fees on persons who enter the country illegally without having to take them to court. This frees up the court system from dealing with smaller cases and allows the Immigration Department to expedite issues while sending a strong message to those attempting to enter illegally.

A general revision of the ***Immigration and Passport Act (CAP. 130)*** is also needed to bring it in line with international best practice and ensure that the legislation is in keeping with the transformation plan for that department.

The new border management system is to be enforced shortly and ensures that a number of systems become online systems to make the department more efficient and effective.

In addition, amendments to the ***Immigration and Passport Act (CAP. 130)*** will help to facilitate adjustments to the immigration policy to allow longer stay for investors in an effort to attract more business to the British Virgin Islands.

In order to bring greater awareness to the roles of Honourable Members as Legislators, their privileges and Powers as we keep on the path of institutional building ***Legislative Council (Privilege, Immunities and Powers) Act.***

Government intends to stay current with modernising the House of Assembly, as such; the ***Standing Orders*** will be further updated, to keep the House of Assembly in line with ever-changing regional and international parliamentary best practice.

Our Government values public input and debate on Bills and will endeavour to increase public consultations on all legislation coming to and presented in this Honourable House.

In the last Session, our Government was hoping to have at least one Sitting per year on a few Sister Islands, so that members of the public can get further experience and exposure to the proceedings and to be a part of monitoring the progress of our Government's Legislative Agenda. However, due to the challenges with COVID 19 plans were changed to ensure that everyone remains safe.

Our Government during this First Sitting of the Third Session of the Fourth House of Assembly will be swiftly moving forward with some of the legislation mentioned in this Speech from the Throne.

In closing, our Government's Legislative Agenda has been laid out for this Session, and it will be monitored by the Premier's Office to ensure that it moves forward with fortitude and determination.

Notwithstanding, as the need arise, other pieces of legislation not mentioned will be considered from time to time.

Finally, as Governor, Honourable Speaker and Honourable Members of this House, visitors in the gallery, members of the public, I thank you.



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Contact Us

Address: 33 Admin Drive, Wickhams Cay 1, Road Town, Tortola, Virgin Islands (British)

Phone: 1(284) 468-3701

Email: gis@gov.vg (mailto:gis@gov.vg)

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