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No. 8 of 2013

Third Session Tenth Parliament Republic of
Trinidad and Tobago

HOUSE OF REPRESENTATIVES

BILL

AN ACT to amend the Customs Act, Chap. 78:01 to
enhance border control by providing for advance
passenger and cargo information to be submitted
electronically to the Comptroller of Customs and
Excise and for related matters

THE CUSTOMS (AMENDMENT) BILL, 2013

Explanatory Note

(These notes form no part of the Bill but are intended only to indicate its general purport)

This Bill seeks to amend the Customs Act, Chap. 78:01 to enhance border control by providing for advance passenger and cargo information to be submitted electronically to the Comptroller of Customs.

Clause 1 of the Bill would provide for the short title.

Clause 2 of the Bill would provide that the Bill shall have effect even though inconsistent with sections 4 and 5 of the Constitution.

Clause 3 of the Bill would provide for the interpretation of certain words.

Clause 4 of the Bill would amend section 2 of the Act to insert new definitions.

Clause 5 of the Bill would amend the Act by repealing and replacing sections 72, 73, 74 and 75 to provide—

- (a) in section 72, a duty on a master, his agent or a cargo reporter to provide advance passenger and cargo information on the prescribed form or by means of a data message;
- (b) in section 73, a requirement that advance passenger and cargo information shall be recorded to show certain goods separately;
- (c) in section 74, that a master, his agent or a cargo reporter shall submit an account of all discharged cargo within twenty-four hours and that failure to do so would incur a penalty of one hundred thousand dollars (\$100,000.00); and
- (d) in section 75, an increase in the penalty from four thousand dollars (\$4,000.00) to six hundred thousand dollars (\$600,000.00) where a master, his agent or a cargo reporter fails to provide advance passenger and cargo information or provides false information and also provides that goods may be forfeited and the Comptroller may refuse to grant clearance until the advance passenger and cargo information is submitted or the penalty is paid.

Clause 6 of the Bill would repeal and replace section 79 of the Act to provide for the penalty for the wrong breaking of bulk, by making the master liable to a penalty of one hundred thousand dollars (\$100,000.00) and the goods liable to forfeiture.

Clause 7 of the Bill would amend the Act by inserting a new section 212A which would provide for a penalty of one hundred and twenty-five thousand dollars (\$125,000.00) for offences relating to the CBCS and the misuse of the authentication code.

Clause 8 of the Bill would amend section 216 of the Act to increase the penalty for an officer taking unauthorised fees from four thousand dollars (\$4,000.00) to two hundred thousand dollars (\$200,000.00) and to imprisonment for ten (10) years.

Clause 9 of the Bill would amend section 217 of the Act to increase the penalty for an officer who is involved in, *inter alia*, collusive seizure of goods or bribery from twenty thousand dollars (\$20,000.00) to two hundred thousand dollars (\$200,000.00) and to imprisonment for ten (10) years.

Clause 10 of the Bill would amend section 259 of the Act by inserting a new subsection (3), which would provide that an electronic record or data message retained by the Comptroller is admissible in evidence and shall be received as *prima facie* evidence.

Clause 11 of the Bill would amend the Act to insert new sections 268 to 281 as follows:

- (a) section 268 would provide for the manner in which an entry of imported or exported goods is to be made;
- (b) section 269 would provide for goods that are exempt from the entry requirement;
- (c) section 270 would provide for persons who may become registered users of the CBCS;
- (d) section 271 would provide the necessary criteria required by a person to become a registered user of the CBCS. The section would also make it compulsory for each applicant to be a holder of a unique identifier issued by the Ministry with responsibility for information and communications technology;
- (e) section 272 would provide for the issue and use of authentication codes. Consequently upon registration under section 271, the Comptroller will also issue to each person a unique authentication code;

- (f) section 273 would provide the circumstances that may lead to the cancellation of the registration of a registered user, by the Comptroller;
- (g) section 274 would give the Comptroller the duty to keep a record of every data message for a period of four (4) years;
- (h) section 275 would create an offence for the unauthorized use of the CBCS. A person found guilty of such an offence is liable on conviction on indictment to imprisonment for fifteen (15) years;
- (i) section 276 would make it an offence for any person who knowingly and without authority causes an unauthorized modification of any program or data held in the CBCS. The penalty for such an offence is imprisonment for ten (10) years. The clause also provides that where damage is caused to the CBCS the person convicted of the offence is liable to a further penalty of fifteen (15) years;
- (j) section 277 would make it an offence for a person to knowingly and without authority obstruct the CBCS. A person who commits such an offence is liable to imprisonment for ten (10) years. The clause also provides that where damage is caused to the CBCS the person convicted of the offence is liable to a further penalty of fifteen (15) years;
- (k) section 278 would make it an offence for a person to knowingly and without authority cause the CBCS to cease to function. This offence would attract a penalty of fifteen (15) years imprisonment;
- (l) section 279 would provide that the Comptroller is required to share information received with the relevant public body requesting the information;
- (m) section 280 would provide that any person who has an official duty or is employed under this Act shall make an official secrecy declaration in the prescribed form before a Justice of the Peace. The section also makes it an offence for a person who makes use of or publishes information which is in his possession which he knows was disclosed in contravention of the Act. A person found guilty of offences under this section is liable on summary conviction to a fine of one hundred thousand dollars (\$100,000.00) and to imprisonment for eight (8) years;

(n) section 281 would provide for a third party liability for information where a person who is provided with information under section 279 uses that information or discloses it to an unauthorised person. The penalty for such an offence on summary conviction is a fine of fifty thousand dollars (\$50,000.00) and to imprisonment for eight (8) years.

Clause 12 of the Bill would provide for a Ninth Schedule which would list all the data which may be shared under section 279.

THE CUSTOMS (AMENDMENT), BILL, 2013

Arrangement of Clauses

Clause

1. Short title
2. Act inconsistent with sections 4 and 5 of the Constitution
3. Interpretation
4. Section 2 amended
5. Sections 72, 73, 74 and 75 repealed and substituted
6. Section 79 repealed and substituted
7. Section 212A inserted
8. Section 216 amended
9. Section 217 amended
10. Section 259 amended
11. Sections 268 to 281 inserted
12. Ninth Schedule inserted

BILL

AN ACT to amend the Customs Act, Chap. 78:01 to enhance border control by providing for advance passenger and cargo information to be submitted electronically to the Comptroller of Customs and Excise and for related matters

[, 2013]

WHEREAS it is enacted *inter alia* by section 13(1) of the Preamble Constitution that an Act of Parliament to which this section applies may expressly declare that it shall have effect even though inconsistent with sections 4 and 5 of the Constitution and, if any such Act does so declare, it shall have effect accordingly:

And whereas it is provided by section 13(2) of the Constitution that an Act of Parliament to which that section applies is one the Bill for which has been passed by both Houses of Parliament and at the final vote thereon in each House has been supported by the vote of not less than three-fifths of all members of that House:

And whereas it is necessary and expedient that the provisions of this Act shall have effect though inconsistent with sections 4 and 5 of the Constitution:

Enactment	ENACTED by the Parliament of Trinidad and Tobago as follows:
Short title	1. This Act may be cited as the Customs (Amendment) Act, 2013.
Act inconsistent with sections 4 and 5 of the Constitution	2. This Act shall have effect even though inconsistent with sections 4 and 5 of the Constitution.
Interpretation Chap. 78:01	3. In this Act, “the Act” means the Customs Act.
Section 2 amended	4. Section 2 of the Act is amended, by inserting in the appropriate alphabetical sequence, the following definitions: <ul style="list-style-type: none"> “ “advance passenger and cargo information” means information in respect of— <ul style="list-style-type: none"> (a) every passenger, crew member or other occupant; (b) the cargo and stores; and (c) any package in respect of which there is no bill of lading or airways bill, <p style="margin-left: 40px;">on board an aircraft or ship;</p> “authentication code” means a form of identification issued by the Comptroller to a registered user under section 272;

“cargo reporter” means a Freight Forwarder, Consolidator, Non-Vessel Operating Common Carrier (NVOCC) and a terminal operator or any such person;

“Customs Border Control System” or “CBCS” means the information system managed and controlled by the Comptroller for the purpose of cargo reporting and passenger document and entry processing;

“data message” means any document, correspondence, memorandum, book or other information generated by, sent to, received from or stored in the CBCS by electronic means;

“electronic” means technology having electronic, magnetic, wireless, optical or similar capabilities used for creating, recording, transmitting, storing or generating information in digital or other intangible forms;

“information system” has the meaning assigned to it under section 2 of the Electronic Transactions Act, 2011;

Act No. 6 of 2011

“in transit cargo”, in relation to imported goods, means—

- (a) goods declared as remaining on board for exportation on the same importing aircraft or ship; or
- (b) goods transported under customs control from one port or place to another port or place;

“package” includes every means by which goods for carriage may be cased, covered, carried, enclosed, contained or packed;

“record” means recorded information collected, created or received in the initiation, conduct or completion of any activity and that comprises sufficient content, context and structure to provide evidence or proof of that activity or transaction;

“registered user” means a person registered by the Comptroller under section 270 as a user of the CBCS; and

“trans-shipment” means the procedure by which goods are transferred under customs control from an importing aircraft or ship to the exporting aircraft or ship within the same port or airport for re-exportation;”.

Sections 72, 73, 74
and 75 repealed and
substituted

5. Sections 72, 73, 74 and 75 of the Act are repealed and the following sections are substituted:

“Advance
passenger
and cargo
information

72. Subject to section 265, the master of every aircraft or ship, whether laden or in ballast, or his agent and every cargo reporter shall, prior to arrival in or departure from Trinidad and Tobago, provide to the Comptroller advance passenger and cargo information on the prescribed form or by means of a data message in the prescribed manner.

Certain goods
to be reported
separately

73. The advance passenger and cargo information required under section 72 shall, except where otherwise allowed by the proper Officer, be provided before bulk is broken and shall show separately, any goods that are—

(a) in transit;

(b) to be trans-shipped; or

(c) to remain on board for other ports in Trinidad and Tobago.

Submission of
landing
accounts

74. (1) The master of every aircraft or ship or his agent, and every cargo reporter shall, within twenty-four hours after the cargo has been discharged but prior to the delivery of the cargo, submit to the proper Officer an account of all the cargo that was discharged from the aircraft or ship.

(2) A person who fails to comply with subsection (1) commits an offence and is liable on summary conviction to a penalty of one hundred thousand dollars.

Penalty for
not making
due report

75. (1) The master of an aircraft or ship, or his agent and any cargo reporter who intentionally or recklessly—

(a) fails to comply with the requirements of section 72; or

(b) provides false information,

commits an offence and is liable on summary conviction to a penalty of six hundred thousand dollars.

(2) Goods not duly reported to the Comptroller under section 72 are liable to forfeiture, unless the failure or omission is explained by the master, his agent or the cargo reporter, to the satisfaction of the Comptroller.

(3) The Comptroller may refuse to grant clearance to an aircraft or ship until the advance passenger and cargo information required under section 72 is provided to the Comptroller or the fine imposed under subsection (1) is paid.”

6. Section 79 of the Act is repealed and the following section is substituted: Section 79 repealed and substituted

“Penalty for
wrongly
breaking bulk

79. A master of an aircraft or ship or his agent and every cargo reporter who,

without the knowledge and consent of the proper Officer, causes—

- (a) bulk to be broken contrary to section 73; or
- (b) permits any goods to be thrown overboard, or any packages to be opened at any time after the arrival of the aircraft or ship in Trinidad and Tobago,

commits an offence and is liable on summary conviction to a penalty of one hundred thousand dollars and any goods in respect of which the offence has been committed on board the aircraft or ship are liable to forfeiture, unless the act, inaccuracy or omission, as the case may be, is explained to the satisfaction of the Comptroller.”.

Section 212A
inserted

7. The Act is amended by inserting after section 212, the following new section:

“Penalty for offences relating to the CBCS

212A. Any person who—

- (a) falsifies or, without the permission of the Comptroller, deletes, damages, alters or impairs any record, data message or information stored in the CBCS or on any duplicate tape or disc or other medium on which any information obtained from the system is held or stored;
- (b) being registered as a user of the CBCS under section 272 or an employee or agent of a registered user, fails to comply with any condition imposed by the Comptroller with respect to the use or security of the authentication code issued to the registered user;

- (c) not being registered as a user of the CBCS under section 272 or an employee or agent of a registered user, uses an authentication code without the authority of the registered user;
- (d) being registered as a user of the CBCS under section 272, uses the authentication code of any other registered user; and
- (e) being registered as a user of the CBCS under section 272, makes any unauthorized copies of any record or information stored in the system or on any duplicate tape or disc or other medium on which information obtained from the CBCS is stored,

is liable on summary conviction to a penalty of one hundred and twenty-five thousand dollars.”.

8. Section 216 of the Act is amended by deleting the words “four thousand dollars” and substituting the words “two hundred thousand dollars and to imprisonment for a term of ten years”.

9. Section 217 of the Act is amended by deleting the words “twenty thousand dollars” wherever it occurs and substituting the words “two hundred thousand dollars and to imprisonment for a term of ten years.”.

10. Section 259 of the Act is amended by inserting after subsection (2), the following subsection:

“ (3) Notwithstanding any other law to the contrary, an electronic record of a data message made to or from the CBCS and retained by the Comptroller under section 275—

(a) is admissible in evidence; and

(b) shall be received as *prima facie* evidence,

that the person, whose authentication code was used for the purpose of the data message, made the statements contained in the data message.”.

Sections 268
to 281 inserted

11. The Act is amended by inserting after section 267, the following sections:

“Entry of imported and exported goods 268. (1) An entry in respect of imported or exported goods shall be made in writing by the importer, exporter or authorized agent—

(a) on the prescribed form; or

(b) by means of a data message in the manner prescribed.

(2) An entry made under subsection (1) shall be deemed to have been made when a lodgment number is issued to that entry, either electronically by the CBCS or manually by the proper Officer.

Goods not requiring entry 269. Notwithstanding any other provision in this Act—

(a) mail bags and postal articles in the course of transmission by post, may be unloaded and delivered to an officer of the Postal Corporation without entry;

(b) diplomatic mail may be unloaded and delivered without entry; and

(c) goods which are the *bona fide* personal baggage of a passenger or member of the crew of any aircraft or ship may be imported by those persons without entry.

Registered
users of
CBCS

270. The Comptroller may register the following persons as users of the CBCS:

- (a) such employees of the Customs and Excise Division as the Comptroller considers necessary; and
- (b) a person who applies under section 272 to become a registered user.

Application
for
registration
as a user

271. (1) A person required by law to make a declaration to the Comptroller may apply to the Comptroller, in the prescribed form, to be registered as a user of the CBCS.

(2) The applicant shall provide the Comptroller with any further information in respect of his application that the Comptroller may require.

(3) After giving consideration to an application made under subsection (1), the Comptroller may—

- (a) approve the application and register the applicant; or
- (b) refuse the application.

(4) The Comptroller shall not register a person as a registered user under subsection (3), unless that person is the holder of a unique identifier issued by the Ministry with responsibility for information and communications technology.

(5) The Comptroller shall, in writing, inform every applicant of the decision made under subsection (3) and where the Comptroller rejects the application, he shall also give the reasons for the refusal.

(6) The Comptroller may, in relation to the use of the CBCS, impose

such conditions as he considers necessary on the registered user.

Issue and use of authentication codes 272. (1) The Comptroller shall upon registering a person under section 271 issue an authentication code to the registered user.

(2) The Comptroller may impose such conditions as he considers necessary on a registered user relating to the use and security of an authentication code.

(3) Where a data message is transmitted to the CBCS using an authentication code issued to a registered user by the Comptroller for that purpose, the transmission of the data message is, unless the contrary is proved, evidence that the data message was transmitted by the registered user to whom the authentication code was issued.

Cancellation of registration 273. The Comptroller may cancel the registration of a registered user by notice in writing, where he is satisfied that the registered user—

- (a) failed to comply with a condition of registration imposed by the Comptroller under section 271(6);
- (b) failed to comply with or breached a condition imposed by the Comptroller under section 272(2) relating to the use and security of the authentication code issued to the registered user; or
- (c) has been convicted of an offence relating to the improper use of, or interference with, the CBCS.

Comptroller
to keep
record of data
messages 274. (1) The Comptroller shall keep a record of every data message transmitted to or received from a registered user of the CBCS.

(2) A record kept under subsection (1) shall be retained for a period of at least four years from the date that the data message was sent or received unless required in legal proceedings.

Unauthorized
use of the
CBCS an
offence 275. (1) A person shall not transmit to or receive information from the CBCS unless he is registered by the Comptroller as a user of the CBCS.

(2) Any person who contravenes subsection (1) commits an offence and is liable on conviction on indictment to imprisonment for fifteen years.

Unauthorized
modification
of the CBCS 276. (1) Subject to subsection (2), a person who knowingly and without authority causes an unauthorized modification of any program or data held in the CBCS commits an offence and is liable on conviction on indictment to imprisonment for ten years.

(2) Where damage to the CBCS is caused as a result of an offence committed under subsection (1), the person convicted of the offence shall be liable to an additional penalty of fifteen years.

(3) For the purpose of this section—

(a) it is immaterial that the modification in question is not directed at—

(i) any particular program or data;

(ii) a program or data of any kind; or

- (iii) a program or data held in the CBCS;
- (b) it is immaterial whether an unauthorized modification is or is intended to be permanent or merely temporary; and
- (c) a modification of any program or data held in the CBCS takes place, if by the operation of any function of the CBCS concerned—
 - (i) any program or data held in the CBCS is altered or erased;
 - (ii) any program or data is added to or removed from any program or data held in the CBCS; or
 - (iii) any act occurs which impairs the normal operation of the CBCS,

and any act which contributes towards causing such modification shall be regarded as causing it.

Unauthorized obstruction of the CBCS 277. (1) Subject to subsection (2), a person who knowingly and without authority—

- (a) interferes with, interrupts, or obstructs the lawful use of the CBCS; or
- (b) impedes, prevents access to, or impairs the usefulness of any program or data on the CBCS,

commits an offence and is liable on conviction on indictment to imprisonment for ten years.

(2) Where damage is caused to the CBCS as a result of an offence committed under subsection (1), the person convicted of the offence shall be liable to a further penalty of fifteen years.

Causing
CBCS to
cease to
function

278. A person who knowingly and without authority engages in conduct which causes the CBCS to cease to function permanently or temporarily, commits an offence and is liable on conviction on indictment to imprisonment for fifteen years.

Comptroller
required to
share
Ninth
Schedule

279. Notwithstanding any written law, the Comptroller shall share the data set specified in the Ninth Schedule in respect of an entry made under section 268—

(a) with—

Chap. 30:01

(i) an inspector referred to in the Food and Drugs Act;

(ii) the Chief Chemist and Director of Food and Drugs of the Ministry with responsibility for health;

Chap. 63:56

(iii) the Chief Technical Officer referred to under the Plant Protection Act; and

Chap. 67:02

(iv) the Chief Technical Officer (Agriculture) referred to in the Animals (Diseases and Importation) Act,

for the purpose of safeguarding public health and safety;

(b) the Executive Director of the Bureau of Standards for the purpose of enforcement of standards; and

- (c) the Chief Trade Officer or the Permanent Secretary in the Ministry with responsibility for trade for the purpose of trade and business facilitation.

Official
Secrecy

280. (1) A person having an official duty or being employed in the administration of this Act, shall regard and deal with all documents, entries, declarations and data messages as secret and confidential and shall make and subscribe a declaration in the prescribed form before a Justice of the Peace.

(2) A person on official duty or being employed in the administration of this Act, who discloses any information contained in any document, entry, declaration or data message received under this Act to any person—

- (a) other than a person to whom he is authorized by this Act to disclose it; or

- (b) otherwise than for the purposes of this Act,

commits an offence and is liable on summary conviction to a penalty of one hundred thousand dollars and imprisonment for a term of eight years.

(3) A person, being in possession of any information which to his knowledge has been disclosed in contravention of this Act, who makes use of or publishes or communicates such information to any person is liable on summary conviction to a penalty of one hundred thousand dollars and imprisonment for a term of eight years.

Third party
liability for
information

281. (1) Where a person is provided with information under section 279, he shall not, for any purpose other than that for

which it was given, use that information or disclose it to any other person except where so authorized by law.

(2) A person who contravenes subsection (1) commits an offence and is liable on summary conviction to a penalty of one hundred thousand dollars and imprisonment for a term of eight years.”.

12. The Act is amended by inserting after the ^{Ninth Schedule} Eighth Schedule the following new Schedule: _{inserted}

“NINTH SCHEDULE

(Section 279)

DATA SET TO BE SHARED UNDER SECTION 279

1. Exporter/Consignor and Number
2. Items
3. Total packages
4. Commercial Reference Number
5. Importer/Consignee and Number
6. Country of first destination
7. Trading country
8. Value details
9. Declarant/Representative and Number
10. Country of export
11. Country of origin
12. Country of destination
13. Identity and nationality of active means of transport on arrival/departure
14. Container
15. Delivery terms
16. Currency and total amount invoiced
17. Exchange rate
18. Nature of transaction
19. Mode of transport at border

NINTH SCHEDULE—CONTINUED

20. Inland mode of transport
21. Port of entry/exit
22. Place of loading
23. Location of goods
24. Package and description of goods [marks and numbers, number and type of packages, containers number(s), tariff description, commercial description]
25. Item number
26. Commodity code
27. Country of origin code
28. Gross mass
29. Preference
30. Net mass
31. Quality
32. Transport document
33. Supplementary units
34. Item value
35. Additional info/Documents produced/Certificates and authorisations (Licence No., Ded Val, Ded quantity, valuation note, attached documents, previous declaration, additional information)*
36. Adjustment
37. Customs value and Statistical value
38. Place and date of signature and Name of Declarant/Representative
39. Declaration Model
40. Registration Date and Registration Number.

* includes Commercial Invoice, CARICOM Invoice, Bill of lading/Airway Bill, Packing List, Technical Standards Certificates, Certificate of Origin, Licences.”.

Passed in the House of Representatives this _____ day
of _____, 2013.

Clerk of the House

IT IS HEREBY CERTIFIED that this Act is one the Bill for which has been passed by the House of Representatives and at the final vote thereon in the House has been supported by the votes of not less than three-fifths of all the members of the House, that is to say by the votes of _____ members of the House.

Clerk of the House

I confirm the above.

Speaker

Passed in the Senate this _____ day of _____, 2013.

Clerk of the Senate

IT IS HEREBY CERTIFIED that this Act is one the Bill for which has been passed by the Senate and at the final vote thereon in the Senate has been supported by the votes of not less than three-fifths of all the members of the Senate, that is to say by the votes of _____ Senators.

Clerk of the Senate

I confirm the above.

President of the Senate

No. 8 of 2013

THIRD SESSION
TENTH PARLIAMENT
REPUBLIC OF
TRINIDAD AND TOBAGO

BILL

AN ACT to amend the Customs Act, Chap. 78:01 to enhance border control by providing for advance passenger and cargo information to be submitted electronically to the Comptroller of Customs and Excise and for related matters

Received and read the

First time

Second time

Third time
