

Third Session Tenth Parliament Republic of
Trinidad and Tobago



REPUBLIC OF TRINIDAD AND TOBAGO

Act No. 6 of 2013

[L.S.]

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

[Assented to 10th July, 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 votes 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 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:

“ “advance passenger and cargo information”
means information in respect of—

- (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,

on board an aircraft or ship;

“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;

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“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. (1) 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.

(2) Where the master of an aircraft or ship, or his agent, or a cargo reporter provides advanced passenger and cargo information under subsection (1) by means of a data message, the Comptroller shall ensure that a data message confirming the receipt of such information is automatically generated and transmitted to the master, agent or cargo reporter, as the case may be.

Certain goods
to be reported
separately

73. The advance passenger and cargo information required under section 72(1) 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(1); 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(1) 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(1) is provided to the Comptroller or the fine imposed under subsection (1) is paid.”.

Section 79 repealed
and substituted

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 Section 79 of the Act is repealed and the following section is 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

(a) causes 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”. Section 216 amended

9. Section 217 of the Act is amended by deleting the words “twenty thousand dollars” wherever they occur and substituting the words “two hundred thousand dollars”. Section 217 amended

Section 259 amended

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 271 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 Eighth Schedule the following new Schedule:

Ninth 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

NINTH SCHEDULE—CONTINUED

16. Currency and total amount invoiced
17. Exchange rate
18. Nature of transaction
19. Mode of transport at border
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 10th day of May, 2013.

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 26 members of the House.

J. SAMPSON-MEIGUEL

Clerk of the House

Passed in the Senate this 5th day of June, 2013.

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 23 Senators.

N. ATIBA-DILCHAN

Clerk of the Senate