

CHAPTER 127

THE CUSTOMS (DUTY-FREE SHOPPING) ACT

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CUSTOMS (DUTY-FREE SHOPPING)

AN ACT to provide for a duty-free shopping system, permitting duty concessions on goods for export and for matters incidental thereto or connected therewith.

(1st November, 1988.)

11/1988.

PART I

Preliminary

- 1.** This Act may be cited as the Customs (Duty-Free Shopping) Act. **Short title.**
- 2.** In this Act— **Interpretation.**
- "approved goods" means any class or description of goods specified in the First Schedule as approved goods; **First Schedule.**
- "approved premises" means any portion of land or place declared by the Minister under section 3 to be approved premises for the purpose of duty-free shopping;
- "Comptroller" means the Comptroller of Customs;
- "consumable" means—
- (a) any spirits, wine, or fermented, distilled or spirituous liquors; and
 - (b) any cigars, cigarettes or tobacco, specified in the First Schedule as consumables; **First Schedule.**
- "diplomat" means persons entitled to diplomatic immunities or privileges under any enactment for the time being in force in Antigua and Barbuda, as certified by the Minister responsible for external affairs;
- "duty-free shopping system" means the system permitted by this Act for the sale of goods for export free

of customs or excise duty or of retail sales tax, consumption tax, stamp duty, or any other tax or duty;

"licensed duty-free shop" means any premises, or area in any premises, in relation to which a licence issued under the provisions of section 5 is in force;

"local resident" means any person who is not a visitor;

"Minister" means the Minister responsible for customs;

"visitor" means a person who is in Antigua and Barbuda—

(a) on a visitor's visa; or

(b) intransit from a place outside Antigua and Barbuda to some other place outside Antigua and Barbuda; or

(c) on a visit primarily for recreational purposes; so however, that in any case, or on any occasion, where that person's status as a visitor is being considered for the purposes of this Act, a person shall not be deemed to be a visitor if—

(i) on that occasion his stay in Antigua and Barbuda exceeds six months; or

(ii) during his stay, he works or performs any function in Antigua and Barbuda for payment or reward or attends an educational or medical institution.

Power to amend Schedules and declare approved premises.

3. The Minister may, from time to time by Order published in the *Gazette*—

(a) amend the Schedules; or

(b) declare any place to be approved premises for the purposes of this Act.

Duty-free shop operator's licence.

4. (1) The Comptroller may, on application made in the prescribed manner and on payment of the prescribed fee, grant to any person who desires to operate on his own account a licensed duty-free shop on the approved premises,

a licence (hereinafter referred to as a duty-free shop operator's licence) so to do.

(2) Any licence granted under this section may be granted on such terms and subject to such conditions as may be prescribed.

(3) Any licence granted under this section shall, unless previously cancelled under this Act, continue in force from the date of issue until the next succeeding 31st day of December, and may be renewed from year to year.

5. (1) The Comptroller may, on application made in the prescribed manner and on payment of the prescribed fee issue to any person who, not being the holder of, or an applicant for, a duty-free shop operator's licence, is for the time being accredited in writing by the holder of, or an applicant for, a duty-free shop operator's licence as an agent for the purposes of the duty-free shopping system, a permit (hereinafter referred to as a duty-free shop operator's agency permit) to operate a duty-free shop as agent for the duty-free shop operator by whom he is accredited.

Duty-free shop operator's agency permit.

(2) Any permit under this section may be issued subject to such terms and conditions as may be prescribed.

(3) Any permit issued under this section shall, unless previously cancelled under this Act, continue in force from the date of issue until the next succeeding 31st day of December, and shall be renewed from year to year on payment of the prescribed fee.

6. (1) The Comptroller may, on application made in the prescribed manner and on payment of the prescribed fee grant to any person who is—

Duty-free shop licence,

(a) the holder of, or an applicant for, a duty-free shop operator's licence; or

(b) the holder of, or an applicant for, a duty-free operator's agency permit,

a licence (hereinafter referred to as a duty-free shop licence) in relation to the approved premises specified in the application, authorising the use of such premises or any area in

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such premises as a licensed duty-free shop where approved goods or consumables may be sold under the duty-free shopping system.

(2) Any licence granted under this section may be granted subject to such terms and conditions as may be prescribed.

(3) Any licence granted under this section shall unless previously cancelled under this Act, continue in force from the date of issue until the next succeeding 31st day of December, and shall be renewed from year to year on payment of the prescribed fee.

Refusal to grant
or renew licence
or permit.

7. (1) Subject to the right of appeal conferred by section 9, the Comptroller may, in his discretion, refuse to grant, any licence or permit under this Act, and shall so refuse if he is not satisfied that the applicant is, or satisfactory evidence is produced that the applicant is not a fit and proper person to be the holder of a licence or permit, or where it appears that the applicant—

(a) not being a body corporate, is under eighteen years of age;

(b) being a body corporate is neither incorporated in Antigua and Barbuda nor registered under the Companies Act as a Company incorporated outside Antigua and Barbuda carrying on business within Antigua and Barbuda;

(c) has within the immediately preceding twelve months been refused the grant of a duty-free shop operator's licence or of a duty-free operator's agency permit;

(d) has been found guilty of knowingly being concerned with evading or attempting to evade the provisions of this Act or of the Customs Duties Act or of the Trade and Revenue Act relating to the importation or exportation of any goods.

Cap. 125.

Cap. 433.

(2) Where an applicant for the grant of a licence or a permit is refused, any fee paid in respect of such application shall not be refunded.

8. The Comptroller shall cancel a licence or permit under this Act if— **Cancellation of licence or permit.**

(a) the holder of the licence or the permit is convicted of any offence involving fraud or dishonesty; or

(b) the holder of the licence or the permit is found guilty of knowingly being concerned with evading or attempting to evade the provisions of this Act or of the Customs Duties Act or of the Trade and Revenue Act relating to the importation or exportation of any goods, in connection with the duty-free shopping system.

9. (1) In any case where the Comptroller cancels a licence under section 8 or refuses to grant any licence or permit under this Act, the holder of, or the applicant for, as the case may be, the licence or permit may, at any time within six days after the decision of the Comptroller has been communicated to him, and on payment of such fees as may be prescribed, appeal in the prescribed manner to the Minister. **Right of appeal.**

(2) On such appeal the Minister may—

(a) confirm the cancellation; or

(b) on payment by the applicant of the prescribed fee, restore or grant the permit or licence, as the case may be, and the decision of the Minister on any such appeal shall be final.

10. (1) Any holder of a duty-free shop licence may apply to the Comptroller to register centres where approved goods and consumables may be displayed, subject to the prescribed conditions, for purposes other than sale. **Display centres.**

(2) Any person who sells approved goods or consumables from a display centre or fails to comply with any prescribed conditions applicable to display centres is guilty of an offence and is liable on summary conviction to a fine of five thousand dollars and imprisonment for six months.

11. (1) Every holder of a duty-free shop licence shall— **Submission of returns.**

(a) make such returns at such time, and

(b) keep such records in such form as may be prescribed or as may be required by the Comptroller.

(2) The Comptroller may vary the times for making any returns, if he thinks fit.

PART II

Warehousing

Duty-free shop as licensed warehouse.

12. (2) Every licensed duty-free shop shall be deemed to be a licensed warehouse for the purposes of the Trade and Revenue Act.

(2) The Comptroller may permit any approved goods or any consumables which, but for the provisions of this Act, would be liable to customs duty, excise duty or consumption tax, or any other taxes or duties, to be removed from any warehouse, or customs area, or private excise warehouse or factory licensed under the Trade and Revenue Act without payment of such duties or taxes and deposited in the approved premises or a licensed duty-free shop, subject to the prescribed conditions, for purposes of export under the duty-free shop system.

(3) No provisions of this section shall confer on any approved goods or consumables any exemption from custom examination either prior to transfer into, or after delivery from, the approved premises or a licensed duty-free shop.

Comptroller may issue directions.

13. (1) The Comptroller may issue any directions he considers necessary for the better regulation and control of the operations of a licensed duty-free shop.

(2) The Comptroller may require a written explanation from any person in charge of a licensed duty-free shop, or his servant employed in such shop, or his agent, in order to enquiry into any matter affecting the administration and control of such shop.

Application of Trade and Revenue Act.

14. The provisions of the Trade and Revenue Act which deal with warehouses shall apply *mutatis mutandis* to the warehousing of goods under the provisions of this Act.

PART III

Duty-Free Shopping System

15. Subject to the provisions of this Act and regulations made thereunder, any approved goods or consumables warehoused in a licensed duty-free shop may be sold free of any customs, excise or consumption duties or any other duties or taxes to which such goods would, but for the provisions of the Act, be liable.

Sale of approved goods and consumables.

16. (1) Only goods imported or otherwise obtained for sale at the approved premises shall be permitted to be stored at the approved premises.

Deposit of approved goods.

(2) Any goods removed from the approved premises other than by a visitor or diplomat are subject to all duties and taxes normally applicable to such goods.

17. The sale of any approved goods or consumables warehoused in a duty-free shop shall be subject to the following conditions, that is to say—

Conditions applicable to sale of approved goods and consumables.

(a) consumables shall be sold only for export;

(b) subject to any prescribed requirements in respect of packaging or otherwise, approved goods may be delivered to the visitor at the time of purchase of such goods; but to local residents only at place and time of departure; and

(c) consumables shall not be delivered to the purchaser until and unless satisfactory proof is furnished to the vendor that the purchase is, at or about the time of delivery of the consumables, departing from Antigua and Barbuda.

18. (1) No goods, class or description of goods prescribed in the Second Schedule shall be brought into or kept in the approved premises without the prior permission of the Comptroller.

Restricted goods. Second Schedule.

(2) All goods brought into the approved premises in contravention of subsection (1) shall be liable to forfeiture.

(3) If any person—

(a) brings;

(b) is concerned in bringing; or

(c) assists any other person in bringing;

goods into the approved premises in contravention of subsection (1), he is guilty of an offence and is liable on summary conviction to a fine of five thousand dollars or five times the value of the goods including any duty payable thereon, whichever is higher, and to imprisonment for six months.

Searches.

19. A customs officer or other officer authorised by the Comptroller may search persons and vehicles entering, within or leaving the approved premises, where there is reasonable cause to do so.

PART IV

Offences and Penalties

False advertisement.

20. Any person who, not being the holder of a duty-free shop operator's licence or a duty-free shop operator's agency permit, with intent to deceive, displays any advertisement indicating in any manner that—

(a) any premises used by him is a licensed duty-free shop;

(b) approved goods or consumables may be obtained from him or through him under the duty-free shopping system; or

(c) he is authorised to sell goods free of customs duty, excise duty, or consumption tax;

is guilty of an offence and is liable on summary conviction to a fine of ten thousand dollars and imprisonment for one year.

Failure to carry out directions.

21. Any person who fails to carry out any directions given in writing by the Comptroller relating to the operation of a duty-free shop is guilty of an offence and is liable on summary conviction to a fine of ten thousand dollars and imprisonment for one year.

22. Any person who infringes any term or condition subject to which his licence or permit was granted, is guilty of an offence and is liable on summary conviction to a fine of ten thousand dollars and imprisonment for one year. **Infringement of conditions.**

23. Any person who, when required by the Comptroller to give a written explanation of any matter relating to the operation of a place used as a licensed warehouse under this Act, without reasonable cause, refuses or fails to give a satisfactory written explanation or to give any explanation within a reasonable period of time, is guilty of an offence and is liable on summary conviction to a fine of five thousand dollars and imprisonment for six months. **Refusal to give explanation.**

24. Any person who, in any matter relating to the duty-free shopping system or to the operation of any duty-free shop, with intent to deceive— **False declaration.**

(a) makes, or causes to be made, any false declaration, whether oral or written; or

(b) uses, or causes to be used, any false certificate; or

(c) makes, or causes to be made, any alteration or falsification in any document after that document has been officially issued,

is guilty of an offence and is liable on summary conviction to a fine of twenty-five thousand dollars or five times the value of the goods including any duty payable, whichever is higher, and to imprisonment for two years.

25. Any person who, knowingly and with intent to defraud the Government of Antigua and Barbuda of revenue— **Evading provisions relating to approved goods.**

(a) acquires possession of;

(b) carries, removes, deposits, conceals or harbours; or

(c) deals in any manner otherwise than in accordance with the provisions of this Act or of any regulations made thereunder with

any approved goods or any consumables on which customs, excise, or consumption duties or any retail sales tax or other

tax or duty thereon has not been paid is guilty of an offence and is liable on summary conviction to a fine for each such offence of five thousand dollars or five times the value of such goods whichever is higher and imprisonment for six months and all such goods shall be forfeited.

Failure to make returns.

26. Any person who fails or refuses—

- (a) to make such returns at such times;
- (b) to keep such records in such form; or
- (c) to embody in any return any such information,

as may be prescribed or as may be required by the Comptroller, is guilty of an offence and is liable on summary conviction to a fine of five thousand dollars and imprisonment for six months.

Prosecution for offences.

27. It shall be lawful for the Comptroller or such officer as he may direct to conduct all prosecutions for offences committed against this Act whether the information or complaint be lodged in his name or not.

Compounding offences.

28. (1) The Comptroller and any person authorised in writing for the purpose by the Minister may, if he is satisfied that any person has committed an offence against this Act or any regulations made under this Act, compound such offence by accepting from such person a sum of money; but—

(a) such sum of money shall not exceed ten thousand dollars;

(b) the power conferred by this section shall only be exercised where the person admits that he has committed the offence and agrees in writing to the offence being dealt with under this section;

(c) the person exercising the power conferred by this section shall give to the person from whom he receives such sum of money a receipt therefor and as soon as practicable report the exercise of such power to the Minister and to the Attorney-General.

(d) subject to subsection (2), if any proceedings are brought against any person under this Act or any regula-

tions made under this Act, it shall be a defence if such person proves that the offence with which he is charged has been compounded under this section;

(e) any sum of money received under this section shall be dealt with as if the sum of money were a fine imposed by a court.

(2) On compounding an offence under this section, the Minister may order the release of any goods seized under this Act or the proceeds of sale of such goods on such conditions including the payment of such additional sums of money not exceeding the value of the goods seized, as he thinks fit.

PART V

General

29. (1) The Minister may make regulations generally ^{Regulations.} for the better carrying out of the purposes and provisions of this Act, and in particular, but without prejudice to the foregoing may make regulations—

(a) prescribing the form and manner in which applications shall be made for any licence or permit which may be granted under this Act, and the forms of such permits or licences;

(b) prescribing any fees to be paid under this Act;

(c) prescribing the nature of the notices, emblems or other instruments to be displayed in duty-free shops;

(d) prescribing the method of packaging of approved goods and consumables;

(e) governing the movements of persons, vehicles and goods within or out of the approved premises;

(f) prescribing the manner of payment of any duties or taxes on goods purchased by local residents at approved premises;

(g) prescribing any other matter or anything which may be, or is required to be prescribed.

FIRST SCHEDULE

(Section 2)

Approved Goods

1. Apparel (top quality) & accessories
2. Hats
3. Binoculars & sunglasses
4. Electric and electronic components and goods
5. Photographic camera with accessories and lenses and film
6. Chinaware — bone and porcelain
7. Cosmetics
8. Cutlery
9. Crystalware and glassware
10. Earthenware
11. Figurines — bronze, ivory or quartz
12. Figurines — china or porcelain
13. Handicrafts, paintings & prints
14. Jewelry and articles consisting of or incorporating pearls
15. Mechanical lighters for cigars, cigarettes and pipes
16. Books and Magazines
17. Perfumery
18. Pipes, cigars and cigarette holders
19. Projectors
20. Sweaters and cardigans, pullovers or similar knitted outerwear or angora, mohair, cashmere or similar mixtures of wool
21. Silverware, sterling silver plate, Sheffield plated and antique reproductions, Siamese, Portuguese sterling silver
22. Table linen — Maderia, Irish, embroidered, hand-painted, out-work
23. Telescope
24. Beach equipment
25. Toilet preparations, health and beauty aids
26. Watches
27. Leather and imitation leather goods
28. Approved souvenirs
29. Approved locally manufactured goods
30. Batik
31. Household Linen
32. Lingerie

Consumables

1. Cigarettes — locally manufactured or imported in containers of not less than two hundred units each
2. Cigars — in boxes of not less than five
3. Tobacco
4. Spirits, liqueurs and wines (except miniatures) imported

5. Spirits or liqueurs (miniatures) — whether assorted or not locally manufactured or imported in sealed containers
6. Spirits, liqueurs or wines — locally manufactured

SECOND SCHEDULE (Section 18)

1. Firearms and ammunitions
 2. Explosives
 3. Petroleum
 4. Inflammable materials
 5. Hazardous cargoes
 6. Oil fuels
 7. Dangerous drugs and narcotics
 8. All goods the importation of which is prohibited under the External Trade Act or any other enactment.
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