

ANTIGUA AND BARBUDA



THE CUSTOMS (CONTROL AND MANAGEMENT) (AMENDMENT) BILL, 2015

No. of 2015

THE CUSTOMS (CONTROL AND MANAGEMENT) (AMENDMENT) ACT, 2013

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THE CUSTOMS (CONTROL AND MANAGEMENT) (AMENDMENT) ACT, 2013

No. of 2013

AN ACT to amend the Customs Control and Management Act, 2013, and for incidental and connected purposes.

ENACTED by the Parliament of Antigua and Barbuda as follows:

1. Short title

This Act may be cited as the Customs Control and Management (Amendment) Act, 2015.

2. Interpretation

In this Act—

“principal Act” means the Customs Control and Management Act, 2013.

“authorized user” means a person who has been authorized under section 103A to use the Customs System;

"Customs System" mean the electronic communication system established under section 103A;

"electronic" has the same meaning as in Section 2 of the Electronic Transactions Act and "electronically" shall be construed accordingly;

“registered”, in relation to a declaration, means accepted by way of the issuance electronically of a registration number in the Customs System in respect of the declaration;”;

3. Repeal of Section 34A

Section “34A” of the principal Act is hereby repealed.

4. Amendment of Section 38

Section 38 of the principal Act is amended by inserting immediately after section 38(4) the following—

“(5) A person who contravenes the provisions of Section 38(1) commits an offense and is liable on conviction to a fine of \$50,000, or 5 times the value of goods so removed, whichever is higher and 5 years imprisonment.

5. Amendemnt to Section 88

Section 88 of the principal Act is amended in subsection (1) by repealing any references to “section 87(1)” and substituting “section 86(1)”.

6. Insertion of Part XIII

The principal Act is amended by inserting immediately after section 103 the following—

PART XIII

CUSTOMS SYSTEM

103A. (1) The Comptroller may establish an electronic communication system for any or all of the following purposes—

- (a) the communication by electronic means of any document or information that is required or authorized to be provided under this Act by any person to the Comptroller or by Comptroller to any person;
- (b) the payment or collection, by electronic means, of customs duties or any other tax, duty, fee or other amount collectible by the Comptroller.
- (c) expediting the process of dealing with the importation and exportation of goods and the movement of persons entering and leaving Antigua and Barbuda.

(2) No person, other than an officer, shall use the Customs System unless such person is authorized by the Comptroller to use the system.

103B. (1) A person other than an officer (hereinafter called an “applicant”) may apply to the Comptroller for an authorization to use the Customs System by submitting an application to the Comptroller in a form and manner prescribed in rules made under section 103F.

(2) The Comptroller may require an applicant to provide additional information that the Comptroller considers necessary for the purposes of deciding whether to grant an application.

(3) If the Comptroller is satisfied that an application meets the prescribed criteria as specified in rules made under section 103F, the Comptroller may grant the authorization, in writing, subject to such terms and conditions as the Comptroller may impose.

(4) If the Comptroller is not satisfied that an applicant meets the criteria referred to in subsection (3), the Comptroller shall refuse to grant the authorization applied for.

(5) Notwithstanding subsections (1) and (2), a person duly authorized and or licensed to practice as a customs broker shall be deemed to be an authorized user, and accordingly—

- (a) the power of the Comptroller to impose terms and conditions under subsection (3); and
- (b) the provision of sections 103C, 103D and 103E, shall apply to such person as they apply in relation to any other authorized user.

103C. The Comptroller may revoke an authorization granted to a person under section 103B (3), or suspend it for such period as the Comptroller may determine, if—

- (a) the person requests the Comptroller, in writing, to revoke or suspend the authorization;
- (b) the person fails to comply with any terms or conditions imposed in respect of the authorization or with any provision of this Act or rules or regulations made under this Act;
- (c) the person has provided false or misleading information with regard to the person's application for the authorization;
- (d) the person has been convicted of an offense under this Act;
- (e) the Comptroller is satisfied that the person no longer meets the criteria referred to in subsection (3); or
- (f) the Comptroller considers that the authorization is no longer required.

103D (1) Subject to section 103E, before the Comptroller refuses to grant an authorization to a person or suspends or revokes a person's authorization, the Comptroller shall give written notice to the person of the proposed refusal, suspension or revocation stating therein—

- (a) in the case of suspension or revocation, the proposed effective date of the suspension or revocation;
- (b) the grounds for the proposed refusal, suspension or revocation; and
- (c) the period referred to in subsection (2), within which the person may make written representations.

(2) A person who has been given notice by the Comptroller of a proposal to refuse the grant of an authorization, or to suspend or revoke an authorization, may, within seven days after receipt of that notice, or such longer period as the Comptroller may in the circumstances allow and notify to the person, make written representations as to why the authorization should be granted, or not suspended or revoked, as the case may be.

(3) After consideration of any representations made under subsection (2) in respect of a proposal to refuse the grant of an authorization, or to suspend or revoke an authorization, the Comptroller may—

- (a) confirm the proposal to refuse the grant of an authorization, or suspension or revocation of an authorization, and proceed to refuse the grant of the authorization, or suspend or revoke the authorization, as the case may be;
- (b) withdraw the proposal to refuse the grant of an authorization, the suspension or revocation of an authorization,; or
- (c) modify the proposal and proceed to implement the proposal as modified.

(4) Where a person's application for an authorization has been refused or where a person's authorization has been revoked, that person may, at any time after such refusal or revocation, make a fresh application under this section for an authorization.

103E. (1) Notwithstanding section 103D, the Comptroller may suspend any person's authorization with immediate effect in accordance with this section.

(2) The Comptroller shall not act under subsection (1) unless he is satisfied that immediate suspension is required in order to—

- (a) preserve the integrity of the Customs System;
- (b) prevent the occurrence of fraud on the revenue or other unlawful revenue loss;
- (c) protect the interest of national security; or
- (d) otherwise protect the public interest.

(3) Upon suspending a person under this section, the Comptroller shall give written notice to the person thereof stating—

- (a) the date on which the suspension took effect; and
- (b) the grounds for suspension, including only such information that the Comptroller is satisfied is not likely to—
 - (i) facilitate;
 - (ii) exacerbate; or
 - (iii) compromise the investigation of,

the circumstance that has become the basis for the Comptroller to act under subsection (1).

(4) An authorized user that has been given notice by the Comptroller of the immediate suspension of that user's authorization may, within seven days after receipt of that notice, or such longer period as the Comptroller may under the circumstances allow and notify the person, make written representation as to why the suspension should be withdrawn.

(5) After consideration of any representations made under subsection (3) in respect of the suspension of an authorization, the Comptroller may—

- (a) withdraw the suspension;
- (b) confirm the suspension and determine the period for which it shall continue; or
- (c) revoke the authorization.

103F. The Comptroller may make rules regarding the operation and use of the Customs System, including, without prejudice to the generality of that power, rules in respect of any or all of the following matters—

- (a) the form and manner of applying for authorization to use the System and the information to be provided by application;
- (b) the criteria to be met by a person who applies for authorization;
- (c) standard terms and conditions that may be imposed with regard to the grant of an authorization, without limiting the power of the Comptroller to specify other or additional terms and condition, if the Comptroller so determines;
- (d) the procedure under section 103D consequent upon refusal, suspension or revocation of an authorization;
- (e) the procedure under section 103E consequent upon the immediate suspension of an authorization;
- (f) the type of documents that may be sent through the Customs System, including the format and manner of sending, and notifying receipt of, documents;
- (g) the format for, and the content of, information that is to be included in documents or with payments sent through the Customs System;
- (h) requirements with regard to authentication codes for access to the Customs System;
- (i) requirements with regard to encrypted signatures in respect of documents sent by means of the Customs System;
- (j) requirements as to confidentiality and non-disclosure in relation to use of the Customs System;
- (k) the manner of dealing with situations that may arise upon any breakdown or interruption in the operation of the Customs System, including the correction of any errors, or the amendment of any documents, information or procedures that may be required as a result of the breakdown or interruption;
- (l) the making, by authorized users, of copies of documents stored in the Customs System;
- (m) any other matter for the efficient administration or operation of the Customs System.

103G. Any person who—

- (a) without the permission of the Comptroller, falsifies, deletes, damages, alters the Customs System. or impairs a document or information that is stored in the Customs System, or that is stored on any duplicate tape, disc or other medium on which information is held or stored in the Customs System;
- (b) makes a copy of a document or information that is stored in the Customs System, or that is stored on any duplicate tape, disc or other medium on which information is held or stored in the Customs System, without being authorized to do so;
- (c) being an authorized user, or an employee or agent of an authorized user, fails to comply with any terms or conditions imposed on the authorized user in respect of use of the Customs System;
- (d) not being an authorized user or an employee or agent of an authorized user, uses the Customs System; or

- (e) uses the Authentication code of an authorized user to access the Customs System without the authority of the Authorized user, commits an offence and is liable on summary conviction to a fine not exceeding one hundred thousand dollars and, in default of payment thereof, to imprisonment for a term not exceeding three years.

103H. (1) Subject to the provisions of this Part and any rules made under section 103F, the provisions of the Electronic Transactions Act, 2006 shall apply in respect of an electronic communication system that is established under section 103A.

(2) For greater certainty, the references to invoices and to books of account include a reference to those types of documents that are in electronic form.

(3) An importer, exporter or any person concerned in the importation of any goods shall provide an officer with access to documents in electronic form of the types referred to in subsection (1), and permit the officer to make copies of such documents, for the purposes of the officer carrying out any powers, duties or functions under the Act.

Passed by the House of Representatives on
the , 2015.

Passed by the Senate on the , 2015.

Speaker.

President.

Clerk to the House of Representatives.

Clerk to the Senate.

EXPLANATORY MEMORANDUM

This Bill seeks to amend the Customs Control Management Act 2013.

The Bill's primary focus is to remove the toxic provisions regarding the necessity of first obtaining a tax compliance certificate.

The Bill seeks to implement the Automated System for Customs Data (ASYCUDA) world system and to accord the validity of such implementation.

Clause 1 Clause 1 states the short title of the Bill

Clause 2 provides for the interpretation of several terms used in the Bill.

Clause 3 repeals section 34A which required the necessity of first obtaining a tax compliance certificate before doing business with Customs.

Clause 4 amends section 38 by inserting a penalty clause.

Clause 5 amends section 88 by correcting a typographical error which referred to a wrong section.

Clause 6 inserts a new PART XIIA in order to implement the Automated System for Customs Data (ASYCUDA) world system.

"ASYCUDA World – a web based Automated Systems Customs Data, will make doing business in Antigua & Barbuda Customs & Excise Division so much easier—

- (a) Most transactions can be handled via the internet;
- (b) Available 24 hours a day 7 days a week;
- (c) Simpler procedures and documentation;
- (d) Computerized Warehousing and duty fee shop operations;
- (e) Tariff and list of importers available online;
- (f) Reduction in use of paper for Customs transactions;
- (g) Simplified import and export procedures;
- (h) Faster cargo clearance;
- (i) Minimization of administrative costs to the Trading community;
- (j) Reduction of the administrative burden on trade through the introduction of the Direct Trader Input (DTI).

The ASYCUDA World system will also have the capability to interface with other government agencies, making all applications for permits and licences electronic, once all agencies are on board hence no more walking around to different places, everything is a one stop shop. Transparency is key with the implementation of the ASYCUDA World system, and will indeed aid in fighting corruption since all transactions will be transparent"

No. of 2013

The Customs (Control and Management) (Amendment) Act, 2013

Hon. Gaston A. Browne
*Prime Minister and Minister of Finance and
Corporate Governance and Minister responsible for
Customs.*