

ANTIGUA AND BARBUDA



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

No. 8 of 2013

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

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ANTIGUA AND BARBUDA

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

No. of 2013

AN ACT to amend the Customs (Control and Management) Act, 2013.

ENACTED by the Parliament of Antigua and Barbuda as follows:

1. Short title

This Act may be cited as Customs (Control and Management) (Amendment) Act, 2013 and shall come into operation on a day to be appointed by the Minister by Notice published in the Gazette.

2. Amendment of section 13 – Customs airport

Section 13 of the Customs (Control and Management) Act, 2013, (in this Act referred to as the principal Act) is amended by the repeal of the words “\$10,000” and the substitution of the words “\$20,000”.

3. Amendment of section 15 - Transit sheds

Section 15 of the principal Act, is amended by the deletion of subsection (4) thereof and the substitution thereof of the following –

“(4) A person who contravenes or fails to comply with any condition or restriction imposed under this section commits an offense and is liable on conviction to a fine of1 “\$10,000.”

4. Amendment of section 16 - Prior notification of arrival.

Section 16 of the principal Act is amended in subsection (4) by the repeal of the words “\$(10,000)” and the substitution of the words “\$20,000”.

5. Amendment of section 17 - Requirement to answer questions.

Section17 of the principal Act is amended in subsection (3)(b) by the repeal of the words “\$10,000” and the substitution of the words “\$20,000”.

6. Amendment of section 22 - Report of arrival of conveyance

Section 22 of the principal Act is amended in subsection (4) by the repeal of the words “\$10,000” and the substitution of the words “\$20,000”.

7. Amendment of section 24 - Disembarkation

Section 24 of the principal Act is amended in subsection (6) by the repeal of the words “\$10,000” and the substitution of the words “\$20,000”.

8. Amendment of section 25 - Baggage to be presented

Section 25 of the principal Act is amended in subsection (3) by the repeal of the words “\$10,000” and the substitution of the words “\$20,000”.

9. Amendment of section 31 – Production of Certificate of clearance

Section 31(3) (b) of the principal Act is amended by the deletion of the words “\$10,000” and the substitution thereof of the words “\$25,000”.

10. Amendment of section 33- Departure to be from customs controlled area only

Section 33(2) of the principal Act is repealed and substituted by the following –

“A master, commander, driver or his agent who contravenes subsection (1) commits an offense and is liable on conviction to a fine of \$25,000.”

11. Amendment of section 34- Production of Tax Compliance Certificate

The principal Act is amended by the insertion after section 34 of the following –

34A.(1) Every importer of goods shall, before entry of such goods present to the Comptroller, a tax compliance certificate as provided under the Tax Administration and Procedure Act, 2012;

(2) Notwithstanding subsection (1) the Comptroller may waive the presentation of a tax compliance certificate in the following circumstances –

- (a) the importer is an individual, or casual importer whose imports are not of a commercial nature;
- (b) imports of the personal effects by returning nationals and persons employed either in the Government or private sector;
- (c) imports by and for accredited diplomatic missions and international organizations;
- (d) the imports are for Government or Government Departments or state owned corporations;
- (e) the goods imported are of a perishable nature;
- (f) the goods imported are of a hazardous and inflammable nature in storage;
- (g) the imports are lifesaving drugs and pharmaceuticals;
- (h) the imports relate to the generation of power and processing of drinking water;
- (i) the imports are in the nature of urgent supplies required for national security;

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- (j) the imports are required for emergency reconstruction and rehabilitation in times of natural calamity and national disasters;
- (k) production by the importer of evidence that the issuance of tax compliance certificate is delayed due to non-reconciliation of the tax due to the Inland Revenue Department and the monies owed by the Government to the importer;
- (l) production by the importer of evidence that the issue of tax compliance certificate is delayed due to administrative reasons internal to the Inland Revenue Department; and
- (m) imports by entities registered under the International Business Corporations Act and other tax exempt organizations.

(3) Where the Comptroller in his discretion waives the requirement of a tax compliance certificate, he shall within seven (7) days of such waiver advise the Commissioner of Inland Revenue.

(4) The Comptroller must give reasons for such waiver and the waiver must be recorded on the warrant in a manner that is auditable.

12. Amendment of section 35 - Entry of goods on importation

Section 35(12) of the principal Act is amended by the deletion of the word “\$10,000” and the substitution thereof of the words “\$20,000”.

13. Amendment of section 41 - Control of movement of goods.

Section 41(4) of the principal Act is amended by the deletion of the words “\$10,000” and the substitution thereof of the words “\$20,000”.

14. Amendment of section 49 - Entry outwards of conveyances.

Section 49(5)(a) of the principal Act is repealed and replaced by the following –

“a person who is required by subsection (1) or (2) to make an entry out wards fails to do so, that person commits an offense and is liable on conviction to a fine of \$10,000 and”

15. Amendment of section 61 - Examination of goods in coasting vessels

Section 61(3)(b) of the principal Act is amended by the deletion of the words “\$10,000” and the substitution thereof of the words “\$20,000”.

16. Amendment of section 85 - Offenses in relation to drawback

Section 85(2) of the principal Act is amended by the deletion of the words "\$25,000" and the substitution of the words "\$50,000”.

17. Amendment of section 86 – Keeping of records.

Section 86(2) of the principal Act is amended by the deletion of the words “\$50,000” and the substitution thereof of the words “\$100,000”.

18. Amendment of section 88 – Access to records

Section 88(3) of the principal Act is amended by the deletion of the words “\$50,000” and the substitution therefor of the words “\$100,000”.

19. Amendment of section 106 – Power to board conveyance

Section 106(5) of the principal Act is amended by the deletion of the words “\$25,000” and the substitution therefor of the words “\$100,000”.

20. Amendment of section 109 – Searching of conveyance.

Section 109(3) of the principal Act is amended by the deletion of the “\$10,000” and the substitution therefor of the words “\$25,000”.

21. Amendment of section 110 – Power to search premises

Section 110(3) of the principal Act is amended by the deletion of the words “\$10,000” and the substitution of the words “\$25,000”.

22. Amendment of section 111 - Power to search vehicles.

Section 111(3) of the principal Act is amended by the deletion of the words “\$10,000” and the substitution therefor of the words “\$25,000”.

23. Amendment of section 135 – Power to require information and the production of evidence

Section 135 (3) of the principal is amended by the deletion of the words “\$10,000” and the substitution of the words “\$25,000”.

24. Amendment of section 137- Power to impose administrative penalties.

Section 137 of the principal Act is repealed and substituted by the following-

“137. Power of the Comptroller to impose administrative penalties.

(1) Where in the opinion of the Comptroller, an offence committed under this Act or under any Customs law is not a serious criminal offence or does not attract a sentence of imprisonment, he may proceed against the offender administratively rather than through court proceedings.

(2) Where the Comptroller decides to proceed with an offence in an administrative manner, he shall impose any of the following penalties-

- (a) a fine of not less than twenty-five percent or more than seventy-five percent of the maximum fine provided under the law; or
- (b) seize the goods; or
- (c) mitigate or remit any fine or penalty imposed by the Comptroller or restore anything seized under the customs laws.

(3) A penalty imposed under this section is recoverable by the Comptroller as a civil debt.

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(4) A person accused of an offense under this Act or under any customs law may, in writing, reject the decision of the Comptroller to proceed with the offence administratively.

(5)The Comptroller shall keep a Minute Book in which, he shall record the proceedings of all administrative actions taken by him under this section.

(6) This section shall not affect any right conferred by any written law to claim goods in the case of a seizure or to commence or require the commencement of legal proceedings at any time prior to the payment of the fine or penalty.”

25. Amendment of section 151 – Entry and search under warrant.

Section 151(6) of the principal Act is amended by the deletion of the words “\$10,000” and the substitution of the words “\$25,000”.

26. Amendment of section 172 – False declarations.

Section 172(1) (b) of the principal Act is amended by the deletion of the words “\$25,000” and the substitution of the words “\$50,000”.

Passed by the House of Representatives
on the _____, 2013.

Passed by the Senate
on the _____, 2013.

Speaker.

President.

Clerk to the House of Representatives.

Clerk to the Senate.

EXPLANATORY MEMORANDUM

This Bill seeks to amend the Customs (Control and Management) Act, 2013 by increasing certain of the fines and penalties to levels comparable to the penalties in the other CARRICOM States. The Bill further strengthens the powers of the Comptroller to impose administrative penalties and requires him to keep a Minute Book for the purpose recording his decisions.

Clause 11 is a new provision which authorizes the Comptroller to require an importer to produce a tax compliance certificate before entry of the goods imported by him. The Comptroller has discretion to waive the requirement of a tax clearance certificate in the circumstances specified in clause 11.

Minister of Finance