

THE CUSTOMS (ADMENDMENT) BILL, 2013

Background

The Customs (Amendment) Bill, 2013 was introduced in the House of Representatives on April 12, 2013 in the name of the Minister of Finance, Senator the Hon. Larry Howai.

Purpose of Bill

The Customs (Amendment) Bill, 2013, seeks to amend the Customs Act, Chapter 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 other related matters.

Key features of the proposed legislation

The Bill:

- ✓ is inconsistent with Sections 4 and 5 of the Constitution and therefore needs to be passed by a three-fifths majority in both Houses of Parliament.
- ✓ provides new definitions for certain relevant terms.
- ✓ requires a master, agent or a cargo reporter to submit to the Comptroller of Customs and Excise, prior to arrival in or departure from Trinidad and Tobago, advance passenger and cargo information.
- ✓ imposes penalties for the following:
 - the wrong breaking of bulk;
 - Customs Border Control System (CBCS), (that is information system managed and controlled by the Comptroller of Customs and Excise for the purpose of cargo reporting and passenger document and entry processing) related offences and the misuse of the authentication code;
 - knowingly and without authority obstructing the CBCS, modifying programs or data held in the CBCS or causing the CBCS to cease functioning ;
 - unauthorised use of or damage caused to the CBCS;
 - unauthorised use, disclosure or publication of information; and
 - failure to submit accounts of all discharged cargo within twenty-four hours to the proper Officer.
- ✓ increases the penalties for the following:
 - failure to provide advance passenger and cargo information or the provision of false information; and
 - bribery, collusive seizure of goods and receipt of unauthorised fees by officers.
- ✓ outlines the criteria required to become a registered user of the CBCS and for the cancellation of registration.
- ✓ requires that a record of every data message be retained for a period of four years by the Comptroller of Customs and Excise.
- ✓ provides for the retention of electronic records and data messages by the Comptroller of Customs and Excise which is admissible in evidence and received as prima facie evidence.

- ✓ requires the provision of advance passenger and cargo information via the prescribed form or data message.
- ✓ establishes the manner in which the entries of imported/exported goods are made, and provides for goods exempted from entry requirement.
- ✓ requires the Comptroller of Customs and Excise to share information with specified public bodies.
- ✓ mandates persons employed under the legislation to make an official secrecy declaration before a Justice of the Peace.
- ✓ Provides a Ninth Schedule which specifies all data which must be shared between the Comptroller of Customs and Excise and the specified public bodies.

Related Legislation

A number of customs and excise laws exist in Trinidad and Tobago. They include:

- Customs Act, Chapter 78:01
- Excise (General Provisions) Act, Chapter 78:50
- Anti-Dumping and Countervailing Duties Act, Chapter 78:05
- Value Added Tax Act, Chapter 75:06
- Brewery Act, Chapter 87:52
- Liquor Licences Act, Chapter 84:10
- Petroleum Taxes Act, Chapter 75:04
- Spirit and Spirit Compounds Act, Chapter 87:54

Previous Legislation

- ***The Customs Act 78:01***

The Customs Act 78:01 was established to make amendments to the Customs Consolidated Act of 1876, brought into force in the United Kingdom. This Act sought to make provisions for the following:

- The imposition and collection of duties
- Prohibitions and regulating the granting of refunds for duty
- The loading and exportation of goods
- Prevention of smuggling
- Making it a requirement for steamships to provide clearance papers before they sail
- Providing regulations for warehousing

It must be noted however, that this Act has been amended at least sixty-five (65) times since it became law. Some of the amendments are as follows:

- ***The Customs (Amendment Act) 1996***

This Act was introduced into the Senate on July 9, 1996. It was aimed at expediting customs procedures with respect to international trade, tourism and the valuation of goods - simplifying the language and eliminating certain ambiguities in the law. This was assented to on November 2, 1996.

- ***The Customs (Amendment and Validation) Act 2003ⁱ***

This Act was introduced in the House of Representatives on June 27, 2003. The Bill sought to amend the Customs Act 78:01 to grant legal status to Customs and Excise Extra Guards which would enable them to be recruited by the Comptroller of Customs and Excise and also enable the Chief Personnel Officer to treat and negotiate with the Recognized Majority Union representing them. It was assented to on September 16, 2003.

- ***The Customs (Amendment) Bill 2006***

This Bill was introduced in the House of Representatives on December 15, 2006. The Bill sought to improve the management provisions in the Customs Act by enhancing the operational effectiveness of the Customs and Excise Division, increasing the existing penalties for violation of customs laws, and providing for trial on indictment for violation of such prohibitions. However due to the dissolution of Parliament on September 28, 2007, the Bill lapsed.

- ***The Customs (Amendment) Bill 2011***

This Bill was introduced in the House of Representatives on January 19, 2011. The Bill sought to enhance border control by providing for advance passenger and cargo information to be submitted electronically to the Comptroller of Customs. The Bill, however, lapsed on June 17, 2011.

- ***The Customs (Amendment) (No. 2) Bill 2011***

This Bill was introduced in the House of Representatives on November 9, 2011. The Bill sought to enhance border control by providing for advance passenger and cargo information to be submitted electronically to the Comptroller of Customs and Exercise and for related matters. The Bill lapsed on June 26, 2012.

COMPARATIVE LEGISLATION IN OTHER JURISDICTIONS

No.	Country	Name of Statute	Noted Similarities	Noted Differences
1.	Australia	<p>Customs Act 1901ⁱⁱ Customs Tariff Act 1995ⁱⁱⁱ Customs Amendment (Anti-Dumping) Bill 2011^{iv} Customs Amendment (Anti-dumping Measures) Bill 2011^v Customs Amendment (Export Controls and Other Measures) Bill 2011^{vi} Customs Amendment (Anti-Dumping Improvements) Bill (No. 1) 2012^{vii} Customs Amendment (Anti-Dumping Improvements) Bill (No. 2) 2012^{viii} Customs Tariff (Anti-Dumping) Amendment Act (No.1) 2012^{ix} Customs Amendment (Miscellaneous Measures) Bill 2012^x</p> <p>Current legislation: Customs Amendment (Anti-Dumping Commission) Act 2013 Customs Tariff Amendment (Incorporation of Proposals) Bill 2013</p>		
2.	Canada	Customs Act 1985 ^{xi}	Part 107 of Canada's Customs Act 1985 is similar in its provision on the disclosure of information, penalties for non-adherence to the regulations set down in the Act	
3.	New Zealand	Customs Act 1901 - Sect 153 ^{zic} ^{xii} Customs and Excise Act 1996 ^{xiii}	New Zealand's Customs and Excise Act 1996 has similar provisions for the use of information and access to information, and the entry and accounting for goods	

4.	United Kingdom	Customs Consolidated Act 1876 Customs and Excise Act 1952 Commissioners for Revenue and Customs Act 2005 ^{xiv}	- Section 19 in the Commissioners for Revenue and Customs Act 2005 on wrongful disclosure, makes the same provision as the Customs Amendment Bill 2013, for persons making use of, or publishing information in their possession an offence. - The UK's current legislation also makes the same provision for confidentiality	
5.	Jamaica	The Customs Act ^{xv} The Customs (Amendment) Act 2009 ^{xvi}		
6.	Dominica	2010 Customs Act ^{xvii}		
9.	India	The Customs Act, 1962 (Act 52 Of 1962) ^{xviii}		

Considerations

- ✓ The consequential effect which this piece of legislation will have on other related pieces of legislation, such as the Immigration (Advanced Passenger Information) Act Chapter 18:04, via illustration.
- ✓ The use and interpretation of “knowingly” in the Bill.
- ✓ The severity and types of penalties imposed.
- ✓ Are persons employed with the identified officials whom the Comptroller of Customs and Excise is required to share information with, who may be privy to such information, liable if they disclose such shared information?

Please take the opportunity to access the Bill via the link provided and feel free to submit your comments and concerns to the Parliament via our website.

Parliament Secretariat
Parliament of the Republic of Trinidad and Tobago
Levels G-7, Tower D,
Port of Spain International Waterfront Centre
#1A Wrightson Road, Port of Spain
TRINIDAD

References

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- ⁱ The Customs (Amendment and Validation) Bill 2003. <http://www.ttparliament.org/legislations/b2003h09.pdf>
- ⁱⁱ http://www.austlii.edu.au/au/legis/cth/consol_act/ca1901124/
- ⁱⁱⁱ <http://www.comlaw.gov.au/Details/C2010C00488>
- ^{iv} <http://www.comlaw.gov.au/Details/C2011B00035>
- ^v <http://www.comlaw.gov.au/Details/C2011B00032>
- ^{vi} <http://www.customs.gov.au/webdata/resources/files/exposureDraftExplanatoryDocument.pdf>
- ^{vii} <http://www.austlii.edu.au/au/legis/cth/bill/caib12012515/>
- ^{viii} <http://www.austlii.edu.au/au/legis/cth/bill/caib22012515/>
- ^{ix} <http://www.comlaw.gov.au/Details/C2012A00195>
- ^x <http://www.comlaw.gov.au/Details/C2012B00220>
- ^{xi} <http://laws-lois.justice.gc.ca/eng/acts/C-52.6/>
- ^{xii} http://www.austlii.edu.au/au/legis/cth/consol_act/ca1901124/s153zic.html
- ^{xiii} <http://www.legislation.govt.nz/act/public/1996/0027/latest/DLM377337.html>
- ^{xiv} <http://www.legislation.gov.uk/ukpga/2005/11/contents>
- ^{xv} <http://www.wipo.int/wipolex/en/details.jsp?id=8902>
- ^{xvi} http://www.wipo.int/wipolex/en/text.jsp?file_id=214894
- ^{xvii} http://www.dominica.gov.dm/cms/files/draft_customs_bill.pdf
- ^{xviii} [http://www.intax-info.com/pdf/law_by_country/India/Customs%20Act%201962%20\(en\).pdf](http://www.intax-info.com/pdf/law_by_country/India/Customs%20Act%201962%20(en).pdf)