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Trinidad and Tobago

HOUSE OF REPRESENTATIVES

BILL

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

THE CUSTOMS (AMENDMENT) (NO. 2) BILL, 2011

Explanatory Note

(These notes form no part of the Bill but are intended only to indicate its general purport)

This Bill seeks 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.

Clauses 1 and 2 of the Bill would provide for the short title and interpretation of the Bill, respectively.

Clause 3 of the Bill would amend section 2 of the Act to insert new definitions.

Clause 4 of the Bill would amend the Act by repealing and replacing sections 72, 73, 74 and 75 to provide—

- (a) in section 72, a duty on a master, his agent or a cargo reporter to provide advance passenger and cargo information on the prescribed form or by means of a data message;
- (b) in section 73, a requirement that advance passenger and cargo information shall be recorded to show certain goods separately;
- (c) in section 74, that a master, his agent or a cargo reporter shall submit an account of all discharged cargo within twenty-four hours and that failure to do so would incur a penalty of one hundred thousand dollars (\$100,000.00); and
- (d) in section 75, an increase in the penalty from four thousand dollars (\$4,000.00) to six hundred thousand dollars (\$600,000.00) where a master, his agent or a cargo reporter fails to provide advance passenger and cargo information or provides false information and also provides that goods may be forfeited and the Comptroller may refuse to grant clearance until the advance passenger and cargo information is submitted or the fine is paid.

Clause 5 of the Bill would repeal and replace section 79 of the Act to provide for the penalty for the wrong breaking of bulk, by making the master liable to a penalty of one hundred thousand dollars (\$100,000.00) and the goods liable to forfeiture.

Clause 6 of the Bill seeks to insert new section 212A to make persons liable to a penalty of one hundred and twenty-five thousand dollars (\$125,000.00) in relation to offences in respect of the Customs Border Control System (CBCS).

Clause 7 of the Bill would amend section 259 of the Act by inserting a new subsection (3) to provide that an electronic record of a data message would be admissible in evidence.

Clause 8 of the Bill would amend the Act by inserting new sections as follows:

- (a) section 268 would provide for the manner in which an entry of imported or exported goods is to be made;
- (b) section 269 would provide for goods that are exempt from the entry requirement;
- (c) section 270 would provide for the persons who may become registered users of the CBCS;
- (d) sections 271 and 272 would provide the criteria necessary to apply to be a registered user of the CBCS and the issue and use of an identifier;
- (e) section 273 would provide the circumstances that may lead to the cancellation of the registration by the Comptroller;
- (f) section 274 would give the Comptroller the duty to keep a record of every data message for a period of four years;
- (g) section 275 would create an offence for the unauthorized use of the CBCS;
- (h) section 276 would make it an offence for any person who knowingly and without authority causes an unauthorized modification of any program or data held in the CBCS. The penalty for such an offence is imprisonment for ten years. The clause also provides that where damage is caused to the CBCS, the person convicted of the offence is liable to a further penalty of fifteen years;
- (i) section 277 would make it an offence for a person to knowingly and without authority obstruct the CBCS. A person who commits such an offence is liable to imprisonment for ten years. The clause also provides that where damage is caused to the CBCS the person convicted of the offence is liable to a further penalty of fifteen years; and
- (j) section 278 would make it an offence for a person to knowingly and without authority cause the CBCS to cease to function. This offence would attract a penalty of fifteen years imprisonment.

BILL

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

[, 2011]

ENACTED by the Parliament of Trinidad and Tobago as Enactment follows:

- Short title **1.** This Act may be cited as the Customs (Amendment) Act, 2011.
- Interpretation
Chap. 78:01 **2.** In this Act, “the Act” means the Customs Act.
- Section 2 amended **3.** Section 2 of the Act is amended in section 2, 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;
- “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 device or combination of devices including input and output devices capable of being used in conjunction with external files which contain computer programs, electronic instructions, input data and output data that perform logic, arithmetic, data storage and retrieval, communication control and other functions used 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;

“identifier” means a form of identification issued by the Comptroller to a registered user under section 272;

“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

“transshipment” 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

4. Sections 72, 73, 74 and 75 of the Act are repealed and the following sections are substituted:

“Advance
passenger
and cargo
information

72. 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.

Certain
goods to be
reported
separately

73. The advance passenger and cargo information required under section 72 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 transhipped; 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 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; or

(b) provides incomplete or false information,

commits an offence and is liable to a penalty of six hundred thousand dollars.

(2) Goods not duly reported to the Comptroller under section 72 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 is provided to the Comptroller or the fine imposed under subsection (1) is paid.”.

5. Section 79 of the Act is repealed and the following section is substituted: Section 79 repealed and 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 causes—

(a) 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 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 insert-

6. 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 identifier 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 identifier without the authority of the registered user;
- (d) being registered as a user of the CBCS under section 272, uses the identifier 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 to a penalty of one hundred and twenty-five thousand dollars.”.

7. Section 259 of the Act is amended by inserting after Section 259 amended 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 identifier was used for the purpose of the data message, made the statements contained in the data message.”.

8. The Act is amended by inserting after section 267, Sections 268 to 275 inserted 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 prescribed manner.

(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 272 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 on 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, 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.

(5) The Comptroller may, in relation to the use of the CBCS, impose such conditions as he considers necessary on the registered user.

272. (1) The Comptroller shall issue an identifier to every registered user of the CBCS. ^{Issue and use of identifiers}

(2) The Comptroller may impose such conditions as he considers necessary on a registered user relating to the use and security of an identifier.

(3) Subject to subsection (4), where a data message is transmitted to the CBCS using an identifier 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 identifier was issued.

(4) Subsection (3) shall not apply where—

- (a) an identifier is used by a person who is not entitled to use it; and
- (b) the registered user to whom the identifier was issued has, prior to the unauthorized use of that identifier, notified the Comptroller, in writing, that the security of the identifier is no longer secure.

273. The Comptroller may cancel the registration of a registered user by notice in writing, where he is satisfied that the registered user— ^{Cancellation of registration}

- (a) failed to comply with a condition of registration imposed by the Comptroller under section 271(5);
- (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 identifier 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.

277. (1) Subject to subsection (2), a ^{Unauthorized} person who knowingly and without ^{obstruction} authority—
of the CBCS

- (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.”.

Passed in the House of Representatives this day
of , 2011.

Clerk of the House

I confirm the above.

Speaker

Passed in the Senate this day of , 2011.

Clerk of the Senate

I confirm the above.

President of the Senate

No. 29 of 2011

SECOND SESSION
TENTH PARLIAMENT
REPUBLIC OF
TRINIDAD AND TOBAGO

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Received and read the

First time

Second time

Third time
