

A BILL

entitled

CUSTOMS TARIFF AMENDMENT ACT 2013

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WHEREAS it is expedient to amend the Customs Tariff Act 1970;

Be it enacted by The Queen's Most Excellent Majesty, by and with the advice and consent of the Senate and the House of Assembly of Bermuda, and by the authority of the same, as follows:

Citation

1 This Act, which amends the Customs Tariff Act 1970 ("the principal Act"), may be cited as the Customs Tariff Amendment Act 2013.

Amends section 1

2 Section 1 of the principal Act is amended by—

- (a) repealing the definitions of "special rate" and "standard rate"; and
- (b) inserting, in the appropriate alphabetical order, the following definition—

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“for home use” means for home consumption or for any use other than for immediate exportation or shipment as stores.”.

Amends section 2

3 Section 2(2) of the principal Act is repealed and substituted by the following—

“(2) Except as otherwise provided in this Act or any other enactment, on goods—

- (a) imported into Bermuda; or
- (b) taken out of bond from any bonded warehouse in Bermuda for home use,

there shall be imposed duty at the rate specified in the First Schedule with respect to goods of that class or description, calculated by reference to the unit for duty specified in relation thereto.”.

Amends section 5

4 Section 5 of the principal Act is amended—

- (a) in subsection (4) by, immediately after “importer”, inserting “(who is an eligible beneficiary)”; and
- (b) by, immediately after subsection (4), inserting the following—

“(5) The Collector of Customs shall refuse to grant an importer relief under subsection (4) if the importation of the goods in respect of which the relief from duty is claimed involves arrangements, made at any time before such relief is granted, that are duty avoidance arrangements.

(6) For the purposes of subsection (5)—

- (a) “arrangements” includes any arrangements, scheme or understanding of any kind, whether or not legally enforceable, involving any number of transactions; and
- (b) arrangements are “duty avoidance arrangements” if the main purpose, or one of the main purposes, of any party to the arrangements, in entering into them, is to obtain relief from duty.”.

Amends section 5A

5 Section 5A of the principal Act is amended by, immediately after subsection (5), inserting the following—

“(6) Medals, cups and similar items awarded abroad to any person for distinction in art, literature, science or sport, or for public service, or otherwise in recognition of meritorious achievement or conduct may be imported into Bermuda without payment of duty.

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(7) Effects inherited by a person who at the time of death of the deceased, is ordinarily resident in Bermuda and provided that such effects were for the personal use of the deceased, may be imported into Bermuda without payment of duty.”.

Repeals and replaces section 11

6 Section 11 of the principal Act is repealed and substituted by the following—

“Surcharge on duty suspension goods

11 (1) Upon the discharge of duty suspension arrangements, in addition to any duty that may be due, there shall be imposed a surcharge of duty in accordance with this section.

(2) The surcharge imposed upon goods (except goods of Headings 27.09, 27.10 and 27.11) taken out of bond from any bonded warehouse in Bermuda shall be three and three quarters per centum [3.75%] of the duty imposed under sections 2(2) and 3.

(3) The surcharge imposed upon goods taken out of a bonded warehouse under subsection (2) shall be applied to—

- (a) goods removed from a regulated shop under the Airport (Duty Free Sales) Act 1997 for export; and
- (b) precious stones taken out of storage in bond under the Bonding of Precious Stones Act 1952.

(4) The surcharge imposed upon goods discharged from CPC 5000 of the Sixth Schedule (business temporary importation relief), shall be calculated as follows—

- (a) if the goods are discharged by re-export, then the surcharge shall be equal to the amount of duty at the time of discharge that would have been payable on identical goods with the deemed customs value entered for home use;
- (b) if the goods are discharged by diversion to home use at an applicable rate determined by section 2 and the Fifth Schedule, then the surcharge shall be equal to the amount of duty payable at the applicable rate on identical goods with the deemed customs value.

(5) All provisions of law relating to the circumstances in which duty is imposed, the payment and collection thereof, the refund, drawback, penalties and legal proceedings in respect thereof shall apply in like manner to the surcharge imposed under this section.

(6) In this section—

“deemed customs value” means—

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- (a) the actual lease payment for the goods for the period between the date of importation and the date of discharge; or
- (b) if there is no actual lease payment, a deemed lease payment representing the open market cost in Bermuda of leasing the goods for the same period; or
- (c) if there is neither an actual lease payment nor an open market cost in Bermuda of leasing the goods then, by reference to the same period, the deemed customs value shall be 10 per centum per annum of the customs value of the goods ascertained in accordance with the Second Schedule to the Revenue Act 1898;

“discharge” means—

- (a) diversion to home use; and
- (b) export;

“duty suspension arrangements” means arrangements for the purposes of—

- (a) bonded warehousing under the Revenue Act 1898;
- (b) storage in a regulated shop under the Airport (Duty Free Sales) Act 1997;
- (c) storage in bond under the Bonding of Precious Stones Act 1952; and
- (d) temporary importation under the Sixth Schedule.”.

Repeals and replaces First Schedule

7 The First Schedule to the principal Act is repealed and replaced by the First Schedule, which is published separately on the website of the Customs Department located at: www.customs.gov.bm.

Amends Second Schedule

8 The Second Schedule to the principal Act is amended by repealing CPC 3007.

Amends Fifth and Sixth Schedules for clarification

9 (1) The general provisions of the Fifth Schedule to the principal Act are amended in paragraph 1—

- (a) at the end of subparagraph (4)(b), by deleting “and”;
- (b) at the end of subparagraph (4)(c), by deleting the full stop and substituting “; and”;
- (c) immediately after subparagraph (4)(c), by inserting—

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“(d) has shown that the importation of the goods does not involve duty avoidance arrangements within the meaning of section 5.”; and

(d) immediately after subparagraph (4), by inserting—

“(5) For the avoidance of doubt, an end-use does not include a use to which goods are put before they have been duly landed in Bermuda.”.

(2) The Fifth and Sixth Schedules to the principal Act are amended in their respective tables by inserting the following at the end of each CPC—

Construction	For the avoidance of doubt, the general provisions of this Schedule shall be construed as one with this CPC.
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Amends Fifth Schedule

10 (1) The Table of End-Use Reliefs in the Fifth Schedule to the principal Act is amended by repealing—

(a) CPCs 4000, 4129 and 4168; and

(b) CPC 4161.

(2) The Fifth Schedule to the principal Act is amended by repealing CPC 4141 and substituting the following—

Description	Community service vehicle
CPC	4141
Duty Rate	0%
Eligible Beneficiary	All importers.
Qualifying Goods	Goods of heading 87.02.
End-Use Conditions / Restrictions	Goods must be imported and used only to provide a free-of-charge community transportation service.
Specific Controls / Diversion	
Construction	For the avoidance of doubt, the general provisions of this Schedule shall be construed as one with this CPC.

(3) The Fifth Schedule to the principal Act is amended by inserting the following CPC 4194 in the appropriate numerical order—

Description	Goods for Cable Co. Ltd
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CPC	4194
Duty Rate	0%
Eligible Beneficiary	Cable Co. Ltd.
Qualifying Goods	Telecommunication cable, equipment, apparatus and machinery.
End-Use Conditions / Restrictions	1. Goods must be imported and used directly and solely in the building, renewal, provision, operation, repair, maintenance or extension of the eligible beneficiary's telecommunications network infrastructure. 2. Goods must be installed on premises owned, leased or otherwise occupied by the eligible beneficiary.
Specific Controls / Diversion	
Construction	For the avoidance of doubt, the general provisions of this Schedule shall be construed as one with this CPC.

(4) The Fifth Schedule to the principal Act is amended by inserting the following CPC 4195 in the appropriate numerical order—

Description	Chemicals, products and equipment for combating oil pollution
CPC	4195
Duty Rate	0%
Eligible Beneficiary	All Importers
Qualifying Goods	Chemical dispersants, biological agents, machinery, apparatus and equipment.
End-Use Conditions / Restrictions	Goods must be imported and used only to manage oil spills.
Specific Controls / Diversion	
Construction	For the avoidance of doubt, the general provisions of this Schedule shall be construed as one with this CPC.

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(5) The Fifth Schedule to the principal Act is amended by inserting the following CPC 4196 in the appropriate numerical order—

“

Description	Supplies for Honorary Consul
CPC	4196
Duty Rate	0%
Eligible Beneficiary	Honorary Consuls.
Qualifying Goods	Flags, stationery, seals of office, official correspondence, passports and similar supplies.
End-Use Conditions / Restrictions	1. Goods must be imported and used only by the Honorary Consul of a foreign country. 2. The Deputy Governor must certify that similar supplies for the use of Her Majesty's consular representative are admitted duty free in such foreign country.
Specific Controls / Diversion	
Construction	For the avoidance of doubt, the general provisions of this Schedule shall be construed as one with this CPC.

”

(6) The Fifth Schedule to the principal Act is amended by inserting the following CPC 4197 in the appropriate numerical order—

“

Description	Educational material from International Labour Organization (“ILO”)
CPC	4197
Duty Rate	0%
Eligible Beneficiary	Registered trade unions.
Qualifying Goods	Educational materials (including audio visual aids and equipment).
End-Use Conditions / Restrictions	1. Goods must be imported and used only by a registered trade union. 2. Goods must be from the ILO.
Specific Controls / Diversion	

”

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Construction	For the avoidance of doubt, the general provisions of this Schedule shall be construed as one with this CPC.
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(7) The Fifth Schedule to the principal Act is amended by inserting the following CPC 4198 in the appropriate numerical order—

“

Description	Awards
CPC	4198
Duty Rate	0%
Eligible Beneficiary	All importers.
Qualifying Goods	Medals, cups and similar articles
End-Use Conditions / Restrictions	Goods must be imported for award to a person for distinction in art, literature, science or sport, or for public service, or otherwise in recognition of meritorious achievement or conduct and must be so awarded.
Specific Controls / Diversion	
Construction	For the avoidance of doubt, the general provisions of this Schedule shall be construed as one with this CPC.

”

(8) The Fifth Schedule to the principal Act is amended by inserting the following CPC 4199 in the appropriate numerical order—

“

Description	Paintings, photographs and sculptures
CPC	4199
Duty Rate	0%
Eligible Beneficiary	Bermuda Society of Arts
Qualifying Goods	Paintings, photographs and sculptures
End-Use Conditions / Restrictions	Goods must be imported for exhibition and sale through the medium of the Bermuda Society of Arts and must be so exhibited and sold.
Specific Controls / Diversion	

”

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Construction	For the avoidance of doubt, the general provisions of this Schedule shall be construed as one with this CPC.
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(9) The Fifth Schedule to the principal Act is amended by inserting the following CPC 4201 in the appropriate numerical order—

“

Description	Poppies
CPC	4201
Duty Rate	0%
Eligible Beneficiary	Bermuda War Veterans Association.
Qualifying Goods	Artificial poppies and forget-me-nots.
End-Use Conditions / Restrictions	Goods must be imported and distributed under the auspices of the Bermuda War Veterans Association
Specific Controls / Diversion	
Construction	For the avoidance of doubt, the general provisions of this Schedule shall be construed as one with this CPC.

”

(10) The Fifth Schedule to the principal Act is amended by inserting the following CPC 4202 in the appropriate numerical order—

“

Description	Sculptures and metal plaques
CPC	4202
Duty Rate	0%
Eligible Beneficiary	All importers.
Qualifying Goods	Sculptures and metal plaques.
End-Use Conditions / Restrictions	Goods must be imported and used only as memorials or to be affixed thereto.
Specific Controls / Diversion	
Construction	For the avoidance of doubt, the general provisions of this Schedule shall be construed as one with this CPC.

”

(11) The Fifth Schedule to the principal Act is amended by inserting the following CPC 4203 in the appropriate numerical order—

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Description	Samples of goods
CPC	4203
Duty Rate	0%
Eligible Beneficiary	All importers
Qualifying Goods	Samples of goods
End-Use Conditions / Restrictions	<ol style="list-style-type: none"> 1. The goods must be imported and used only to solicit orders for goods of the type they represent. 2. Goods must not be sold or otherwise disposed of by way of trade. 3. Goods must be— <ol style="list-style-type: none"> (a) clearly marked as samples; or (b) of negligible value. 4. In this CPC “samples of goods” means any article representing a type of goods whose manner of presentation and quantity rule out its use for any purpose other than that of seeking orders for goods of the same type or quality.
Specific Controls / Diversion	<ol style="list-style-type: none"> 1. The Collector of Customs may require that certain articles, to qualify for relief, be rendered permanently unusable by being torn, perforated, or clearly and indelibly marked, or by any other process, provided such operation does not destroy their character as samples. 2. In determining whether samples are of negligible value the Collector of Customs may consider the value of the individual sample or the aggregate value of all the samples in one consignment.
Construction	For the avoidance of doubt, the general provisions of this Schedule shall be construed as one with this CPC.

(12) The Fifth Schedule to the principal Act is amended by inserting the following CPC 4204 in the appropriate numerical order—

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“

Description	Goods acquired by Government from a foreign government
CPC	4204
Duty Rate	0%
Eligible Beneficiary	All importers.
Qualifying Goods	All goods.
End-Use Conditions / Restrictions	1. Goods must be imported and used only by Government. 2. Goods must be acquired from a foreign government or an agency of a foreign government.
Specific Controls / Diversion	
Construction	For the avoidance of doubt, the general provisions of this Schedule shall be construed as one with this CPC.

”

(13) The Fifth Schedule to the principal Act is amended by inserting the following CPC 4205 in the appropriate numerical order—

“

Description	Commercial bindery supplies
CPC	4205
Duty Rate	15%
Eligible Beneficiary	All importers
Qualifying Goods	Bindery supplies
End-Use Conditions / Restrictions	Goods must be imported and used only for commercial binding.
Specific Controls / Diversion	
Construction	For the avoidance of doubt, the general provisions of this Schedule shall be construed as one with this CPC.

”

(14) The Fifth Schedule to the principal Act is amended by inserting the following CPC 4206 in the appropriate numerical order—

“

Description	Electric motors for boats
CPC	4206

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Duty Rate	0%
Eligible Beneficiary	All importers.
Qualifying Goods	Electric propulsion motors of heading 85.01.
End-Use Conditions / Restrictions	Goods must be imported and used only to propel boats.
Specific Controls / Diversion	
Construction	For the avoidance of doubt, the general provisions of this Schedule shall be construed as one with this CPC.

Amends Sixth Schedule

11 The Sixth Schedule to the principal Act is amended by inserting the following new CPCs in appropriate numerical order—

“

Description	Goods eligible for business temporary importation relief.
CPC	5000
Duty Rate	0% subject to the surcharge imposed by section 11
Eligible Beneficiary	All importers
Qualifying Goods	All goods
End-Use Conditions / Restrictions	The good must be both imported and used wholly and exclusively for business purposes. In this CPC “business” means— (a) the supply of goods and services for consideration; and (b) not for profit supplies of goods and services as made otherwise than in a personal capacity.
Specific Controls / Diversion	Security for the relieved duty shall be provided in such form and manner as the Collector of Customs may require as a condition of authorization.
Construction	For the avoidance of doubt, the general provisions of this Schedule shall be construed as one with this CPC.

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Description	Goods for exhibitions
CPC	5029
Duty Rate	0%
Eligible Beneficiary	All importers
Qualifying Goods	All goods
Temporary Importation Conditions / Restrictions	Goods must be imported— 1. with the consent of and under conditions laid down by the Collector of Customs; and 2. for the purpose of display at exhibitions
Specific Controls / Diversion	Security in such form as the Collector of Customs may require to ensure that, in the event of such goods being lost, sold or otherwise disposed locally, the duty ordinarily payable on similar goods at the time of sale, loss or other disposal will be paid.
Construction	For the avoidance of doubt, the general provisions of this Schedule shall be construed as one with this CPC.

Repeal of Seventh Schedule and consequential amendments

- 12 (1) The Seventh Schedule to the principal Act is repealed.
- (2) The following amendments are made to the principal Act in consequence of that repeal—
- (a) section 5(3) is repealed;
 - (b) in sections 5(4) and 13(1), delete “Fifth, Sixth or Seventh” and substitute “Fifth or Sixth”; and
 - (c) in section 12(1), delete “, Seventh”.
- (3) The following enactments are amended in section 2(2) by deleting “seven” in the definition of—
- (a) “the Customs Tariff” in the Hotels (Temporary Customs Duty Relief) Act 1991;
 - (b) “the Customs Tariff” in the Restaurants (Temporary Customs Duty Relief) Act 2002; and
 - (c) “Customs Tariff” in the Retail Shops (Temporary Customs Duty Relief for Capital Investments) Act 2008.

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Amends Eighth Schedule

13 The Eighth Schedule to the principal Act is amended—

(a) by repealing paragraph 1 and substituting the following—

“1. In the First Schedule—

- (a) goods of tariff code 1905.091;
 - (b) goods of Headings 49.07 and 71.18;
 - (c) petroleum oils and petroleum gases of Headings 27.09, 27.10 and 27.11 imported via the ship terminal at the Oil Docks, St. George’s;
 - (d) goods of Heading 98.02;
 - (e) goods of Heading 98.03 that are imported by post.”;
- (b) in paragraph 2 by deleting “and 4186” and substituting “4186, 4201 and 4204”; and
- (c) by repealing paragraph 4.

Commencement

14 (1) Section 6, with respect to—

- (a) subsection (4); and
- (b) definition of “deemed customs value”,

of the replaced section 11 of the principal Act, comes into effect on such day as the Minister may appoint by notice published in the Gazette.

(2) Section 10(1)(b) (which repeals CPC 4161) comes into effect on such day as the Minister may appoint by notice published in the Gazette.

(3) Section 11 (which inserts new CPCs 5000 and 5029 into the Sixth Schedule.) comes into effect on such day as the Minister may appoint by notice published in the Gazette.

(4) The remaining provisions of this Act come into effect on 1 April 2013.

Consequential amends to Revenue Act 1898

15 The Revenue Act 1898 is amended in section 2 by inserting, in the appropriate alphabetical order, the following definition—

“for home use” means for home consumption or for any use other than for immediate exportation or shipment as stores;”.

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EXPLANATORY MEMORANDUM

This Bill seeks to amend the Customs Tariff Act 1970.

Clause 1 provides a citation for the Bill.

Clause 2 repeals the definition of “special rate” and “standard rate” in section 1 of the principal Act which are no longer needed. The clause further amends section 1 by inserting a definition for the term “for home use”.

Clause 3 repeals and replaces section 2(2) of the principal Act.

Clause 4 amends section 5 of the principal Act. The amendment to subsection (4) seeks to clarify a doubt that has arisen by making it clear that not all persons who fall within the very broad definition of “importer” qualify to be granted relief from customs duty, and that only an eligible beneficiary qualifies for relief. The new subsection (5) provides that the Collector of Customs must refuse to grant relief if the importation of goods involves duty avoidance arrangements, as defined in the new subsection (6).

Clause 5 amends section 5A of the principal Act by inserting subsections (6) and (7). Subsection (6) seeks to exempt from duty medals, cups and similar items awarded abroad to any person for distinction in art, literature, science or sport, or for public service, or otherwise in recognition of meritorious achievement or conduct. Subsection (7) seeks to exempt from duty effects imported into Bermuda that are inherited by any person who at the time of death of the deceased, is ordinarily resident in Bermuda and provided that such effects were for the personal use of the deceased.

Clause 6 repeals and replaces section 11 of the principal Act. The new subsection (1) imposes a surcharge of duty upon the discharge of duty suspension arrangements, as defined in the new subsection (6). The new subsection (2) provides a single rate for the surcharge imposed on goods taken out of bond from a bonded warehouse. The new subsection (3) applies the surcharge imposed on goods under subsection (2) to goods removed for export from a regulated shop under the Airport (Duty Free Sales) Act 1997, and to precious stones taken out of storage in bond under the Bonding of Precious Stones Act 1952. The new subsection (4) provides for the calculation of the duty surcharge imposed on goods discharged from the new CPC 5000 of the Sixth Schedule (business temporary importation relief). The new subsection (5) provides that the legal requirements of the principal Act that apply to duty, shall apply equally to any duty surcharge imposed under the new section 11. The new subsection (6) provides definitions of the expressions “deemed customs value”, “discharge” and “duty suspension arrangements” for the purposes of the new section 11.

Clause 7 repeals and replaces the First Schedule to the principal Act. The replaced Schedule is located on the website of the Customs Department.

Clause 8 amends the Second Schedule to the principal Act by repealing CPC 3007.

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Clause 9 amends the Fifth and Sixth Schedules to the principal Act. Subsection (1) amends the general provisions in paragraph 1 by: (a) adding a provision that the Collector of Customs shall not allow relief from duty on goods unless satisfied that the applicant for such relief has shown that the importation of the goods does not involve duty avoidance arrangements; and (b) clarifying that an end-use does not include a use to which goods are put before they have been landed in Bermuda. Subsection (2) makes a general amendment to the Fifth and Sixth Schedules to the principal Act. The amendment seeks to ensure that each CPC is correctly construed by providing a direct textual link between each CPC and the general provisions of the applicable Schedule

Clause 10 amends the table of end-use reliefs in the Fifth Schedule by repealing CPCs 4000, 4129, 4161 and 4168. The clause further amends the Fifth Schedule, as a consequence of the repeal of the Seventh Schedule, to insert the following CPCs: 4141, 4194 to 4199 and 4201 to 4206.

Clause 11 amends the Sixth Schedule to the principal Act by inserting new CPCs 5000 and 5029.

Clause 12 repeals the Seventh Schedule to the principal Act and makes consequential amendments.

Clause 13 amends the Eighth Schedule to the principal Act by repealing paragraph 4 and providing consequential amendments to paragraphs 1 and 2.

Clause 14 provides for the following clauses of the Bill to be brought into effect by notice published in the Gazette: clause 6 (with respect to the new section 11(4) and the definition of “deemed customs value”), clause 10(1)(b) and clause 11. The remainder of the Bill will come into effect on 1 April 2013.

Clause 15 provides for consequential amendments to section 2 of the Revenue Act 1898. The amendment inserts a definition of the expression “for home use” in the interpretation section of the Revenue Act 1898.