

CUSTOMS MANAGEMENT (AMENDMENT) ACT, 2013

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No. 23 of 2013

CUSTOMS MANAGEMENT (AMENDMENT) ACT, 2013
AN ACT TO AMEND THE CUSTOMS MANAGEMENT ACT
(NO. 30 OF 2011)

[Date of Assent – 1st July, 2013]

Enacted by the Parliament of The Bahamas

1. Short title and commencement.

- (1) This Act, which amends the Customs Management Act¹, may be cited as the Customs Management (Amendment) Act, 2013.
- (2) This Act shall come into force on the 1st day of July, 2013.

2. Amendment of section 2 of the principal Act.

Section 2 of the principal Act is amended by —

- (a) the insertion in the appropriate alphabetical order of the following word and definition —
“entered” in relation to goods imported, exported, warehoused, or put on board a ship or aircraft as stores, means —
 - (i) the acceptance and signature by the proper officer of an entry, specification, or shipping bill;
 - (ii) a declaration on the prescribed form completed and signed by the importer or exporter in the prescribed manner;
 - (iii) the payment by the importer or exporter to the proper officer of —
 - (A) all rents and charges due to the Crown in respect of the goods;
 - (B) subject to paragraphs (d) and (e), all duties payable in respect of dutiable goods except in

¹(No. 30 of 2011)

respect of the entry for warehousing of imported goods;

- (C) where permitted, the deposit of a sum of money or the giving of security for dutiable goods; and
- (D) in the case of goods for which security by bond is required on exportation, removal or use as stores, the giving of security in respect of such goods;”;

- (b) the deletion of the definitions of “Customs places”, “Customs seal” and “sufferance wharf” and the substitution of the following definitions —

“Customs places” means customs ports, customs airports and sufferance wharves designated or appointed under section 13;”;

“Customs seal” means a seal approved by the Customs authority and appointed by the Minister by notice published in the Gazette in accordance with section 122A;”;

“sufferance wharf” means a place for the loading or unloading of goods that is owned or operated by or on behalf of a person or entity other than the Government and appointed under section 13 as a Customs place;”.

3. Amendment of section 4 of the principal Act.

Section 4 of the principal Act is amended in subsection (1) by —

- (a) the deletion of the words “section 348” and the substitution of the words “section 354”; and
- (b) in paragraph (c), by the deletion of the word “or” and the substitution of the word “or”.

4. Amendment of section 7 of the principal Act.

Section 7 of the principal Act is amended by the —

- (a) deletion in the marginal notes of the words “and Removal”;
- (b) deletion of subsections (2) and (3); and
- (c) renumbering of subsection (4) as subsection (2).

5. Amendment of section 12 of the principal Act.

Section 12 of the principal Act is amended —

- (a) by the deletion of subsection (3) and the substitution of the following —
 - “(3) The Minister shall approve the description and design of and appoint, by notice published in the Gazette —

- (a) a Customs flag; and
- (b) a Customs symbol.”;

- (b) by the deletion of the words “subsection (4)” where it last occurs and the substitution of the words “subsection (5)”.

6. Amendment of section 13 of the principal Act.

Section 13 of the principal Act is amended —

- (a) by the insertion immediately after subsection (2) of the following subsections —

“(3) The Minister may, by notice published in the Gazette and subject to such conditions or restrictions as the Minister may determine, appoint as Customs places sufferance wharves.

(4) All sufferance wharves approved by the Minister and in use at the commencement of this Act shall be deemed to have been appointed under this section;”;

- (b) by the insertion immediately after the existing subsection (3) of the following subsection —

“(6) The Minister may, by notice published in the Gazette and subject to such conditions or restrictions as the Minister may determine —

- (a) vary or revoke an appointment under this section;
- (b) vary, revoke or replace any or all conditions or restrictions to which an approval or appointment was previously subject;”;

- (c) by renumbering —

- (i) the existing subsection (3) as subsection (5); and
- (ii) the existing subsection (4) as subsection (7).

7. Amendment of section 14 of the principal Act.

Section 14 of the principal Act is amended in subsection (1) by the insertion after the word “appointed” of the words “by the Comptroller in such manner as he may determine”.

8. Amendment of section 20 of the principal Act.

Section 20 of the principal Act is amended —

- (a) in paragraph (b) of subsection (4), by the deletion of the words “subsection (4)” and the substitution of the words “subsection (3)”; and
- (b) in subsection (5), by the deletion of the words “subsection (4)” and the substitution of the words “subsection (3)”.

9. Amendment of section 85 of the principal Act.

Section 85 of the principal Act is amended in paragraph (b) of subsection (4) by the deletion of the words "section 197" and the substitution of the words "the provisions of Part XV".

10. Amendment of section 94 of the principal Act.

Section 94 of the principal Act is amended by the deletion of the words "section 348" and the substitution of the words "section 354".

11. Insertion of new section 122A into the principal Act.

The principal Act is amended by the insertion, immediately after "DIVISION SEVEN – CUSTOMS SEALS" and before section 123, of the following new section —

"122A. Appointment of Customs Seal.

- (1) The Minister shall for the purposes of this Act appoint, by notice published in the Gazette, a Customs seal approved by the Customs Authority.
- (2) The Customs seal appointed by the Minister shall be officially and judicially noticed."

12. Amendment of section 133 of the principal Act.

Section 133 of the principal Act is amended in subsection (1) by the insertion immediately after paragraph (c) of the following new paragraph —

- "(d) Goods carried in the coasting trade shall be deemed to be coastwise cargo."

13. Amendment of section 142 of the principal Act.

Section 142 of the principal Act is amended in subsection (3) by the deletion of the words "section 348" and the substitution of the words "section 354".

14. Amendment of section 151 of the principal Act.

Section 151 of the principal Act is amended in subsection (1) by the deletion of the words "section 150(4)" and the substitution of the words "section 150(3)".

15. Amendment of section 166 of the principal Act.

Section 166 of the principal Act is amended in subsection (1) by the deletion of the words "section 162(2)" and the substitution of the words "section 165(2)".

16. Amendment of section 168 of the principal Act.

Section 168 of the principal Act is amended —

- (a) at the commencement of the section, by the deletion of the words "section 166" and the substitution of the words "section 168(9)"; and
- (b) by renumbering the section as section 169.

17. Amendment of section 169 of the principal Act.

Section 169 of the principal Act is amended by renumbering the section as section 168.

18. Amendment of section 170 of the principal Act.

Section 170 of the principal Act is amended in subsection (2) by the deletion of the words "section 168" and the substitution of the words "section 171".

19. Amendment of section 179 of the principal Act.

Section 179 of the principal Act is amended —

- (a) in subsection (1), by the deletion immediately before the words "be calculated" of the symbol "_"; and
- (b) in subsection (2), by the deletion immediately before the words "be deemed" of the symbol "_".

20. Amendment of section 197 of the principal Act.

Section 197 of the principal Act is amended in subsection (2) by the deletion of the words "section 348" and the substitution of the words "section 354".

21. Amendment of section 198 of the principal Act.

Section 198 of the principal Act is amended by the deletion of subsection (1).

22. Insertion of Part XVIIIA into the principal Act.

The principal Act is amended by the insertion, immediately after section 211 and before the commencement of Part XVIII, of the following new Part —

"PART XVIIIA – EXPORT CONTROL AND REGULATION OF SCRAP METAL AND COPPER

211A. Interpretation.

- (1) In this Part —
"authorised dealer" means an exporter, shipper or vendor of scrap metal in possession of a valid business licence

issued pursuant to the Business Licence Act, 2010 (No. 25 of 2010);

"authorised officer" means a —

- (a) customs officer;
- (b) police officer; or
- (c) Department of Environmental Health Officer of Assistant Director or above,

assigned to the special investigation unit within the Customs Department;

"certified shipment" means a shipment or container of scrap metal presented for export or transshipment which has been inspected and certified by an authorised officer to contain permitted scrap;

"documented chain of custody" means the documentary evidence referred to in section 211B certifying the origin and history of scrap metal;

"permitted scrap" means metal generated from —

- (a) contracted demolition;
- (b) authorised removal of derelict vehicles;
- (c) authorised scrapping of industrial equipment; or
- (d) a verified dump site;

"restricted metals" means copper, aluminium, brass and catalytic converters which comprise permitted scrap;

"special investigation unit" means the unit within the Customs Department established pursuant to section 211C.

(2) No person shall —

- (a) export scrap metal from The Bahamas to any place outside The Bahamas; or
- (b) transship scrap metal from a Family Island to New Providence or to any other Family Island,

unless —

- (i) such person is an authorised dealer;
- (ii) records showing a documented chain of custody have been submitted with the shipment or container;
- (iii) the shipment or container is a certified shipment;
- (iv) in the case of copper, the exporter, shipper or vendor has held the copper in his possession for

a period of 30 days prior to its presentation for export or transshipment; and

- (v) permission for export or transshipment has been granted by a customs officer of the special investigation unit.

(3) A person who contravenes any provision of subsection (2) commits an offence and shall be liable on summary conviction to —

- (a) a fine not exceeding fifty thousand dollars or three times the value of the shipment or container of scrap metal, whichever is the greater sum;
- (b) imprisonment for a term not exceeding twelve months; or
- (c) both fine and imprisonment as described in paragraphs (a) and (b).

211B. Requirement to keep records to document chain of custody.

(1) An authorised dealer shall keep records of each customer from whom he receives scrap metal and such records shall include, for each customer —

- (a) a valid photo identification;
- (b) a receipt signed by the customer for each transfer of scrap metal to the dealer;
- (c) a certification by the customer —
 - (i) that the scrap metal was legitimately obtained by him;
 - (ii) outlining the origin and history of the scrap metal prior to its possession by the customer; and
- (d) in the case of copper, the customer's seal on the container.

(2) The records referred to in subsection (1) shall —

- (a) provide a documented chain of custody when submitted in respect of a shipment or container of scrap metal presented for export or transshipment; and
- (b) be kept in accordance with the provisions of section 70.

211C. Special investigation unit.

(1) The Comptroller shall establish a special investigation unit within the Customs Department —

- (a) to investigate and inspect shipments or containers of scrap metal presented for export or transshipment;
 - (b) after due investigation and inspection —
 - (i) to certify that a shipment or container contains permitted scrap; or
 - (ii) to refer the matter to the Royal Bahamas Police Force where a shipment or container does not contain permitted scrap;
 - (c) to conduct a comprehensive chain of custody investigation and inspection where a shipment or container of permitted scrap comprises copper or other restricted metals.
- (2) The special investigation unit may comprise, in addition to customs officers, officers assigned to it from the Royal Bahamas Police Force and the Department of Environmental Health Services.
 - (3) The special investigation unit shall carry out its inspection and sealing of scrap metal containers laden for export —
 - (a) either at the point of demolition and during loading into a container for export; or
 - (b) at the exporter's place of business, if different from (a).
 - (4) Officers of the special investigation unit only shall be authorised to certify that a shipment or container of scrap metal presented for export or transshipment contains permitted scrap.
 - (5) A customs officer of the special investigation unit only shall be authorised to grant permission to export or transship permitted scrap.

211D. Grant of permission to export.

- (1) Subject to subsections (2) and (3), a customs officer of the special investigation unit shall grant permission to export or transship permitted scrap where —
 - (a) the shipment is a certified shipment;
 - (b) the exporter or shipper is an authorised dealer; and
 - (c) a documented chain of custody has been submitted with the shipment or container.
- (2) A customs officer of the special investigation unit shall not, where a certified shipment comprises restricted metals excluding copper, grant permission to export or transship until after a period of 15 days has elapsed since presentation for export or transshipment, as the case may be, to ensure and

facilitate a comprehensive chain of custody investigation and inspection by the special investigations unit.

- (3) A customs officer of the special investigation unit shall not, where a certified shipment comprises copper, grant permission to export or transship unless —
 - (a) the exporter, shipper or vendor has held the copper in his possession for a period of 30 days prior to its presentation for export or transshipment;
 - (b) the special investigations unit has completed a comprehensive chain of custody investigation and inspection and verified the legitimacy of the origin and history of the copper; and
 - (c) where the copper comes from equipment or appliances, such equipment or appliance has been presented for export in its assembled state.”.

23. Amendment of section 215 of the principal Act.

Section 215 of the principal Act is amended —

- (a) in subsection (1) —
 - (i) by the deletion of the words “section 218(1)” and the substitution of the words “section 212(1)”;
 - (ii) by the deletion of the words “sections 222(1) and (2)” and the substitution of the words “section 216(1) and (2)”;
- (b) in subsection (5), by the deletion of the words “section 218(1)” and the substitution of the words “section 212(1)”;
- (c) in subsection (6), by the deletion of the words “section 222(1)” and the substitution of the words “section 216(1)”.

24. Amendment of section 222 of the principal Act.

Section 222 of the principal Act is amended by the insertion immediately after subsection (2) of a new subsection as follows —

- “(3) All BTC, BOI and BVI rulings given by the Customs authority shall be published in the *Gazette*.”.

25. Amendment of section 231 of the principal Act.

Section 231 of the principal Act is amended in subsection (4) by the deletion immediately before the words “to pay” of the symbol “_”.

26. Amendment of section 257 of the principal Act.

Section 257 of the principal Act is amended in paragraph (a) of subsection (1) by the deletion of the words "section 202" and the substitution of the words "section 208".

27. Amendment of section 292 of the principal Act.

Section 292 of the principal Act is amended in paragraph (a) of subsection (10) by the deletion of the words "or more" and the substitution of the words "or more".

28. Amendment of section 293 of the principal Act.

Section 293 of the principal Act is amended in subsection (11) by the deletion of the word "article".

29. Amendment of section 295 of the principal Act.

Section 295 of the principal Act is amended by the deletion of the words "section 291" and the substitution of the words "section 292".

29A. Amendment of section 320 of the principal Act.

Section 320 of the principal Act is amended by the insertion immediately after the word "legislation" of the words "as well as complaints in respect of any other matter that the Minister shall by regulation prescribe."

30. Amendment of section 354 of the principal Act.

Section 354 of the principal Act is amended in subsection (1) by the insertion immediately after paragraph (v) of the following new paragraphs —

- (w) prescribing the declarations, reports and other forms to be used for the purposes of this Act and the conditions of use of such forms;
- (x) prescribing the fees to be paid for the processing of declarations, reports and other forms prescribed in accordance with this Act;
- (y) providing for payment of an environmental levy on the import of specified goods deemed to have a negative impact on the environment."

31. Amendment of section 358 of the principal Act.

Section 358 of the principal Act is amended in paragraph (a) by the deletion of the words "and other existing Customs legislation" and the substitution of the words "and the Customs Regulations 1976".

32. Amendment of the First Schedule to the principal Act.

The First Schedule to the principal Act is amended —

- (a) in the Schedule heading, by the deletion of the words "Section 202" and the substitution of the words "Section 208";
- (b) by the insertion, immediately before the subheading "Prohibited Goods", of the words "A - ", and, under the subheading "Prohibited Goods", by the deletion of section 2;
- (c) by the insertion, immediately before the subheading "Restricted Goods", of the words "B - "; and
- (d) in the subheading "Restricted Goods", by the insertion immediately after item 11 of a new item as follows —

"12. The following —

- Trichlorofluoromethane (CFC - 11)
- Dichlorodifluoromethane (CFC - 12)
- Trichlorotrifluoroethanes (CFC - 113)
- Dichlorotetrafluoroethanes (CFC - 114)
- Chloropentafluoroethane (CFC - 115)
- Chlorotrifluoromethane (CFC - 13)
- Pentachlorofluoroethane (CFC - 111)
- Tetrachlorodifluoroethane (CFC - 112)
- Heptachlorofluoropropane (CFC - 211)
- Hexachlorodifluoropropane (CFC - 212)
- Pentachlorotrifluoropropane (CFC - 213)
- Tetrachlorotetrafluoropropane (CFC - 214)
- Trichloropentafluoropropane (CFC - 215)
- Dichlorohexafluoropropane (CFC - 216)
- Chloroheptafluoropropane (CFC - 217)
- Bromochlorodifluoromethane (Halon 1211)
- Bromotrifluoromethane (Halon 1301)
- Dibromotetrafluoroethanes (Halon 2402)
- Dichlorofluoromethane (HCFC - 21)
- Chlorodifluoromethane (HCFC - 22)
- Chlorofluoromethane (HCFC - 31)
- Tetrachlorofluoroethane (HCFC - 121)
- Trichlorodifluoroethane (HCFC - 122)

- Dichlorotrifluoroethane (HCFC - 123)
- Chlorotetrafluoroethane (HCFC - 124)
- Trichlorofluoroethane (HCFC - 131)
- Dichlorodifluoroethane (HCFC - 132)
- Chlorotrifluoroethane (HCFC - 133)
- 1, 1, 1 - Trifluoro - 2 - Chloro - ethane (HCFC - 133a)
- Dichlorofluoroethane (HCFC - 141)
- 1, 1 - Dichloro - 1 - Fluoroethane (HCFC - 141b)
- Chlorodifluoroethane (HCFC - 142)
- 1 - Chloro - 1, 1 - Difluoroethane (HCFC - 142b)
- Chlorofluoroethane (HCFC - 151)
- Hexachlorofluoropropane (HCFC - 221)
- Pentachlorodifluoropropane (HCFC - 222)
- Tetrachlorotrifluoropropane (HCFC - 223)
- Trichlorotrifluoropropane (HCFC - 224)
- Dichloropentafluoropropane (HCFC - 225)
- 1, 1 - Dichloro - 2, 2, 3, 3, 3 - Pentafluoropropane (HCFC - 225 CA)
- 1, 3 - Dichloro - 1, 2, 2, 3, 3 - Pentafluoropropane (HCFC - 225 CB)
- Chlorohexafluoropropane (HCFC - 226)
- Pentachlorofluoropropane (HCFC - 231)
- Tetrachlorodifluoropropane (HCFC - 232)
- Trichlorotrifluoropropane (HCFC - 233)
- Dichlorotetrafluoropropane (HCFC - 234)
- Chloropentafluoropropane (HCFC - 235)
- Tetrachlorofluoropropane (HCFC - 241)
- Trichlorodifluoropropane (HCFC - 242)
- Dichlorotrifluoropropane (HCFC - 243)
- Chlorotetrafluoropropane (HCFC - 244)
- Trichlorofluoropropane (HCFC - 251)
- Dichlorodifluoropropane (HCFC - 252)
- Chlorotrifluoropropane (HCFC - 253)

- Fluorodichloropropane (HCFC - 261)
 - Chlorodifluoropropane (HCFC - 262)
 - Chlorofluoropropane (HCFC - 271),
- unless authorised by the National Ozone Unit in accordance with the Montreal Protocol."

33. Amendment of the Second Schedule to the principal Act.

The Second Schedule to the principal Act is amended —

- (a) in the Schedule heading, by the deletion of the words "Section 203" and the substitution of the words "Section 209";
- (b) by the insertion, immediately before the subheading "Prohibited Goods", of the words "A - ", and, under the subheading "Prohibited Goods", by the deletion of section 2.;"
- (c) by the insertion, immediately before the subheading "Restricted Goods", of the words "B - "; and
- (d) in the subheading "Restricted Goods", by the insertion immediately after item 4 of the following new item —
 5. otherwise than in compliance and pursuant to permission granted in accordance with the provisions of Part VIIA, scrap metal and copper."

34. Amendment of the Third Schedule to the principal Act.

The Third Schedule to the principal Act is amended —

- (a) in section 6, by the deletion in subsection (2) of the words "subsections (2) to (4)" and the substitution of the words "Subsections (2) to (5)"; and
- (b) in subsection (6) of section 7, by the deletion in paragraph (c) of the words "4(1)(b)(ii)" and the substitution of the words "4(1)(b)(i)".