

**THE FREE TRADE AND PROCESSING ZONE
AREA ACT, 1994**

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SCHEDULE



[L.S.]

I Assent,

James B. Carlisle,
Governor-General.

10th November, 1994.

ANTIGUA AND BARBUDA

No. 12 of 1994

AN ACT to provide for the establishment of a free trade and processing zone in Antigua and Barbuda and to make provision for the administration and management thereof.

[24th November, 1994]

ENACTMENT by the Parliament of Antigua and Barbuda as follows —

1. This Act may be cited as the Free Trade and Processing Zone Act, 1994 and comes into operation on the day appointed by the Minister by notice published in the *Gazette*.

Short title and
commencement.

2. In this Act —

Interpretation.

"CARICOM" means Caribbean Common Market;

"Commission" means the Commission established under section 3;

"Free Trade and Processing Zone" means an area declared a free trade and processing zone in accordance with section 6;

"House" means the House of Representatives;

"Licence" means a licence issued by the Commission under section 11;

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BARBUDA

2 *The Free Trade and Processing Zone Act, 1994.* No. 12 of 1994.

"Minister" means Minister responsible for trade;

"prescribed" means prescribed by the Commission.

Establishment of
Commission.

3. (1) For the purposes of this Act there is established a Commission to be known as the Free Trade and Processing Zone Commission.

(2) The Commission shall be a body corporate with perpetual succession and a common seal, having capacity to acquire, hold, mortgage and dispose of property, to enter into contracts, to sue and be sued in its corporate name and to do all things necessary for the purposes of this Act.

(3) The service on the Commission of any legal process and notices shall be effected by delivery at the principal office of the Commission.

Seal and procedure
for sealing
documents.

4. (1) The Commission shall have a common seal which shall be affixed to all deeds, documents and other instruments requiring the seal of the Commission.

(2) Any document requiring the seal of the Commission shall be made in the presence of the Commissioner or in his absence the person appointed by the Minister to act as Commissioner and one other member of the Commission authorized to act in that behalf, who shall both sign every such document to which the seal is affixed and such signing shall be sufficient evidence that such seal was duly and properly affixed and that the same is lawful seal of the Commission.

Acquisition of land
for free trade area.

5. For the purpose of establishing a free trade and processing zone, the Governor-General may convey to the Commission a leasehold interest in any vacant Crown land; provided that the interest so conveyed shall not exceed ninety nine (99) years.

Declaration of a
free trade and
processing zone

6. The Minister may, with the approval of the Cabinet and by notice published in the *Gazette*, declare area acquired by the Commission as a free trade and processing zone for the purposes of this Act.

Functions and
powers of the
Commission.

7. (1) Subject to the provisions of this Act the Commission may develop and maintain or may cause to be developed and maintained any land declared to be a free trade and processing zone for use by persons licensed in accordance with section 11.

(2) The Commission may, with the approval of the appropriate Ministry, cause such infrastructure as may be required, to be constructed, installed or delivered in or to the free trade and processing zone. Such infrastructure shall include the following—

- (a) the construction of roads and highways sufficient to give the free trade and processing zone access to existing international seaports and airports;
- (b) the construction of electric generating plant and power lines;
- (c) the installation and maintenance of lines of telecommunications essential for the operation of the free trade and processing zone;
- (d) the installation and maintenance of water lines and facilities of sewerage;
- (e) the provision for installation and maintenance of a port and the establishment of customs and excise posts.

(3) The Commission may with the approval of the appropriate Ministry enter into contracts with third parties for carrying out the functions set out under this section.

(4) The Commission may in carrying out its functions under this Act issue licences to any approved person to operate businesses in the Free Trade and Processing Zone.

(5) The Minister may, by writing, give such directions as he considers necessary to the implementation of this Act to the Commission and, the Commission shall carry out such directions.

8. The Commission shall consist of the following persons —

Composition and
administration of
the Commission.

- (a) the Commissioner appointed under section 10;
- (b) a chairman appointed by the Minister with the approval of Cabinet
- (c) four other persons appointed by the Minister with the approval of the Cabinet.

9. (1) The procedures and meetings of the Commission shall be in accordance with the rules set out in the Schedule.

Meetings and
procedures of the
Commission.

(2) The Minister may, with the approval of the Cabinet, by regulation, amend the Schedule.

Appointment and
duties of
Commissioner.

10. (1) For the purposes of this Act, there shall be a Commissioner who shall be appointed by the Minister with the approval of the Cabinet.

(2) The Commissioner shall be the administrative head of the Commission and subject to this Act, perform other duties directed in writing by the Commission.

(3) Where the Commissioner is absent or for any reason is unable to perform his duties the Minister may, with the approval of the Cabinet, appoint some other person to act as Commissioner.

Procedure for
application and
grant of licence.

11. (1) Subject to section 12 (1) any person or company may apply on the prescribed form to the Commissioner to establish and operate any industry or engage in any commercial activity in a free trade and processing zone.

(2) The Commissioner shall, within fourteen days of the receipt of any application under this section, submit the application to the Commission for examination and approval.

(3) The Commission may, in the performance of its duties under this section, employ the services of any consultant.

(4) Where the Commission is satisfied that the business or enterprise described in the application is not specifically prohibited by law, it shall, subject to section 17 (3) and upon payment of the prescribed fee, approve the application and issue to the applicant within fourteen days of such payment, a licence, authorizing the applicant to establish and operate within the free trade and processing zone the business or enterprise specified in the licence.

(5) Where the Commission refuses to approve an application, it shall, within fourteen days of such decision, inform the applicant by writing .

(6) There may be attached to every licence such conditions as the Commission may consider necessary including —

- (i) the time within which the person or company shall commence operation;
- (ii) the minimum amount of investment to be made in the free trade and processing zone; and

- (iii) a provision in any contract of employment to remunerate any person employed in the free trade and processing zone in a currency approved by the Commission.

(7) The Minister shall publish in the *Gazette* the name of any person to whom a licence has been granted under this Act.

12. (1) Any person licenced to operate in a free trade and processing zone is entitled to engage in any industrial or commercial activity not specifically prohibited by law. Licences.

(2) Such industrial or commercial activity may include —

- (a) the provision to offer free trade and processing zone companies of services such as financing, maintenance, supplying and other services that may promote the efficient conduct of industrial and commercial transactions within the free trade and processing zone;
- (b) the sale and exchange of goods and services amongst themselves within the free trade and processing zone.

13. (1) The Commission shall in considering the application for a licence under section 11 ensure that no industrial or commercial activity prohibited by any law is approved. Commission not to
approve unlawful
activity.

(2) No person shall carry on any industrial or commercial activity within a free trade and processing zone except under and in accordance with a licence issued by the Commission.

(3) The Commission may revoke the licence of any licensee who contravenes the provisions of this section or any regulations made to give effect thereunder or any condition attached to a licence.

(4) In deciding to grant a licence, the Commission shall have regard, in particular, to the extent to which the trade, business or manufacture in respect of which the licence is sought is carried on in the free trade and processing zone.

(5) Any person who contravenes subsection (2) is guilty of an offence and is liable on summary conviction to a fine of one hundred thousand dollars and in addition the court may order any property, machinery, or goods of that person within the free trade and processing zone to be forfeited to the Commission.

Incentives to
licensed industries.

14. Notwithstanding any law to the contrary, and subject only to this Act, a licensee shall, during the currency of his licence be—

- (a) entitled to establish and engage in the industrial or commercial activity specified in the licence without having to obtain any permit or other licences in respect thereof;
- (b) exempted from the payment of taxes or levies imposed by the Government in respect of any industrial and commercial activity being carried on within the free trade and processing zone.
- (c) exempted from the payment of taxes and other duties on the importation of machinery, equipment, spare parts, construction material and other items needed to construct and operate facilities within the free trade and processing zone;
- (d) exempted from payment of duty and other taxes on the importation of raw materials and other goods to be incorporated in the products produced or assembled within or to be utilized in the performance of services within the free trade and processing zone.
- (e) exempted from the payment of income and other taxes of any kind other than Social Security payments and Medical Benefits contributions and the education levy on the earnings accruing to any person by virtue of carrying on of his employment in any industrial or commercial activity within the free trade and processing zone;
- (f) exempted from the payment of export taxes or levies on the exportation from a free trade and processing zone to any place outside Antigua and Barbuda of any goods, articles or things that are produced or manufactured by a licensee within the free trade and processing zone.
- (g) exempted from the payment of taxes of any kind on the repatriation of profits earned in the free-trade and processing zone.

Conditions for
employment in free
trade and
processing zone.

15. (1) Subject to this section, every person who is not a citizen of Antigua and Barbuda requires a special work permit to work in the Free Trade and Processing Zone.

(2) An application to employ a non-citizen shall be submitted to the Commission on a prescribed form and accompanied by such particulars as the Minister may by regulation prescribe.

(3) If the Minister is satisfied that there is no suitable person in Antigua and Barbuda with the kind of skill or expertise required, he may approve the application and obtain the required work permit for the proposed employee.

(4) Notwithstanding subsection (3) the Cabinet may approve the application of any other person;

(5) All employers and employees in a free trade and processing zone shall be subject to the laws in force in Antigua and Barbuda.

(6) Any licensee employing any person from outside Antigua and Barbuda shall, at the expiration of the contract of such employee, be responsible for his repatriation, and shall, at the request of the Commission or the Government, repatriate such employee.

16. (1) Except as specifically exempted by this Act, every licensee, shall comply with this Act, any regulations or by-laws made thereunder or any conditions attached to a licence.

Licensee to comply
with the Act or
regulations etc.

(2) Without prejudice to subsection (1) or to any regulations made under this Act, every licensee shall —

- (a) take reasonable measures to protect the health and safety of its employees;
- (b) undertake to hold the Commission free and harmless for any loss incurred by the licensee by reason of or ensuing from the failure in any service to the free trade and processing zone pertaining to the supply of water, electricity, sewerage, telecommunication or other services that are normally provided to or within the free trade and processing zone and not under the control of the Commission;
- (c) secure and maintain insurance in the prescribed amount relating to any liability for injury or damage occasioned by or to any person and his property in a free trade and processing zone while that person is on the premises whereon the licensee is conducting business operations or utilizing the common approaches contiguous to those premises;

- (d) undertake to hold the Commission free and harmless for any loss or damage to the goods, articles, machinery and things upon the premises occupied by the licensee in the free trade and processing zone for any loss or damage arising from any acts or omission of other licensees;
- (e) secure and maintain in respect of his employees in a free trade and processing zone workmen's compensation insurance and further to ensure that all agents or contractors engaged by him to carry out work for his benefit within the free trade and processing zone effect similar insurance.

Environmental
protection.

17. (1) The Minister in consultation with the Minister responsible for the environment may, with the approval of the Cabinet, make regulations prescribing guidelines for the protection and preservation of the environment.

(2) Any regulations made under this section may include the requirement for the provision of adequate facilities by licencees for the disposal of industrial and commercial waste in a free trade and processing zone.

(3) The Commission shall not approve any application for a licence under this Act unless it is satisfied that the applicant has made adequate provision for the disposal of any waste material that may be produced from activities to be undertaken by him.

(4) Every licencee shall before commencing operation in a free trade and processing zone undertake to comply with any regulations made under this section

Movement of
goods in and out of
free trade and
processing zone.

18. (1) The Minister responsible for customs and excise may, after consultation with the Commission, make regulations relating to —

- (a) to the entry, removal, importation and exportation of goods, articles, machinery or other things into or out of a free trade and processing zone;
- (b) the seizure and forfeiture of goods, articles, machinery or other things intended for or brought into or taken out of a free trade and processing zone in breach of Customs regulations.

(2) For the purposes of this section —

- (a) goods, articles, machinery or other things manufactured, processed, assembled by a licensee and exported out of the free trade and processing zone into a non-free trade and processing zone in Antigua and Barbuda shall be considered as—
 - (i) exports from a non CARICOM country into Antigua and Barbuda; and
 - (ii) imports into Antigua and Barbuda from a non CARICOM country.

(3) Any goods and services sold by companies within Antigua and Barbuda and sent into the Free Trade and Processing Zones shall be considered as imports into the Free Trade and Processing Zone as exports from Antigua and Barbuda.

(4) Except as specifically exempted by the Act any exports and imports in relation to any of the goods, articles, machinery, or other things referred to in this section shall be subject to any law relating to the exportation and importation of such goods, articles, machinery or other things.

19. (1) The Minister responsible for customs and excise may, after consultation with the Commission, cause to be established a customs post in a Free Trade and Processing Zone and assign to such post, customs officers as he thinks fit.

Establishment of
Customs posts in
free trade and
processing zone.

(2) Customs officers assigned to a customs post in a Free Trade and Processing Zone shall carry out such duties as are assigned to them and in particular —

- (a) inspect, monitor and record the entry of all goods into free trade and processing zones, including —
 - (i) the names of the importer and the exporter;
 - (ii) the description of the goods and the declared value of such goods; and
 - (iii) the country of origin of the goods.

- (b) inspect, monitor and record the exit of all goods from a free trade and processing zone including —
 - (i) the name of the exporter and the importer or consignee;
 - (ii) the description of the goods or services exported or consigned and the declared value of such goods.
 - (iii) the destination of the goods.

(3) The officer in charge of customs post in the free trade and processing zone shall, at the end of every month, submit to the Minister responsible for customs and excise and the Commission, a report in respect of the information recorded pursuant to subsection (2).

(4) The Minister responsible for customs and excise may, after consultation with the Commission, charge such fees as he may consider appropriate for handling and for other Customs services provided in the free trade and processing zone.

Commission to
charge royalties.

20. (1) The Commission shall charge —

- (a) any person with whom it has contracted to develop and maintain any area for use as a Free Trade and Processing Zone;
- (b) any licensee engaged in industrial or commercial activities in a Free Trade and Processing Zone;

such royalties as the Commission may determine.

(2) The Commission may, from time to time, review any agreement made under this section after consultation with the Minister, but such agreement shall, in any case, be reviewed every five years.

(3) Where any royalty remains unpaid on the due date, the licensee shall pay interest on day to day basis at the rate of 1% above the bank rate on all amounts in arrears.

(4) Any contractor or licensee who defaults in the payment of any royalty determined in respect of his business by the Commission on the due date, shall be deemed to be in breach of a condition of his license and the Commission may revoke his licence.

(5) Any licence revoked under this section shall not be restored until all arrears of royalties and any interests accruing for non payment of such royalties are fully settled.

21. The revenues of the Commission shall be used for the following purposes — Investments.

- (a) for the payment of the expenses of the commission;
- (b) for such investment as may be approval by Cabinet,
- (c) for payment into the reserve fund; and
- (d) for the payment of the balance into the Consolidated Fund

22. The Commission shall establish a reserve fund to be utilized for such purposes as the Minister responsible for Finance may approve. Reserve Fund.

23. (1) The Commission shall keep accounts of its transactions to the satisfaction of the Minister responsible for Finance and such accounts shall be audited annually by the Director of Audit or some other suitable person appointed by the Minister for the purpose. Accounts and audit.

(2) The members, officers and servants of the Commission shall grant to the Director of Audit or any other person appointed under this section to audit its accounts access to all books, documents, cash and securities of the Commission and shall give to him on request all such information as may be within their knowledge in relation to the operation of the Commission.

24. (1) The Laws of Antigua and Barbuda shall apply to any contract between the Commission and a licensee as well as the conduct and operations of any business or enterprise, and generally for good order and management in a free trade and processing zone. Law and legal proceedings.

(2) Any person who is not satisfied by a decision of the Commission may first appeal to the Minister against that decision.

(3) Where any licensee is aggrieved by —

- (a) a decision of the Minister; or
- (b) any action taken by the Minister or the Government in contravention of this Act or agreement entered into between the Commission and the licensee or a condition attached to a licence;

he may appeal to the High Court against that decision or action within thirty days after the receipt of the decision, or notice of the action, and serve the Commissioner with a written notice signed by him or his attorney that an appeal against the decision has been lodged.

(4) The Commissioner shall upon receipt of such notice of appeal transmit to the High Court a copy of the decision or notice of action taken and all documents relating thereto.

(5) Upon the hearing of the appeal, the Court may make such order, including an order for cost as it thinks fit.

(6) Unless the Court otherwise decides, a decision revoking a licence shall remain in force until varied by an order of the court.

Preservation of
secrecy and non-
disclosure of
information to
unauthorised
person.

25. (1) Except with the consent of a licensee or as authorized by law, no officer, agent, consultant or attorney of the Commission, or any customs or immigration officer assigned to a free trade and processing zone shall disclose any information that may have come to his knowledge in the course of his duty to a third party.

(2) Any person who contravenes this section is guilty of an offence and is liable on conviction to a fine of fifty thousand dollars or to imprisonment for five years or to both.

Annual report.

26. The Commission shall prepare and present to the Minister within three months, or such longer period as the Minister may allow, after the expiration of each financial year of the Commission a report —

- (a) dealing generally with the activities of the Commission during its last financial year;
- (b) containing such information relating to the proceedings and policy of the Commission as in its opinion can be made public without detriment to the interest of the Commission; and

- (c) include a statement of its account audited in accordance with the provisions of section 23.

(2) The Minister shall cause a copy of the report together with the annual statement of accounts and the report of the person who audited the accounts on that statement and on the accounts of the Commission to be laid on the table of the House.

(3) Copies of the Commission's report together with the annual statement of accounts and the report of the person who audited the accounts on that statement and on the accounts of the Commission shall be published in such manner as the Minister may direct.

27. (1) The Minister may, with the approval of the Cabinet, make regulations relating to — Regulation.

- (a) the management, supervision, control and operation of a free trade and processing zone;
- (b) the terms and conditions subject to which licencees may operate within a free trade and processing zone;
- (c) the reimbursement of the Commission by a licencee or any person with whom the Commission has contracted to develop, maintain and operate a free trade and processing zone of expenses incurred by the Commission in the provision of services in the free trade and processing zone;
- (d) measures that may be taken to ensure the payment of royalties and fees;
- (e) measures that may be taken to enforce the compliance of this Act, any regulation or by-laws made thereunder or any condition included in a licence;
- (f) the conveyance, storage, labelling, packing of goods for or from a free trade and processing zone;
- (g) the granting of permits, licences and approvals; and
- (h) the better administration and implementation of this Act.

(2) The Commission may with the approval of the Minister make by-laws with respect to the following —

- (a) the construction of buildings, factories, ports and other structures required in the free trade and processing zone;
- (b) the provision of utilities and the rates that may be charged for the services provided;
- (c) the construction, use and maintenance of roads, ports and other facilities provided within a free trade and processing zone.

SCHEDULE

Section 9

Meeting of the
Commission.

1. The Commission may meet at such times and at such places as the Chairman may determine.
2. All meetings shall be presided over by the Commissioner, but where the Commissioner is absent or for any reason unable to attend any meeting of the Commission, the person appointed by the Minister shall preside.
3. All decisions of the Council shall be by a majority of the votes of the members present and voting.
4. For the proper conduct of the business of the Commission, the Commissioner and two other members shall constitute a quorum.
5. The Commissioner shall appoint one of his staff to perform the duties of Secretary to the Commission.
6. The Secretary shall keep a minutes book in which he shall record all the decisions of the Commission.
7. All decisions of the Commission shall be signed by the Commissioner or in his absence by the person appointed by the Cabinet to act in his place.
8. The Commission may in its discretion communicate any decision of a general nature to all licencees, but may communicate a decision of a specific nature affecting any person to such person within fourteen days.
9. The Commission may determine its own rules and procedures.

No. 12 of 1994.

*The Free Trade and Processing
Zone Act, 1994.*

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ANTIGUA
AND
BARBUDA

Passed the House of Representatives this
29th day of August, 1994.

Passed the Senate this 4th
day of October, 1994.

*B. Harris,
Speaker.*

*M. Percival,
Speaker.*

*S. Walker,
Acting Clerk to the House of Representatives.*

*S. Walker,
Acting Clerk to the Senate.*

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