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THE PRESIDENCY

No. 1245

6 May 1992

It is hereby notified that the President has assented to the following Act, which is hereby published for general information:—

No. 61 of 1992: Customs and Excise Amendment Act, 1992.



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GENERAL EXPLANATORY NOTE:

- [** **]** Words in bold type in square brackets indicate omissions from existing enactments.
- Words underlined with a solid line indicate insertions in existing enactments.

ACT

To amend the Customs and Excise Act, 1964, so as to provide for the imposition of a certain duty and provisional payment in respect of certain goods; and for renaming the Board of Trade and Industry; to adjust the designation of the Minister of Trade and Industry; to further regulate the power of the Minister of Finance to amend Schedule No. 1 to the said Act; to provide for consultation by the Minister of Finance with the Minister of Trade and Industry and for Economic Co-ordination in amending in certain circumstances any Schedule to the said Act; and to further regulate the imposition of anti-dumping and countervailing duties in respect of certain goods; and to provide for matters connected therewith.

(Afrikaans text signed by the State President.)
(Assented to 26 April 1992.)

BE IT ENACTED by the State President and the Parliament of the Republic of South Africa, as follows:—

Amendment of section 45 of Act 91 of 1964, as amended by section 9 of Act 112 of 1977, section 7 of Act 86 of 1982 and section 6 of Act 101 of 1985

- 5 1. Section 45 of the Customs and Excise Act, 1964 (hereinafter referred to as the principal Act), is hereby amended by the substitution in subsection (1) for paragraph (a) of the following paragraph:
- 10 “(a) Notwithstanding anything to the contrary in this Act contained, all goods consigned to or imported into the Republic or stored or manufactured in a customs and excise warehouse or removed in bond shall upon being entered for home consumption be liable to such duties (including anti-dumping duties, **[and]** countervailing duties and safeguard duties specified in Schedule No. 2 and new or increased duties referred to in section 58(1) and duties imposed under the provisions of section 53) as may
- 15 at the time of such entry be leviable upon such goods.”.

Amendment of section 46 of Act 91 of 1964, as amended by section 5 of Act 68 of 1989

- 20 2. Section 46 of the principal Act is hereby amended—
- (a) by the substitution in subsection (1) for paragraph (c) of the following paragraph:
- “(c) such other processes as the Minister may, on the recommendation of the Board **[of Trade and Industries]** on

Tariffs and Trade, by regulation prescribe in respect of any class or kind of goods, have taken place in the production or manufacture of goods of such class or kind in that territory.”; and

- 5 (b) by the substitution for subsection (2) of the following subsection:
 “(2) The Minister may from time to time, on the recommendation of the Board **[of Trade and Industry]** on Tariffs and Trade, by regulation increase the percentage prescribed in subsection (1), in regard to any class or kind of imported goods, or in regard to any
 10 class or kind of such goods from a particular territory, to which that subsection applies.”.

Amendment of section 47 of Act 91 of 1964, as amended by section 11 of Act 95 of 1965, section 17 of Act 105 of 1969, section 2 of Act 7 of 1974, section 7 of Act 105 of 1976, section 10 of Act 112 of 1977, section 6 of Act 110 of 1979, sections
 15 9 and 15 of Act 98 of 1980, section 8 of Act 86 of 1982, section 6 of Act 52 of 1986, section 15 of Act 84 of 1987, section 4 of Act 69 of 1988, section 6 of Act 68 of 1989 and section 22 of Act 59 of 1990

3. Section 47 of the principal Act is hereby amended by the substitution for subsection (6) of the following subsection:

- 20 “(6) Any duty payable in terms of section 53, any anti-dumping duty payable in terms of section 56, **[and]** any countervailing duty payable in terms of section **[57]** 56A and any safeguard duty payable in terms of section 57 shall be paid for the benefit of the State Revenue Fund in accordance with the provisions of the said sections.”.

25 Amendment of section 48 of Act 91 of 1964, as amended by section 6 of Act 57 of 1966, section 18 of Act 105 of 1969, section 3 of Act 98 of 1970, section 1 of Act 68 of 1973, section 8 of Act 105 of 1976, section 11 of Act 112 of 1977, sections 10 and 15 of Act 98 of 1980, section 9 of Act 86 of 1982, section 18 of Act 84 of 1987, section 7 of Act 68 of 1989 and section 23 of Act 59 of 1990

30 4. Section 48 of the principal Act is hereby amended—

- (a) by the substitution in subsection (1) for paragraph (b) of the following paragraph:

35 “(b) in order to give effect to any **[recommendation of]** request by the **[Board of Trade and Industries]** Minister of Trade and Industry and for Economic Co-ordination;” and

- (b) by the substitution in subsection (5) for paragraph (a) of the following paragraph:

40 “(a) Whenever the Minister is satisfied that any amendment made under this section has an effect which was not foreseen or intended, he may, whether or not such amendment has ceased to have effect as such or has lapsed under subsection (6), after consultation with the **[Board of Trade and Industries]** Minister of Trade and Industry and for Economic Co-ordination, by further notice in the *Gazette*, adjust such amendment, to the extent he
 45 deems fit, with effect from the date of such amendment or any later date, and any adjustment effected under this subsection shall be deemed to be an amendment under this section.”.

Amendment of section 48A of Act 91 of 1964, as inserted by section 19 of Act 84 of 1987 and amended by section 8 of Act 68 of 1989

50 5. Section 48A of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

55 “(1) Whenever the Minister is satisfied that any provision of any Schedule to this Act differs from any similar provision in force immediately prior to 1 January 1988 and that such difference is to the detriment of any importer or manufacturer and was not so intended by the Minister, the Minister may, by notice in the *Gazette*, adjust such provision, to the extent he deems fit, with effect from the date of such amendment or any later date, and any adjustment effected under this subsection shall be deemed to be an amendment under this section.”.

the **[Board of Trade and Industry]** Minister of Trade and Industry and for Economic Co-ordination, by means of an amendment effected by notice in the *Gazette* adjust the provision concerned to the extent he deems fit, with effect from 1 January 1988.”.

5 **Amendment of section 53 of Act 91 of 1964, as amended by section 19 of Act 105 of 1969, section 12 of Act 112 of 1977, section 37 of Act 97 of 1986 and section 20 of Act 84 of 1987**

6. Section 53 of the principal Act is hereby amended by the substitution in subsection (1) for the words following upon paragraph (b) and preceding
10 paragraph (i) of the following words:

“he may in order to give effect to any recommendation of the **[Board of Trade and Industries]** Minister of Trade and Industry and for Economic Co-ordination or whenever he deems it fit in the public interest, by notice in the *Gazette* impose—”.

15 **Amendment of heading to Chapter VI of Act 91 of 1964, as substituted by section 14 of Act 112 of 1977**

7. The following heading is hereby substituted for the heading to Chapter VI of the principal Act:

20 “ANTI-DUMPING, **[AND]** COUNTERVAILING AND SAFEGUARD DUTIES”

Substitution of section 55 of Act 91 of 1964, as substituted by section 15 of Act 112 of 1977

8. The following section is hereby substituted for section 55 of the principal Act:

25 “**General provisions regarding anti-dumping, countervailing and safeguard duties**

30 55. (1) **[Subject to the provisions of this Chapter and of the regulations, the]** The goods specified in Schedule No. 2 shall, upon entry for home consumption, be liable, in addition to any other duty payable in terms of the provisions of this Act, to the appropriate anti-dumping, **[or]** countervailing or safeguard duties provided for in respect of such goods in that Schedule at the time of such entry, if they are imported from a supplier, or originate in a territory, specified in that Schedule in respect of those goods.

35 (2) **[An anti-dumping duty as well as a countervailing duty shall not be imposed under this Chapter on the same imported goods on account of the same circumstances.]**

40 (a) The imposition of any anti-dumping duty in the case of dumping as defined in the Board on Tariffs and Trade Act, 1986 (Act No. 107 of 1986), a countervailing duty in the case of subsidized export as so defined or a safeguard duty in the case of disruptive competition as so defined and the rate at which or the circumstances in which such duty is imposed in respect of any imported goods shall be in accordance with any request by the Minister of Trade and Industry and for Economic Co-ordination under the provisions of the Board on Tariffs and Trade Act, 1986.

45 (b) Any such anti-dumping duty or countervailing duty may be imposed in respect of the goods concerned in accordance with such request with effect from the date on which any provisional payment in relation to anti-dumping or countervailing duty is imposed in
50 respect of those goods under section 57A.

(3) (a) Whenever any anti-dumping, **[or]** countervailing or safe-guard duty is imposed on any goods under the provisions of this Chapter, the owner of any such goods stored in a customs and excise

warehouse shall produce the invoice and other documents relating to such goods to the Controller not later than the time of entry of all or any part of such goods for removal from such warehouse.

5 (b) The provisions of paragraph (a) shall not apply in the case of such goods entered for export from a customs and excise warehouse.

10 (4) An anti-dumping, **[or]** countervailing or safeguard duty imposed under the provisions of this Chapter shall not apply to any goods entered under the provisions of any item specified in Schedule No. 3 or 4 unless such item is specified in Schedule No. 2 in respect of such goods.

15 (5) Notwithstanding the provisions of section 56, 56A or 57, the Commissioner may, subject to such conditions as he may impose in each case, exempt from payment of any anti-dumping, **[or]** countervailing or safeguard duty, any goods which are imported in such circumstances or in such quantities that the importation of such goods does not, in his opinion, constitute regular importation of such goods for trade purposes.”.

20 **Substitution of section 56 of Act 91 of 1964, as substituted by section 16 of Act 112 of 1977 and amended by section 4 of Act 93 of 1978, section 4 of Act 89 of 1984 and section 7 of Act 52 of 1986**

9. The following section is hereby substituted for section 56 of the principal Act:

“Imposition of anti-dumping duties

25 **56.** (1) The Minister may from time to time by notice in the Gazette amend Schedule No. 2 to impose an anti-dumping duty in accordance with the provisions of section 55(2).

30 (2) The Minister may, in accordance with any request by the Minister of Trade and Industry and for Economic Co-ordination, from time to time by notice in the *Gazette* withdraw or reduce, with or without retrospective effect and to such extent as may be specified in the notice, any anti-dumping duty imposed under subsection (1).

(3) The provisions of section 48(6) and (7) shall *mutatis mutandis* apply in respect of any amendment, withdrawal or reduction made under the provisions of subsection (1) or (2) of this section.”.

35 **Insertion of section 56A in Act 91 of 1964**

10. The following section is hereby inserted in the principal Act after section 56:

“Imposition of countervailing duties

40 **56A.** (1) The Minister may from time to time by notice in the Gazette amend Schedule No. 2 to impose a countervailing duty in accordance with the provisions of section 55(2).

45 (2) The Minister may, in accordance with any request by the Minister of Trade and Industry and for Economic Co-ordination, from time to time by notice in the *Gazette* withdraw or reduce, with or without retrospective effect and to such extent as may be specified in the notice, any countervailing duty imposed under subsection (1).

(3) The provisions of section 48(6) and (7) shall *mutatis mutandis* apply in respect of any amendment, withdrawal or reduction made under the provisions of subsection (1) or (2) of this section.”.

Substitution of section 57 of Act 91 of 1964, as substituted by section 17 of Act 112 of 1977

11. The following section is hereby substituted for section 57 of the principal Act:

5 **“Imposition of safeguard duties**

57. (1) The Minister may from time to time by notice in the *Gazette* amend Schedule No. 2 to impose a safeguard duty in accordance with the provisions of section 55(2).

10 (2) The Minister may, in accordance with any request by the Minister of Trade and Industry and for Economic Co-ordination, from time to time by notice in the *Gazette* withdraw or reduce, with or without retrospective effect and to such extent as may be specified in the notice, any safeguard duty imposed under subsection (1).

15 (3) The provisions of section 48(6) and (7) shall *mutatis mutandis* apply in respect of any amendment, withdrawal or reduction made under the provisions of subsection (1) or (2) of this section.”.

Substitution of section 57A of Act 91 of 1964, as inserted by section 18 of Act 112 of 1977 and amended by section 4 of Act 89 of 1983

12. The following section is hereby substituted for section 57A of the principal Act:

“Imposition of provisional payment

25 57A. (1) Whenever the Board on Tariffs and Trade publishes a notice in the *Gazette* to the effect that it is investigating the imposition of an anti-dumping duty or a countervailing duty on goods imported from a supplier or originating in a territory specified in that notice, the Commissioner shall, in accordance with any request by the said Board, by notice in the *Gazette* impose a provisional payment in respect of those goods for such period and for such amount as the Board may specify in such request.

30 (2) The Commissioner shall, in accordance with any request by the said Board, by further notice in the *Gazette* extend the period for which the provisional payment mentioned in subsection (1) is imposed or withdraw or reduce it with or without retrospective effect and to such extent as may be specified in the request.

35 (3) Such provisional payment shall be paid on goods subject thereto, at the time of entry for home consumption thereof, as security for any anti-dumping or countervailing duty which may be retrospectively imposed on such goods under section 56 or 56A and may be set off against the amount of the retrospective anti-dumping or countervailing duty payable.

40 (4) If no anti-dumping or countervailing duty is imposed before expiry of the period for which a provisional payment in relation to the goods concerned has been imposed, the amount of such payment shall be refunded.

45 (5) If the amount of any such provisional payment on the said goods—

(a) exceeds the amount of any anti-dumping or countervailing duty retrospectively imposed on such goods under section 56 or 56A, the amount of the difference shall be refunded; or

50 (b) is less than the amount of the anti-dumping or countervailing duty so imposed, the amount of the difference shall not be collected.”

Amendment of section 75 of Act 91 of 1964, as amended by section 13 of Act 95 of 1965, section 10 of Act 57 of 1966, section 8 of Act 85 of 1968, section 24 of Act 105 of 1969, section 8 of Act 103 of 1972, section 2 of Act 68 of 1973, section 9 of Act 71 of 1975, section 27 of Act 112 of 1977, section 8 of Act 93 of 1978, section 5 10 of Act 110 of 1979, section 15 of Act 98 of 1980, section 19 of Act 86 of 1982, section 6 of Act 89 of 1984, section 11 of Act 101 of 1985, section 9 of Act 52 of 1986, section 23 of Act 84 of 1987, section 8 of Act 69 of 1988, section 13 of Act 68 of 1989 and section 29 of Act 59 of 1990

13. Section 75 of the principal Act is hereby amended—

10 (a) by the substitution in subsection (1) for paragraph (c) of the following paragraph:

“(c) a drawback or a refund of the ordinary customs duty, anti-dumping duty, countervailing duty, safeguard duty, surcharge and fuel levy actually paid on entry for home consumption on any imported goods described in Schedule No. 5 shall, subject to the provisions of paragraph (f)(i), be paid to the person who paid such duties or any person indicated in the notes to the said Schedule, subject to compliance with the provisions of the item of the said Schedule in which those goods are specified;”;

20 (b) by the substitution in subparagraph (i) of paragraph (f) of the said subsection (1) for the words preceding the proviso of the following words:

25 “a refund of the ordinary customs duty, anti-dumping duty, countervailing duty, safeguard duty, surcharge or fuel levy leviable on any distillate fuel shall be granted to the extent stated in item 533.01 or 540.02 of Schedule No. 5 in which such fuel is specified, subject to compliance with the provisions of the said item, or a refund of the excise duty or fuel levy leviable on such fuel shall be granted to the extent stated in item 609.05.10 or 640.03 of Schedule No. 6 in which such fuel is specified, subject to compliance with the provisions of the said item, and any refund under this paragraph may be paid to any user who has purchased and used such distillate fuel in accordance with the provisions of the said items of Schedule No. 5 or 6 or to any person indicated in the notes to the said Schedule No. 5 or 6;”;

30 (c) by the substitution for subsection (4) of the following subsection:

“(4) Notwithstanding the provisions of section 56, 56A or 57, a rebate of any anti-dumping duty, **[or]** countervailing duty or safeguard duty specified in Schedule No. 2 in respect of any goods entered under the provisions of any item specified in Schedule No. 3 or 4 may be granted if it is expressly stated in such item of Schedule No. 3 or 4 that the extent of the rebate includes such anti-dumping duty, **[or]** countervailing duty or safeguard duty.”;

45 (d) by the substitution in subsection (14A) for paragraph (a) of the following paragraph:

50 “(a) The Minister of **[Economic Affairs and Technology]** Trade and Industry and for Economic Co-ordination or any officer in his Department designated by him may at any time after a permit by virtue of which goods may, in terms of any item of Schedule No. 3, 4 or 6, be entered under rebate of duty has, on the recommendation of the Board **[of Trade and Industries]** on Tariffs and Trade, been refused by him or the Director-General: Trade and Industry but not later than two years after duty was paid on those goods, issue, on the recommendation of the Board **[of Trade and Industries]** on Tariffs and Trade and with the concurrence of the Minister, a permit authorizing entry of those goods under rebate of duty in accordance with the provisions of the item concerned,

if, with due regard to any facts which became known after such a permit has been refused, he is satisfied that he or the said Director-General would have issued such a permit if those facts were then known.”; and

- 5 (e) by the substitution in subsection (15) for paragraph (a) of the following paragraph:

10 “(a) The Minister may from time to time by notice in the *Gazette* amend Schedule No. 3, 4, 5 or 6 in order to give effect to any **[recommendation of]** request by the **[Board of Trade and Industries]** Minister of Trade and Industry and for Economic Co-ordination or whenever he deems it expedient in the public interest to do so.”

15 **Amendment of section 84 of Act 91 of 1964, as amended by section 11 of Act 57 of 1966, section 28 of Act 105 of 1969, section 29 of Act 112 of 1977 and section 15 of Act 52 of 1986**

14. Section 84 of the principal Act is hereby amended by the substitution in subsection (2) for the words preceding paragraph (a) of the following words:

20 “For the purposes of subsection (1), any invoice or other document relating to any denomination, description, class, grade or quantity of goods shall be deemed to contain a false statement if the price charged by the exporter or any value, price, commission, discount, cost, charge, expense, royalty, freight, duty, tax, drawback, refund, rebate, remission or other information whatever declared therein which has a bearing on value for the purposes of payment of any duty or on classification in terms of any Schedule to this Act or on anti-dumping duty, **[or]** countervailing duty or safeguard duty or on extent of rebate, refund or drawback of duty—”.

Construction of references to Board of Trade and Industry

15. (1) Any reference in any Schedule to the principal Act to the Board of Trade and Industry shall be construed as a reference to the Board on Tariffs and Trade.

(2) Anything done by or on behalf of the Board of Trade and Industry before the commencement of subsection (1) in the application of any such Schedule, shall be deemed to have been done by or on behalf of the Board on Tariffs and Trade.

35 **Short title**

16. This Act shall be called the Customs and Excise Amendment Act, 1992.