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GOVERNMENT GAZETTE

STAATSKOERANT

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OFFICE OF THE PRESIDENT

KANTOOR VAN DIE PRESIDENT

No. 1477.

22 September 1995

No. 1477.

22 September 1995

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

Hierby word bekend gemaak dat die President sy goedkeuring geheg het aan die onderstaande Wet wat hierby ter algemene inligting gepubliseer word:—

No. 45 of 1995: Customs and Excise Amendment Act, 1995.

No. 45 van 1995: Wysigingswet op Doeane en Aksyns, 1995.

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 that the Commissioner may conclude certain agreements; to delete the power to publish the names of certain offenders; to extend the powers of Controllers; to delete certain limitations of the jurisdiction of courts; to further regulate the report of arrival or departure of ships and aircraft; to further regulate sealing of goods on board ships or aircraft; to further regulate the landing of unentered goods; to delete references to permission to land or load goods; to further regulate the importation and exportation of goods overland; to extend the power of the Commissioner to make rules and to revoke certain powers of the Minister to make regulations; to further regulate the importation or exportation of goods by post; to provide for the loading and discharge of goods carried coastwise; to further regulate the removal of goods in bond, and to provide for sorting and repacking of goods in transit; to prescribe the periods which goods may be retained in customs and excise warehouses; to provide for the collection of duties on certain beer on the alcoholic strength thereof; to further regulate the exemption of certain goods which are subject to excise duty; to further regulate particulars on invoices; to extend the applicability of the provisions regarding origin of goods; to delete the power to detain certain goods; to repeal the Minister's power to amend Schedules under certain circumstances; to further regulate licensing, and to provide for licensing regarding wrecks; to provide for the conversion of currency for purposes of calculation of prices paid or payable; to delete the power to refund fuel levy to certain users of distillate fuel and to administrations of other territories; to further regulate refunds of fuel levy; to delete the power of the Minister of Trade and Industry to issue permits with retrospective effect under certain circumstances; to further regulate an offence in respect of beer of higher alcoholic strength than indicated on container; to further regulate the release of goods detained for the purpose of other laws; to empower the Commissioner to make rules relating to security; to amend Schedule No. 1 to the said Act; to provide for the continuation of certain amendments of Schedules Nos. 1 to 6 to the said Act; and to effect certain textual alterations; and to provide for matters connected therewith.

(Afrikaans text signed by the President.)
(Assented to 21 September 1995.)

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

Amendment of section 2 of Act 91 of 1964

1. Section 2 of the Customs and Excise Act, 1964 (hereinafter referred to as the principal Act), is hereby amended by the insertion after subsection (1) of the following subsection: 5

“(1A) The Commissioner may, for the purposes of the administration of this Act, make such arrangements or enter into such agreements with any railway, port, airline or postal authority, depot operator or container operator or any other person or authority as he may deem necessary.”. 10

Amendment of section 4 of Act 91 of 1964, as amended by section 2 of Act 105 of 1969, section 2 of Act 110 of 1979, sections 3 and 15 of Act 98 of 1980, section 2 of Act 84 of 1987, section 4 of Act 59 of 1990, section 1 of Act 105 of 1992 and section 1 of Act 98 of 1993

2. Section 4 of the principal Act is hereby amended by the deletion of subsection (3B). 15

Amendment of section 6 of Act 91 of 1964, as amended by section 2 of Act 71 of 1975, section 1 of Act 52 of 1986 and section 6 of Act 59 of 1990

3. Section 6 of the principal Act is hereby amended by the substitution for subsection (5) of the following subsection:

“(5) The owner or occupier of a transit shed appointed in terms of this section shall, if required by the Commissioner, provide accommodation [to the satisfaction of the Commissioner] for any officer whom the Commissioner considers it necessary to station at such shed.”. 20

Amendment of section 7 of Act 91 of 1964, as amended by section 3 of Act 105 of 1969, section 3 of Act 71 of 1975, section 1 of Act 105 of 1976, section 4 of Act 98 of 1980, section 1 of Act 101 of 1985 and section 7 of Act 59 of 1990 25

4. Section 7 of the principal Act is hereby amended—

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

“(a) make due report in writing as may be prescribed by rule of the arrival, with as many duplicates or extracts as the Controller may require;” 30

(b) by the deletion of subsection (2);

(c) by the substitution for subsections (2A) and (3) of the following subsections, respectively: 35

“(2A) Subject to the provisions of section 9, any goods which have not been recorded in any [such] manifest or list of containers as may be prescribed by rule shall be declared to the Controller and delivered to him.

(3) The master of any ship and the pilot of any aircraft bound from any place within to any place outside the Republic shall appear before the Controller and deliver to him a report outwards [in the prescribed form] as may be prescribed by rule together with a full account of the cargo laden on board that ship or aircraft and shall make and subscribe to a declaration as to the truth of such report and account and answer all such questions as may be put to him by the Controller.”; 40 45

(d) by the substitution for subsections (5) and (6) of the following subsections, respectively:

“(5) The provisions which shall apply in connection with the departure of any ship or foreign-going aircraft from any place within to any other place within the Republic shall be as prescribed by [regulation] rule. 50

(6) (a) The master of a ship or the pilot of a foreign-going aircraft shall not cause or permit the ship or aircraft to depart from any appointed place of entry or any place appointed as a customs and excise airport without 55

first obtaining a certificate of clearance as may be prescribed by rule or transire for the intended voyage or flight from the Controller, and the master or pilot, as the case may be, shall not after departure call or land at any place in the Republic other than an appointed place of entry or a place appointed as a customs and excise airport, unless forced to do so by stress of weather, accident or other circumstances beyond his control. 5

(b) The provisions which shall apply where such master or pilot has been so forced to call or land at a place other than an appointed place of entry or a place appointed as a customs and excise airport shall be as prescribed by **[regulation] rule.**” 10

(e) by the deletion of subsection (8); and

(f) by the substitution for subsections (9), (10) and (11) of the following subsections, respectively:

“(9) The master of a ship or the pilot of an aircraft may, with the permission of the **[Commissioner] Controller** and subject to such conditions as he may impose, retain on board goods consigned to any port or airport for landing at any other port or airport or land at any port or airport goods not consigned thereto. 15

(10)(a) **[Subject to the regulations, the Commissioner] The Controller** may grant **[general or special]** transires, on such conditions as he may impose, in respect of any **[coasting ship or]** ship exclusively engaged in **[fishing, sealing or whaling or collecting and transporting guano or such other activity as the Commissioner may determine]** activities as may be prescribed by rule. 20

(b) The **[Commissioner] Controller** may by notice to the master or owner of the ship or any member of the crew on board such ship revoke any such transire. 25

(11) The Commissioner may **[subject to such conditions as he may impose]** exempt by rule any ship or aircraft or any class or kind of ship or aircraft from all or any of the provisions of this section.”. 30

Amendment of section 9 of Act 91 of 1964, as amended by section 4 of Act 105 of 1969, section 15 of Act 98 of 1980, section 2 of Act 101 of 1985, section 3 of Act 84 of 1987 and section 9 of Act 59 of 1990

5. Section 9 of the principal Act is hereby amended—

(a) by the substitution for subsection (1) of the following subsection: 35

“(1) On arrival of any ship at any place in the Republic—

(a) the master thereof shall declare **[on the] as prescribed [form] by rule** all sealable goods on board the ship which are unconsumed stores of such ship; and

(b) the master and every member of the crew thereof shall declare **[on the] as prescribed [form] by rule** all sealable goods which are his personal property or in his possession, and the Controller may seal up all such sealable goods.”; 40

(b) by the substitution for subsection (3) of the following subsection:

“(3) For the purposes of this section ‘sealable goods’ means [— 45

(a) tobacco, cigars, cigarettes and any other preparations of tobacco or substitutes therefor;

(b) any spirits or alcoholic beverages;

(c) opium, preparations of opium in any form and opium outfits;

(d) cocaine, preparations of cocaine and other habit-forming drugs; 50

(e) saccharin, sweetening substances containing saccharin, and substitutes for saccharin;

(f) articles brought or intended as gifts for or for sale to or exchange with any person; 55

- (g) all non-duty-paid imported goods and all excisable goods and fuel levy goods shipped at a place in the Republic as ships' or aircraft stores; and
- (h) any other goods which may from time to time be declared by the Commissioner by rule to be sealable goods] any goods which are prescribed by rule to be sealable goods."; and
- (c) by the addition of the following subsection:
 "(7) The Commissioner may exempt any ship or aircraft or exempt by rule any class or kind of ship or aircraft from all or any of the provisions of this section."

Substitution of section 11 of Act 91 of 1964, as amended by section 2 of Act 105 of 1976

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

"Landing of unentered goods

11. (1) [Subject to the regulations, no] All goods imported into the Republic by ship or aircraft [or carried coastwise from any place in the Republic] shall, [without the permission of the Controller be landed, removed or otherwise dealt with, and any goods landed with such permission before due entry thereof, shall] if landed before due entry thereof, be placed in a transit shed, container terminal, container depot or State warehouse, or removed to any other place approved by the Controller [Provided that any goods intended for transit carriage may without such permission be landed by the master of a ship or the pilot of an aircraft at any place of entry for direct removal from that place to any place outside the Republic].

(2) All goods landed from a ship or aircraft before due entry of such goods and placed in a transit shed or other approved place in accordance with the provisions of subsection (1) shall be deemed to be still in the ship or aircraft, and as long as such goods remain in such shed or place, the master or pilot, as the case may be, shall remain responsible therefor in all respects and liable for the duty thereon as if the goods had not been removed from such ship or aircraft.

(3) Subject to the regulations, no goods shall, without the permission of the Controller, be loaded into a ship or aircraft for exportation from the Republic or for carriage coastwise.

(4) No goods or ballast shall, without the permission of the Controller, be laden at any place in the Republic on a ship or aircraft before all inward cargo for that place has been discharged.

(5) Subject to the provisions of subsection (2) and the regulations and to any conditions which he may impose, the Controller may permit the landing at any place without due entry of goods not consigned to that place from a ship or aircraft which has sustained damage or is in distress.]

Amendment of section 12 of Act 91 of 1964, as amended by section 10 of Act 59 of 1990

7. Section 12 of the principal Act is hereby amended—

(a) by the substitution for subsection (1) of the following subsection:

"(1) (a) [Upon or before arrival at a railway station of any train with] Where any goods [thereon] are imported by train [from beyond the borders of the Republic, the station master or other person in control of the station or any other person designated by] the railway authority concerned [by arrangement with the Commissioner] shall furnish the Controller with such documents as may be prescribed by rule [deliver to the Controller a copy of all advice and delivery notes received by him] relating to [the] such goods [consigned to that station by that train].

(b) [Such] The station master or other person in control of railway premises shall not permit any such goods to be removed from [the railway] such premises before due entry thereof unless the Controller allows such goods to be so removed, subject to such conditions as he may in each case impose, before such entry.”;

(b) by the substitution for subsection (7) of the following subsection:

“(7) [(a)] No person in charge of any vehicle (other than an aircraft [used in the] or a train), whether or not conveying any goods for exportation [of goods] overland shall remove any such vehicle or goods beyond the borders of the Republic [except with the permission of the Controller and subject to such conditions as the Commissioner may specify] unless due entry has been made of such vehicle and the goods carried thereon or permission for removal has been granted by the Controller.

[(b) The Commissioner may in his discretion grant a general permission to any such person.]”;

(c) by the addition of the following subsection:

“(8) The Controller may grant a general permission to any person referred to in subsections (4) and (7) in respect of such vehicles.”.

Amendment of section 13 of Act 91 of 1964, as amended by section 3 of Act 57 of 1966, section 5 of Act 105 of 1969, section 2 of Act 112 of 1977, section 3 of Act 101 of 1985, section 3 of Act 52 of 1986 and section 11 of Act 59 of 1990

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

(a) by the substitution for the proviso to subsection (1) of the following proviso:

“Provided that the [Minister] Commissioner may by [regulation] rule exclude from the provisions of this subsection any goods of a class or kind specified in such [regulation] rule or any such goods imported in circumstances so specified.”;

(b) by the substitution for subsections (3) and (4) of the following subsections, respectively:

“(3) (a) Notwithstanding anything contained in subsection (1), any goods imported by post which the addressee desires to enter for warehousing, or for removal or export in bond, or under any heading or item of Schedule No. 1 which requires that a certificate be given or a condition be complied with, or under any item of Schedule No. 3, or under any item of Schedule No. 2 or 4 [or 5 specified] unless exempted by the Commissioner [after consultation with the Postmaster-General] by rule, shall be so entered at a customs and excise office before a Controller.

(b) Notwithstanding anything contained in subsection (1), any goods imported by post by such class of addressee, or any goods imported by post and of such class or kind, as may be [specified] prescribed by the Commissioner [after consultation with the Postmaster-General] by rule, shall be entered at a customs and excise office before a Controller.

(4) (a) In the case of goods exported by post, any form or label affixed to or completed in respect of a postal item and on which a description of the contents and their value are set forth, shall be deemed to be a bill of entry for export as required by this Act.

(b) Notwithstanding the provisions of paragraph (a), the Commissioner may prescribe by rule goods which shall be entered for export at a customs and excise office before a Controller.”;

(c) by the substitution for subsection (6) of the following subsection:

“(6) Any postmaster may at any time detain any imported postal item under his control and cause such postal item to be removed to the

Controller, who may [in his discretion] examine such postal item, and if the goods therein are found not to agree in all respects with the particulars relating to the value, description or quantity appearing on the form or label referred to in subsection (1) or the invoice concerned, such goods shall notwithstanding anything to the contrary in any other law contained be liable to forfeiture.” 5

Amendment of section 14 of Act 91 of 1964

9. Section 14 of the principal Act is hereby amended—

(a) by the substitution for subsection (2) of the following subsection:

“(2) A foreign-going ship may also carry coastwise goods while on a voyage between ports in the Republic subject to the [regulations and] rules relating to such goods.”; 10

(b) by the deletion of subsection (3); and

(c) by the addition of the following subsection:

“(4) Any dutiable goods which have not been entered for home consumption shall— 15

(a) not be loaded on board any ship for carriage coastwise unless they have been entered for removal or deemed to have been so entered in terms of this Act; and

(b) be reported by the master to the Controller at the port of discharge in the Republic as prescribed by rule.”. 20

Amendment of section 17 of Act 91 of 1964, as amended by section 3 of Act 110 of 1979

10. Section 17 of the principal Act is hereby amended—

(a) by the substitution in subsection (2) for the words preceding paragraph (a) of the following words: 25

“Any officer who has the custody of any goods in any State warehouse may refuse delivery thereof from such warehouse until he has been furnished with proof [to his satisfaction] that— ”; and

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

“(4) If a warrant or permission for the removal of any goods from a State warehouse has been granted by the Controller, and the person to whom such warrant or permission has been granted does not immediately remove the said goods from the warehouse, they may, notwithstanding any other provisions of this Act, [in the discretion of the Commissioner] be dealt with as if they were goods in respect of which entry has not been made under the provisions of this Act.”. 35

Amendment of section 18 of Act 91 of 1964, as amended by section 2 of Act 95 of 1965, section 6 of Act 105 of 1969, section 4 of Act 71 of 1975, section 3 of Act 105 of 1976, section 3 of Act 112 of 1977, section 15 of Act 98 of 1980, section 4 of Act 84 of 1987 and section 13 of Act 59 of 1990 40

11. Section 18 of the principal Act is hereby amended—

(a) by the substitution for paragraphs (d) and (e) of subsection (1) of the following paragraphs, respectively:

“(d) a container operator may remove any container in bond to the container depot or container terminal to which it was consigned, without furnishing the security provided for in subsection (6) of this section, and the manifest [in terms of section 7(2)(b)] of the goods packed in such container shall be deemed to be due entry for removal in bond of that container; 45

(e) the pilot of [an] any aircraft [of the South African Airways] may remove in bond any goods landed from [an] any aircraft at a place in the Republic and for which an air cargo transfer manifest has been completed, to their place of entry for the Republic, without 50

furnishing the security provided for in subsection (6), and such air cargo transfer manifest shall be deemed to be due entry for removal in bond of such goods.”;

- (b) by the substitution in subsection (3) for the words preceding paragraph (a) of the following words: 5
 “Subject to the provisions of subsection (4), any liability for duty in terms of subsection (2) shall cease when it is proved **[to the satisfaction of the Commissioner]** by the person concerned—”;
- (c) by the substitution for subsection (4) of the following subsection: 10
 “(4) If the person concerned fails to submit any such proof as is referred to in subsection (3) within a period **[of thirty days from the date on which the goods in question were entered for removal in bond]** as may be prescribed by rule, he shall upon demand by the **[Commissioner] Controller** forthwith pay the duty due on such goods.”;
- (d) by the substitution for subsection (7) of the following subsection: 15
 “(7) The removal in bond of goods shall be subject to the **[regulations] rules** and such conditions as the Commissioner may impose in respect of such goods or any class or kind of such goods or goods removed in circumstances specified by him and the **[Commissioner] Controller** may refuse to accept **[bills of]** entry for the removal in bond of goods from a remover who has **[persistently]** failed to comply with such **[regulations] rules** or conditions or who has committed an offence referred to in section 80.”; 20
- (e) by the deletion of subsection (9); and
- (f) by the addition to subsection (13) of the following paragraph, the existing subsection becoming paragraph (a): 25
 “(b) (i) Notwithstanding the provisions of paragraph (a), the Commissioner may, in such circumstances and subject to such conditions as he may prescribe by rule, permit goods in transit through the Republic or any class or kind of such goods to be delivered to any place approved by him for the purposes of sorting or repacking. 30
 (ii) The goods shall not be removed from such place to the place where they are destined to leave the Republic unless the duty on any deficiency has been paid to the Controller.”.

Amendment of section 18A of Act 91 of 1964, as inserted by section 5 of Act 84 of 1987 35

12. Section 18A of the principal Act is hereby amended—

- (a) by the substitution for subsections (2) and (3) of the following subsections, respectively: 40
 “(2) Subject to the provisions of subsection (3), any liability for duty in terms of subsection (1) shall cease when it is proved **[to the satisfaction of the Commissioner]** by the exporter that the said goods have been duly taken out of the common customs area.
 (3) If the exporter fails to submit any such proof as is referred to in subsection (2) within a period **[of 30 days from the date on which the goods concerned were entered for export]** as may be prescribed by rule he shall upon demand by the **[Commissioner] Controller** forthwith pay the duty due on those goods.”; 45
- (b) by the substitution for subsection (6) of the following subsection: 50
 “(6) The said exportation of goods shall be subject to the **[regulations] rules** and such conditions as the Commissioner may impose in respect of the goods concerned or any class or kind of those goods or those goods exported in circumstances specified by him, and the **[Commissioner] Controller** may refuse to accept bills of entry for the said exportation of goods from an exporter who has **[persistently]** failed to comply with the said **[regulations] rules** or conditions or who has committed an offence referred to in section 80.”; and 55
- (c) by the deletion of subsection (7).

Amendment of section 19 of Act 91 of 1964, as amended by section 3 of Act 95 of 1965 and section 7 of Act 105 of 1969

13. Section 19 of the principal Act is hereby amended—

- (a) by the substitution for subsections (7) and (8) of the following subsections, respectively: 5
- “(7) Subject to the provisions of subsection (8), any liability for duty in terms of subsection (6) shall cease when it is proved [to the satisfaction of the Commissioner] by the licensee concerned that the goods in question have been duly entered in terms of [subsection (4) of section 20] section 20(4) and have been delivered or exported in terms of such entry. 10
- (8) If the licensee concerned fails to submit any such proof as is referred to in subsection (7) [in respect of any goods in the warehouse in question] within the period [specified in the regulations] for which goods of that class or kind may be stored or kept in a customs and excise warehouse or if the licensee commits an offence under this Act in respect of any goods stored or kept in such warehouse he shall upon demand by the [Commissioner] Controller forthwith pay the duty due on such goods.”; and 15
- (b) by the addition of the following subsection: 20
- “(9) Except with the permission of the Commissioner, which shall only be granted in circumstances which he considers to be exceptional and subject to such conditions as he may impose in each case, no imported goods entered for storage or excisable or fuel levy goods manufactured in a customs and excise warehouse, excluding spirits or wine in the process of maturation or maceration, shall be retained in any customs and excise warehouse for a period of more than five years from the time the imported goods were first entered for storage or from the time the excisable or fuel levy goods were deemed to have been manufactured in terms of section 44(2).” 25 30

Amendment of section 20 of Act 91 of 1964, as amended by section 4 of Act 95 of 1965, section 8 of Act 105 of 1969, section 15 of Act 98 of 1980, section 1 of Act 86 of 1982, section 6 of Act 84 of 1987 and section 14 of Act 59 of 1990

14. Section 20 of the principal Act is hereby amended—

- (a) by the substitution in subsection (4) for the words preceding paragraph (a) of the following words: 35
- “No goods which have been stored or manufactured in a customs and excise warehouse shall be taken or delivered from such warehouse except in accordance with the [regulations] rules and upon due entry for one or other of the following purposes—”; 40
- (b) by the substitution for subsection (4)*bis* of the following subsection: 45
- “(4)*bis* No person shall, without the written permission of the [Commissioner] Controller, divert any goods entered for removal from or delivery to a customs and excise warehouse, except goods entered for payment of the duty due thereon, to a destination other than the destination declared on entry of such goods or deliver or cause such goods to be delivered in the Republic except in accordance with the provisions of this Act.”; and 50
- (c) by the substitution for the proviso to subsection (5) of the following proviso: 50
- “Provided that in the case of goods manufactured in any customs and excise manufacturing warehouse or in the case of goods in the process of manufacture and removal from one customs and excise manufacturing warehouse to another such warehouse, the Commissioner may, subject to the provisions of section 35(2), allow working, pumping, handling,

processing and similar losses and losses due to natural causes, between the time when liability for duty first arises and the time of removal of such goods from the warehouse in which the goods are so manufactured or in which such process of manufacture is completed, to the extent specified in Schedule No. 4 or 6, if [he is satisfied that] no part of such loss was wilfully or negligently caused.” 5

Amendment of section 24 of Act 91 of 1964, as substituted by section 5 of Act 95 of 1965

15. Section 24 of the principal Act is hereby amended by the substitution for the words preceding the proviso of the following words: 10

“If any goods shipped as stores for any foreign-going ship or aircraft from a customs and excise warehouse under the provisions of [subsection (4) of section 20] section 20(4) or any goods shipped as stores for such ship or aircraft outside the Republic (except any such goods which are used for the operation of such ship and are, save as provided in the [regulations] rules, not for consumption by or for sale or disposal to the master or members of the crew or passengers of or visitors to such ship) are consumed, sold or disposed of on such ship in any port in the Republic or on such aircraft at any place in the Republic when the aircraft is not airborne or on such aircraft on a flight between any places in the Republic, the master of such ship or the pilot of such aircraft, as the case may be, shall be liable for the duty on such goods so consumed, sold or disposed of and shall, upon demand by the [Commissioner] Controller forthwith pay the duty due on such goods”. 15 20

Substitution of section 25 of Act 91 of 1964, as substituted by section 6 of Act 95 of 1965

16. The following section is hereby substituted for section 25 of the principal Act: 25

“Sorting, packing, etc., in customs and excise storage warehouses

25. Subject to the provisions of this Act, the [Commissioner] Controller may permit the licensee of a customs and excise storage warehouse or the owner of any goods in such warehouse to sort, separate, pack or repack any goods in such warehouse and to make such alterations therein or such arrangements as may be necessary for the preservation of those goods or for the sale, exportation or other lawful disposal thereof.” 30

Amendment of section 26 of Act 91 of 1964, as substituted by section 1 of Act 89 of 1983

17. Section 26 of the principal Act is hereby amended by the substitution in subsection (1) for the words preceding paragraph (a) of the following words: 35

“Except with the prior permission of the Commissioner and subject to such conditions as may be prescribed by rule—”.

Amendment of section 27 of Act 91 of 1964, as amended by section 10 of Act 105 of 1969, section 4 of Act 112 of 1977, section 15 of Act 98 of 1980, section 7 of Act 84 of 1987 and section 15 of Act 59 of 1990 40

18. Section 27 of the principal Act is hereby amended—

(a) by the deletion of subsection (5);

(b) by the substitution for paragraph (a) of subsection (7) of the following paragraph: 45

“(a) Every licensee of a customs and excise manufacturing warehouse shall, if required by the Commissioner, provide suitable office accommodation and board and lodging [to the satisfaction of the Commissioner] for any officer stationed at or visiting such warehouse for the purposes of this Act.”; 50

- (c) by the deletion of subsection (8);
- (d) by the substitution for subsection (9) of the following subsection:
 “(9) No licensee shall, without the written permission of the
[Commissioner] Controller in a customs and excise manufacturing
 warehouse, carry on any business except that for which the warehouse is
 licensed and the premises and plant are registered.”;
- (e) by the substitution in subsection (10) for the words preceding paragraph (a) of
 the following words:
 “No person shall, except with the written permission of the **[Commis-
 sioner] Controller—**”; and
- (f) by the substitution for subsections (12) and (13) of the following subsections,
 respectively:
 “(12) No distilling operation shall be commenced until the whole or
 any part of the distilling system or plant, as the Commissioner may
 require, has been provided, at the expense of the licensee, with fittings
 and requirements to permit of the insertion or affixing of customs and
 excise meters, gauges, rods, locks and seals according to the **[regula-
 tions and to the satisfaction of the Commissioner] rules** for the
 purpose of securing such system or plant, and until such system or plant
 has been duly secured by the Controller.
 (13) If any meter, rod, lock or fitting is tampered with or damaged, or
 if any pipe, cock, fastening or fitting connected with a still or vessel is
 pierced or damaged, the licensee shall forthwith repair or renew the
 article in question **[to the satisfaction of the Controller]** or an officer
 may effect the repair or renewal at the expense of the licensee.”.

Amendment of section 28 of Act 91 of 1974, as substituted by section 1 of Act 103 of 1972

19. Section 28 of the principal Act is hereby amended by the substitution for subsection (2) of the following subsection:
 “(2) In ascertaining the quantity of spirits by measuring the mass, the tables
 prescribed **[in the regulations] by rule** shall be used, and the quantity ascertained
 in accordance with the said tables shall be deemed to be the true quantity of such
 spirits for the purposes of this Act.”.

Amendment of section 30 of Act 91 of 1964, as amended by section 2 of Act 86 of 1982 and section 32 of Act 60 of 1989

20. Section 30 of the principal Act is hereby amended by the substitution for the proviso to subsection (1) of the following proviso:
 “Provided that if the Board declined to certify any spirits as suitable for such use
 as aforesaid, the manufacturer may redistill such spirits or treat the same by any
 method approved by the Board, and thereafter **[in its discretion]** the Board may
 certify the spirits as suitable for use in the manufacture of alcoholic beverages.”.

Substitution of section 33 of Act 91 of 1964

21. The following section is hereby substituted for section 33 of the principal Act:

“Requirements in respect of stills

33. Subject to the provisions of section 63, no person shall distil spirits in
 a still which does not comply with the requirements prescribed **[in the
 regulations] by rule** as to use, capacity **[and]** or construction: Provided that
 the Commissioner may **[in his discretion] by rule** exempt **[from all or]** any
[of the said requirements, for such period and on such conditions as he

thinks fit, any] person or still [in use at the commencement of this Act or any still used for any purpose other than the manufacture of potable spirits] from all or any of the provisions of this section.”.

Amendment of section 34 of Act 91 of 1964, as amended by section 15 of Act 98 of 1980, section 3 of Act 86 of 1982, section 1 of Act 69 of 1988 and section 2 of Act 19 of 1994 5

22. Section 34 of the principal Act is hereby amended by the substitution for subsections (1), (2), (3) and (4) of the following subsections, respectively:

“(1) The manufacture of spirits by an agricultural distiller shall be subject to such supervision by an officer as the [Commissioner] Controller may in each case consider necessary. 10

(2) An allowance may be made by the Controller for natural waste and evaporation on all spirits of his own distillation stored by an agricultural distiller on his farm, to the extent specified in Schedule No. 6, if [the Commissioner is satisfied that] no part of such loss was wilfully or negligently caused. 15

(3) No agricultural distiller shall use his still for distilling spirits from any material other than produce grown on the farm of which he is the owner or occupier and which is of a kind prescribed by [regulation] rule in respect of the class of agricultural distiller to which he belongs.

(4) Subject to the provisions of this Act and the [Liquor Act, 1977 (Act No. 87 of 1977)] Liquor Act, 1989 (Act No. 27 of 1989), the provisions of [subsection (4) of section 20] section 20(4) of this Act shall *mutatis mutandis* apply in respect of spirits manufactured from grapes by any class of agricultural distiller specified by the [Minister by regulation] Commissioner by rule, and for the purpose of such application any reference in the said subsection to a customs and excise warehouse shall be deemed to be a reference to the farm on which such spirits are manufactured.”. 25

Amendment of section 35 of Act 91 of 1964, as amended by section 3 of Act 103 of 1972

23. Section 35 of the principal Act is hereby amended by the deletion of subsection (2). 30

Amendment of section 35A of Act 91 of 1964, as inserted by section 5 of Act 112 of 1977

24. Section 35A of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection: 35

“(1) The [Minister] Commissioner may by [regulation] rule prescribe the sizes and types of containers which may be used by a manufacturer for the packing of cigarettes and cigarette tobacco.”.

Substitution of section 36 of Act 91 of 1964, as amended by section 4 of Act 103 of 1972 and section 6 of Act 98 of 1980 40

25. The following section is hereby substituted for section 36 of the principal Act:

“Specific provisions regarding beer

36. (1) The alcoholic strength by volume of beer made from malt shall, for duty purposes, be ascertained in the manner prescribed by the Commissioner by rule. 45

(2) Every manufacturer shall, in respect of such beer manufactured by him in the Republic, register with the Commissioner the names whereunder such beer will be sold or disposed of for home consumption, together with the alcoholic strength by volume of the beer so sold or disposed of under any such name, and no beer shall be so sold or disposed of except under a name and alcoholic strength by volume so registered. 50

(3) No such beer shall be sold or disposed of by any manufacturer for home consumption except in a container which indicates the name and the alcoholic strength by volume of such beer, and any invoice or other document relating to such sale or disposal of such beer shall indicate the registered name thereof.

(4) Any description on any container of beer bearing an indication of a name and alcoholic strength by volume registered with the Commissioner shall be deemed to be a declaration for the purpose of assessment of duty.

(5) The Commissioner may exempt beer of any class or kind from any or all of the provisions of subsections (2) and (3).

(6) (a) If the alcoholic strength by volume of any beer in any container bearing an indication of a name and alcoholic strength by volume registered with the Commissioner under this section is ascertained to be more than 0,5 per cent higher than the alcoholic strength by volume so registered in relation to beer of such name the manufacturer shall be liable for the duty on the full quantity of the brew or blend of brews of beer from which such container was filled at the rate of duty applicable to beer of the strength as ascertained in respect of the contents of such container.

(b) If the Commissioner is unable to establish such full quantity from the records of the manufacturer, he may determine a quantity which shall be deemed to be such full quantity.

(c) Any beer of any brew or blend of brews of beer referred to in paragraph (a) and not delivered from the stocks of such manufacturer shall be liable to forfeiture."

Amendment of section 36A of Act 91 of 1964, as inserted by section 11 of Act 105 of 1969, substituted by section 16 of Act 59 of 1990 and amended by section 2 of Act 98 of 1993

26. Section 36A of the principal Act is hereby amended—

(a) by the deletion of the proviso to subsection (1);

(b) by the substitution for paragraph (a) of subsection (2) of the following paragraph:

"(a) where the value added by any process in the manufacture of excisable goods specified in Section B of Part 2 of Schedule No. 1 is, in the opinion of the Commissioner, low in relation to the manufacturer's selling price of such goods, or where any process in the manufacture of excisable goods specified in Section B of Part 2 of Schedule No. 1 presents in his opinion exceptional difficulties in the collection of excise duty specified in Section B of Part 2 of Schedule No. 1 in respect of such goods, the provisions of subsection (1) shall apply, and due entry of such goods shall be effected, at such stage in the manufacture of the said goods as he may [in his discretion] determine, and the processes which shall be deemed to be included for the purposes of calculating the value for purposes of excise duty specified in Section B of Part 2 of Schedule No. 1 of such goods shall be as determined by him;"

(c) by the substitution for subsections (3) and (4) of the following subsections, respectively:

"(3) Excisable goods specified in Section B of Part 2 of Schedule No. 1 manufactured in the Republic by any [natural] person for his own use and not for sale or disposal and in circumstances which in the opinion of the Commissioner do not constitute a business venture, may, subject to such conditions as he may impose in each case, be exempted by the Commissioner from the payment of excise duty specified in Section B of Part 2 of Schedule No. 1 thereon.

(4) Excisable goods specified in Section B of Part 2 of Schedule No. 1 manufactured in the Republic by any [other] person for sale or disposal and in circumstances which in the opinion of the Commissioner

constitute a business venture, or any class or kind of such goods, may subject to such conditions as [the Minister] he may impose by rule, be exempted by the Commissioner from the payment of excise duty specified in Section B of Part 2 of Schedule No. 1 thereon if—

- (a) the average value for purposes of excise duty specified in Section B of Part 2 of Schedule No. 1 of such goods or such class or kind of such goods has during such period or periods as the [Minister] Commissioner may [determine] prescribe by rule, not exceeded such amount as [the Minister] he may [determine] so prescribe; or
 (b) the value for purposes of excise duty specified in Section B of Part 2 of Schedule No. 1 of such goods or such class or kind of such goods is in the opinion of the Commissioner not likely to exceed the amount referred to in paragraph (a) during one calendar year; or
 (c) such circumstances as may be prescribed by [regulation] rule apply.”.

Amendment of section 37 of Act 91 of 1964, as amended by section 8 of Act 95 of 1965, section 12 of Act 105 of 1969, sections 7 and 15 of Act 98 of 1980, section 8 of Act 84 of 1987 and section 17 of Act 59 of 1990

27. Section 37 of the principal Act is hereby amended—

- (a) by the substitution for paragraph (e) of subsection (4) of the following paragraph:

“(e) Any such mineral oil product used in such mixing or blending shall be deemed to consist entirely of imported goods unless it is proved [to the satisfaction of the Commissioner] that it consists entirely of excisable goods or it is proved [to his satisfaction] that it contains such a small proportion of imported goods that [he] the Commissioner considers it negligible, in which event such mineral oil product shall be deemed to consist entirely of excisable goods.”; and

- (b) by the substitution for subsections (6) and (7) of the following subsections, respectively:

“(6) If [the Commissioner is satisfied that] any goods to which this Act relates have become mixed by an act or omission which by the exercise of reasonable care could not have been avoided, [he] the Commissioner may apply the provisions of subsection (2), in so far as that subsection relates to the duty payable and any rebate of duty, as if such goods were mixed in a customs and excise storage warehouse with his permission.

(7) Notwithstanding anything to the contrary in this Act contained, the Commissioner may, subject to such conditions as he may in each case impose, regard the mixing of mineral oil products of different classes or kinds as a result of transport by pipeline (except a pipeline used in connection with the loading or discharge of ships or vehicles) or the mixing of imported and locally manufactured mineral oil products of the same class or kind in the ordinary course of transport or storage or distribution in the Republic as not constituting manufacture of a new product, provided the quantities of the constituent products entered before they became so mixed are separately accounted for [to his satisfaction].”.

Amendment of section 38 of Act 91 of 1964, as amended by section 1 of Act 57 of 1966, section 13 of Act 105 of 1969, section 5 of Act 71 of 1975, section 4 of Act 105 of 1976, section 15 of Act 98 of 1980, section 2 of Act 89 of 1983, section 9 of Act 84 of 1987 and section 18 of Act 59 of 1990

28. Section 38 of the principal Act is hereby amended—

- (a) by the substitution in paragraph (a) of subsection (3) for the words preceding subparagraph (i) of the following words:

“Every exporter of any goods shall, before such goods are exported from the Republic, deliver, during the hours of any day prescribed by [regulation] rule, to the Controller a bill of entry in the prescribed form, but the Commissioner may—”;

- (b) by the substitution in subsection (3) for subparagraph (i) of paragraph (b) of the following subparagraph: 5

“(i) in the case of goods to be exported in a ship, at the time when such goods are delivered to the [South African Transport Services] port authority, a depot operator, the master of the ship concerned or a container operator, as the case may be;”;

- (c) by the substitution in subsection (3) for subparagraph (iii) of paragraph (b) of the following subparagraph: 10

“(iii) in the case of goods to be exported in a train, at the time when such goods are delivered to the [South African Transport Services] railway authority;”;

- (d) by the substitution for paragraph (a) of subsection (4) of the following paragraph: 15

“(a) The [Minister] Commissioner may by [regulation] rule permit any excisable goods or fuel levy goods and any class or kind of imported goods, which he may specify by [regulation] rule, to be removed from a customs and excise warehouse on the issuing by the owner of such goods of a prescribed certificate or an invoice or other document prescribed or approved by the Commissioner, and the payment of duty on such goods at a time and in a manner specified by [regulation] rule, and such certificate, invoice or other document, shall for the purposes of section 20(4), and subject to the provisions of section 39(2A), be deemed to be a due entry from the time of removal of those goods from the customs and excise warehouse.” 20 25

Amendment of section 39 of Act 91 of 1964, as amended by section 1 of Act 85 of 1968, section 14 of Act 105 of 1969, section 1 of Act 93 of 1978, section 4 of Act 110 of 1979, sections 8 and 15 of Act 98 of 1980, section 10 of Act 84 of 1987, section 3 of Act 69 of 1988 and section 19 of Act 59 of 1990 30

29. Section 39 of the principal Act is hereby amended—

- (a) by the substitution for paragraph (a) of subsection (1) of the following paragraph: 35

“(a) The person entering any imported goods for any purpose in terms of the provisions of this Act shall deliver, during the hours of any day prescribed by [regulations] rule, to the Controller a bill of entry in the prescribed form, setting forth the full particulars as indicated on the form and as required by the Controller, and according to the purpose (to be specified on such bill of entry) for which the goods are being entered, and shall make and subscribe to a declaration in the prescribed form, as to the correctness of the particulars and purpose shown on such bill of entry.”;

- (b) by the substitution for paragraph (c) of subsection (1) of the following paragraph: 40 45

“(c) The said person shall further produce the transport document or such other document in lieu thereof as may be approved by the Commissioner, invoices as prescribed; shipper’s statement of expenses incurred by him, copy of the confirmation of sale or other contract of purchase and sale, importer’s written clearing instructions, unless exempted by rule, and such other documents relating to such goods as the Controller may require in each case and answer all such questions relating to such goods as may be put to him by the Controller, and furnish in such manner as the Commissioner may determine such information regarding the tariff classification of such goods as the Commissioner may require.”; and 50 55

- (c) by the substitution for paragraph (a) of subsection (2A) of the following paragraph:

“(a) Any person who removes goods from a customs and excise warehouse by means of the issuing of a certificate, invoice or other document referred to in section 38(4) shall present to the [Commissioner] Controller a validating bill of entry in the prescribed form at the time and in the manner specified by [regulation] rule in respect of any such certificate, invoice or other document, and shall pay at the prescribed time to the [Commissioner] Controller the duty due on the goods to which such certificate, invoice or other document relates.”

Amendment of section 40 of Act 91 of 1964, as amended by section 9 of Act 95 of 1965, section 6 of Act 71 of 1975, section 5 of Act 105 of 1976, section 2 of Act 93 of 1978, section 15 of Act 98 of 1980, section 4 of Act 86 of 1982, section 3 of Act 89 of 1983, section 11 of Act 84 of 1987 and section 4 of Act 68 of 1989

30. Section 40 of the principal Act is hereby amended by the substitution in paragraph (a) of subsection (3) for the words preceding subparagraph (i) of the following words: “Subject to the provisions of sections 76 and 77 and on such conditions as the Commissioner may impose and on payment of such fees as [the Minister] he may prescribe by [regulation] rule—”

Amendment of section 41 of Act 91 of 1964, as substituted by section 2 of Act 85 of 1968 and amended by section 15 of Act 105 of 1969, section 6 of Act 112 of 1977, section 3 of Act 93 of 1978, section 15 of Act 98 of 1980, section 5 of Act 86 of 1982, section 12 of Act 84 of 1987 and section 20 of Act 59 of 1990

31. Section 41 of the principal Act is hereby amended—

(a) by the substitution for subsections (1) and (2) of the following subsections, respectively:

“(1) The exporter of any goods imported into or exported from the Republic or the owner of any excisable goods or fuel levy goods manufactured in any customs and excise warehouse shall render a true, correct and sufficient invoice, certificate of value and certificate of origin of such goods in such form and declaring such particulars of such goods as may be prescribed in the [regulations] rules and as may be necessary to make a valid entry of such goods and shall furnish such additional information in connection with such invoice, certificate, particulars or goods as the Commissioner may, for the purpose of this Act, require at any time: Provided that different requirements may be prescribed in the [regulations] rules in respect of invoices and certificates relating to goods of different classes or kinds or goods to which different circumstances specified in the [regulations] rules apply.

(2) Every exporter or manufacturer shall allocate to any goods of a class or kind specified in the [regulations] rules for the purposes of this subsection and exported to or from or manufactured in the Republic [after a date specified by the Minister by notice in the Gazette] a distinctive and permanent identification number, code, description, character or other mark in such manner and in accordance with such method as may be prescribed in the [regulations] rules and [from the day immediately after such date] such number, code, description, character or other mark shall be quoted or reproduced in all prescribed invoices relating to such goods and in all such other documents relating to such goods as may be specified in the [regulations] rules.”; and

(b) by the substitution for the proviso to subsection (3) of the following proviso: “Provided that the Commissioner may [in his discretion] refuse to act

upon the result of any such examination or analysis if the particulars in such invoice are thereby proved to be incorrect.”

Amendment of section 43 of Act 91 of 1964, as amended by section 6 of Act 105 of 1976, section 7 of Act 112 of 1977 and section 6 of Act 86 of 1982

32. Section 43 of the principal Act is hereby amended— 5

(a) by the substitution for subsection (1) of the following subsection:

“(1) If entry of any imported goods has not been made under the provisions of section 38, [the Controller may] on expiry of the period prescribed in subsection (1) of the said section, [require] the master or other person who [brought the] has physical control of such goods [into the Republic to] shall remove them to the State warehouse or other place indicated by the Controller or the controller may himself so remove them.”; 10

(b) by the substitution for paragraph (a) of subsection (2) of the following paragraph: 15

“(a) The [Commissioner] Controller may at any time after the expiry of such prescribed period call upon the importer to make due entry of the goods within a time specified and if such importer fails to do so the goods shall be liable to forfeiture.”;

(c) by the substitution in subsection (3) for the words preceding the proviso of the following words: 20

“If after the expiration of three months from the date of removal to the State warehouse or other place indicated by the Controller or, where no such removal has taken place, from the date of expiry of the period prescribed in section 38(1), any goods remain unentered, the [Commissioner] Controller may cause them to be sold, and if so sold the proceeds thereof shall be applied in discharge of any duty, expenses incurred by the Office, charges due to the Office, [the Railway Administration] a port or railway authority, the Department of Transport, a container operator or a depot operator, and freight, and the overplus, if any, shall, unless [the Commissioner is satisfied that] such goods were imported in contravention of any law, upon application be paid to the owner of the said goods”; and 25

(d) by the substitution for paragraph (b) of subsection (3) of the following paragraph: 30

“(b) if the goods cannot be sold at a price regarded by the Commissioner as reasonable, they may [in his discretion] be appropriated by him to the State; and”.

Amendment of section 44 of Act 91 of 1964, as amended by section 10 of Act 95 of 1965, sections 1 and 5 of Act 57 of 1966, section 16 of Act 105 of 1969, section 7 of Act 71 of 1975, section 8 of Act 112 of 1977, section 5 of Act 110 of 1979, section 15 of Act 98 of 1980, section 3 of Act 89 of 1984, section 5 of Act 52 of 1986, section 13 of Act 84 of 1987, section 21 of Act 59 of 1990 and section 3 of Act 98 of 1993 40

33. Section 44 of the principal Act is hereby amended—

(a) by the substitution for the proviso to subsection (1) of the following proviso: 45

“Provided that, subject to the provisions of subsection (7), any such liability shall cease if it is proved [to the satisfaction of the Commissioner] that such goods (excluding, save in so far as the [regulations] rules otherwise provide, goods which are missing from any individual package and in respect of which any customs duty, surcharge or fuel levy, each taken separately, does not exceed twenty-five rand) were not landed at any place in the Republic.”; and 50

(b) by the substitution for subsection (3) of the following subsection:

“(3) The master of a ship or pilot of an aircraft or carrier of goods by means of any other vehicle shall be liable for the duty on all goods which are removed from that ship, aircraft or vehicle at a place in the Republic 55

to which they are not consigned, and such liability shall continue until the goods have been duly entered or otherwise accounted for [to the satisfaction of the Commissioner].”.

Substitution of section 44A of Act 91 of 1964, as inserted by section 14 of Act 84 of 1987

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34. The following section is hereby substituted for section 44A of the principal Act:

“Joint and several liability for duty or certain amounts

44A. Subject to the provisions of sections 36A(2)(b)(i) and 99(2)(b), whenever in terms of this Act liability for duty or any amount demanded under section 88(2)(a) devolves on two or more persons, each such person shall, unless he [satisfies the Commissioner] proves that his relevant liability has ceased in terms of this Act, be jointly and severally liable for such duty or amount, any one paying, the other or others to be absolved *pro tanto*.”.

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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, section 6 of Act 101 of 1985 and section 1 of Act 61 of 1992

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35. Section 45 of the principal Act is hereby amended by the substitution for paragraph (b) of subsection (2) of the following paragraph:

“(b) goods imported otherwise shall be deemed to be the time when the bill of entry concerned is delivered to the Controller in terms of section 39(1)(a) and at a place indicated by the Controller, irrespective of whether that bill of entry is returned by the Controller in order to be adjusted as required by the Controller, provided it is redelivered, so adjusted, to the Controller within five days calculated as prescribed by rule, after the day on which it was so returned by the Controller.”.

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Amendment of section 46 of Act 91 of 1964, as amended by section 5 of Act 68 of 1989 and section 2 of Act 61 of 1992

36. Section 46 of the principal Act is hereby amended—

(a) by the substitution for subsections (1) and (2) of the following subsections, respectively:

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“(1) For the purposes of this Act [(excluding Chapters VI and IX)] goods shall not be regarded as having been produced or manufactured in any particular territory unless—

(a) at least twenty-five per cent (or such other percentage as may be determined under subsection (2), (3) or (4)), of the production cost of those goods, determined in accordance with the [regulations] rules, is represented by materials produced and labour performed in that territory;

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(b) the last process in the production or manufacture of those goods has taken place in that territory; and

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(c) such other processes as the [Minister] Commissioner may, [on the recommendation] at the request of the Board on Tariffs and Trade by [regulation] rule 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.

45

(2) The [Minister] Commissioner may from time to time, [on the recommendation] at the request of the Board on Tariffs and Trade, by [regulation] rule increase the percentage prescribed in subsection (1), in regard to any class or kind of imported goods, or in regard to any class or kind of such goods from a particular territory, to which that subsection applies.”; and

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(b) by the deletion of subsection (5).

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 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, section 22 of Act 59 of 1990 and section 3 of Act 61 of 1992 5

37. Section 47 of the principal Act is hereby amended by the substitution in the proviso to subsection (1) for the words preceding paragraph (a) of the following words: 10
 “Provided that the Commissioner may [in his discretion] condone any underpayment of such duty where the amount of such underpayment in the case of—”.

Amendment of section 47A of Act 91 of 1964, as inserted by section 7 of Act 101 of 1985 and substituted by section 4 of Act 98 of 1993

38. Section 47A of the principal Act is hereby amended by the deletion of subsection (2). 15

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, section 23 of Act 59 of 1990, section 4 of Act 61 of 1992 and section 3 of Act 19 of 1994 20

39. Section 48 of the principal Act is hereby amended—

(a) by the substitution in subsection (2A) for subparagraph (ii) of paragraph (a) of the following subparagraph:

“(ii) The Director-General: Trade and Industry or the Commissioner may [in his discretion] at any time cancel, amend or suspend any withdrawal referred to in subparagraph (i).”; and 25

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

“(a) Whenever [the Minister is satisfied that] any amendment made under this section has an effect which was not foreseen or intended, [he] the Minister may, whether or not such amendment has ceased to have effect as such or has lapsed under subsection (6), after consultation with the Minister of Trade and Industry [and for Economic Co-ordination] by further notice in the *Gazette*, adjust such amendment, 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.”. 30 35

Repeal of section 48A of Act 91 of 1964

40. Section 48A of the principal Act is hereby repealed. 40

Amendment of section 52 of Act 91 of 1964, as inserted by section 24 of Act 59 of 1990

41. Section 52 of the principal Act is hereby amended by the substitution for paragraph (a) of the following paragraph:

“(a) Notwithstanding anything to the contrary in this Act contained, any fuel levy goods which are removed to the territory of a party to any customs union agreement concluded in terms of section 51 or brought into the Republic from any such territory, shall, if a fuel levy has not been imposed by such party, be deemed to be goods exported from and goods imported into the Republic, respectively, and the provisions of this Act relating to the exportation from and importation of goods 50

into the Republic shall, subject to such arrangements as the Commissioner [in his discretion] may determine, apply to those goods until such time as such fuel levy is imposed by that party as provided in this Act.”.

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, section 20 of Act 84 of 1987, section 6 of Act 61 of 1992 and section 5 of Act 19 of 1994 5

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

“If [the Minister is satisfied that] the government of any territory has—

- (a) imposed directly or indirectly on any goods wholly or partly produced or manufactured in the Republic any duty, charge or restriction which is not imposed upon like goods produced or manufactured in any third territory; or
- (b) discriminated against the commerce of the Republic in such a manner as to place it at a disadvantage in comparison with the commerce of any third territory,

[he] the Minister may in order to give effect to any recommendation of the 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 —”.

Amendment of section 54 of Act 91 of 1964, as substituted by section 13 of Act 112 of 1977

43. Section 54 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) The [Minister] Commissioner may by [regulation] rule prescribe the sizes and types of containers in which cigarettes may be imported into the Republic.”.

Amendment of section 60 of Act 91 of 1964, as substituted by section 20 of Act 105 of 1969 and amended by section 11 of Act 86 of 1982, section 25 of Act 59 of 1990 and section 9 of Act 19 of 1994

44. Section 60 of the principal Act is hereby amended by the substitution for subsection (2) of the following subsection:

“(2) The Commissioner may, subject to an appeal to the Minister, [whose decision shall be final—

- (a)] refuse any application for a new licence or
- [(b)] refuse any application for a renewal of any licence or cancel or suspend for a specified period any licence if the applicant or the holder of such licence, as the case may be—
 - [(i)] (a) has contravened or failed to comply with the provisions of this Act; or
 - [(ii)] (b) has been convicted of an offence under this Act [or has incurred a penalty under section 91 (1)]; or
 - [(iii)] (c) has been convicted of an offence involving dishonesty.”.

Amendment of section 63 of Act 91 of 1964, as amended by section 9 of Act 57 of 1966 and section 4 of Act 98 of 1970

45. Section 63 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) No person shall own or have in his possession or under his control any still except under a licence prescribed in Schedule No. 8 and subject to the [regulations] rules: Provided that the Commissioner may [subject to such conditions as he may impose] by rule exempt from all or any of the provisions of this subsection—

- (a) any licensed still maker in so far as any still manufactured or imported by him for sale and in his possession is concerned; or

- (b) any person in so far as any still is concerned which he has proved to the [satisfaction of the] Commissioner is in his possession solely as a curiosity or ornament or is used solely for any such purpose as the Commissioner may [subject to the regulations, authorize] specify by rule.”

Amendment of section 64B of Act 91 of 1964, as inserted by section 19 of Act 112 of 1977 5

46. Section 64B of the principal Act is hereby amended by the substitution for subsection (2) of the following subsection:

- “(2) The Commissioner may, subject to such conditions as he may [in each case impose] prescribe by rule, license any person applying therefor and approved by him, as a clearing agent for making entry of or delivering a bill of entry relating to, goods on behalf of an importer or exporter of goods, as the case may be.” 10

Insertion of section 64C in Act 91 of 1964

47. The following section is hereby inserted in the principal Act after section 64B:

“Licence to search wreck or to search for wreck” 15

64C. (1) No person shall search any wreck or search for any wreck unless he is licensed with the Commissioner to do so and has furnished such security as the Commissioner may require.

(2) The Commissioner may by rule prescribe the circumstances under which and the conditions on which a licence may be issued to any person entitling him to search or to search for any wreck, but no such licence shall give the holder thereof the exclusive right to search or to search for any particular wreck.” 20

Amendment of section 65 of Act 91 of 1964, as substituted by section 13 of Act 86 of 1982 and amended by section 8 of Act 101 of 1985, section 8 of Act 52 of 1986 and section 9 of Act 68 of 1989 25

48. Section 65 of the principal Act is hereby amended by the substitution for paragraph (a) of subsection (4) of the following paragraph:

- “(a) If [in the opinion of the Commissioner] the transaction value of any imported goods cannot be ascertained in terms of section 66 or has been incorrectly ascertained by the importer, the Commissioner may determine a value, which shall, subject to a right of appeal to the court, be deemed to be the value for customs duty purposes of the goods.” 30

Amendment of section 66 of Act 91 of 1964, as substituted by section 14 of Act 86 of 1982 and amended by section 5 of Act 69 of 1988, section 10 of Act 68 of 1989 and section 26 of Act 59 of 1990 35

49. Section 66 of the principal Act is hereby amended—

- (a) by the substitution for paragraph (c) of subsection (2) of the following paragraph:

“(c) Every importer of goods which are not exempted by [regulation] rule shall, when making entry of the goods, declare, in the manner prescribed by [regulation] rule, whether or not he is related to the supplier of the goods within the meaning of this section.” 40

- (b) by the substitution for paragraph (a) of subsection (3) of the following paragraph: 45

“(a) [in the opinion of the Commissioner] such relationship did not influence the price paid or payable; or”;

- (c) by the substitution in paragraph (b) of subsection (3) for the words preceding subparagraph (i) of the following words: 50

“the importer proves [to the satisfaction of the Commissioner] that the transaction value closely approximates to one of the following values, namely—”; and

- (d) by the substitution for subsection (10) of the following subsection:

“(10) For the purposes of subsection (7)(a)(ii) or (8)(d), goods which are exported to the Republic from any country but pass in transit through another country shall, subject to any conditions which may be prescribed by [regulation] rule, be deemed to have been exported direct from the first-mentioned country.” 5

Amendment of section 67 of Act 91 of 1964, as inserted by section 15 of Act 86 of 1982 and amended by section 6 of Act 69 of 1988, section 11 of Act 68 of 1989 and section 27 of Act 59 of 1990

50. Section 67 of the principal Act is hereby amended by the substitution for subsection (3) of the following subsection: 10

“(3) For the purposes of subsection (1)(e) or (2)(a), goods which are exported to the Republic from any country but pass in transit through another country shall, subject to such conditions as may be prescribed by [regulation] rule, be deemed to have been exported direct from the first-mentioned country.”

Substitution of section 73 of Act 91 of 1964, as substituted by section 9 of Act 110 of 1979 15

51. The following section is hereby substituted for section 73 of the principal Act:

“Currency conversion

73. (1) When the value of or the price paid or payable for any imported goods is expressed in a foreign currency, it shall, for the purpose of calculating the customs value thereof, be converted into the currency of the Republic at the selling rate at the date of shipment of the goods as determined by the Commissioner, in consultation with the South African Reserve Bank, or if no such rate is determined for such date, the latest rate determined before that date shall be used. 20 25

(2) For the purposes of subsection (1) the date of shipment of—
 (a) non-containerized goods shall be the date of the bill of lading, air waybill, consignment note or such other document as the Commissioner may require;
 (b) containerized goods shall be the date on which the container is taken on board ship as endorsed on the bill of lading or arrival notification or, if imported otherwise than by sea, the date of the airway bill, consignment note or such other document as the Commissioner may require.” 30

Amendment of section 74 of Act 91 of 1964, as amended by section 25 of Act 112 of 1977 and section 17 of Act 86 of 1982 35

52. Section 74 of the principal Act is hereby amended by the substitution for subsection (2) of the following subsection:

“(2) The [Minister] Commissioner may by [regulation] rule exempt, to the extent specified in the [regulations] rules, any class or kind of such goods or any such goods to which circumstances so specified apply, from the provisions of subsection (1).” 40

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 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, section 29 of Act 59 of 1990, section 13 of Act 61 of 1992, section 7 of Act 98 of 1993 and section 10 of Act 19 of 1994 45 50

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

- (a) by the substitution in subsection (1) for subparagraph (ii) of paragraph (f) of the following subparagraph:
- “(ii) notwithstanding the provisions of subparagraph (i), the Commissioner may **[in his discretion]** investigate any such purchase or use to establish whether such fuel has been duly entered or is deemed to have been duly entered in terms of this Act or has been so used and may refuse to allow or pay any such refund if he is not satisfied that such fuel has been so entered or used;” 5
- (b) by the deletion of paragraph (g) of subsection (1);
- (c) by the substitution for paragraph (a) of subsection (1A) of the following paragraph: 10
- “(a) Notwithstanding anything to the contrary in this Act contained, the Commissioner may, **[in his discretion and]** subject to such conditions, including conditions as to the registration of the person concerned, as he may in each case impose, allow in respect of any refund referred to in subsection (1)(f)(i) any person to grant a provisional refund of duty and fuel levy to any registered user of distillate fuel who purchases such fuel from that person.”; 15
- (d) by the substitution in subsection (1A) for subparagraph (i) of paragraph (g) of the following subparagraph: 20
- “(i) Any user who has been granted such a provisional refund shall, in relation to the actual use by him of the fuel concerned, furnish the Commissioner at such times as may be prescribed **[by regulation] in the notes to item 609.00**, with a declaration in such form and supported by such documents as may be prescribed **[by regulation] in such notes**.”; 25
- (e) by the substitution in subsection (1A) for subparagraph (i) of paragraph (h) of the following subparagraph:
- “(i) If **[the Commissioner is satisfied after considering the said declaration that]** the provisional refund granted to the user concerned either exceeds or falls short of any amount refundable in terms of item 533.01 or 540.02 of Schedule No. 5 or item 609.05.10 or 640.03 of Schedule No. 6, such excess shall be paid by that user upon demand by the Commissioner and any shortfall shall be refunded by the Commissioner to him .”;
- (f) by the substitution in subsection (2) for subparagraph (iii) of paragraph (b) of the following subparagraph: 35
- “(iii) elsewhere in any other activity which the Commissioner may **[in his discretion]** approve for the purposes of this subparagraph;”;
- (g) by the substitution for paragraphs (b), (c), (d) and (e) of subsection (4A) of the following paragraphs, respectively: 40
- “(b) (i) Any application for refund of such duty or levy shall be in such form and shall declare such particulars and be supported by such documents and shall be for such quantities and for such periods as may be prescribed **[by regulations] in the notes to item 609.00**.
- (ii) Any seller of such fuel shall furnish any such user with an invoice reflecting the particulars, and shall keep a copy of such invoice for such time, as may be prescribed **[by regulation] in the notes to item 609.00**. 45
- (c) Any registered user shall complete and keep such books, accounts and documents and furnish at such times such particulars of the ship, vehicle, machinery or other equipment in which such fuel is used or any other particulars as may be prescribed **[by regulation] in the notes to item 609.00**. 50
- (d) Notwithstanding anything to the contrary in this Act contained, any user of such fuel who has been granted such refund and who fails to forthwith furnish an officer at his request with the books, accounts and documents required **[by regulation] in the notes to item 609.00** to be completed and kept in respect of the use of any distillate fuel purchased 55

by him shall be deemed to have used such distillate fuel for a purpose or use other than a purpose or use stated in the items of Schedule No. 5 or 6 referred to in paragraph (a) and the use declared in the relevant application for refund and shall pay on demand to the Commissioner the full amount of any refund granted to him in respect of such fuel or such portion thereof as the Commissioner may **[in his discretion]** determine, during a period of two years prior to the date of such request by such officer, failing which such amount or such portion shall be recoverable in terms of this Act as if it were the duty or levy concerned. 5

(e) The Commissioner may refuse to register, as provided in paragraph (a), any person mentioned in that paragraph, or cancel such registration, if such person fails to complete, keep or furnish such accounts, books or documents as may be prescribed **[by regulation]** in the notes to item 609.00, or claims or receives any refund or payment to which he is not entitled in terms of the said items of Schedule No. 5 or 6.”; 10 15

(h) by the substitution in subsection (5) for the second proviso to subparagraph (i) of paragraph (a) of the following proviso:

“Provided further that the Commissioner may **[in his discretion]** permit any duty paid on entry of such goods under rebate to be deducted from any duty for which any person becomes liable in terms of this paragraph.”; 20

(i) by the substitution in subsection (5) for the words preceding the proviso to paragraph (b) of the following words:

“Any person to whom any distillate fuel or residual fuel oil has been supplied from stocks which have been entered under rebate of duty for a purpose stated in the item under which such distillate fuel or residual fuel oil was so entered, and who applies such distillate fuel or residual fuel oil or any portion thereof for any other purpose, shall be guilty of an offence and shall, notwithstanding the provisions of paragraph (a), be liable for the duty to the extent of the rebate allowed on entry for home consumption of such distillate fuel or residual fuel oil on the full quantity of the distillate fuel or residual fuel oil so supplied to him or on such portion thereof as the Commissioner may **[in his discretion]** determine”; 25 30

(j) by the substitution in subsection (10) for the words preceding the proviso to paragraph (a) of the following words: 35

“No goods may be entered or acquired under rebate of duty **[under this section or the regulations]** until the person so entering or acquiring them has furnished such security as the Commissioner may require and has complied with such other conditions (including registration with the Commissioner of his premises and plant) as may be prescribed by **[the Minister by regulation]** rule or in the notes to Schedule No. 3, 4 or 6 in respect of any goods specified in any item of **[Schedule No. 3, 4 or 6]** such Schedule”; 40

(k) by the substitution for subsection (13) of the following subsection: 45

“(13) If **[the Commissioner is of the opinion that]** any goods, not being a spirituous beverage, manufactured from spirits under rebate of excise duty in terms of any formula approved by **[him]** the Commissioner under any item of Schedule No. 6, are used as a beverage, he may forthwith revoke his approval of such formula.”; 50

(l) by the substitution in subsection (14) for the proviso to subparagraph (i) of paragraph (b) of the following proviso:

“Provided that no refund shall be paid if the quantity of distillate fuel to which the application for such refund relates is less than such quantity as may be prescribed **[by regulation]** in the notes to item 609.00; and”; 55

(m) by the deletion of subsection (14A);

- (n) by the substitution for paragraphs (a) and (b) of subsection (14B) of the following paragraphs, respectively:

“(a) **[Subject to the provisions of subsection (14A), any]** Any Minister, other than the Minister of Finance, any Director-General mentioned in the second column of Schedule 1 to the **[Public Service Act, 1984 (Act No. 111 of 1984)]** **Public Service Act, 1994 (Proclamation No. 103 of 1994)**, and designated by such Minister, or any official of any institution involved, or the Commissioner, may, in respect of goods which may, in terms of any item of Schedule No. 3, 4, 5 **[and] or 6**, be entered under rebate of duty or be subject to a drawback or a refund of duty, issue, subject to such conditions as such Minister, Director-General or official or the Commissioner may specify, with or without retrospective effect, a permit or certificate authorizing entry of those goods under rebate of duty, or authorizing a drawback or a refund of duty in accordance with the provisions of the item concerned, provided **[the Commissioner is satisfied in respect of the goods concerned]** where the permit or certificate concerned is issued with retrospective effect, **[that]** the provisions of such item and such conditions have been complied with.

(b) **[The provisions of subsection (14A)(b) shall apply *mutatis mutandis* in respect of any permit or certificate referred to in paragraph (a) of this subsection]** For the purposes of section 40(3)—

- (i) any bill of entry passed in relation to goods in respect of which a permit or certificate is issued under paragraph (a), shall be deemed to have been passed in error by reason of duty having been paid on goods intended for purposes or use under rebate of duty under this section;
- (ii) the goods in respect of which such a permit or certificate is issued, shall be deemed to have qualified at the time duty was paid on such goods, in all respects for rebate; and
- (iii) the duty paid on the goods concerned, shall be deemed to have been paid on the date on which the permit or certificate referred to in paragraph (a) was issued.”;

- (o) by the substitution for paragraph (bA) of subsection (18) of the following paragraph:

“(bA) in the case of unpacked excisable spirits intended for export and which are removed in bond from a customs and excise manufacturing warehouse for temporary storage in a customs and excise warehouse approved for that purpose, such percentage, but not exceeding 1,25 per cent, of the quantity so removed as may **[in the opinion of the Commissioner]** represent a loss incurred while the spirits in question are so removed and stored for such period as the Commissioner may determine.”;

- (p) by the substitution for paragraphs (dA) and (e) of subsection (18) of the following paragraphs, respectively:

“(dA) in the case of imported petroleum naphtha entered for use as fuel in the manufacture of ammonia, such percentage, but not exceeding 0,25, of any quantity so entered as may **[in the opinion of the Commissioner]** represent a loss by evaporation;

(e) in the case of imported or excisable petrol, distillate fuels or residual fuel oils, such percentage of any quantity removed in bond unpacked by ship from one place in the Republic to another place in the Republic, as the **[Minister] Commissioner** may determine, or, where no such percentage has been so determined, a percentage equal to the full net loss incurred while the goods in question are so removed.”; and

- (q) by the substitution for subsection (21) of the following subsection:

“(21) Except with the permission of the Commissioner, which shall only be granted in circumstances which he considers to be exceptional

and subject to such conditions as he may impose in each case, any goods entered under any item of Schedule No. 3, 4 or 6 for manufacturing purposes or such other purpose as may be specified in the **[regulations] notes to such item** shall be used for the purpose specified in such item at the time of such entry, or such other purpose, within five years from the date of such entry.”. 5

Amendment of section 76 of Act 91 of 1964, as substituted by section 30 of Act 59 of 1990 and amended by section 5 of Act 105 of 1992

54. Section 76 of the principal Act is hereby amended—

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

“(1) No refund of any duty or other charge in respect of imported goods, excisable goods, surcharge goods or fuel levy goods, other than a refund provided for under section 75 or 77, shall be paid or granted except in accordance with the provisions of this section **[and the regulations]**.”; and 15

(b) by the substitution in subsection (4) for the words preceding paragraph (a) of the following words:

“No application for a refund or payment in terms of this section shall be considered by the Commissioner unless it is received by the Controller, duly completed and in the form as may be prescribed by rule and supported by the necessary documents and other evidence to prove that such refund or payment is due under this section, within a period of two years—”. 20

Amendment of section 77 of Act 91 of 1964, as substituted by section 31 of Act 59 of 1990 25

55. Section 77 of the principal Act is hereby amended by the substitution in paragraph (a) for the words preceding subparagraph (i) of the following words:

“A licensee of a customs and excise warehouse who, in terms of the **[regulations] rules**, is permitted to pay any duty monthly or quarterly, and who—”.

Amendment of section 79 of Act 91 of 1964, as amended by section 2 of Act 64 of 1974, section 11 of Act 52 of 1986 and section 7 of Act 105 of 1992 30

56. Section 79 of the principal Act is hereby amended by the deletion of paragraph (c) of subsection (1).

Substitution of section 85 of Act 91 of 1964, as substituted by section 4 of Act 68 of 1973 and amended by section 16 of Act 52 of 1986 and section 12 of Act 105 of 1992 35

57. The following section is hereby substituted for section 85 of the principal Act:

“Beer of higher alcoholic strength than indicated on container

85. Any manufacturer of beer in whose customs and excise warehouse or on whose delivery vehicle beer packed for sale in the common customs area is found [of a relative density before fermentation higher or lower than such relative density specified in the subitem of tariff item 104.10 registered in terms of section 36(4) in relation to beer of the name indicated on the container of beer so found] of an alcoholic strength by volume of more than 0,5 per cent higher than such strength registered and indicated on the container in terms of section 36 shall be guilty of an offence and liable on conviction to a fine not exceeding R8 000 or treble the value of the goods in respect of which such offence was committed, whichever is the greater, or to imprisonment for a period not exceeding two 40 45

years, or to both such fine and such imprisonment, and the goods in respect of which such offence was committed shall be liable to forfeiture.”.

Amendment of section 86 of Act 91 of 1964, as substituted by section 11 of Act 85 of 1968 and amended by section 17 of Act 52 of 1986 and section 13 of Act 105 of 1992

58. Section 86 of the principal Act is hereby amended by the substitution for paragraph (h) of the following paragraph: 5

“(h) contravenes or fails to comply with the provisions of section 101 or of any [regulation] rule made in terms of section 73 or 101.”.

Amendment of section 88 of Act 91 of 1964, as amended by section 12 of Act 85 of 1968, section 30 of Act 112 of 1977, section 15 of Act 98 of 1980, section 28 of Act 84 of 1987, section 15 of Act 68 of 1989 and section 10 of Act 98 of 1993 10

59. Section 88 of the principal Act is hereby amended by the substitution for paragraphs (c) and (d) of subsection (1) of the following paragraphs, respectively:

“(c) If such ship, vehicle, plant, material or goods are liable to forfeiture under this Act the Commissioner may [in his discretion] seize that ship, vehicle, plant, material or goods. 15

(d) The Commissioner may [in his discretion] seize any other ship, vehicle, plant, material or goods liable to forfeiture under this Act.”.

Amendment of section 91 of Act 91 of 1964, as amended by section 14 of Act 85 of 1968, section 12 of Act 105 of 1976, section 15 of Act 98 of 1980 and section 29 of Act 84 of 1987 20

60. Section 91 of the principal Act is hereby amended—

(a) by the substitution in subsection (1) for subparagraph (i) of paragraph (a) of the following subparagraph:

“(i) has [in the opinion of the Commissioner] contravened any provision of this Act or failed to comply with any such provision with which it was his duty to comply; and”;

(b) by the substitution for subsection (2) of the following subsection:

“(2) There shall be a right of appeal to the Minister from any determination or order of the Commissioner under subsection (1), whereby a penalty exceeding R1 000 is imposed, provided such right is exercised within a period of three months from the date of such determination or order [and the Minister’s decision on any such appeal shall be final].”.

Amendment of section 92 of Act 91 of 1964, as amended by section 11 of Act 98 of 1993 35

61. (1) Section 92 of the principal Act is hereby amended—

(a) by the substitution for the proviso to subsection (1) of the following proviso:

“Provided that the Commissioner may withhold a sum not exceeding one-third of any such fine, penalty or proceeds which he may then award to any person (including any officer) by whose means or information the fine or penalty or forfeiture was imposed or the seizure made.”;

(b) by the deletion of subsections (2) and (3).

(2) Subsection (1) shall be deemed to have come into operation on 9 July 1993. 45

Amendment of section 99 of Act 91 of 1964, as amended by section 15 of Act 95 of 1965, section 17 of Act 85 of 1968, section 7 of Act 98 of 1970, section 34 of Act 112 of 1977, section 12 of Act 110 of 1979 and section 24 of Act 86 of 1982

62. Section 99 of the principal Act is hereby amended—

- (a) by the substitution in the proviso to paragraph (a) of subsection (2) for the words preceding paragraph (i) of the following words:
 “Provided that such agent or person shall cease to be so liable if he proves **[to the satisfaction of the Commissioner]** that—”;
- (b) by the substitution in subsection (3) for the words preceding the proviso of the following words: 5
 “Every shipping and forwarding agent and every agent acting for the master of a ship or the pilot of an aircraft and any other class of agent which the **[Minister] Commissioner** may by **[regulation] rule** specify shall, before transacting any business with the department, and any class of carrier of goods to which this Act relates which the **[Minister] Commissioner** may by **[regulation] rule** specify shall, before conveying any such goods, give such security as the Commissioner may from time to time require for the due observance of the provisions of this Act”;
- (c) by the substitution in the proviso to paragraph (a) of subsection (4) for the words preceding paragraph (i) of the following words: 10
 “Provided that any such agent shall cease to be so liable if he proves **[to the satisfaction of the Commissioner]** that—”; and
- (d) by the substitution in paragraph (b) of subsection (4) for the words preceding the proviso of the following words: 15
 “Every agent of a class referred to in paragraph (a) and specified in the **[regulations] rules** for the purposes of this paragraph shall register himself with the Commissioner and furnish such security as the Commissioner may from time to time require for the due observance of the provisions of this Act”. 20
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Amendment of section 101 of Act 91 of 1964, as substituted by section 18 of Act 85 of 1968 and amended by section 12 of Act 98 of 1980

63. Section 101 of the principal Act is hereby amended—

- (a) by the substitution for paragraph (a) of subsection (1) of the following paragraph: 30
 “(a) Any person carrying on any business in the Republic shall keep within the Republic in one of the official languages such books, accounts and documents relating to his transactions as **[the Minister may prescribe in the regulations]** may be prescribed by rule and such books, accounts and documents shall be kept in such form and manner and shall be retained for such period as **[the Minister may so prescribe]** may be so prescribed.”; and 35
- (b) by the substitution in subsection (3) for the words preceding paragraph (a) of the following words: 40
 “The **[Minister] Commissioner** may by **[regulation] rule** prescribe—”.

Amendment of section 102 of Act 91 of 1964, as amended by section 16 of Act 95 of 1965, section 12 of Act 57 of 1966, section 19 of Act 85 of 1968, section 29 of Act 105 of 1969, section 35 of Act 112 of 1977, section 15 of Act 98 of 1980, section 12 of Act 101 of 1985, section 30 of Act 84 of 1987 and section 34 of Act 59 of 1990

64. Section 102 of the principal Act is hereby amended by the substitution for subsection (4) of the following subsection: 45

- “(4) If in any prosecution under this Act or in any dispute in which the State, the Minister or the Commissioner or any officer is a party, the question arises whether the proper duty has been paid or whether any goods or plant have been lawfully used, imported, exported, manufactured, removed or otherwise dealt with or in, or whether any books, accounts, documents, forms or invoices required by **[regulation] rule** to be completed and kept, exist or have been duly completed and kept or have been furnished to any officer, it shall be presumed that such duty has not been paid or that such goods or plant have not been lawfully used, imported, exported, manufactured, removed or otherwise dealt with or in, or that such books, 50
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accounts, documents, forms or invoices do not exist or have not been duly completed and kept or have not been so furnished, as the case may be, unless the contrary is proved.”.

Amendment of section 105 of Act 91 of 1964, as substituted by section 2 of Act 111 of 1991 5

65. Section 105 of the principal Act is hereby amended by the substitution in paragraph (c) for the words preceding subparagraph (i) of the following words: “the Commissioner may [in his discretion and] on such conditions as he may consider necessary—”.

Amendment of section 106 of Act 91 of 1964, as amended by section 30 of Act 105 of 1969 and section 35 of Act 59 of 1990 10

66. Section 106 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) An officer may on entry of any imported goods or during the manufacture of any excisable goods, or at any time after such entry or manufacture, take, without payment, from any person in possession of such imported goods or of any manufactured or partly manufactured excisable goods samples of such imported, manufactured or partly manufactured goods or of materials intended for the manufacture of excisable goods or of goods used under the provisions of Chapter X, for examination or for ascertaining the duties payable thereon or for such other purpose as the Commissioner [deems necessary] may prescribe by rule, and those samples shall be dealt with and accounted for in such manner as the Commissioner may direct.”. 15 20

Amendment of section 107 of Act 91 of 1964, as amended by section 20 of Act 85 of 1968, section 31 of Act 105 of 1969, section 11 of Act 93 of 1978 and section 6 of Act 89 of 1983 25

67. Section 107 of the principal Act is hereby amended by the substitution for paragraph (a) of subsection (2) of the following paragraph:

“(a) Subject to the provisions of this Act, the Commissioner shall not, except on such conditions, including conditions relating to security, as may be determined by him, allow goods to pass from his control until [he has satisfied himself that] the provisions of this Act or any law relating to the importation or exportation or transit carriage through the Republic of goods, have been complied with in respect of such goods, and the State or the Commissioner or any officer shall in no case be liable in respect of any claim arising out of the detention of goods pending the decision of the Commissioner or for the costs of such detention.”. 30 35

Amendment of section 109 of Act 91 of 1964, as amended by section 12 of Act 93 of 1978

68. Section 109 of the principal Act is hereby amended by the substitution in subsection (1) for the words preceding paragraph (a) of the following words: 40

“If [in the opinion of the Commissioner] it is necessary for the safeguarding of public health or for the safety of the public or the State, [he] the Commissioner may at any time, and at the expense and risk of the importer, exporter, owner, master or pilot concerned, according as the Commissioner may determine—”.

Substitution of section 110 of Act 91 of 1964, as amended by section 10 of Act 103 of 1972 45

69. The following section is hereby substituted for section 110 of the principal Act:

“Instruments and tables

110. (1) Except as elsewhere provided in this Act, the [Minister] Commissioner may by [regulation] rule prescribe the instruments, meters, gauges, and other appliances and the tables, formulae and other methods of calculation to be used in ascertaining the mass, quantity, strength, relative density, temperature, pressure or any other characteristics of any goods for the purposes of this Act. 5

(2) For calculating the full quantity of any goods which have been manufactured or used under the provisions of this Act, the [Minister] Commissioner may by [regulation] rule prescribe tables indicating the quantity of goods which shall be deemed to have been manufactured from any given quantity of any goods or the quantity of goods which shall be deemed to have been used in the manufacture of any given quantity of any goods manufactured therefrom.” 10

Amendment of section 112 of Act 91 of 1964, as amended by section 21 of Act 85 of 1968 15

70. Section 112 of the principal Act is hereby amended—

(a) by the substitution for subsection (3) of the following subsection:

“(3) Wreck found in or brought into the Republic may, at any time after it has come under the control of the [Commissioner] Controller, be disposed of by him in the manner set forth in section 43, but shall otherwise be subject to the provisions of this Act.”; and 20

(b) by the deletion of subsection (4).

Amendment of section 113 of Act 91 of 1964, as amended by section 17 of Act 95 of 1965, section 14 of Act 57 of 1966, section 11 of Act 103 of 1972, section 5 of Act 68 of 1973, section 49 of Act 42 of 1974, section 25 of Act 86 of 1982, section 7 of Act 89 of 1983, section 31 of Act 84 of 1987, section 17 of Act 68 of 1989, section 14 of Act 105 of 1992 and section 12 of Act 98 of 1993 25

71. Section 113 of the principal Act is hereby amended—

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

“(4) The Minister may by notice in the *Gazette* suspend the operation of any provision of subsection (1), whenever [he is satisfied that] such suspension would be in the public interest.”;

(b) by the substitution for subsection (7) of the following subsection:

“(7) The [Minister] Commissioner may by [regulation] rule prohibit or restrict the coastwise carriage or the transit carriage through the Republic of any goods referred to in subsection (1) or of any other goods in respect of which he considers any such prohibition or restriction necessary in the public interest.”; and 35

(c) by the substitution for paragraph (d) of subsection (8) of the following paragraph: 40

“(d) Any goods so detained may be released by the Commissioner to the South African Police Service, the authority administering such law, [or] the importer or the exporter.”. 40

Amendment of section 116 of Act 91 of 1964, as substituted by section 18 of Act 95 of 1965 45

72. Section 116 of the principal Act is hereby amended—

(a) by the substitution in subsection (1) for subparagraph (iii) of paragraph (a) of the following subparagraph:

“(iii) in respect of any quantity of such excisable goods in respect of which duty will [in his opinion] become payable, accept duty (or any portion thereof), calculated according to any basis which he deems reasonable, from any person who sells or disposes of any material for use in the manufacture of such excisable goods to the manufacturer thereof;”; and 50 55

(b) by the deletion of subsection (2).

Amendment of section 120 of Act 91 of 1964, as amended by section 36 of Act 105 of 1969, section 15 of Act 98 of 1980, section 35 of Act 84 of 1987, section 39 of Act 59 of 1990 and section 11 of Act 19 of 1994

73. Section 120 of the principal Act is hereby amended— 5
- (a) by the substitution in subsection (1) for the words preceding paragraph (a) of the following words: 5
- “The [Minister] Commissioner may make [regulations] rules—”;
- (b) by the insertion after paragraph (m) of subsection (1) of the following paragraph: 10
- “(mA) as to matters relating to security;”;
- (c) by the substitution for paragraph (n) of subsection (1) of the following paragraph: 10
- “(n) as to all matters which by this Act are required or permitted to be prescribed by [regulation] rule;”;
- (d) by the deletion of subsection (2); and 15
- (e) by the substitution for subsection (3) of the following subsection: 15
- “(3) The [regulations and] rules made under this section may provide penalties for any contravention thereof or failure to comply therewith not exceeding the penalties mentioned in subsection (2) of section 78.”. 20

Amendment of Schedule No. 1 to Act 91 of 1964, as amended by section 19 of Act 95 of 1965, section 15 of Act 57 of 1966, section 2 of Act 96 of 1967, section 22 of Act 85 of 1968, section 37 of Act 105 of 1969, section 9 of Act 98 of 1970, section 2 of Act 89 of 1971, section 12 of Act 103 of 1972, section 6 of Act 68 of 1973, section 3 of Act 64 of 1974, section 13 of Act 71 of 1975, section 13 of Act 105 of 1976, section 38 of Act 112 of 1977, section 3 of Act 114 of 1981, section 27 of Act 86 of 1982, section 10 of Act 89 of 1984, section 14 of Act 101 of 1985, section 11 of Act 69 of 1988, section 19 of Act 68 of 1989, section 40 of Act 59 of 1990, section 3 of Act 111 of 1991, section 15 of Act 105 of 1992, section 13 of Act 98 of 1993 and section 12 of Act 19 of 1994 25

74. (1) Schedule No. 1 to the principal Act is hereby amended to the extent set out in the Schedule to this Act. 30

(2) Subject to the provisions of section 58(1) of the principal Act, this section shall be deemed to have come into operation on 15 March 1995.

Continuation of certain amendments of Schedules Nos. 1 to 6 to Act 91 of 1964

75. Every amendment of Schedules Nos. 1 to 6 to the principal Act made under section 48, section 48A, section 56 or section 75(15) of the principal Act prior to 31 December 1994 shall not lapse by virtue of the provisions of section 48(6), 48A(2), 56(3) or 75(16) of the principal Act. 35

Short title and commencement

76. This Act shall be called the Customs and Excise Amendment Act, 1995, and sections 1, 4 to 9, 11 to 19, 21 to 26, 28 to 33, 35, 36, 43, 45 to 47, 49 to 55, 57, 58, 62 to 64, 66, 69 to 71 and 73 shall come into operation on a date fixed by the President by proclamation in the *Gazette*. 40

CUSTOMS AND EXCISE AMENDMENT ACT, 1995

Schedule

AMENDMENTS TO SCHEDULE NO. 1 TO THE CUSTOMS AND EXCISE ACT, 1964

| Tariff Item | Tariff Heading | Description | Rate of duty | |
|-------------|----------------|--|--------------|--------------|
| | | | Excise | Customs |
| 104.00 | | By the substitution for tariff item 104.00 of the following: | | |
| "104.00 | | PREPARED FOODSTUFFS; BEVERAGES, SPIRITS AND VINEGAR; TOBACCO | | |
| 104.01 | 19.01 | MALT EXTRACT; FOOD PREPARATIONS OF FLOUR, MEAL, STARCH OR MALT EXTRACT, NOT CONTAINING COCOA POWDER OR CONTAINING COCOA POWDER IN A PROPORTION, BY MASS OF LESS THAN 50 PER CENT, NOT ELSEWHERE SPECIFIED OR INCLUDED; FOOD PREPARATIONS OF GOODS OF HEADINGS NOS. 04.01 TO 04.04, NOT CONTAINING COCOA POWDER OR CONTAINING COCOA POWDER IN A PROPORTION, BY MASS, OF LESS THAN 10 PER CENT, NOT ELSEWHERE SPECIFIED OR INCLUDED: | | |
| .10 | | Preparations based on sorghum flour, put up for making beverages | 25c/kg | 25c/kg |
| 104.05 | 22.01 | WATERS, INCLUDING NATURAL OR ARTIFICIAL MINERAL WATERS AND AERATED WATERS, NOT CONTAINING ADDED SUGAR OR OTHER SWEETENING MATTER NOR FLAVOURED; ICE AND SNOW; | | |
| | 22.02 | WATERS, INCLUDING MINERAL WATERS AND AERATED WATERS, CONTAINING ADDED SUGAR OR OTHER SWEETENING MATTER OR FLAVOURED, AND OTHER NON-ALCOHOLIC BEVERAGES (EXCLUDING FRUIT OR VEGETABLE JUICES OF HEADING NO. 20.09): | | |
| .10 | | Mineral waters, including spa waters and aerated waters, put up in closed bottles or other closed containers ready for drinking without dilution (excluding beverages packed in plastic tubes or similar containers and which are normally consumed in a frozen state) | 13,60c/ℓ | 14,66c/ℓ |
| .20 | | Lemonade and flavoured mineral waters, including flavoured spa and aerated waters, put up in closed bottles or other closed containers ready for drinking without dilution (excluding beverages packed in plastic tubes or similar containers and which are normally consumed in a frozen state) | 13,60c/ℓ | 14,66c/ℓ |
| .30 | | Non-alcoholic beverages not elsewhere specified or included in this tariff item, put up in closed bottles or other closed containers ready for drinking without dilution (excluding beverages packed in plastic tubes or similar containers and which are normally consumed in a frozen state) | 13,60c/ℓ | 14,66c/ℓ |
| 104.10 | 22.03 | BEER MADE FROM MALT: | | |
| .10 | | Of a relative density before fermentation not exceeding 1 040° | 7 499c/100 ℓ | 7 498c/100 ℓ |

| Tariff Item | Tariff Heading | Description | Rate of duty | | | |
|-------------|--|--|---------------|---|--|--|
| | | | Excise | Customs | | |
| .20 | | Plus a suspended duty of: | Nil | Nil | | |
| | | (i) In operation | 275c/100 ℓ | 275c/100 ℓ | | |
| | | (ii) Maximum rate | | | | |
| | | Of a relative density before fermentation exceeding 1 040° but not exceeding 1 050°, which is cleared ex any customs and excise manufacturing warehouse during any financial year, or which is imported into the Republic, or which is illicit beer: | | | | |
| | | (1) On the first 4 500 000 ℓ or any quantity less than 4 500 000 ℓ so cleared during a financial year | 7 774c/100 ℓ | — | | |
| | | (2) On the quantity so cleared during a financial year which is more than 4 500 000 ℓ but not exceeding 9 000 000 ℓ | 7 906c/100 ℓ | — | | |
| | | (3) On the quantity so cleared during a financial year which is more than 9 000 000 ℓ but not exceeding 18 000 000 ℓ | 8 038c/100 ℓ | — | | |
| | | (4) On the quantity so cleared during a financial year which is more than 18 000 000 ℓ but not exceeding 27 000 000 ℓ | 8 170c/100 ℓ | — | | |
| .30 | | (5) On the quantity so cleared during a financial year which is more than 27 000 000 ℓ but not exceeding 36 000 000 ℓ | 8 302c/100 ℓ | — | | |
| | | (6) On the quantity so cleared during a financial year which is more than 36 000 000 ℓ | 8 434c/100 ℓ | — | | |
| | | (7) If duty is paid on illicit beer | 8 434c/100 ℓ | — | | |
| | | (8) If imported | — | 7 752c/100 ℓ | | |
| | | Of a relative density before fermentation exceeding 1 050° | 8 533c/100 ℓ | 7 972c/100 ℓ | | |
| | | Plus, for every degree of relative density before fermentation exceeding 1 080° | 22c/100 ℓ | 22c/100 ℓ | | |
| | | 104.15 | 22.04 | WINE OF FRESH GRAPES, INCLUDING FORTIFIED WINES; GRAPE MUST OTHER THAN THAT OF HEADING NO. 20.09; | | |
| | | | 22.05 | VERMOUTHS AND OTHER WINE OF FRESH GRAPES FLAVOURED WITH PLANTS OR OTHER AROMATIC SUBSTANCES; | | |
| 22.06 | OTHER FERMENTED BEVERAGES (FOR EXAMPLE, CIDER, PERRY, MEAD): | | | | | |
| .05 | | Sorghum beer (excluding beer made from preparations based on sorghum flour) | 500c/100 ℓ | 500c/100 ℓ | | |
| .10 | | Unfortified still wine | 3 600c/100 ℓ | 3 600c/100 ℓ | | |
| .40 | | Fortified still wine | 8 400c/100 ℓ | 8 400c/100 ℓ | | |
| .50 | | Other still fermented beverages, unfortified | 4 100c/100 ℓ | 4 100c/100 ℓ | | |
| .60 | | Other still fermented beverages, fortified | 8 102c/100 ℓ | 8 102c/100 ℓ | | |
| .70 | | Sparkling wine | 10 700c/100 ℓ | 10 700c/100 ℓ | | |
| .80 | | Other fermented beverages (excluding sorghum beer) | 9 804c/100 ℓ | 9 804c/100 ℓ | | |
| 104.20 | 22.07 | UNDENATURED ETHYL ALCOHOL OF AN ALCOHOLIC STRENGTH BY VOLUME OF 80 PERCENT VOLUME OR HIGHER; ETHYL ALCOHOL AND OTHER SPIRITS, DENATURED, OF ANY STRENGTH; | | | | |

Act No. 45, 1995

CUSTOMS AND EXCISE AMENDMENT ACT, 1995

| Tariff Item | Tariff Heading | Description | Rate of duty | |
|-------------|----------------|--|---|---|
| | | | Excise | Customs |
| | 22.08 | UNDENATURED ETHYL ALCOHOL OF AN ALCOHOLIC STRENGTH BY VOLUME OF LESS THAN 80 PERCENT VOLUME; SPIRITS, LIQUEURS AND OTHER SPIRITUOUS BEVERAGES; COMPOUND ALCOHOLIC PREPARATIONS OF A KIND USED FOR THE MANUFACTURE OF BEVERAGES: | | |
| .10 | | Wine spirits, manufactured in the Republic by the distillation of wine | 198 238c/ 100 ℓ of absolute alcohol | — |
| .15 | | Spirits, manufactured in the Republic by the distillation of any sugar cane product | 208 201c/ 100 ℓ of absolute alcohol | — |
| .25 | | Spirits, manufactured in the Republic by the distillation of any grain product | 212 708c/ 100 ℓ of absolute alcohol | — |
| .29 | | Other spirits, manufactured in the Republic | 202 675c/ 100 ℓ of absolute alcohol | — |
| .60 | | Imported spirits of any nature, including spirits in imported spirituous beverages (excluding liqueurs, cordials and similar spirituous beverages containing added sugar) and in compound alcoholic preparations of an alcoholic strength exceeding 1,713 per cent alcohol by volume | — | 188 625c/ 100 ℓ of absolute alcohol or 81 109c/ 100 ℓ |
| .70 | | Spirits of any nature in imported liqueurs, cordials and similar spirituous beverages containing added sugar, with or without flavouring substances | — | 188 625c/ 100 ℓ of absolute alcohol |
| 104.30 | 24.02 | CIGARS, CHEROOTS, CIGARILLOS AND CIGARETTES, OF TOBACCO OR OF TOBACCO SUBSTITUTES; | | |
| | 24.03 | OTHER MANUFACTURED TOBACCO AND MANUFACTURED TOBACCO SUBSTITUTES, "HOMOGENISED" OR "RECONSTITUTED" TOBACCO EXTRACTS AND ESSENCES: | | |
| .10 | | Cigars | 375c/kg net | 397c/kg net |
| .20 | | Cigarettes | 44c/10 cigarettes | 44c/10 cigarettes |
| | | Plus in respect of cigarettes the mass of the tobacco of which exceeds 1,5 kg/1 000 cigarettes | 1 641,6c/kg tobacco content | 1 641,6c/kg tobacco content |
| .30 | | Cigarette tobacco | 55c/50 g or fraction thereof plus 213c/kg tobacco | 55c/50 g or fraction thereof plus 213c/kg tobacco |
| | | Plus a suspended duty of: | | |
| | | (i) In operation | Nil | Nil |
| | | (ii) Maximum rate | 73c/kg tobacco | 73c/kg tobacco |
| .40 | | Pipe tobacco in immediate packings of a content of less than 5 kg | 405c/kg net | 405c/kg net |
| .50 | | Pipe tobacco in immediate packings of a content of not less than 5 kg | 387c/kg net | 387c/kg net" |