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STAATSKOERANT

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DEPARTEMENT VAN DIE EERSTE MINISTER

DEPARTMENT OF THE PRIME MINISTER

No. 1593.

18 Julie 1979.

No. 1593.

18 July 1979.

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

No. 110 van 1979: Wysigingswet op Doeane en Aksyns, 1979.

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

No. 110 of 1979: Customs and Excise Amendment Act, 1979.

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CUSTOMS AND EXCISE AMENDMENT ACT, 1979.

GENERAL EXPLANATORY NOTE:

[Words in bold type in square brackets indicate omissions from existing enactments.

Words underlined with solid line indicate insertions in existing enactments.

ACT

To amend the Customs and Excise Act, 1964, so as to further define "manufacture"; to further regulate the disclosure of certain information by officers; to exclude a certain liability by reason of wrong delivery of certain goods; to extend the information which an importer of goods has to furnish; to further regulate the liability for duty on imported goods; to provide for the determination by the Secretary for Customs and Excise of the classification of goods with reference to the duty payable thereon; to further regulate the calculation and determination of the value of imported goods for customs duty purposes; to determine any liability for duty which may arise after entry of certain goods under rebate of duty; to extend the power of the Minister of Finance to amend certain Schedules to the said Act; to further regulate the granting of refunds of duty or other charges in respect of dutiable goods; to extend the liability of agents for the fulfilment of the obligations imposed on their principals; and to provide for the continuation of certain amendments of Schedules Nos. 1, 3, 4, 5 and 6 to the said Act; and to provide for matters connected therewith.

(English text signed by the State President.)
(Assented to 2 July 1979.)

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

Amendment of section 1 of Act 91 of 1964, as amended by section 1 of Act 95 of 1965, section 1 of Act 57 of 1966, section 1 of Act 105 of 1969, section 1 of Act 98 of 1970, section 1 of Act 71 of 1975 and section 1 of Act 112 of 1977.

1. Section 1 of the Customs and Excise Act, 1964 (hereinafter referred to as the principal Act), is hereby amended by the substitution in subsection (1) for the definition of "manufacture" of the following definition:

- "'manufacture' includes, in the discretion of the Secretary, any process—
- (a) in the manufacture of any excisable goods or sales duty goods;
 - (b) in the conversion of any goods into excisable goods or sales duty goods;
 - (c) whereby the dutiable quantity or value of any excisable goods or sales duty goods is increased in any manner;
 - (d) in the recovery of excisable goods or sales duty goods from excisable goods or any other goods; or
 - (e) **[in the discretion of the Secretary]** in the packing or measuring off of any excisable goods or sales duty goods;"

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Amendment of section 4 of Act 91 of 1964, as amended by section 2 of Act 105 of 1969.

2. Section 4 of the principal Act is hereby amended by the substitution for subsection (3) of the following subsection:

“(3) No officer shall **[except for the purposes of this Act or when required to do so as a witness in a court of law]** disclose any information relating to any person, firm or business acquired in the performance of his duties, except— 5
 (a) for the purposes of this Act; or
 (b) when required to do so as a witness in a court of law; or
 (c) to the Secretary for Inland Revenue or any officer of the Department of Inland Revenue designated by that Secretary, for the purposes of the Sales Tax Act, 1978 (Act No. 103 of 1978).” 10

Amendment of section 17 of Act 91 of 1964.

3. Section 17 of the principal Act is hereby amended by the substitution for subsection (3) of the following subsection:

“(3) The State or any officer shall in no case be liable in 15 respect of any loss or diminution of or damage to any goods in a State warehouse or in respect of any loss or damage sustained by reason of wrong delivery of such goods.”

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 and section 1 of Act 93 of 1978.

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

(a) by the substitution for paragraph (a) of subsection (1) of 20 the following paragraph:

“(a) The person entering any imported goods for any purpose in terms of the provisions of this Act shall deliver to the Controller a bill of entry in the prescribed form, setting forth the full particulars as 25 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 30 correctness of the particulars and purpose shown on such bill of entry.”; and

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

“(c) The said person shall further produce the transport 35 document or such other document in lieu thereof as may be approved by the Secretary, 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 40 written clearing instructions 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 45 Secretary may determine such information regarding the tariff classification of such goods as the Secretary may require.”

Amendment of section 44 of Act 91 of 1964, as amended by section 10 of Act 95 of 1965, section 5 of Act 57 of 1966, section 16 of Act 105 of 1969, section 7 of Act 71 of 1975 and section 8 of Act 112 of 1977.

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

(a) by the substitution for subsection (4) of the following 50 subsection:

“(4) The master, pilot or carrier concerned shall be liable for the duty on all goods deemed in terms of section 10 to have been imported, except goods in respect of which a bill of lading, air consignment note or 55 other document was issued on loading of such goods onto the ship, aircraft or vehicle by means of which they were imported stating that the said goods were accepted

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for conveyance at the risk of the owner thereof in all respects and not only as regards risk in respect of damage to such goods, provided such goods have not been landed and placed in a transit shed appointed or prescribed under section 6 (1)."; and 5

(b) by the substitution for subsection (8) of the following subsection:

"(8) The manufacturer, **[or the]** owner or purchaser of any excisable goods or sales duty goods shall, subject to the provisions of Chapter VII, be liable 10 for the duty on such goods and his liability shall continue until such goods have been duly entered and the duty due thereon paid."

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 and section 10 of Act 112 of 1977.

6. (1) Section 47 of the principal Act is hereby amended by the addition of the following subsections: 15

"(9) (a) (i) The Secretary may determine the tariff headings, tariff subheadings or items of any Schedule under which any imported goods or goods manufactured in the Republic shall be classified. 20

(ii) The acceptance by any officer of a bill of entry or the release of any goods as entered shall be deemed not to be any such determination. 20

(b) Any determination so made shall, subject to appeal to the court, be deemed to be correct for the purposes of this Act, and any amount due in terms of any such determination shall remain payable as long as such determination remains in force. 25

(c) The Secretary may within 90 days from the date of any such determination publish it by notice in the *Gazette*.

(d) The Secretary may whenever he deems it expedient amend any such determination or withdraw it and make a new determination with effect from— 30

(i) the date of first entry of the goods in question;

(ii) the date of the notice referred to in paragraph (c); 35

(iii) the date of the determination made under paragraph (a);

(iv) the date of such new determination; or

(v) the date of such amendment.

(e) An appeal against any such determination shall lie to the division of the Supreme Court of South Africa having jurisdiction to hear appeals in the area wherein the determination was made, or the goods in question were entered for home consumption. 40

(f) Such appeal shall be prosecuted within a period of 90 days from the date of the determination. 45

(10) Save where—

(a) a determination has been made under subsection (9) (a) or (d); or

(b) any false declaration is made for the purposes of subsection (9), 50

there shall be no liability for any underpayment in duty on any goods, where such underpayment is due to the acceptance of a bill of entry bearing an incorrect tariff heading, tariff subheading or item of any Schedule, after a period of two years from the date of entry of such goods." 55

(2) Subsection (1) shall come into operation on 1 October 1979.

Amendment of section 65 of Act 91 of 1964, as amended by section 5 of Act 85 of 1968, section 21 of Act 105 of 1969,

7. Section 65 of the principal Act is hereby amended by the substitution for subsection (3) of the following subsection:

"(3) If the value of any imported goods of a single denomination according to the provisions of this section is— 60

(a) in excess of **[twenty] one** rand, such value shall, for the purpose of assessing the amount of duty payable, be

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section 20 of
Act 112 of 1977
and section 5 of
Act 93 of 1978.

- calculated to the nearest rand, an amount of fifty cents being regarded as less than one half of one rand;
(b) less than one rand, such value shall be calculated as one rand."

Amendment of
section 66 of
Act 91 of 1964,
as substituted by
section 21 of
Act 112 of 1977.

8. Section 66 of the principal Act is hereby amended— 5
(a) by the substitution for paragraph (e) of subsection (1) of the following paragraph:
"e) the price includes all costs, charges and expenses incidental to the sale and to **placing the goods on board a ship or on any vehicle at a port or other place, inside or outside the territory of export, from where they were finally transported to the Republic** delivery of the goods to the place of final dispatch in the territory of export but does not include [freight and insurance from such port or other place to the port or other place of importation in the Republic] any other costs, charges and expenses incidental to the delivery thereof to the Republic."; and
(b) by the deletion of paragraph (c) of subsection (3). 20

Substitution of
section 73 of
Act 91 of 1964,
as substituted by
section 24 of
Act 112 of 1977.

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

"Conversion of prices. 73. The Minister may by regulation determine the rate and time at which the **normal** price paid or payable in respect of imported goods shall, if expressed in a foreign currency, be converted into the currency of the Republic."

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
and section 8 of
Act 93 of 1978.

10. Section 75 of the principal Act is hereby amended—
(a) by the insertion after subsection (4) of the following subsection: 30
"4A) (a) Notwithstanding anything to the contrary in this Act contained, any kerosene, distillate fuel or residual fuel oil which may be entered under rebate of duty under any item of Schedule No. 4 or 6, shall be so entered by the supplier thereof. 35
(b) Any kerosene, distillate fuel or residual fuel oil so entered shall, if supplied to a reseller or user thereof, be so supplied in such manner and on such conditions as may be prescribed by regulation.
(c) Any reseller so supplied who supplies such kerosene, distillate fuel or residual fuel oil to any user, shall so supply it in such manner and on such conditions as may be prescribed by regulation. 40
(d) If a supplier mentioned in paragraph (a) supplies any kerosene, distillate fuel or residual fuel oil entered as stated in paragraph (a) to any reseller or user contrary to the manner or conditions prescribed therefor by regulation, he shall be liable for such duty thereon as may at the time of such entry, or, if the duty concerned has after such entry been increased, of the payment of such duty, be leviable thereupon, as if no rebate of duty applied thereto. 45
(e) If any reseller mentioned in paragraph (c) supplies any kerosene, distillate fuel or residual fuel oil to any user contrary to the manner or conditions prescribed therefor by regulation, he shall be liable for the duty thereon to the extent of the rebate allowed to the supplier mentioned in paragraph (a) at the time of entry: Provided that if the duty in 55 60

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question has after such entry under rebate been increased, the extent of such rebate shall be deemed to be—

- (i) the difference between the duty actually paid on entry for home consumption and such increased duty; or
- (ii) such increased duty if no duty was paid on entry for home consumption.”;
- (b) by the addition to paragraph (a) of subsection (5) of the following subparagraphs, the existing paragraph (a) becoming subparagraph (i) thereof:
- “(ii) The Controller may at any time take stock of goods entered for home consumption and stored on any premises registered by virtue of subsection (10), and duty shall, subject to the provisions of subparagraph (i), be paid forthwith on demand upon any deficiency detected.
- (iii) If the stock is found to be greater than the quantity which should be on such premises, the excess shall be debited to stock.”; and
- (c) by the insertion in subsection (15) after paragraph (a) of the following paragraph:
- “(aA) The Minister may, whenever he deems it expedient in the public interest to do so, by like notice amend any such Schedule with retrospective effect from such date as he may specify in that notice.”.

Amendment of section 76 of Act 91 of 1964, as substituted by section 5 of Act 98 of 1970 and amended by section 10 of Act 71 of 1975.

11. Section 76 of the principal Act is hereby amended by the substitution for paragraph (c) of subsection (2) of the following paragraph:
- “(c) a determination under section 47 (9) or incorrect tariff classification;”.

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 and section 34 of Act 112 of 1977.

12. Section 99 of the principal Act is hereby amended—
- (a) by the substitution for subsection (2) of the following subsection:
- “(2) (a) An agent appointed by any importer, exporter, manufacturer, licensee, remover of goods in bond or other principal and any person who represents himself to any officer as the agent of any importer, exporter, manufacturer, licensee, remover of goods in bond or other principal, and is accepted as such by that officer, shall be liable for the fulfilment, in respect of the matter in question, of all obligations, including the payment of duty and charges, imposed on such importer, exporter, manufacturer, licensee, remover of goods in bond or other principal by this Act and to any penalties which may be incurred in respect of that matter.
- (b) No importer, exporter, manufacturer, licensee, remover of goods in bond or other principal shall be relieved from liability for the fulfilment of any obligation imposed on him by this Act and to any penalty which may be incurred in respect thereof.”;
- and
- (b) by the addition of the following subsection:
- “(5) Any liability in terms of subsection (1), (2) or (4) (a) shall cease after the expiration of a period of two years from the date on which it was incurred in terms of any such subsection.”.

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Continuation of certain amendments of Schedules Nos. 1, 3, 4, 5 and 6 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 and section 38 of Act 112 of 1977.

13. (1) Every amendment of Schedules Nos. 1, 3, 4, 5 and 6 to the principal Act made under section 48 (1) or (2) or section 75 (15) of the principal Act prior to 2 February 1979, shall not lapse by virtue of the provisions of section 48 (6) or 75 (16) of the principal Act. 5

(2) The amendments of Schedules Nos. 1 and 6 to the principal Act made under sections 48 (1) and (2) and 75 (15) of the principal Act by Government Notices Nos. R.641 to R.645 of 29 March 1979, shall not lapse by virtue of the provisions of section 48 (6) or 75 (16) of the principal Act. 10

(3) Item 410.04 of Schedule No. 4 to the principal Act and item 609.06 of Schedule No. 6 to the principal Act, as published by Government Notices Nos. R.783 and R.784, respectively, of 12 April 1979, shall, for the purposes of section 2 (1) (a) (iii) of the National Roads Act, 1971 (Act No. 54 of 1971), and section 1 (b) 15 of the State Oil Fund Act, 1977 (Act No. 38 of 1977), be deemed not to constitute rebates.

(4) The Note to item 317.05 of Schedule No. 3 to the principal Act, published by Government Notice No. R.66 of 6 January 1978, shall be deemed to have come into operation on 6 January 20 1978.

(5) Government Notice No. R.583 of 23 March 1978, in so far as it relates to tariff heading No. 85.01.13 of Schedule No. 1 to the principal Act, shall be deemed to have come into operation on 21 May 1976. 25

(6) Government Notice No. R.1223 of 16 June 1978, in so far as it relates to tariff heading No. 59.11 in item 312.01 of Schedule No. 3 to the principal Act, shall be deemed to have come into operation on 7 August 1975.

(7) Item 306.04 of Schedule No. 3 to the principal Act shall be 30 construed as if there were included therein a provision providing for a rebate of the full duty, during the period 18 April 1975 to 18 January 1979, on hydroxypropyl methylcellulose for the manufacture of colour, paint, varnish and allied products.

(8) Government Notice No. R.1 of 1 January 1978, in so far as 35 it relates to tariff heading No. 90.07.60.50 of Schedule No. 1 to the principal Act, shall be deemed to have come into operation on 8 June 1973.

(9) Paragraph (3) of tariff heading No. 90.07 in sales duty item 148.00 of Schedule No. 1 to the principal Act shall be construed 40 as if it provided for a rate of sales duty of 15% during the period 8 June 1973 to 23 August 1973, a rate of sales duty of 5% during the period 24 August 1973 to 30 March 1976, a rate of sales duty of 6.5% during the period 31 March 1976 to 6 March 1977 and a rate of sales duty of 8% during the period 7 March 1977 to 31 45 December 1977.

(10) Subsection (3) shall be deemed to have come into operation on 12 April 1979.

Short title.

14. This Act shall be called the Customs and Excise Amendment Act, 1979. 50