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REPUBLIEK VAN SUID-AFRIKA

STAATSKOERANT

GOVERNMENT GAZETTE

OF THE REPUBLIC OF SOUTH AFRICA

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KANTOOR VAN DIE STAATSPRESIDENT

STATE PRESIDENT'S OFFICE

No. 1366.

20 Junie 1990

No. 1366.

20 June 1990

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

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

No. 59 van 1990: Wysigingswet op Doeane en Aksyns, 1990.

No. 59 of 1990: Customs and Excise Amendment Act, 1990.

CUSTOMS AND EXCISE AMENDMENT ACT, 1990

Act No. 59, 1990

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 delete references to sales duty, sales duty goods and an embargo and the territory of South-West Africa; to extend certain definitions for the purposes of all customs union agreements concluded under the said Act; to regulate the performance or exercise of any duties imposed or powers conferred by the said Act on the Director-General: Trade and Industry; to provide further for the prevention of any goods entering the Republic in contravention of the provisions of the said Act; to further regulate the entry of goods and the liability for duty on imported goods; to provide for duty or levy payable on fuel levy goods removed to the territory of a party to any customs union agreement or brought into the Republic from any such territory; to empower the Minister of Finance to amend Schedule No. 8 to the said Act; to further regulate the calculation of the value for customs duty purposes of imported goods, and the granting of refunds of duty and fuel levy and rebates of duty; to provide for the set-off of certain overpayments in respect of duty, or certain provisional refunds or amounts refundable against duty subsequently payable; to amend Schedule No. 1 to the said Act; to provide for the continuation of certain amendments of Schedules Nos. 1, 3, 4, 5, 6 and 7 to the said Act; and to provide for the application of section 45 of the said Act in relation to a certain bill of entry, and for the removal of goods between the Republic of Namibia and the common customs area and the payment of fuel levy to the Government of the Republic of Namibia; to repeal section 42 of the Customs and Excise Amendment Act, 1987; and to delete Part 3 of Schedule No. 1 and Schedule No. 7 to the said Act; and to provide for matters connected therewith.

(Afrikaans text signed by the State President.)
(Assented to 14 June 1990.)

BE IT ENACTED by the State President and the Parliament 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, 5 section 1 of Act 71 of 1975, section 1 of Act 112 of 1977, section 1 of Act 110 of 1979, sections 1 and 15 of Act 98 of 1980, section 1 of Act 89 of 1984, section 1 of Act 84 of 1987 and section 1 of Act 68 of 1989

1. Section 1 of the Customs and Excise Act, 1964 (hereinafter referred to as the principal Act), is hereby amended—

10 (a) by the substitution in subsection (1) for the words preceding the definition of “agricultural distiller” of the following words:

“In this Act, unless the context otherwise indicates, any reference to

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- customs and excise or matters relating thereto shall be deemed to include a reference to **[sales duty]** surcharge and fuel levy or matters relating thereto, and —”;
- 5 (b) by the substitution in the said subsection (1) for the definition of “agricultural distiller” of the following definition:
- “‘agricultural distiller’ means any owner or occupier of a farm in the Province of the Cape of Good Hope, the Transvaal or the Orange Free State **[or in the territory of South-West Africa]** who—
- 10 (a) is licensed to keep a still on such farm; and
- (b) in the Province of the Cape of Good Hope **[or in the territory of South-West Africa]** is licensed to distil spirits exclusively from grapes grown by him on such farm; or
- (c) in the Province of the Transvaal or the Orange Free State is licensed to distil spirits on such farm from grapes or other prescribed fresh fruit
- 15 grown by him on such farm;”;
- (c) by the substitution in the said subsection (1) for the definition of “customs duty” of the following definition:
- “‘customs duty’ means, subject to the provisions of subsection (3), any duty leviable under Schedule No. 1 (except Parts **[3]** 4 and 5 thereof) or No.
- 20 2 on goods imported into the Republic;”;
- (d) by the deletion in the said subsection (1) of the definition of “customs tariff”;
- (e) by the substitution in the said subsection (1) for the definition of “entry for home consumption” of the following definition:
- 25 “‘entry for home consumption’ includes entry under any item in Schedule No. 3, 4 or 6 **[or 7]**”;
- (f) by the substitution in the said subsection (1) for the definition of “illicit goods” of the following definition:
- 30 “‘illicit goods’, in relation to imported or excisable goods, **[sales duty goods]** surcharge goods or fuel levy goods, means any such goods in respect of which any contravention under this Act has been committed, and includes any preparation or other product made wholly or in part from spirits or other materials which were illicit goods;”;
- (g) by the substitution in the said subsection (1) for the definition of “manufacture” of the following definition:
- 35 “‘manufacture’, when used as a noun, includes, in the discretion of the Commissioner, any process—
- (a) in the manufacture or assembly of any excisable goods **[sales duty goods]** or fuel levy goods;
- 40 (b) in the conversion of any goods into excisable goods **[sales duty goods]** or fuel levy goods;
- (c) whereby the dutiable quantity or value of any imported goods specified in Section B of Part 2 of Schedule No. 1, excisable goods **[sales duty goods]** or fuel levy goods is increased in any manner;
- 45 (d) in the recovery of excisable goods **[sales duty goods]** or fuel levy goods from excisable goods or any other goods; or
- (e) in the packing or measuring off of any imported goods specified in Section B of Part 2 of Schedule No. 1, excisable goods **[sales duty goods]** or fuel levy goods,
- 50 and, when used as a verb, has a corresponding meaning; and ‘manufacturer’ has a corresponding meaning;”;
- (h) by the substitution in the said subsection (1) for the definition of “officer” of the following definition:
- 55 “‘officer’ means a person employed on any duty relating to customs and excise **[and sales duty, surcharge and fuel levy]** by order or with the concurrence of the Commissioner, whether such order has been given or such concurrence has been expressed before or after the performance of the said duty;”;
- (i) by the deletion in the said subsection (1) of the definition of “ordinary duty”;
- 60 (j) by the deletion in the said subsection (1) of the definitions of “sales duty” and “sales duty goods”; and

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

5 "For the purposes of [the agreement] any customs union agreements concluded under section 51 [with the governments of the Republic of Botswana, the Kingdom of Lesotho and the Kingdom of Swaziland and published by Government Notice No. R.3914 of 12 December 1969]—".

Substitution of section 1B of Act 91 of 1964, as inserted by section 2 of Act 98 of 1980

2. The following section is hereby substituted for section 1B of the principal Act:

"Commissioner for Customs and Excise

10 **1B.** At the head of the Office there is the Commissioner for Customs and Excise, who shall be a person appointed as such under the Public Service Act, [1957 (Act No. 54 of 1957)] 1984 (Act No. 111 of 1984)."

Insertion of section 3A in Act 91 of 1964

3. (1) The following section is hereby inserted in the principal Act after section 3:

15 **"Duties and powers of Director-General: Trade and Industry**

3A. (1) Any duty imposed or power conferred by this Act on the Director-General: Trade and Industry may be performed or exercised by him personally or by an officer under a delegation from or under the control or direction of the said Director-General.

20 (2) Any decision made under subsection (1) by any such officer may be withdrawn or amended by the said Director-General or by the officer (with effect from the date of making such decision or the date of withdrawal or amendment thereof) and shall, until it has been so withdrawn, be deemed, except for the purposes of this subsection, to have been made by that Director-General."

25 (2) Subsection (1) of this section shall be deemed to have come into operation on 14 October 1987.

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 and section 2 of Act 30 84 of 1987

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

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

35 "(2) No officer shall be directly financially interested in the manufacture or sale or importation of or trade in imported or excisable goods or [sales duty goods] fuel levy goods.";

(b) by the substitution for subsection (9) of the following subsection:

40 "(9) (a) An officer may board any ship within the territorial waters or fishing zone of the Republic or may stop and board any vehicle in the Republic and may search any such ship or vehicle or any person found therein or thereon for goods upon which duty has not been paid, or in respect of which he has reasonable cause to believe that there has been a contravention of any provision of this Act, and may freely remain on such ship or vehicle in pursuance of his duties.

45 (b) If any vehicle, room, cabin, place, safe, chest, box, [or] package or container as defined in section 1 (2), is locked and the keys thereof are not produced on demand, the officer may open such vehicle, room, cabin, place, safe, chest, box, [or] package or container in any manner.

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- (c) An officer shall have free access to and the right to rummage every part of any such ship or vehicle and to examine all goods on board, with power to fasten down hatchways and to mark any goods before landing and to lock up, seal, mark or otherwise secure any goods on board that ship or vehicle, including any apparatus thereof, and he may also demand from the master of such ship or the pilot of any aircraft concerned or the person in charge of any other vehicle the production of any document to which any provision of this Act relates.
- (d) If any lock, seal or mark placed upon any goods on board a ship or vehicle by an officer in terms of the provisions of this section is wilfully opened, broken, obliterated or altered or if any goods which have been locked, sealed, marked or otherwise secured in terms of this section are removed or if the hatchways of any such ship are, after having been fastened down by an officer, opened without his consent, the master of any such ship, the pilot of any aircraft concerned or the person in charge of any other such vehicle, as the case may be, shall be guilty of an offence unless he proves that it was not possible for him to have prevented the act in question.”;
- (c) by the addition to subsection (10) of the following paragraph, the existing subsection becoming paragraph (a) thereof:
- “(b) If such person fails to stop, the officer may take such action, including the use of force, as he may deem necessary to stop such person.”; and
- (d) by the addition of the following subsection:
- “(13) No person shall be entitled to any compensation for any loss or damage arising out of any *bona fide* action of an officer under this section.”.

Amendment of section 5 of Act 91 of 1964, as substituted by section 2 of Act 68 of 1989

5. Section 5 of the principal Act is hereby amended by the deletion of paragraph (a).

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

6. Section 6 of the principal Act is hereby amended by the deletion of subsections (3) and (4).

35 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 and section 1 of Act 101 of 1985

7. Section 7 of the principal Act is hereby amended by the insertion after subsection (1) of the following subsection:

- “(1A) (a) The master of a foreign-going ship shall not call at any place in the Republic other than a place of entry appointed in terms of section 6 and the pilot of an aircraft arriving in the Republic shall, unless the Commissioner has granted him special permission to land elsewhere, make his first landing at a place appointed as a customs and excise airport in terms of section 6: Provided that the provisions of this subsection shall not apply if the master or pilot, as the case may be, is forced by circumstances beyond his control to call or land at a place not so appointed and he reports to the Controller nearest to the place where he was so forced to call or land or to the Controller at the first place of entry or customs and excise airport appointed in terms of section 6 at which he next arrives.
- (b) Such master or pilot who is forced by circumstances beyond his control to call or land at a place in the Republic not appointed as a place of entry in

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terms of section 6 shall take all precautions necessary to prevent any contravention of this Act in respect of any goods on or in such ship or aircraft.”.

Repeal of section 8 of Act 91 of 1964

5 8. Section 8 of the principal Act is hereby repealed.

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 and section 3 of Act 84 of 1987

9. Section 9 of the principal Act is hereby amended by the substitution in subsection (3) for paragraph (g) of the following paragraph:

10 “(g) all non-duty-paid imported goods and all excisable goods [sales duty goods] and fuel levy goods shipped at a place in the Republic as ships’ or aircraft stores; and”.

Amendment of section 12 of Act 91 of 1964

15 10. Section 12 of the principal Act is hereby amended by the substitution in subsection (1) for paragraph (b) of the following paragraph:

20 “(b) Such station master or other person shall not permit any such goods to be removed from the railway premises [without the written sanction of the Controller] 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.”.

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 and section 3 of Act 52 of 1986

25 11. Section 13 of the principal Act is hereby amended by the substitution in subsection (3) for paragraph (a) of the following paragraph:

30 “(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, 4 or 5 [or 7] specified by the Commissioner after consultation with the Postmaster-General, shall be so entered at a customs and excise office before a Controller.”.

Amendment of section 15 of Act 91 of 1964, as amended by section 2 of Act 98 of 1970, section 2 of Act 89 of 1984 and section 4 of Act 101 of 1985

12. Section 15 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

40 “(1) Any person entering or leaving the Republic shall, in such a manner as the Commissioner may determine, unreservedly declare—

(a) at the time of such entering, all goods (including goods of another person) upon his person or in his possession which he brought with him into the Republic [or proposes taking with him beyond the borders of the Republic] which—

45 (i) were purchased or otherwise acquired abroad or on any ship, vehicle or in any shop selling goods on which duty has not been paid;

(ii) were remodelled, processed or repaired abroad; or

(iii) are prohibited, restricted or controlled under any law;

50 (b) before leaving, all goods which he proposes taking with him beyond the borders of the Republic,

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and shall furnish an officer with full particulars thereof, answer fully and truthfully all questions put to him by such officer and, if required by such officer to do so, produce and open such goods for inspection by the said officer, and shall pay the duty assessed by such officer, if any, to the Controller.”.

5 **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 and section 4 of Act 84 of 1987**

13. Section 18 of the principal Act is hereby amended by the substitution in paragraph (a) of subsection (1) for the words preceding the proviso of the following
10 words:

“the importer or owner of any imported goods landed in the Republic or the manufacturer, owner, seller or purchaser of any excisable goods [sales duty
goods] or fuel levy goods manufactured in a customs and excise warehouse or
15 the licensee of a customs and excise warehouse in which dutiable goods are
manufactured or stored may remove such goods in bond to any place in the
Republic appointed as a place of entry or warehousing place under this Act or
to any place outside the Republic.”.

20 **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 and section 6 of Act 84 of 1987**

14. Section 20 of the principal Act is hereby amended by the substitution in subsection (5) for the proviso of the following proviso:

“Provided that in the case of goods manufactured in any customs and excise
25 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
30 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 [or 7], if he is satisfied that no part of
such loss was wilfully or negligently caused.”.

35 **Amendment of section 27 of Act 91 of 1964, as amended by section 1 of Act 57 of 1966, section 10 of Act 105 of 1969, section 4 of Act 112 of 1977, section 15 of Act 98 of 1980 and section 7 of Act 84 of 1987**

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

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

“**(1)** Subject to the provisions of this Act, goods liable to excise duty
40 [sales duty] or fuel levy may not be manufactured except in terms of this
section and except in a customs and excise manufacturing warehouse
licensed under this Act: Provided that spirits distilled by agricultural
distillers shall be excluded from the requirement of manufacture in a
customs and excise manufacturing warehouse and that excisable goods [or
45 sales duty goods] may with the permission of the Commissioner be
manufactured in a special customs and excise warehouse licensed under this
Act.”; and

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

“**(3)** Any dutiable goods brought into and intended for use in a customs
and excise manufacturing warehouse in the manufacture of goods liable to

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excise duty [sales duty] or fuel levy shall be entered for home consumption and any duty due thereon shall be paid prior to such use.”.

Substitution of section 36A of Act 91 of 1964, as inserted by section 11 of Act 105 of 1969, substituted by section 4 of Act 52 of 1986 and amended by section 2 of Act 69 of 1988

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

“Special provisions in respect of manufacture of goods specified in Section B of Part 2 of Schedule No. 1 and collection of excise duty specified in Section B of Part 2 of Schedule No. 1

36A. (1) Every manufacturer of [sales duty goods or] excisable goods specified in Section B of Part 2 of Schedule No. 1, every owner of [sales duty goods or] excisable goods specified in Section B of Part 2 of Schedule No. 1 manufactured for him partly or wholly from materials owned by such owner, and every dealer of a class designated by the Commissioner, in pearls, precious and semi-precious stones, precious metals, metals clad with precious metals or articles containing or manufactured of such pearls, precious and semi-precious stones, precious metals or metals clad with precious metals (excluding imitation jewellery), shall license his premises as a special customs and excise warehouse for [sales duty purposes or for] purposes of excise duty specified in Section B of Part 2 of Schedule No. 1 in terms of the provisions of this Act, and no such manufacturer, owner or dealer shall manufacture or deal in or with [sales duty goods or] excisable goods specified in Section B of Part 2 of Schedule No. 1 unless he has so licensed his premises: Provided that the Commissioner may in his discretion and to the extent he deems fit, exempt, on the conditions imposed by him in each case, any such manufacturer or owner from the requirements of this Act.

(2) Notwithstanding anything to the contrary in this Act contained—

(a) where the value added by any process in the manufacture of [sales duty goods or] 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 [sales duty goods or] excisable goods specified in Section B of Part 2 of Schedule No. 1 presents in his opinion exceptional difficulties in the collection of [sales duty or] 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 [sales duty purposes or 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;

(b) the Commissioner may, subject to such conditions as he may impose in each case—

(i) where the production and disposal of any [sales duty goods or] excisable goods specified in Section B of Part 2 of Schedule No. 1 are performed by different persons, or under other circumstances rendering it expedient in his opinion to do so, issue one licence under the provisions of this Act in respect of the

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- premises of two or more persons concerned, and thereupon each such person shall be jointly and severally liable for the **[sales duty or]** excise duty specified in Section B of Part 2 of Schedule No. 1 on all the **[sales duty goods or]** excisable goods specified in Section B of Part 2 of Schedule No. 1 concerned, any one paying, the other or others to be absolved *pro tanto*;
- 5
- (ii) include in a special customs and excise warehouse licence issued under this Act in respect of the premises of any manufacturer of **[sales duty goods or]** excisable goods specified in Section B of Part 2 of Schedule No. 1, any warehouse, depot, agency, branch or other storage place approved by the Commissioner and in which any such goods owned by such manufacturer are stored, and thereupon such goods so stored shall, for the purposes of this Act, be deemed to be in the licensed special customs and excise warehouse of such manufacturer, and the licensee concerned shall be liable as such in all respects for compliance with the requirements of this Act and for the **[sales duty or]** excise duty specified in Section B of Part 2 of Schedule No. 1 on such goods so stored;
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- (iii) in such circumstances as he may deem expedient, license the premises of any dealer in **[sales duty goods or]** excisable goods specified in Section B of Part 2 of Schedule No. 1 as a special customs and excise warehouse under the provisions of this Act, and thereupon such dealer shall comply with the requirements of this Act relating to the collection of **[sales duty or]** excise duty specified in Section B of Part 2 of Schedule No. 1 on such **[sales duty goods or]** excisable goods specified in Section B of Part 2 of Schedule No. 1 as the Commissioner may determine, and be liable for the **[sales duty or]** excise duty specified in Section B of Part 2 of Schedule No. 1 on such goods;
- 25
- 30
- (iv) make such temporary or permanent adjustment to the **[sales duty value of any sales duty goods or]** excise duty value of excisable goods specified in Section B of Part 2 of Schedule No. 1 as he may deem reasonable in circumstances which are in his opinion exceptional.
- 35
- (3) **[Sales duty goods or excisable]** 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 **[sales duty or]** excise duty specified in Section B of Part 2 of Schedule No. 1 thereon.
- 40
- 45
- (4) **[Sales duty goods or excisable]** Excisable goods specified in Section B of Part 2 of Schedule No. 1 manufactured in the Republic by any other person, or any class or kind of such goods, may, subject to such conditions as the Minister may impose, be exempted by the Commissioner from the payment of **[sales duty or]** excise duty specified in Section B of Part 2 of Schedule No. 1 thereon if—
- 50
- (a) the average value for **[sales duty purposes or 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 may determine, not exceeded such amount as the Minister may determine; or
- 55
- (b) the value for **[sales duty purposes or 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
- 60
- (c) such circumstances as may be prescribed by regulation apply.”.

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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 and section 8 of Act 84 of 1987

17. Section 37 of the principal Act is hereby amended by the substitution for subsection (8) of the following subsection:

“(8) There shall be paid on entry for home consumption, in addition to any duty payable in terms of this section and subject to the provisions of sections 27 (3) and 75, [sales duty] surcharge or fuel levy at the rate applicable in terms of Schedule No. 1 on any [sales duty goods] surcharge goods or fuel levy goods used or incorporated in the manufacture, reconditioning, mixing or blending of any goods to which this section relates and on any such manufactured, reconditioned, mixed or blended goods which are liable to [sales duty] surcharge or fuel levy in terms of the [aforementioned] said Schedule.”.

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 and section 9 of Act 84 of 1987

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

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

“(b) (i) [The Controller] Any importer may, at any place appointed under the provisions of this Act for the entry of goods, [shall accept entries for] make such entry of goods [in respect of] which [it is proved to the satisfaction of the Controller that such goods] have been loaded on a ship or delivered to the carrier which conveys the goods by vehicle to the Republic for discharge at that place, notwithstanding the fact that such ship or vehicle has not yet arrived at that place.

(ii) If any goods referred to in subparagraph (i) have not been so loaded at the time of entry as provided in section 45 (2), the importer shall be guilty of an offence and those goods shall be deemed not to have been entered.”;

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

“(2) Every importer shall within seven days of the granting of a [delivery] release order by the Controller in respect of any goods entered in terms of subsection (1) or, where the goods in question arrive after the granting of the order, within seven days of the arrival of such goods, present such [delivery] release order to the authority in possession of such goods for delivery thereof.”;

(c) by the substitution in subsection (3) for the words preceding subparagraph (i) of paragraph (a) 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, to the Controller a bill of entry in the prescribed form, but the Commissioner may—”; and

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

“(a) The Minister may by regulation permit any excisable goods [sales duty goods] or fuel levy goods and any class or kind of imported goods, which he may specify by regulation, 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, 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

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be a due entry from the time of removal of those goods from the customs and excise warehouse.”.

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 and section 3 of Act 69 of 1988

19. Section 39 of the principal Act is hereby amended by the substitution in subsection (1) for paragraph (a) of the following paragraph:

10 “(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 regulation, 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.”

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 and section 12 of Act 84 of 1987

20. Section 41 of the principal Act is hereby amended by the substitution in subsection (1) for the words preceding the proviso of the following words:

25 “The exporter of any goods imported into or exported from the Republic or the owner of any excisable goods [sales duty 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 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 purposes of this Act, require at any time:”

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 and section 13 of Act 84 of 1987

21. (1) Section 44 of the principal Act is hereby amended—

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

40 “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 otherwise provide, goods which are missing from any individual package and in respect of which any customs duty, [sales duty] surcharge or fuel levy, each taken separately, does not exceed twenty-five rand) were not landed at any place in the Republic.”;

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

50 “(2) Any excisable goods [sales duty goods] or fuel levy goods shall, for the purposes of this Act, be deemed to have been manufactured at that stage in the manufacturing process when the said goods have acquired the essential characteristics of and are in the opinion of the Commissioner capable of use as such excisable goods [sales duty goods] or fuel levy goods, and liability for duty shall commence at the said stage.”;

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- (c) by the substitution in subsection (6) for paragraph (c) of the following paragraph:
- “(c) in any other case, on the importer or the owner of such goods or any person who assumes such liability for any purpose under the provisions of this Act, subject to the approval of the Commissioner and such conditions as he may determine.”;
- (d) by the substitution for subsection (7) of the following subsection:
- “(7) Notwithstanding anything to the contrary in this section contained, no importer shall be granted a refund of customs duty, [sales duty] surcharge or fuel levy paid in respect of any goods missing from any individual imported package, if such customs duty, [sales duty] surcharge or fuel levy, each taken separately, does not exceed twenty-five rand.”; and
- (e) by the substitution for subsection (8) of the following subsection:
- “(8) The manufacturer, owner, seller or purchaser of any excisable goods [sales duty goods] or fuel levy goods shall, subject to the provisions of Chapter VII, be liable for the duty on such goods, and his liability shall continue until such goods have been duly entered and the duty due thereon paid.”.
- (2) Paragraph (c) of subsection (1) of this section shall be deemed to have come into operation on 10 May 1989.

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 and section 6 of Act 68 of 1989

22. Section 47 of the principal Act is hereby amended—

- (a) by the substitution in subsection (1) for the words preceding the proviso of the following words:
- “Subject to the provisions of this Act, duty shall be paid for the benefit of the State Revenue Fund on all imported goods, all excisable goods, [all sales duty goods] all surcharge goods and all fuel levy goods in accordance with the provisions of Schedule No. 1 at the time of entry for home consumption of such goods.”; and
- (b) by the substitution for subsection (7) of the following subsection:
- “(7) Wherever the tariff heading or subheading under which any goods are classified in Part 1 of Schedule No. 1 is expressly quoted in any tariff item, [sales duty item] surcharge item or fuel levy item or item of Part 2, [3] 4, 5 or 6 of the said Schedule or in any item in Schedule No. 2 in which such goods are specified, the goods so specified in the said tariff item, [sales duty item] surcharge item, fuel levy item or item of the said Part 2, [3] 4, 5 or 6 or in the said item of Schedule No. 2 shall be deemed not to include goods which are not classified under the said tariff heading or subheading.”.

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, section 10 of Act 98 of 1980, section 9 of Act 86 of 1982, section 18 of Act 84 of 1987 and section 7 of Act 68 of 1989

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

- (a) by the substitution in subsection (2) for the words preceding the proviso of the following words:
- “The Minister may from time to time by like notice amend or withdraw or, if so withdrawn, insert Part 2, [Part 3] Part 4 or Part 5 of Schedule No. 1, whenever he deems it expedient in the public interest to do so.”; and
- (b) by the substitution in subsection (2A) for subparagraph (i) of paragraph (a) of the following subparagraph:

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- 5 “(i) The Minister may from time to time by like notice, whenever he deems it expedient in the public interest to do so, authorize the Director-General: Trade and Industry or the Commissioner to withdraw, with or without retrospective effect, and subject to such conditions as the said Director-General or Commissioner may determine, any duty specified in Part 2 [Part 3] or Part 4 of Schedule No. 1.”

Insertion of section 52 in Act 91 of 1964

24. (1) The following section is hereby inserted in the principal Act after section 51:

- 10 **“Imposition of a fuel levy by any party to a customs union agreement**
 52. (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
 15 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 into the Republic shall, subject to such
 20 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.
 (b) If any such party to such customs union agreement imposes such fuel
 25 levy as provided in this Act, the Commissioner may, notwithstanding
 the provisions of section 47 (1), in respect of any fuel levy paid
 in the Republic on any petrol or distillate fuel entered or removed
 for consumption in the territory of any such party pay such fuel levy
 for any period it remains so imposed, if the Minister approves, to
 such party.
 (c) For the purposes of paragraph (b), the Commissioner may pay the
 30 fuel levy concerned on the basis of any documents, relating to the
 movement of such petrol or distillate fuel, in possession of any
 person as may be determined by him.”

(2) Subsection (1) of this section shall be deemed to have come into operation on 1 July 1987.

35 **Amendment of section 60 of Act 91 of 1964, as amended by section 4 of Act 85 of 1968, section 20 of Act 105 of 1969 and section 11 of Act 86 of 1982**

25. Section 60 of the principal Act is hereby amended by the addition of the following subsections:

- 40 “(3) The Minister may, whenever he deems it expedient in the public interest to do so, amend Schedule No. 8 by notice in the *Gazette*.
 (4) The provisions of section 48 (6) and (7) shall *mutatis mutandis* apply in respect of any amendment made under the provisions of subsection (3) of this section.”

45 **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 and section 10 of Act 68 of 1989**

26. (1) Section 66 of the principal Act is hereby amended—

- (a) by the substitution in subsection (8) for paragraph (d) of the following paragraph:
 50 “(d) the cost of transportation, loading, unloading, handling and insurance and associated costs incidental to delivery of the imported goods at the port or place of export in the country of exportation and placing those goods on board ship or on any vehicle, or in a container as defined in section 1 (2), at that port or place [ready for export to the Republic];”;
 and

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(b) by the substitution for subsection (11) of the following subsection:

“(11) For the purposes of subsection (7) (a) (ii) or (8) (d), the port or place of export referred to therein shall be the place in the country of exportation where the goods in question [are]—

5 (a) are packed in a container as defined in section 1 (2) or, if not so packed in a container, placed on board ship or on any vehicle which conveys them from or across the border of [in the] that country [of exportation, ready for export to the Republic]; or

10 (b) [placed on the vehicle which conveys them across the border of the country from which they are exported to the Republic.] if they are ships or vehicles moving under their own power, finally leave that country for the Republic.”

(2) Subsection (1) of this section shall be deemed to have come into operation on 21 June 1989.

15 **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 and section 11 of Act 68 of 1989**

27. (1) Section 67 of the principal Act is hereby amended—

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

20 “(e) to the extent that they are not included in the price actually paid or payable for the goods, the cost of transportation, loading, unloading, handling and insurance and associated costs incidental to delivery of the goods at the port or place of export in the country of exportation and placing those goods on board ship or on any vehicle, or in a

25 container as defined in section 1 (2), at that port or place [ready for export to the Republic].”; and

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

30 “(4) For the purposes of subsection (1) (e) or (2) (a), the port or place of export referred to therein shall be the place in the country of exportation where the goods in question [are]—

(a) are packed in a container as defined in section 1 (2) or, if not so packed in a container, placed on board ship or on any vehicle which conveys them from or across the border of [in the] that country [of exportation, ready for export to the Republic]; or

35 (b) [placed on the vehicle which conveys them across the border of the country from which they are exported to the Republic.] if they are ships or vehicles moving under their own power, finally leave that country for the Republic.”

40 (2) Subsection (1) of this section shall be deemed to have come into operation on 21 June 1989.

Repeal of section 70 of Act 91 of 1964, as inserted by section 23 of Act 105 of 1969 and amended by section 9 of Act 105 of 1976, section 23 of Act 112 of 1977, section 7 of Act 93 of 1978 and section 16 of Act 86 of 1982

28. Section 70 of the principal Act is hereby repealed.

45 **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**

50 **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 and section 13 of Act 68 of 1989**

29. (1) Section 75 of the principal Act is hereby amended—

(a) by the deletion in subsection (1) of paragraph (e);

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- (b) by the substitution in subsection (1) for the proviso to subparagraph (i) of paragraph (f) of the following proviso:
“Provided that no such refund shall be paid to the State or any government, department, administration or any body, institution or authority mentioned in [item 401.00 of Schedule No. 4 and item 601.00 of Schedule No. 6, including any university, college, school or other educational institution or any regional or local authority, except as provided in] the notes to the said Schedule No. 5 or 6;”;
- (c) by the substitution in subsection (2) for subparagraph (i) of paragraph (b) of the following subparagraph:
“(i) in a factory which is registered under the Machinery and Occupational Safety Act, 1983 (Act No. 6 of 1983) [or any like law in force in the territory of South-West Africa];”;
- (d) by the substitution in subsection (6) for the proviso to paragraph (a) of the following proviso:
“Provided that, in respect of any such goods which are specified in any item of Schedule No. 3, 4 or 6 [or 7] the Commissioner may, subject to the provisions of or the notes applicable to the item in which such goods are specified and to any conditions which he may impose in each case, exempt any such goods from the whole or any portion of the duty payable thereon under this subsection on the ground of the period or the extent of use in accordance with the provisions of the item under which such goods were entered, or on any other ground which he considers reasonable.”;
- (e) by the substitution in subsection (7) for the words preceding the proviso of the following words:
“No drawback or refund shall be paid in respect of any goods specified in any item of Schedule No. 5 or 6 [or 7] if such goods have been used or disposed of otherwise than in accordance with the provisions of this section and the item in question or if such provisions have not been complied with in respect of such goods.”;
- (f) by the substitution for subsection (8) of the following subsection:
“(8) Wherever the tariff heading or subheading or the tariff item or subitem [or the sales duty item or subitem] under which any goods are classified in Schedule No. 1 is expressly quoted in any item of Schedule No. 3, 4, 5 or 6 [or 7] in which such goods are specified, the goods so specified in the said item of Schedule No. 3, 4, 5 or 6 [or 7] shall be deemed not to include goods which are not classified under the said tariff heading or subheading or tariff item or subitem [or sales duty item or subitem].”;
- (g) by the substitution in subsection (9) for the words preceding the proviso of the following words:
“Any goods entered for use under rebate of duty under this section shall, for the purposes of this Act, be deemed to be entered for home consumption, but no entry in respect of any such goods described in Schedule No. 3 or 4 [or 7] shall be valid unless the number of the tariff heading and subheading [or sales duty item and subitem] under which such goods are classified in Schedule No. 1 and the number of the item of Schedule No. 3 or 4 [or 7] in which the said goods are specified are both declared on such entry and the industry in which and the purpose for which such goods are to be used, as specified in the said item, are declared on such entry.”;
- (h) by the substitution in subsection (10) for the words preceding the proviso to paragraph (a) of the following words:
“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

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the Minister by regulation in respect of any goods specified in any item of Schedule No. 3, 4 or 6 [or 7].”;

- (i) by the substitution for subsection (11) of the following subsection:

5 “(11) Notwithstanding anything to the contrary in this Act contained, the Commissioner may, in respect of Schedule No. 5 or 6 [or 7] for the purpose of calculating the amount of duty refundable on any imported or excisable goods [sales duty goods] or fuel levy goods used in the manufacture, reconditioning, mixing or blending of any goods exported or marketed in the Republic, determine the quantity of such exported goods or
10 such goods marketed in the Republic which shall be deemed to have been produced, reconditioned, mixed or blended from a given quantity of such imported or excisable goods [sales duty goods] or fuel levy goods or the quantity of such imported or excisable goods [sales duty goods] or fuel levy goods which shall be deemed to have been used in the production, reconditioning, mixing or blending of a given quantity of such exported
15 goods or such goods marketed in the Republic.”;

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

20 “(a) The Minister may from time to time by notice in the *Gazette* amend Schedule No. 3, 4, 5 or 6 [or 7] in order to give effect to any recommendation of the Board of Trade and Industries or whenever he deems it expedient in the public interest to do so.”;

- (k) by the substitution for subsection (17) of the following subsection:

25 “(17) The Commissioner may refuse to accept an entry under rebate or an application for drawback or refund under any item of Schedule No. 3, 4, 5 or 6 [or 7] from any person who has persistently contravened or failed to comply with the provisions of this Act or who has committed an offence referred to in section 80, 83, 84, 85 or 86 and he may cancel any registration under the provisions of this Act of such person or suspend any such registration for such period as he may deem fit.”;

- (l) by the substitution in subsection (18) for the words preceding paragraph (a) of the following words:

35 “Subject to the provisions of the proviso to section 20 (5) and items 412.07, 412.08, 412.09, 531.00, 532.00, 608.01, 608.02, 608.03, 608.04, 615.01, 615.02 and 615.03 [707.01, 707.02 and 707.03] of Schedules Nos. 4, 5 and 6 [and 7] no rebate or refund of duty in respect of any loss or deficiency of any nature of any goods shall be allowed, but the Commissioner may allow the deduction from the dutiable quantity of the undermentioned goods of a quantity equal to the percentage stated below in each case, namely —”;

- (m) by the substitution for subsection (19) of the following subsection:

45 “(19) No person shall, without the permission of the Commissioner, divert any goods entered under rebate of duty under any item of Schedule No. 3, 4 or 6 [or 7] or for export for the purpose of claiming a drawback or refund of duty under any item in Schedule No. 5 or 6 [or 7] to a destination other than the destination declared on such entry or deliver such goods or cause such goods to be delivered in the Republic otherwise than in accordance with the provisions of this Act and, in the case of goods entered under rebate of duty, otherwise than to the person who entered the goods or on whose behalf the goods were entered.”; and

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

55 “(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 [or 7] for manufacturing purposes or such other purpose as may be specified in the regulations 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.”.

(2) Paragraph (b) of section (1) of this section shall be deemed to have come into
60 operation on 1 October 1989.

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Substitution 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, section 11 of Act 110 of 1979, section 15 of Act 98 of 1980, section 20 of Act 86 of 1982, section 5 of Act 89 of 1983, section 24 of Act 84 of 1987 and section 14 of Act 68 of 1989.

5 30. The following section is hereby substituted for section 76 of the principal Act:

“General refunds in respect of imported goods or excisable goods

10 76. (1) No refund of any duty or other charge in respect of imported goods, excisable goods, [sales duty 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.

15 (2) The Commissioner shall, subject to the provisions of subsection (4), consider any application for a refund or payment from any applicant who contends that he has paid any duty or other charge for which he was not liable or that he is entitled to any payment under this Act by reason of—

- 20 (a) an error in determining an assessment or calculating the amount thereof;
- (b) the duty having been assessed on a value higher than the value for duty purposes;
- (c) a determination under section 47 (9) or incorrect tariff classification;
- 25 (d) the goods concerned having been damaged, destroyed or irrecoverably lost by circumstances beyond his control prior to the release thereof for home consumption;
- (e) all or part of such goods having been shortlanded, shortshipped or shortpacked;
- (f) the substitution of any bill of entry in terms of section 40 (3); or
- 30 (g) the duty having been reduced or withdrawn as provided for in section 48 (2) or (2A).

(3) Except with the permission of the Commissioner, any application for a refund under this section shall not relate to more than one bill of entry or other document in respect of which the alleged overpayment was made.

35 (4) 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 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—

- 40 (a) from the date of entry for home consumption as provided in section 45 (2), of the goods to which the application relates; or
- (aA) from the date on which the charge to which the application relates was paid; or
- 45 (b) in the case where a determination of a tariff heading, tariff subheading or item referred to in paragraph (a) of section 47 (9) or of a value referred to in paragraph (a) of subsection (4) of section 65 is, under paragraph (d) of the said section 47 (9) or subsection (5) of the said section 65, as the case may be, amended with retrospective effect from a date before or on the date on which the duty to which the application relates was paid, or any such determination is, under the said paragraph (d) or subsection
- 50 (5), as the case may be, withdrawn with such retrospective effect, and a new determination is thereunder made with effect from such withdrawal, from the date on which such amendment is effected or such new determination is made or, if such amendment or new determination is published by notice in the *Gazette*, the date on which such amendment or new determination is so published; or
- 55 (c) in the case where any Schedule is amended with such retrospective effect, from the date on which such amendment is published by
- 60 notice in the *Gazette*:

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Provided that the Commissioner may, in such circumstances as he may consider exceptional, consider any such application after expiration of such period.

5 (5) If, after considering any application for a refund or payment in terms of this section, the Commissioner is satisfied that the applicant is entitled to any such refund or payment, the Commissioner may pay to the applicant the amount due to him: Provided that no refund shall be made under this section if, in the case of goods imported by post, the amount thereof is less than fifty cents or, in the case of goods imported
10 in any other manner, less than five rand or, in the case of excisable goods **[or sales duty goods]** manufactured in the Republic, less than two rand, unless the Commissioner is satisfied that exceptional circumstances exist which warrant such refund.”

15 Substitution of section 77 of Act 91 of 1964, as substituted by section 26 of Act 105 of 1969 and amended by section 3 of Act 68 of 1973, section 15 of Act 98 of 1980, section 21 of Act 86 of 1982, section 26 of Act 84 of 1987 and section 10 of Act 69 of 1988

31. The following section is hereby substituted for section 77 of the principal Act:

“Set-off of certain amounts

20 77. **[(1)]** (a) **[Any amount due to a]** A licensee of a customs and excise warehouse who, in terms of the regulations, is permitted to pay **[excise] any duty [sales duty or fuel levy] monthly or quarterly, and who—**

25 (i) **[in respect of such] paid any duty [paid by him]** for which he was not liable; or

(ii) **granted any provisional refund [granted by him]** in terms of section 75 (1A); or

30 (iii) **[which is refundable to him]** becomes entitled to a refund in terms of item 534.00 of Schedule No. 5 or any item of Schedule No. 6 **[or 7]**,

may, subject to the approval of the Commissioner, at any time within a period of two years from the date on which **[such amount first becomes due, be]** that duty was paid, such provisional refund was granted or such licensee became entitled to such refund, set off such duty, provisional refund or amount refundable against **[any amount] that particular duty** for which such licensee subsequently becomes liable **[in respect of excise duty, sales duty or fuel levy]**, except that the duty refundable in terms of the said item 534.00 be set off against the excise duty specified in Section B of Part 2 of
35 Schedule No. 1 for which such licensee subsequently becomes liable, provided the monthly or quarterly accounts or bills of entry submitted by such licensee in respect of the payment of any **[amount] duty** against which any **[amount so due to him] duty, provisional refund or amount refundable** has been set off are accompanied by a full statement by such licensee, supported by a certificate by an officer, giving full particulars **[of the excise duty, sales duty or fuel levy so paid]** and a full account of the circumstances **[under which the payment thereof took place]** in respect of such set-off and by such
40 documentary evidence as the Commissioner may in each case require.

45 (b) If **[the] such set-off [of any amount]** is not **[allowed] approved** by the Commissioner in terms of paragraph (a) **[such amount]**, it shall be debited to the account of such licensee.

50 (2) With the permission of the Commissioner and subject to such conditions as he may impose, any amount of sales duty or excise duty
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5 specified in Section B of Part 2 of Schedule No. 1 paid by the licensee of a special customs and excise warehouse licensed in terms of this Act in respect of sales duty goods or excisable goods specified in Section B of Part 2 of Schedule No. 1 sold by him to any person whose premises are not so licensed and who has exported such goods or supplied them to any other person entitled to acquire such goods under rebate of sales duty or excise duty specified in Section B of Part 2 of Schedule No. 1, may be set off against any amount for which such licensee subsequently becomes liable in respect of sales duty or excise duty specified in Section B of Part 2 of Schedule No. 1, provided proof to the satisfaction of the Commissioner of such export or supply under rebate of duty and the identity of the sales duty goods or excisable goods specified in Section B of Part 2 of Schedule No. 1 so exported or supplied is submitted by such licensee, together with such documentary proof as the Commissioner may in each case require regarding the sale of such goods by such licensee.]"

Amendment of section 80 of Act 91 of 1964, as amended by section 10 of Act 85 of 1968, section 27 of Act 105 of 1969, section 28 of Act 112 of 1977, section 22 of Act 86 of 1982, section 7 of Act 89 of 1984, section 12 of Act 52 of 1986 and section 27 of Act 84 of 1987

20 32. Section 80 of the principal Act is hereby amended by the substitution in subsection (1) for paragraph (b) of the following paragraph:

“(b) not being a licensed manufacturer or dealer, without lawful authority has in his possession or custody or under his control any partly manufactured excisable goods [sales duty goods] or fuel levy goods or excisable goods [sales duty goods] or fuel levy goods upon which duty has not been paid;”

Amendment of section 81 of Act 91 of 1964, as substituted by section 9 of Act 93 of 1978 and amended by section 13 of Act 52 of 1986

33. The following section is hereby substituted for section 81 of the principal Act:

“Non-declaration in respect of certain goods

30 81. Any person who contravenes or fails to comply with the provisions of section 15, [fails to declare any dutiable goods or goods the importation or exportation of which is prohibited or restricted under any law and which he has upon his person or in his possession, or makes any statement for customs or excise purposes as to any dutiable goods or prohibited or
 35 restricted goods upon his person or in his possession from which any dutiable goods or prohibited or restricted goods are omitted] shall [if any such goods are discovered to be or to have been upon his person or in his possession at the time of the failure, or of the statement] be guilty of an offence and liable on conviction to a fine not exceeding [five thousand rand] R5 000 or treble the value of the goods in question, whichever is the greater, or to imprisonment for a period not exceeding two years, or to both such fine and such imprisonment, and the goods in question and any other goods contained in the same package as well as the package itself shall be liable to forfeiture.”

45 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 and section 30 of Act 84 of 1987

50 34. Section 102 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) Any person selling, offering for sale or dealing in imported or excisable goods [sales duty goods] or fuel levy goods or any person removing the same, or

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any person having such goods entered in his books or mentioned in any documents referred to in section 75 (4A) or 101, shall, when requested by an officer, produce proof as to the person from whom the goods were obtained and, if he is the importer or manufacturer or owner, as to the place where the
 5 duty due thereon was paid, the date of payment, the particulars of the entry for home consumption and the marks and numbers of the cases, packages, bales and other articles concerned, which marks and numbers shall correspond to the documents produced in proof of the payment of the duty.”

**Amendment of section 106 of Act 91 of 1964, as amended by section 30 of Act 105 of
 10 1969**

35. 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 sales duty goods] or at any time after such entry
 15 or manufacture, take, without payment, from any person in possession of such imported goods or of any manufactured or partly manufactured excisable goods [or sales duty goods] samples of such imported, manufactured or partly
 20 manufactured goods or of materials intended for the manufacture of excisable goods [or sales duty 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, and those samples shall be dealt with and accounted for in such manner as the Commissioner may direct.”

Repeal of section 108 of Act 91 of 1964

36. Section 108 of the principal Act is hereby repealed.

25 **Amendment of section 114 of Act 91 of 1964, as amended by section 33 of Act 105 of 1969, section 12 of Act 71 of 1975, section 36 of Act 112 of 1977, section 15 of Act 98 of 1980, section 13 of Act 101 of 1985 and section 32 of Act 84 of 1987**

37. (1) Section 114 of the principal Act is hereby amended—

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

“(a) (i) The correct amount of duty for which any person is liable in respect of any goods imported into or exported from the Republic or any goods manufactured in the Republic shall from the date on which liability for such duty commences; and
 35 (ii) any interest payable under this Act and any fine, penalty or forfeiture incurred under this Act shall, from the time when it should have been paid, constitute a debt to the State by the person concerned, and any goods in a customs and excise warehouse or in the custody of the Office (including goods in a rebate store-room) and belonging to that person, and any goods afterwards imported or exported by the person by whom the debt is due, and any imported goods in the possession or under the control of such person or on any premises in the possession or under the control of such person, and any goods in respect of which
 40 an excise [or sales] duty or fuel levy is prescribed (whether or not such duty or levy has been paid) and any materials for the manufacture of such goods in the possession or under the control of such person or on any premises in the possession or under the control of such person and any vehicles, machinery, plant or equipment in the possession or under the control of such person in which fuel in respect of which any duty or
 45 levy is prescribed (whether or not such duty or levy has been paid), is used, transported or stored, may be detained in accordance with the

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- provisions of subsection (2) and shall be subject to a lien until such debt is paid.”;
- (b) by the substitution in the said subsection (1) for the words preceding the proviso to paragraph (aA) of the following words:
- 5 “Any plant and stills for the manufacture of any goods in respect of which an excise [or sales] duty or fuel levy is prescribed which are in the possession or under the control of such person or on any premises in the possession or under the control of such person shall be subject to a lien from the time when the liability for the duty or levy payable as contemplated in paragraph (a) in respect of any goods so manufactured commences until the debt in question is paid, as if such plant and stills are detained in accordance with the provisions of subsection (2):”; and
- 10 (c) by the insertion in the said subsection (1) after paragraph (aA) of the following paragraph:
- 15 “(aB) Any capital goods in respect of which any surcharge has been withdrawn in terms of any permit issued by the Director-General: Trade and Industry shall be subject to a lien as security for the surcharge so withdrawn until the conditions specified in such permit have been complied with to the satisfaction of the said Director-General, as if such goods are detained in accordance with the provisions of subsection (2) unless other security is furnished to the satisfaction of the Commissioner.”
- 20 (2) Subsection (1) (c) of this section shall be deemed to have come into operation on 10 May 1989.
- 25

Amendment of section 117 of Act 91 of 1964, as substituted by section 35 of Act 105 of 1969 and amended by section 15 of Act 98 of 1980, section 20 of Act 52 of 1986 and section 34 of Act 84 of 1987

38. Section 117 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:
- 30 “(1) Such statistics of the import and export trade of the Republic and of excisable goods manufactured in the Republic [and of sales duty goods] and of fuel levy goods manufactured in and imported into the Republic as the Minister may determine, shall be compiled and tabulated by the Commissioner and published at such times and in such manner as the Minister may direct.”.
- 35

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 and section 35 of Act 84 of 1987

39. Section 120 of the principal Act is hereby amended—
- (a) by the substitution in subsection (1) for paragraph (b) of the following paragraph:
- 40 “(b) determining [the special] services for which charges shall be payable [on account of the attendance of or supervision by officers], the rate and the method of payment of such charges and the conditions attaching to such [special] services [(including the payment of transport charges)];”; and
- 45 (b) by the substitution in subsection (1) for paragraph (h) of the following paragraph:
- “ (h) as to the collection of excise duties [and sales duties] and fuel levy, the time, manner and terms of payment and the calculation thereof;”; and
- 50 (c) by the substitution in subsection (1) for paragraph (k) of the following paragraph:
- “ (k) governing the entry of goods under any item of Schedule No. 3, 4, 5 or 6 [or 7] and prescribing the conditions on which such goods may be so entered or such goods may be transferred from one manufacturer or owner to another or such goods may be used, and as to the registration of manufacturers or owners so entering goods (including requirements as to the suitability of buildings, premises, storerooms and methods of manufacture for the purposes of this Act to be complied with by such
- 55

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manufacturers or owners); the records to be kept by such manufacturers or owners and the form of the application for registration and the particulars to be furnished by such manufacturers or owners;”.

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 and section 19 of Act 68 of 1989

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

(2) Subject to the provisions of section 58 (1) of the principal Act, this section shall be deemed to have come into operation on 14 March 1990.

Continuation of certain amendments of Schedules Nos. 1, 3, 4, 5, 6 and 7 to Act 91 of 1964

41. (1) Every amendment of Schedules Nos. 1, 3, 4, 5, 6 and 7 to the principal Act made under section 48 (1) and (2), section 48A (1) or section 75 (15) of the principal Act prior to 2 February 1990 shall not lapse by virtue of the provisions of section 48 (6), 48A (2) or 75 (16) of the principal Act.

(2) The amendments of Parts 2 and 4 of Schedule No. 1 to the principal Act made under section 48 (1) and (2) of the principal Act by Government Notices Nos. R.574 and R.575 of 15 March 1990, shall not lapse by virtue of the provisions of section 48 (6) of the principal Act.

(3) The amendments of Schedule No. 6 to the principal Act made under section 75 (15) of the principal Act by Government Notice No. R.573 of 14 March 1990, shall not lapse by virtue of the provisions of section 75 (16) of the principal Act.

Substitution of long title of Act 91 of 1964, as substituted by section 41 of Act 84 of 1987

42. The following long title is hereby substituted for the long title of the principal Act:

“ACT

To provide for the levying of customs and excise [and sales] duties and a surcharge; for a fuel levy, the prohibition and control of the importation, export or manufacture of certain goods; and for matters incidental thereto.”.

Application of section 45 of Act 91 of 1964 in relation to a bill of entry

43. For the purposes of section 45 (2) of the principal Act—

- (a) bill of entry No. 3, delivered at the D. F. Malan Airport on 28 February 1989, shall be deemed to have been so delivered on 10 August 1988; and
(b) the duty paid on the goods entered on that bill of entry shall be deemed to have been paid on the date of commencement of this Act.

Removal of goods between the Republic of Namibia and the common customs area

44. (1) Notwithstanding anything to the contrary in the principal Act or any other law contained, goods produced or manufactured in the common customs area and the Republic of Namibia and any imported, excisable or fuel levy goods which have been duly entered in the common customs area or the Republic of Namibia may be removed between the Republic of Namibia and the common customs area without making entry in terms of sections 38 and 39.

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(2) Subsection (1) of this section shall be deemed to have come into operation on 21 March 1990.

Payment of fuel levy to the Government of the Republic of Namibia

5 45. (1) Notwithstanding anything to the contrary in the principal Act contained, the Commissioner may, if the Minister approves, pay any fuel levy collected in the Republic on any petrol or distillate fuel entered or removed for consumption in the Republic of Namibia from 21 March 1990 to the date the Republic of Namibia becomes a party to any customs union agreement concluded in terms of section 51 of the principal Act, to the Government of the Republic of Namibia.

10 (2) Subsection (1) of this section shall be deemed to have come into operation on 21 March 1990.

Repeal of section 42 of Act 84 of 1987

46. Section 42 of the Customs and Excise Amendment Act, 1987, is hereby repealed.

15 Deletion of Part 3 of Schedule No. 1 and Schedule No. 7

47. Part 3 of Schedule No. 1, and Schedule No. 7, to the principal Act are hereby deleted.

Short title

48. This Act shall be called the Customs and Excise Amendment Act, 1990.

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Schedule

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

Tariff Item	Tariff Heading	Description	Rate of Duty	
			Excise	Customs
104.10 104.15 104.20 and 104.30		By the substitution for tariff items 104.10, 104.15, 104.20 and 104.30 of the following:		
"104.10	22.03	BEER MADE FROM MALT:		
.10		Of a relative density before fermentation not exceeding 1 040° (excluding sorghum beer as defined in the Sorghum Beer Act, 1962 (Act No. 63 of 1962))	3 927c/100ℓ	3 926c/100ℓ
		Plus a suspended duty of:		
		(i) In operation	Nil	Nil
		(ii) Maximum rate	275c/100ℓ	275c/100ℓ
.20		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 (excluding sorghum beer as defined in the Sorghum Beer Act, 1962 (Act No. 63 of 1962)):		
		(1) On the first 4 500 000ℓ or any quantity less than 4 500 000ℓ so cleared during a financial year	4 202c/100ℓ	—
		(2) On the quantity so cleared during a financial year which is more than 4 500 000ℓ but not exceeding 9 000 000ℓ	4 334c/100ℓ	—
		(3) On the quantity so cleared during a financial year which is more than 9 000 000ℓ but not exceeding 18 000 000ℓ	4 466c/100ℓ	—
		(4) On the quantity so cleared during a financial year which is more than 18 000 000ℓ but not exceeding 27 000 000ℓ	4 598c/100ℓ	—
		(5) On the quantity so cleared during a financial year which is more than 27 000 000ℓ but not exceeding 36 000 000ℓ	4 730c/100ℓ	—
		(6) On the quantity so cleared during a financial year which is more than 36 000 000ℓ	4 862c/100ℓ	—
		(7) If duty is paid on illicit beer	4 862c/100ℓ	—
		(8) If imported		4 180c/100ℓ
.30		Of a relative density before fermentation exceeding 1 050° (excluding sorghum beer as defined in the Sorghum Beer Act, 1962 (Act No. 63 of 1962))	4 961c/100ℓ	4 400c/100ℓ
		Plus, for every degree of relative density before fermentation exceeding 1 080°	22c/100ℓ	22c/100ℓ
104.15	22.04	WINE OF FRESH GRAPES, INCLUDING FORTIFIED WINES; GRAPE MUST OTHER THAN OF HEADING NO. 20.09;		
	22.05	VERMOUTH AND OTHER WINE OF FRESH GRAPES FLAVOURED WITH PLANTS OR AROMATIC SUBSTANCES;		

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Tariff Item	Tariff Heading	Description	Rate of Duty	
			Excise	Customs
	22.06	RAISIN WINE, INDUSTRIAL GRAPE SYRUP AND INDUSTRIAL "MOSKONFYT", WITH FERMENTATION ARRESTED BY THE ADDITION OF ALCOHOL; FERMENTED APPLE, PEAR AND ORANGE BEVERAGES:		
.40		Fortified still wine	2 318c/100ℓ	2 318c/100ℓ
.60		Fortified still fermented apple, pear and orange beverages	2 452c/100ℓ	2 452c/100ℓ
.70		Sparkling wine (excluding champagne)	3 924c/100ℓ	3 924c/100ℓ
.80		Sparkling fermented apple, pear and orange beverages	4 154c/100ℓ	4 154c/100ℓ
104.20	22.07	UNDENATURED ETHYL ALCOHOL OF AN ALCOHOLIC STRENGTH BY VOLUME OF 80% VOL. OR HIGHER; ETHYL ALCOHOL AND OTHER SPIRITS, DENATURED, OF ANY STRENGTH;		
	22.08	UNDENATURED ETHYL ALCOHOL OF AN ALCOHOLIC STRENGTH BY VOLUME OF LESS THAN 80% VOL.; 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	117 026c/100ℓ of absolute alcohol	—
.15		Spirits, manufactured in the Republic by the distillation of any sugar cane product	126 989c/100ℓ of absolute alcohol	—
.25		Spirits, manufactured in the Republic by the distillation of any grain product	131 496c/100ℓ of absolute alcohol	—
.29		Other spirits, manufactured in the Republic	121 463c/100ℓ of absolute alcohol	—
.30		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	—	107 413c/100ℓ of absolute alcohol or 47 046c/100ℓ
.40		Spirits of any nature in imported liqueurs, cordials and similar spirituous beverages containing added sugar, with or without flavouring substances	—	107 413c/100ℓ of absolute alcohol
104.30	24.02	CIGARS, CHERROOTS, 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	180c/kg net	202c/kg net
.20		Cigarettes	17,5c/10 cigarettes plus 56c/kg tobacco content	17,5c/10 cigarettes plus 56c/kg tobacco content
		Plus in respect of cigarettes the mass of the tobacco of which exceeds 1,5 kg/1 000 cigarettes	804c/kg tobacco content	804c/kg tobacco content
.30		Cigarette tobacco	17,5c/50g or fraction thereof plus 213c/kg tobacco	17,5c/50g or fraction thereof plus 213c/kg tobacco

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Tariff Item	Tariff Heading	Description	Rate of Duty	
			Excise	Customs
		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	210c/kg net	210c/kg net
.50		Pipe tobacco in immediate packings of a content of not less than 5 kg	192c/kg net	192c/kg net''.