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GOVERNMENT GAZETTE

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OFFICE OF THE PRIME MINISTER

KANTOOR VAN DIE EERSTE MINISTER

No. 1469.

6 July 1983

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

No. 89 of 1983: Customs and Excise Amendment Act, 1983.

No. 1469.

6 Julie 1983

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

No. 89 van 1983: Wysigingswet op Doeane en Aksyns, 1983.

Act No. 89, 1983

CUSTOMS AND EXCISE AMENDMENT ACT, 1983

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 regulate the pledging or hypothecation of warehoused goods; to provide for the determination of the time of exportation of certain goods; to further regulate the adjustment of bills of entry which have been passed in error; to make further provision for the imposition of anti-dumping duties, for refunds of duty in respect of dutiable goods and for the conditions on which certain goods may be allowed to pass from the control of the Commissioner for Customs and Excise; to delete a certain provision relating to the prohibition of the exportation or transit carriage through the Republic or coastwise carriage of certain goods; to effect certain textual changes; and to provide for the continuation of certain amendments of Schedules Nos. 1, 3, 4, 5 and 6 to the said Act, for the commencement of certain Government Notices amending Schedules Nos. 1 and 3 to the said Act and for the construction of tariff heading No. 56.05 in item 311.02 of Schedule No. 3 to the said Act; and to provide for matters connected therewith.

(Afrikaans text signed by the State President.)
(Assented to 27 July 1983.)

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

Substitution of section 26 of Act 91 of 1964.

1. The following section is hereby substituted for section 26 of the Customs and Excise Act, 1964 (hereinafter referred to as the principal Act):

“Transfer of ownership or pledging or hypothecation of warehoused goods.

26. (1) Except with the prior permission of the Commissioner—

(a) the owner of any dutiable goods in a customs and excise warehouse may **[transfer] not enter** into any agreement whereby—

(i) his ownership of such goods is transferred to any other person **[but the Commissioner may refuse to recognize any such transfer of ownership unless the Controller is notified thereof in the manner prescribed by the Commissioner by rule which may vary in respect of different classes or kinds of goods or goods in respect of which circumstances specified by him apply];**

(ii) such goods are pledged or otherwise hypothecated in favour of any other person;

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(b) any person in whose favour such goods have been pledged or hypothecated may not enter into any agreement whereby any rights obtained by him by virtue of such pledging or hypothecation are ceded to any other person. 5

(2) Any agreement entered into contrary to the provisions of subsection (1) shall for the purposes of this Act be deemed to be null and void."

Amendment of section 38 of Act 91 of 1964, as amended by section 13 of Act 105 of 1969, section 5 of Act 71 of 1975 and section 4 of Act 105 of 1976.

2. Section 38 of the principal Act is hereby amended by the substitution for subsection (3) of the following subsection: 10

"(3) (a) Every exporter [~~exporting~~] of any goods shall, before such [~~exportation takes place~~] goods are exported from the Republic deliver to the Controller a bill of entry in the prescribed form, but the Commissioner may—

(i) if no export duty is payable on and no obligation 15 or condition is to be fulfilled or complied with under any law in respect of such goods; or

(ii) in the case of goods to be exported overland by way of a vehicle (excluding an aircraft and a train) which are loaded for export at a place other 20 than a place appointed under section 6 where goods may be entered for customs and excise purposes,

allow such a bill of entry to be delivered at such time as he deems reasonable. 25

(b) For the purposes of paragraph (a), in relation to the delivery of a bill of entry, the goods referred to therein shall be deemed to have been exported from the Republic—

(i) in the case of goods to be exported in a ship, at the 30 time when such goods are delivered to the South African Transport Services, a depot operator, the master of the ship concerned or a container operator, as the case may be;

(ii) in the case of goods to be exported in an aircraft, 35 at the time when such goods are delivered to the pilot of the aircraft concerned or are brought within the control area of the airport authority concerned, as the case may be;

(iii) in the case of goods to be exported in a train, at 40 the time when such goods are delivered to the South African Transport Services;

(iv) in the case of goods to be exported overland in a vehicle (excluding an aircraft and a train), subject to the provisions of paragraph (a), at the time 45 when such goods are loaded on the vehicle concerned."

Amendment of section 40 of Act 91 of 1964, as amended by section 9 of Act 95 of 1965, section 6 of Act 71 of 1975, section 5 of Act 105 of 1976, section 2 of Act 93 of 1978 and section 4 of Act 86 of 1982.

3. Section 40 of the principal Act is hereby amended—

(a) by the substitution for subparagraph (ii) of paragraph (a) of subsection (3) of the following subparagraph: 50

"(ii) if a bill of entry has been passed in error by reason of duty having been paid on goods intended for storage or manufacture in a customs and excise warehouse under section 20 or for purposes or use under rebate of duty under section 75, the Com- 55 missioner may allow the importer, exporter or manufacturer concerned to adjust that bill of entry by substitution of a fresh bill of entry and cancellation of the original bill of entry, provided such

goods, where a rebate of duty is being claimed, qualified at the time the duty was paid in all respects for that rebate.”;

- (b) by the insertion after paragraph (a) of the said subsection (3) of the following paragraph: 5

“(aA) The provisions of paragraph (a) (ii) shall apply *mutatis mutandis* in respect of a bill of entry in which goods have according to the tariff heading, tariff subheading, item or circumstances according to which such goods are charged with duty, been described in error as goods other than goods intended for— 10

(i) storage or manufacture in a customs and excise warehouse under section 20; or

(ii) purposes or use under rebate of duty under section 75, 15
in consequence of the fact that—

(aa) a determination of any such tariff heading, tariff subheading or item is, under section 47 (9) (d), amended with retrospective effect as from a date before or on the date on which the goods described in such bill of entry have been entered for home consumption; 20

(bb) any such determination is, under the said section 47 (9) (d), withdrawn with such retrospective effect, and a new determination is thereunder made with effect from such withdrawal; or 25

(cc) any Schedule is amended with such retrospective effect, 30
and in which such goods, if such amendment or new determination had been in operation on the date on which such goods were so entered, would have been described as goods intended for the said storage or manufacture or the said purposes or use.”; and 35

- (c) by the substitution for paragraph (b) of the said subsection (3) of the following paragraph:

“(b) No application for such substitution as is referred to in paragraph (a) (ii) or in that paragraph as read with paragraph (aA) shall be considered by the Commissioner unless it is received by the Controller, supported by the necessary documents and other evidence to prove that such substitution is justified, within a period of three months— 40 45

(i) from the date on which the duty to which the application relates was paid; or

(ii) in the case of any amendment of a determination referred to in subparagraph (aa) of paragraph (aA) or of a new determination referred to in subparagraph (bb) of the said paragraph (aA), 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 50 55

(iii) in the case of an amendment referred to in subparagraph (cc) of the said paragraph (aA), from the date on which such amendment is published by notice in the *Gazette*.” 60

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Amendment of section 57A of Act 91 of 1964, as inserted by section 18 of Act 112 of 1977.

4. Section 57A of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) Whenever, before any anti-dumping duty is imposed under section 56, the Minister is satisfied that the requirements of section 56 (1) (a), (b) and (c) are satisfied in respect of any class or kind of imported goods, he may, on the recommendation of the Board of Trade and Industries, by notice in the *Gazette* impose a provisional charge in relation to anti-dumping duty on imported goods of that class or kind for a period not exceeding ~~three~~ four months as from 10 the date of publication of such notice or, if requested thereto by the ~~importer or~~ exporter concerned before the expiry of the said period, for a further period not exceeding ~~three~~ two months.”.

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, section 11 of Act 110 of 1979 and section 20 of Act 86 of 1982.

5. Section 76 of the principal Act is hereby amended by the substitution in subsection (4) for the words preceding the proviso of the following words:

“No application for a refund or payment in terms of this section shall be considered by the Commissioner unless it is received by the Controller, duly completed and 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—

- (a) from the date on which the duty or charge to which the application relates was paid; or 25
- (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 (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 30 35 40
- (c) in the case where any Schedule is amended with such retrospective effect, from the date on which such amendment is published by notice in the *Gazette*.”. 45

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

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

“(a) Subject to the provisions of this Act, the Commissioner shall not, except on such conditions, including conditions relating to security, as may be determined by him, allow goods to pass from his control until he has satisfied himself that the provisions of this Act or any law relating to the importation or exportation or transit carriage through the Republic of goods, have been complied with in respect of such goods, and the State or the Commissioner or any officer shall in no case be liable in respect of any claim arising out of the detention of goods pending the decision of the Commissioner or for the costs of such detention.”. 50 55 60

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Amendment of section 113 of Act 91 of 1964, as amended by section 17 of Act 95 of 1965, section 14 of Act 57 of 1966, section 11 of Act 103 of 1972, section 5 of Act 68 of 1973, section 49 of Act 42 of 1974 and section 25 of Act 86 of 1982.

7. Section 113 of the principal Act is hereby amended by the deletion of subsections (5) and (6).

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

8. (1) Every amendment of Schedules Nos. 1, 3, 4, 5 and 6 to the principal Act made under section 48 (1) and (2) or section 75 (15) of the principal Act prior to 28 January 1983 shall not lapse by virtue of the provisions of section 48 (6) or section 75 (16) of the principal Act.

(2) The amendment of Part 4 of Schedule No. 1 to the principal Act made under section 48 (2) of the principal Act by Government Notice No. R. 412 of 25 February 1983 shall not lapse by virtue of the provisions of section 48 (6) of the principal Act.

Commencement of certain Government Notices.

9. (1) The substitution, by Government Notice No. R. 977 of 16 May 1980, of tariff headings Nos. 51.01.53.20 and 51.01.53.30 of Part 1 of Schedule No. 1 to the principal Act, shall be deemed to have come into operation on 12 July 1978.

(2) The substitution, by Government Notice No. R. 1754 of 20 August 1982, of tariff heading No. 87.09.30.30 of Part 1 of Schedule No. 1 to the principal Act, shall be deemed to have come into operation on 22 September 1981.

(3) The substitution, by Government Notice No. R. 1755 of 20 August 1982, of tariff item 126.35 of Part 2 of Schedule No. 1 to the principal Act, shall be deemed to have come into operation on 22 September 1981.

(4) The substitution, by Government Notice No. R. 2298 of 29 October 1982, of tariff heading No. 40.02.20 of Part 1 of Schedule No. 1 to the principal Act, shall be deemed to have come into operation on 13 July 1981.

(5) The substitution, by Government Notice No. R. 2695 of 17 December 1982, of rebate code 01.00 47 to tariff heading No. 76.03 in item 315.07 of Schedule No. 3 to the principal Act, shall be deemed to have come into operation on 14 July 1980.

Construction of tariff heading No. 56.05 in item 311.02 of Schedule No. 3 to Act 91 of 1964.

10. Paragraph (2) of tariff heading No. 56.05 in item 311.02 of Schedule No. 3 to the principal Act shall be construed as if it provided for a rebate of the full duty on goods mentioned therein which have been entered for home consumption before 31 August 1981.

Short title and commencement.

11. (1) This Act shall be called the Customs and Excise Amendment Act, 1983.

(2) Sections 1 and 2 shall come into operation 30 days after the date of promulgation of this Act.