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GOVERNMENT GAZETTE

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DEPARTMENT OF THE PRIME MINISTER

DEPARTEMENT VAN DIE EERSTE MINISTER

No. 1302.

23 June 1978.

No. 1302.

23 Junie 1978.

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

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

No. 93 of 1978: Customs and Excise Amendment Act, 1978.

No. 93 van 1978: Wysigingswet op Doeane en Aksyns, 1978.

CUSTOMS AND EXCISE AMENDMENT ACT, 1978.

Act No. 93, 1978

GENERAL EXPLANATORY NOTE:

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

 Words underlined with solid line indicate insertions in existing enactments.

ACT

To amend the Customs and Excise Act, 1964, so as to further regulate the production of documents relating to imported goods and entries; to provide for the amendment of Schedule No. 2 to the said Act with retrospective effect, for establishing the value for customs duty purposes of certain imported goods, for establishing the value for excise duty purposes of certain goods manufactured in the Republic and for establishing the value for sales duty purposes of certain goods manufactured in the Republic; to empower the Secretary for Customs and Excise to pay certain drawbacks of customs duty and to allow certain deductions from the dutiable quantity of certain fermented beverages manufactured in the Republic; to further regulate the non-declaration of certain goods; to increase the jurisdiction of magistrates' courts in respect of certain proceedings under the said Act; to regulate the disposal of certain unclaimed goods; to alter the circumstances in which certain goods may be destroyed and ships or vehicles may be detained; and to provide for the continuation of certain amendments of Schedules Nos. 1 to 7 to the said Act; and to provide for matters connected therewith.

(English text signed by the State President.)

(Assented to 16 June 1978.)

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

1. Section 39 of the Customs and Excise Act, 1964 (hereinafter referred to as the principal Act), is hereby amended by the substitution for paragraph (c) of subsection (1) of the following paragraph:

10 “(c) The said person shall further produce the **[bill of lading or other documents of title]** transport document or such other document in lieu thereof as may be approved by the Secretary, invoices **[in the prescribed form]** as prescribed, shipper's statement of expenses
15 incurred by him, copy of the confirmation of sale or other contract of purchase and sale, importer's written clearing instructions and such other documents relating to such goods as the Controller may require in each case and answer all such questions relating to such goods as may be put to him by the Controller.”

Amendment of section 39 of Act 91 of 1964, as amended by section 1 of Act 85 of 1968 and section 14 of Act 105 of 1969.

2. Section 40 of the principal Act is hereby amended by the substitution for paragraph (d) of subsection (1) of the following paragraph:

“(d) in the case of goods purchased by or sold, consigned or disposed of to any person in the Republic, a correct and

Amendment of section 40 of Act 91 of 1964, as amended by section 9 of Act 95 of 1965.

CUSTOMS AND EXCISE AMENDMENT ACT, 1978.

Act No. 93, 1978

sufficient invoice thereof, **[in the prescribed form]** as prescribed, has been produced to the Controller;”

section 6 of Act 71 of 1975 and section 5 of Act 105 of 1976.

3. Section 41 of the principal Act is hereby amended by the substitution for paragraph (a) of subsection (4) of the following paragraph:

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 and section 6 of Act 112 of 1977.

5 (a) All particulars necessary to make a valid entry and all particulars in respect of the normal price or of any commission, discount, cost, charge, expense, royalty, freight, duty, tax, drawback, refund, rebate, remission or other information whatever which relates to and has a bearing on such price: **[(including any information required to be given in any prescribed certificate of value)]** shall be declared by the exporter in any prescribed invoice **[or certificate]** in respect of any imported goods and such particulars shall, except where the Secretary otherwise determines, relate to the final amount of such normal price or commission, discount, cost, charge, expense, royalty, freight, duty, tax, drawback, refund, rebate or remission and to the final particulars or information regarding such goods.”

4. Section 56 of the principal Act is hereby amended by the insertion after subsection (1) of the following subsection:

Amendment of section 56 of Act 91 of 1964, as substituted by section 16 of Act 112 of 1977.

25 “(1A) The Minister may, in respect of any class or kind of imported goods on which a provisional charge has been imposed under section 57A, so amend Schedule No. 2 with effect from a date not more than three months prior to the date with effect from which that provisional charge has been imposed.”

5. Section 65 of the principal Act is hereby amended by the addition of the following subsection:

Amendment of section 65 of Act 91 of 1964, as amended by section 5 of Act 85 of 1968, section 21 of Act 105 of 1969 and section 20 of Act 112 of 1977.

35 “(6) (a) Notwithstanding the provisions of subsections (1) and (4), the value for customs duty purposes of any imported goods specified in Section B of Part 2 of Schedule No. 1 (other than pearls, precious and semi-precious stones, precious metals, rolled precious metals or articles containing or manufactured of such pearls, precious and semi-precious stones, precious metals or rolled precious metals entered under Schedule No. 4) shall be the normal price thereof plus 15 per cent of such price, plus any non-rebated customs duty payable in terms of Part 1 of Schedule No. 1 on such goods, but excluding the customs duty specified in the said Section B of Part 2 of Schedule No. 1 on such goods.

45 (b) The provisions of subsection (3) or (4) of section 70 shall *mutatis mutandis* apply to the calculation or determination of the value for customs duty purposes of any such imported pearls, precious and semi-precious stones, precious metals, rolled precious metals or articles containing or manufactured of such pearls, precious and semi-precious stones, precious metals or rolled precious metals.”

6. Section 69 of the principal Act is hereby amended by the addition of the following subsection:

Amendment of section 69 of Act 91 of 1964, as amended by section 22 of Act 105 of 1969.

55 “(4) (a) Notwithstanding the provisions of subsections (1) and (2), the value for excise duty purposes of any goods manufactured in the Republic and specified in Section B of Part 2 of Schedule No. 1 (other than pearls, precious and semi-precious stones, precious metals, rolled precious metals or articles containing or manufactured of such pearls, precious and semi-precious stones, precious metals or rolled precious metals), shall be the value for

CUSTOMS AND EXCISE AMENDMENT ACT, 1978.

Act No. 93, 1978

excise duty purposes of such goods calculated or determined in terms of subsection (1) or (2), plus any non-rebated excise duty payable in terms of Section A of Part 2 of Schedule No. 1 on such goods.

- 5 (b) The provisions of subsection (3) or (4) of section 70 shall *mutatis mutandis* apply to the calculation or determination of the value for excise duty purposes of any such pearls, precious and semi-precious stones, precious metals, rolled precious metals or articles
10 containing or manufactured of such pearls, precious and semi-precious stones, precious metals or rolled precious metals.”

7. (1) Section 70 of the principal Act is hereby amended—

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

“(2) The value for sales duty purposes of any goods manufactured in the Republic, other than goods entered in terms of sales duty item 144.00, except under tariff heading 71.16 thereof, of Schedule No. 1, shall be the value for excise duty purposes of such goods, calculated or determined in terms of section 69 as if they were excisable goods, plus any non-rebated excise duty on such goods not included in the price of such goods, but excluding the sales duty on such goods.”;

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

“(3) The value for sales duty purposes of any imported goods entered in terms of item 709.01 of Schedule No. 7 and any goods manufactured in the Republic and entered in terms of sales duty item 144.00, except under tariff heading 71.16 thereof, of Schedule No. 1, shall be—”; and

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

35 “(a) whenever any imported goods entered in terms of item 709.01 of Schedule No. 7 or any goods manufactured in the Republic and entered in terms of sales duty item 144.00, except under tariff heading 71.16 thereof, of Schedule No. 1, are sold in such circumstances that the value thereof for sales duty purposes cannot be calculated in terms of subsection (3), the Secretary may determine a value which shall, subject to a right of appeal to the Minister, be deemed to be the value for sales duty purposes of such goods.”

- 40 (2) Subsection (1) shall be deemed to have come into operation on 1 October 1977.

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

- 50 (a) by the substitution for the proviso to subsection (7) of the following proviso:

“Provided that the Secretary may, in respect of any class or kind of goods specified in any item of Part 1 of Schedule No. 5 and used in the manufacture of any goods marketed in the Republic, pay any drawback to the extent stated in such item, where goods of comparable class, kind, quality and quantity and manufactured or produced in the Republic have been used in the manufacture of any goods exported.”; and

- 55 (b) by the insertion after paragraph (c) of subsection (18) of the following paragraph:

60 “(cA) in the case of any fermented apple, pear or orange beverage manufactured in the Republic, 0,5 per cent of the quantity so manufactured on which duty is paid;”

Amendment 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 and section 23 of Act 112 of 1977.

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 and section 27 of Act 112 of 1977.

CUSTOMS AND EXCISE AMENDMENT ACT, 1978.

Act No: 93, 1978.

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

Substitution of section 81 of Act 91 of 1964.

5 "Non-declaration of goods.

81. Any person who [is asked by an officer whether he has] 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, [and denies it] or makes any statement for customs or excise purposes as to any dutiable goods or prohibited or 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 [denial] failure, or of the statement, be guilty of an offence and liable on conviction to a fine not exceeding two thousand rand 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."

10. Section 95 of the principal Act is hereby amended by the addition of the following subsection:

Amendment of section 95 of Act 91 of 1964, as amended by section 16 of Act 85 of 1968.

25 "(3) Notwithstanding anything to the contrary in any other law contained, a magistrate's court shall have jurisdiction to give judgment for any amount claimed under this Act, together with the costs of obtaining such judgment."

30 11. Section 107 of the principal Act is hereby amended by the addition of the following paragraph to subsection (1), the existing subsection becoming paragraph (a) thereof:

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

35 "(b) Any goods remaining in the custody or under the control of the department after expiry of a period of 28 days from the date of due entry thereof, may be removed by the Controller to the State warehouse or other place indicated by the Controller, and may thereupon be disposed of in terms of section 43 (3)."

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

Amendment of section 109 of Act 91 of 1964.

45 "(1) If in the opinion of the Secretary it is necessary for the safeguarding of public health or for the safety of the public or the State, he may at any time, and at the expense and risk of the importer, exporter, owner, master or pilot concerned, according as the Secretary may determine—"

50 13. (1) Every amendment of Schedules Nos. 1 to 7 to the principal Act made under section 48 (1) or (2), section 55 (2) or (3), section 56 (1) or section 75 (15) of the principal Act prior to 27 January 1978, shall not lapse by virtue of the provisions of section 48 (6), 56 (7) or 75 (16) of the principal Act.

Continuation of certain amendments of Schedules Nos. 1 to 7 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,

55 (2) The amendments of Schedules Nos. 1 and 6 to the principal Act made under sections 48 (1) and (2) and 75 (15) of the principal Act by Government Notices Nos. R.633 to R.637 of 30 March 1978, shall not lapse by virtue of the provisions of section 48 (6) or 75 (16) of the principal Act.

60 (3) The amendments mentioned in subsection (2), in so far as they relate to tariff items 104.15.20, 104.15.60 and 104.15.80 of Part 2 of Schedule No. 1 to the principal Act, shall apply to the goods concerned which were in stock in licensed customs and excise warehouses on 30 March 1978 and which had not yet been removed from such warehouses on the said date.

CUSTOMS AND EXCISE AMENDMENT ACT, 1978.

Act No. 93, 1978

(4) Government Notice No. R.689 of 29 April 1977, in so far as it relates to tariff heading No. 85.00 (1) in item 411.00 of Schedule No. 4 to the principal Act, shall be deemed to have come into operation on 7 March 1973.

section 12 of
Act 103 of 1972,
section 6 of
Act 68 of 1973,
section 3 of
Act 64 of 1974,
section 13 of
Act 71 of 1975,
section 13 of
Act 105 of 1976
and section 38 of
Act 112 of 1977.

5 14. This Act shall be called the Customs and Excise Amendment Act, 1978. Short title.