

## CUSTOMS AND EXCISE

*This **draft legislation** is released for public information. The amendments contained in this draft are merely proposals which are **subject to change and final approval by the Minister of Finance**. Early comments on this draft will be considered for possible inclusion in a revised draft Bill.*

*It is the intention to release the revised draft Bill in the first seven days of October, prior to the commencement of the informal Parliamentary process.*

*There will be an opportunity to comment on the revised draft Bill, either directly to the National Treasury and SARS or during the public hearings in the Parliamentary Committees in mid-October 2003.*

*Due to time constraints, it will not be possible to respond individually to comments received. However, receipt of comments will be acknowledged and fully considered by the National Treasury and SARS.*

*Comments may be submitted to either:*

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### **Amendment of section 1 of Act 91 of 1964**

. Section 1 of the Customs and Excise Act, 1964, is hereby amended –

- (a) by the insertion after the definition of “customs duty” of the following definitions:

“degrouing depot’ means any degrouing depot for air cargo contemplated in section 6 (1) (LC) and licensed under the provisions of this Act; and

‘degrouing operator’ means the licensee of a degrouing depot;”

(b) by the insertion after the definition of “importer” of the following definition:

“International Trade Administration Commission’ means the International Trade Administration Commission established by section 7 of the International Trade Administration Act, 2002 (Act No. 71 of 2002);”

#### **Amendment of section 3 of Act 91 of 1964**

. Section 3 of the Customs and Excise Act, 1964, is hereby amended –

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

“(1) Any duty imposed or power conferred on the Commissioner may be performed or exercised by the Commissioner personally or by an officer or any person under a delegation from or under the control or direction of the Commissioner.

(2) (a) Any decision made and any notice or communication signed or issued by any such officer or person may be withdrawn or amended by the Commissioner or by the officer or person concerned (with effect from the date of making such decision or signing or issuing such notice or communication or the date of withdrawal or amendment thereof) and shall, until it has been so withdrawn, be deemed, except for the purposes of this sub-section, to have been made, signed or issued by the Commissioner.

(b) The Commissioner may make rules regarding any matter which the Commissioner considers reasonably necessary and useful for the purposes of administering the provisions of this section.”

(b) by the deletion of subsections (3) and (4).

#### **Substitution of section 3A of Act 91 of 1964**

. The following section hereby substitutes section 3A of the Customs and Excise Act, 1964:

**“3A Duties and powers of Director-General or other official in terms of the Act**

(1) Any duty imposed or power conferred by this Act on a Director-General of any department or any other official of such department or any other organ of state may, unless the law administered by such department or other organ of state otherwise provides, be performed or exercised by the Director-General or official personally or by an officer of such department or other organ of state under a delegation from or under the control or direction of the said Director-General or official.

(2) Any decision made under subsection (1) by any such officer may be withdrawn or amended by the said Director-General or official, 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 or official.”

**Amendment of section 4 of Act 91 of 1964**

. Section 4 of the Customs and Excise Act, 1964 is hereby amended by the addition of the following paragraphs:

“(8A)(a) An officer may stop and detain any goods in order to determine whether the provisions of this Act or any other law have been complied with in respect of such goods as contemplated in section 107 (2) (a).

(b) The release of goods may be stopped at any time while such goods are under customs control or in or on any premises licensed under this Act.

(c) (i) Whenever any goods are stopped as contemplated in this paragraph the goods may be detained under the control of a Controller for any reasonable period required to determine whether the goods comply with the provisions of this Act or such other law.”

(ii) Any detention under this section is not subject to the provisions of section 93 and the officer or Controller must release the goods if found to comply with the provisions of this Act or such other law.

(iii) Where at any time during such detention the officer or Controller decides that it is necessary to establish whether the goods are liable to forfeiture, a detention under section 88(1)(a) must be substituted for the detention under this subsection.”

#### **Amendment of section 6 of Act 91 of 1964**

. Section 6 of the Customs and Excise Act, 1964 is hereby amended by the substitution in subsection (1) for paragraph (LC) of the following paragraph:

“(LC) places where degrouping depots may be established to which air cargo may be removed from a transit shed before due entry thereof for the:

- (a) storage, detention, unpacking or examination of consolidated packing or its contents,
- (b) removal to another such degrouping depot or the delivery to importers of such contents after due entry thereof, or
- (c) consolidation of air cargo for export and such other purposes as may be specified by rule.”

#### **Amendment of section 35 A of Act 91 of 1964**

. Section 35 A of the Customs and Excise Act, 1964 is hereby

amended by the substitution for subsections (1) and (2) of the following subsections:

“(1) The Commissioner may prescribe by rule –

(a) the sizes and types of containers which may be used by a manufacturer for the packing of cigarettes and cigarette tobacco,

(b) distinguishing marks or numbers in addition to the stamp impression referred to in subsection (2) which must or must not appear on containers of cigarettes and cigarette tobacco removed from a customs and excise warehouse for home consumption or for export;

(c) any other matter which is necessary to prescribe and useful to achieve the efficient and effective administration of this section.

(2) No licensee may remove any cigarettes or allow any cigarettes to be removed from a customs and excise warehouse unless-

(a) if removed for home consumption, a stamp impression determined by the Commissioner has been made on their containers; or

(b) if removed for export, such stamp impression does not appear on the containers; and

(c) the cigarettes otherwise comply in every respect with the requirements prescribed by rule.”

#### **Amendment of section 44 of Act 91 of 1964**

. Section 44 of the Customs and Excise Act, 1964 is hereby amended –

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

“(b) if due entry of the goods has not been made -

(i) upon delivery thereof to the State Warehouse or other place indicated for the purposes of this section by the Controller; or

(ii) in the case of air cargo, upon delivery thereof to a degrouping depot;”

(b) by the deletion of paragraph (d).”;

(c) by the insertion after subsection (5B) of the following subsection:

“(5C)(a) The degrouping operator shall be liable for the duty on all goods delivered to the degrouping depot -

(b) The liability for duty of the degrouping operator shall cease -

(i) upon receipt of such goods in any other degrouping depot in accordance with the procedures prescribed by rule;

(ii) upon lawful delivery after due entry thereof to the importer or the importer’s agent;

(iii) in respect of any of such goods of which due entry has not been made upon delivery thereof to the state warehouse or other place indicated for the purposes of this section by the Controller.”

#### **Amendment of section 46 of Act 91 of 1964**

. Section 46 of the Customs and Excise Act, 1964 is hereby amended -

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

“(c) such other processes as the Commissioner may, at the request of the International Trade Administration Commission by rule prescribe in respect of any class or kind of goods, have taken place in the production or manufacture of goods of such class or kind in that territory.”

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

“(2) The Commissioner may from time to time, at the request of the International Trade Administration Commission by rule increase the percentage prescribed in subsection (1), in regard to any class or kind of imported goods, or in regard to any class or kind of such goods from a particular territory, to which that subsection applies;”

#### **Amendment of section 48 of Act 91 of 1964**

. Section 48 of the Customs and Excise Act, 1964 is hereby amended by the substitution for paragraphs (a) and (b) of subsection (2A) of the following paragraphs:

“(2A) (a) (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 International Trade Administration Commission or the Commissioner to withdraw, with or without retrospective effect, and subject to such conditions as the said Commission or Commissioner may determine, any duty specified in Part 2 or Part 4 of Schedule No. 1;

(ii) The International Trade Administration Commission or the Commissioner may at any time cancel, amend or suspend any withdrawal referred to in subparagraph (i);

(b) Any application for such withdrawal, with retrospective effect, shall be submitted to the said International Trade Administration Commission or Commissioner, as the case may be, not later than six

months from the date of entry for home consumption as provided in section 45 (2)."

#### **Substitution of section 54 of Act 91 of 1964**

. Section 54 of the Customs and Excise Act, 1964 is hereby amended by the substitution for subsections (1) and (2) of the following subsections:

"(1) The Commissioner may prescribe by rule -

(a) the sizes and types of containers in which cigarettes may be imported into the Republic;

(b) distinguishing marks or numbers in addition to the stamp impression referred to in subsection (2) which must or must not appear on containers of imported cigarettes.

(c) any other matter which is necessary to prescribe and useful to achieve the efficient and effective administration of this section.

(2) No person may import any cigarettes unless -

(a) if entered for home consumption, a stamp impression determined by the Commissioner has been made on their containers; or

(b) if entered for storage in a customs and excise warehouse for export such stamp impression does not appear on the containers; and

(c) the cigarettes otherwise comply with the requirements prescribed by rule."

#### **Substitution of section 57A of Act 91 of 1964**



. Section 57A of the Customs and Excise Act, 1964 is hereby amended by the substitution for subsections (1) and (2) of the following subsections:

“(1) Whenever the International Trade Administration Commission publishes a notice in the *Gazette* to the effect that it is investigating the imposition of an anti-dumping, countervailing or safeguard duty on goods imported from a supplier or originating in a territory specified in that notice, the Commissioner shall, in accordance with any request by the Commission, by notice in the *Gazette* impose a provisional payment in respect of those goods for such period and for such amount as the Commission may specify in such request.

“(2) The Commissioner shall, in accordance with any request by the Commission, by further notice in the *Gazette* extend the period for which the provisional payment mentioned in subsection (1) is imposed or withdraw or reduce it with or without retrospective effect and to such extent as may be specified in the request.”

#### **Amendment of section 64 of Act 91 of 1964**

. The following section is hereby inserted in the Customs and Excise Act, 1964 after section 64F:

#### **“64 (G) Licensing of degrouping depot**

(1) (a) Any reference in this section to a –

‘degrouping depot’ shall mean a licensed degrouping depot for air cargo defined in section 1 for the purposes and activities contemplated in section 6 (1) (LC) and such other purposes and activities as the Commissioner may prescribe by rule;

‘degrouping operator’ shall mean the licensee of a degrouping depot.

(b) No person shall perform any act in connection with, or be in possession of, any air cargo for the purposes and activities contemplated in paragraph (a) unless such person has obtained the appropriate licence for a degrouping depot in accordance with the requirements of section 60, this section, any note to Schedule No. 8, any relevant rule, the application form and any conditions the Commissioner may impose in each case.

(2) (a) (i) Application for such a licence shall be made on the form prescribed by the Commissioner by rule and the applicant shall furnish such information and supporting documents as may be specified in such form and comply with all requirements contemplated in subparagraph (1)(a).

(ii) The Commissioner may require the degrouping operator to enter into an agreement with the Commissioner and may prescribe such agreement by rule.

(b) Before any licence is issued, the applicant must furnish security; and such security may be altered, as contemplated in section 60 (1) (c).

(3) The degrouping operator shall be liable for duty on all goods received in the degrouping depot and liability for duty shall cease as provided in section 44 (5C).

(4) Goods in a degrouping depot shall be deemed to be under customs control and the degrouping operator shall comply with any requirement in respect thereof specified in this section, and any other relevant provision of this Act including any rule made in terms of this section or any agreement entered into with the degrouping operator or any condition specified by or directive issued by the Commissioner.

(5) The Controller may require any consolidated or other package to be detained in the degrouping depot for examination of the package or its contents.

(6) (a) The Commissioner may refuse any application for a degrouping depot licence or cancel or suspend such licence.

(b) The provisions of section 60 (2) shall apply *mutatis mutandis* for the purposes of paragraph (a).

(7) The Commissioner may prescribe by rule -

(a) the application form and any other form required for the purposes of any customs procedure;

(b) the documents to be furnished in support of the application form or to be completed and kept in respect of any activity relating to the operation of the degrouping depot;

(c) any procedure or obligation or standards of conduct to be observed in the operation of the degrouping depot;

(d) all matters that are required or permitted in terms of this section to be prescribed by rule;

(e) any other matter which is necessary to prescribe and useful to achieve the efficient and effective administration of the air cargo and a degrouping depot as contemplated in this section; and

(f) subject to section 3 (2), any delegation of powers or duties as contemplated in that section.”

**Substitution of section 69 of Act 91 of 1964**

. Subsection 1 of section 69 of the Customs and Excise Act, 1964 is hereby amended –

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

“(d) For the purposes of assessing the excise duty on any goods manufactured in the Republic and specified in any items of Section B of Part 1 of Schedule No. 1 other than those specified in paragraph (a) and contemplated in paragraph (dA), the value thereof shall be the “invoice price” which shall mean – “; and

- (b) by the insertion of the following paragraph:

“(dA)(i) The provisions of this paragraph apply to digital video discs (DVD’s), recorded compact discs, audio tapes and video tapes dutiable in terms of item 124.65 of Section B of Part 2 of Schedule No. 1.

(ii) Subject to such limitations, adaptations and requirements as the Commissioner may prescribe by rule, the value for assessing the excise duty on such goods shall be in the case of -

(aa) recorded compact discs and audio tapes, the contract price of the manufacturer thereof to the retailer, plus, to the extent that may be prescribed in such rule, a maximum of 15 per cent of such price;

(bb) recorded video tapes and digital video discs (DVD’s), the manufacturers’ duplicating costs, plus, to the extent that may be prescribed by rule, a maximum of 10 per cent of such costs.”

#### **Substitution of section 75 of Act 91 of 1964**

. Section 75 of the Customs and Excise Act, 1964 is hereby amended –

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

“(c) only in respect of goods entered for use in such industry in a factory, mine, works or activity which complies with such requirements in respect of quantity of material used or quantity of goods produced or manufactured as the Commissioner may impose in consultation with the International Trade Administration Commission.”

- (b) by the addition to subsection (11A) of the following paragraph:

“(c) Notwithstanding anything to the contrary in this section or in any other provision of this Act contained but subject to the provisions of this subsection, any amount duly refundable in terms of any item of Schedule No. 6 may be an amount that may be set off, if such item so provides, by a licensee of a customs and excise warehouse in terms of section 77 where the goods have been entered or are deemed to have been entered for home consumption and payment of duty in accordance with the provisions of this Act.”

#### **Amendment of section 80 of Act 91 of 1964**

. Section 80 of the Customs and Excise Act, 1964, is hereby amended by the insertion of the following paragraph:

“(r) without lawful cause fails to comply with a notice of appointment as agent in terms of section 114A within the period specified in such notice.”

#### **Substitution of section 93 of Act 91 of 1964**

. The following section is substituted for section 93 of the Customs and Excise Act, 1964:

**“93. (1) Remission or mitigation of penalties and forfeiture -**

The Commissioner may, on good cause shown, direct that any ship, vehicle, container or other transport equipment, plant, material or goods detained or seized or forfeited under this Act be delivered to the owner thereof, subject to payment of any duty which may be payable in respect thereof and any charges which may have been incurred in connection with the detention or seizure or forfeiture, and to such conditions (including conditions providing for the payment of an amount not exceeding the value for duty purposes of such ship, vehicle, container or other transport equipment, plant, material or goods plus any unpaid duty thereon) as he deems fit, or may mitigate or remit any penalty incurred under this Act, on such conditions as he deems fit.

(2) (a) Any person who, for the purposes contemplated in this section alleges ownership of any ship, vehicle, container or other transport equipment, plant material or goods shall have the burden of proving such ownership to the satisfaction of the Commissioner; and

(b) where two or more persons claim ownership of the same goods, ownership must be decided by a competent court and the Commissioner shall only grant release thereof to the person or persons as ordered by such court.”

**Amendment of section 101 of Act 91 of 1964**

. Section 101 of the Customs and Excise Act, 1964, is hereby amended by the substitution for subsection (2B) of the following subsection:

“(2B) Any person referred to in subsection (1) shall keep and produce on demand any **[data created by means of a ‘computer’ as defined in section 1 of the Computer Evidence Act, 1983 (Act No. 57 of 1983), including data in the electronic form in which it was originally created or in which it is stored for the purposes of backing up such data]** electronic representations of information in any form.”.

## **Amendment of section 101A of Act 91 of 1964**

. Section 101A of the Customs and Excise Act, 1964 is hereby amended by the insertion in subsection (10) of the following paragraph:

“(d) (i) The Commissioner may, notwithstanding anything to the contrary contained in this section, permit, as prescribed by rule, any person who is registered as a user and has entered into a user agreement as contemplated in subsection (3), to submit electronically any report referred to in paragraph (a), by using the Internet.

(ii) Subject to such exceptions, adaptations or additional requirements as the Commissioner may prescribe by rule, the provisions of this section shall apply to the submission of such report.

(iii) “Internet” shall have the meaning assigned thereto in the Electronic Communications and Transactions Act, 2002 (Act. No. 25 of 2002).”

## **Insertion of sections 114A and 114B in Act 91 of 1964**

. The following sections are hereby inserted in the Customs and Excise Act, 1964, after section 114:

### **“Power to appoint agent**

**114A.** The Commissioner may, if he thinks it necessary, declare any person to be the agent of any other person, and the person so declared an agent

(a) shall for the purposes of this Act be the agent of such other person in respect of the payment of any amount of duty, interest, fine, penalty or forfeiture payable by such other person under this Act, and

(b) may be required to make payment of such amount from any moneys which may be held by him or her for or be due by him or her to the

person whose agent he or she has been declared to be:

Provided that a person so declared an agent who, is unable to comply with a requirement of the notice of appointment as agent, must advise the Commissioner in writing of the reasons for not complying with that notice within the period specified in the notice.

### **Remedies of Commissioner against agent or trustee**

**114B.** The Commissioner shall have the same remedies against all property of any kind vested in or under the control or management of any agent or person acting in a fiduciary capacity as [he or she] the Commissioner would have against the property of any person liable to pay any duty, interest, fine, penalty or forfeiture payable under this Act and in as full and ample a manner.”

### **Amendment of section 73 of Act 30 of 2002**

. Section 73 of the Taxation Laws Amendment Act, 2002 is hereby repealed.

### **Amendment of section 76 of Act 30 of 2002**

. Section 76 of the Taxation Laws Amendment Act, 2002 is hereby repealed.

### **Amendment of section 113 of Act 60 of 2001**

. Section 113 of the Second Revenue Laws Amendment Act, 2001 is hereby amended by the deletion of paragraphs (a) to (d) and (f) to (i) of subsection (1) and paragraph (b) of subsection (2).

### **Amendment of section 116 of Act 60 of 2001**



. Section 116 of the Second Revenue Laws Amendment Act, 2001 is hereby amended by the deletion of paragraph (d) of subsection (1) and paragraph (b) of subsection (2).

#### **Amendment of sections 117 and 118 of Act 60 of 2001**

. Sections 117 and 118 of the Second Revenue Laws Amendment Act, 2001 is hereby repealed.

#### **Amendment of section 121 (1) of Act 60 of 2001**

. Section 121 (1) of the Second Revenue Laws Amendment Act, 2001 is hereby amended –

(a) by the substitution for paragraph (a) of subsection (1) of the proposed section 21 A of the following paragraph:

“(a) For the purposes of this Act, Industrial Development Zone or the abbreviation IDZ, and any other expression relating thereto shall, unless otherwise specified in this Act or the context of any provision of this Act otherwise indicates, have the meaning assigned thereto in the regulations made by the Minister of Trade and Industry under section 10 (1) of the Manufacturing Development Act, 1993 (Act No. 187 of 1993), and published in Government Notice R.1224 of 1 December 2000 (Regulation Gazette No. 6936) or in any amendment of such regulations;”

(b) by the substitution for subparagraph (i) of paragraph (b) of subsection (1) of the proposed section 21 A of the following subparagraph:

“(b) (i) Any reference in this section and its rules to ‘the regulations’ or any regulation, shall, unless otherwise specified, be a reference to the regulations or a regulation published in Government Notice R.1224 of 1 December 2000, as amended;”

(c) by the substitution for subparagraph (i) of paragraph (a) of subsection (2) of the proposed section 21 A of the following subparagraph:

“(i) The customs secured area (CSA) of an IDZ shall, notwithstanding anything to the contrary contained in this Act or any regulation, and subject to the provisions of this section or any Schedule or any exemption or adaptation as the Commissioner may prescribe by rule, be deemed to be a special customs and excise warehouse contemplated in section 21.”

(d) by the substitution for paragraph (d) of subsection (1) of the proposed section 21 A of the following paragraph:

“(d) The person who actually brings the goods into the CSA, including the IDZ enterprise, and the IDZ operator shall be jointly and severally liable for the duty on such goods and the provisions of section 44 A shall apply *mutates mutandis* to such liability.”

(e) by the substitution for subparagraph (ee) of paragraph (e) (i) of the following subparagraph:

“(ee) the goods have been removed and received in any other premises licensed or registered under the provisions of this Act;” and

(f) by the substitution for paragraph (e) of subsection (5) of the proposed section 21 A of the following paragraph:

“(e) requiring the registration and prescribing conditions and procedures regulating such registration in respect of any enterprise or any other person operating in or having access to the CSA”

#### **Amendment of section 125 of Act 60 of 2001**

. Section 125 of the Second Revenue Laws Amendment Act, 2001 is

hereby repealed.

**Amendment of section 135 of Act 60 of 2001**

. Section 135 of the Second Revenue Laws Amendment Act, 2001 is hereby repealed.

**Amendment of section 137 of Act 60 of 2001**

. Section 137 of the Second Revenue Laws Amendment Act, 2001 is hereby repealed.

**Amendment of section 128 of Act 74 of 2002**

. Section 128 of the Revenue Laws Amendment Act, 2002, is hereby repealed.