CUSTOMS AND EXCISE ACT
NO. 91 OF 1964

[View Regulation]

[ASSENTED TO 27 JULY, 1964]
[DATE OF COMMENCEMENT: 1 JANUARY, 1965]

(Unless otherwise indicated)

(English text signed by the State President)

This Act has been updated to *Government Gazette* 39667 dated 9 February, 2016.

as amended by

Customs and Excise Amendment Act, No. 95 of 1965

Customs and Excise Amendment Act, No. 57 of 1966

Customs and Excise Amendment Act, No. 96 of 1967

Customs and Excise Amendment Act, No. 85 of 1968

South-West Africa Affairs Act, No. 25 of 1969
[with effect from 1 April, 1969]

Customs and Excise Amendment Act, No. 105 of 1969

Customs and Excise Amendment Act, No. 98 of 1970

Customs and Excise Amendment Act, No. 89 of 1971

Customs and Excise Amendment Act, No. 103 of 1972

Customs and Excise Amendment Act, No. 68 of 1973

Customs and Excise Amendment Act, No. 7 of 1974

Parliamentary Service Act, No. 33 of 1974
[with effect from 1 August, 1974]

Publications Act, No. 42 of 1974
[with effect from 1 April, 1975]

Second Customs and Excise Amendment Act, No. 64 of 1974

Customs and Excise Amendment Act, No. 71 of 1975

Customs and Excise Amendment Act, No. 105 of 1976

Customs and Excise Amendment Act, No. 12 of 1977

Second Customs and Excise Amendment Act, No. 112 of 1977

Customs and Excise Amendment Act, No. 93 of 1978

Customs and Excise Amendment Act, No. 110 of 1979

Customs and Excise Amendment Act, No. 98 of 1980

Customs and Excise Amendment Act, No. 86 of 1982

Customs and Excise Amendment Act, No. 89 of 1983

Customs and Excise Amendment Act, No. 89 of 1984

Customs and Excise Amendment Act, No. 101 of 1985

Customs and Excise Amendment Act, No. 52 of 1986

Transfer of Powers and Duties of the State President Act, No. 97 of 1986
[with effect from 3 October, 1986]

Customs and Excise Amendment Act, No. 84 of 1987

Customs and Excise Amendment Act, No. 69 of 1988

Liquor Products Act, No. 60 of 1989
[with effect from 1 July, 1990]

Customs and Excise Amendment Act, No. 68 of 1989

Customs and Excise Amendment Act, No. 59 of 1990

Customs and Excise Amendment Act, No. 111 of 1991

Customs and Excise Amendment Act, No. 61 of 1992

Customs and Excise Second Amendment Act, No. 105 of 1992

Customs and Excise Amendment Act, No. 98 of 1993

Customs and Excise Amendment Act, No. 19 of 1994

Customs and Excise Amendment Act, No. 45 of 1995

Customs and Excise Amendment Act, No. 44 of 1996

Board on Tariffs and Trade Amendment Act, No. 16 of 1997
[with effect from 23 May, 1997]

Taxation Laws Amendment Act, No. 27 of 1997
[with effect from 4 July, 1997]

South African Revenue Service Act, No. 34 of 1997
[with effect from 1 October, 1997]

Taxation Laws Amendment Act, No. 30 of 1998
[with effect from 29 June, 1998]

Taxation Laws Amendment Act, No. 32 of 1999
[with effect from 31 March, 1999, unless otherwise indicated]

Government Notice No. 540 of 22 April, 1999

Government Notice No. 1066 of 1 September, 1999

Revenue Laws Amendment Act, No. 53 of 1999
[with effect from 24 November, 1999, unless otherwise indicated]

Government Notice No. 185 of 25 February, 2000

Taxation Laws Amendment Act, No. 30 of 2000
[with effect from 19 July, 2000, unless otherwise indicated]

Revenue Laws Amendment Act, No. 59 of 2000
[with effect from 1 January, 2001, unless otherwise indicated]

Revenue Laws Amendment Act, No. 19 of 2001
[with effect from 27 July, 2001, unless otherwise indicated]

Second Revenue Laws Amendment Act, No. 60 of 2001
[with effect from 12 December, 2001, unless otherwise indicated]

Taxation Laws Amendment Act, No. 30 of 2002
[with effect from 5 August, 2002, unless otherwise indicated]

Revenue Laws Amendment Act, No. 74 of 2002
[with effect from 13 December, 2002, unless otherwise indicated]

Exchange Control Amnesty and Amendment of Taxation Laws Act, No. 12 of 2003
[with effect from 31 May, 2003, unless otherwise indicated]

Revenue Laws Amendment Act, No. 45 of 2003
[with effect from 22 December, 2003, unless otherwise indicated]

Taxation Laws Amendment Act, No. 16 of 2004
[with effect from 27 July, 2004, unless otherwise indicated]

Revenue Laws Amendment Act, No. 32 of 2004
[with effect from 24 January, 2005, unless otherwise indicated]

Second Revenue Laws Amendment Act, No. 34 of 2004
[with effect from 24 January, 2005, unless otherwise indicated]

Taxation Laws Amendment Act, No. 9 of 2005
[with effect from 19 July, 2005, unless otherwise indicated]

Taxation Laws Second Amendment Act, No. 10 of 2005
[with effect from 13 July, 2005, unless otherwise indicated]

Revenue Laws Amendment Act, No. 31 of 2005
[with effect from 1 February, 2006, unless otherwise indicated]

Revenue Laws Second Amendment Act, No. 32 of 2005
[with effect from 1 February, 2006, unless otherwise indicated]

National Credit Act, No. 34 of 2005
[with effect from 1 June, 2006, unless otherwise indicated]

Second Small Business Tax Amnesty and Amendment of Taxation Laws Act, No. 10 of 2006
[with effect from 25 July, 2006, unless otherwise indicated]

Revenue Laws Amendment Act, No. 20 of 2006
[with effect from 7 February, 2007, unless otherwise indicated]

Revenue Laws Second Amendment Act, No. 21 of 2006
[with effect from 7 February, 2007, unless otherwise indicated]

Taxation Laws Amendment Act, No. 8 of 2007
[with effect from 8 August, 2007, unless otherwise indicated]

Taxation Laws Second Amendment Act, No. 9 of 2007
[with effect from 8 August, 2007, unless otherwise indicated]

Revenue Laws Amendment Act, No. 35 of 2007
[with effect from 8 January, 2008, unless otherwise indicated]

Revenue Laws Amendment Act, No. 36 of 2007
[with effect from 8 January, 2008, unless otherwise indicated]

Taxation Laws Amendment Act, No. 3 of 2008
[with effect from 22 July, 2008, unless otherwise indicated]

Revenue Laws Amendment Act, No. 60 of 2008
[with effect from 8 January, 2009, unless otherwise indicated]

Revenue Laws Second Amendment Act, No. 61 of 2008
[with effect from 8 January, 2009, unless otherwise indicated]

Taxation Laws Amendment Act, No. 17 of 2009
[with effect from 30 September, 2009, unless otherwise indicated]

Taxation Laws Second Amendment Act, No. 18 of 2009
[with effect from 30 September, 2009, unless otherwise indicated]

Voluntary Disclosure Programme and Taxation Laws Second Amendment Act, No. 8 of 2010
[with effect from 2 November, 2010, unless otherwise indicated]

Taxation Laws Amendment Act, No. 24 of 2011
[with effect from 10 January, 2012]

Taxation Laws Second Amendment Act, No. 25 of 2011
[with effect from 14 December, 2011]

Tax Administration Laws Amendment Act, No. 21 of 2012
[with effect from 20 December, 2012]

Taxation Laws Amendment Act, No. 22 of 2012
[with effect from 1 February, 2013]

Tax Administration Laws Amendment Act, No. 39 of 2013
[with effect from 16 January, 2014, unless otherwise indicated]

Tax Administration Laws Amendment Act, No. 44 of 2014
[with effect from 20 January, 2015]

Rates and Monetary Amounts and Amendment of Revenue Laws Act, No. 13 of 2015

Tax Administration Laws Amendment Act, No. 23 of 2015
[with effect from 8 January, 2016]

proposed amendments by

Revenue Laws Amendment Act, No. 74 of 2002
(provision not yet proclaimed)

Revenue Laws Amendment Act, No. 20 of 2006
(provisions not yet proclaimed)

Revenue Laws Second Amendment Act, No. 21 of 2006
(provisions not yet proclaimed)

Revenue Laws Amendment Act, No. 35 of 2007

(provisions not yet proclaimed)

Revenue Laws Amendment Act, No. 36 of 2007

(provisions not yet proclaimed)

Revenue Laws Amendment Act, No. 60 of 2008

(provisions not yet proclaimed)

Revenue Laws Second Amendment Act, No. 61 of 2008

(provisions not yet proclaimed)

Taxation Laws Second Amendment Act, No. 18 of 2009

(provisions not yet proclaimed)

Taxation Laws Second Amendment Act, No. 18 of 2009 (provisions not yet proclaimed)	
Proposed amendments by	*Sections to be amended*

S. 25 of Act No. 18 of 2009	S. 3 of Act No. 91 of 1964
S. 30 of Act No. 18 of 2009	S. 93 of Act No. 91 of 1964
S. 31 of Act No. 18 of 2009	S. 105 of Act No. 91 of 1964

Taxation Laws Amendment Act, No. 31 of 2013 (provisions not yet proclaimed)	
Proposed amendments by	*Sections to be amended*
S. 162 of Act No. 31 of 2013	S. 72 of Act No. 91 of 1964
S. 163 of Act No. 31 of 2013	S. 73 of Act No. 91 of 1964

Customs and Excise Amendment Act, No. 32 of 2014 (provisions not yet proclaimed)	
Proposed amendments by	*Sections to be amended*
S. 1 of Act No. 32 of 2014	S. 1 of Act No. 91 of 1964
S. 2 of Act No. 32 of 2014	S. 2 of Act No. 91 of 1964
S. 3 of Act No. 32 of 2014	S. 3 of Act No. 91 of 1964
S. 4 of Act No. 32 of 2014	Ss. 3A, 4, 4B, 4C, 6, 6A, 7, 7A, 8, 9, 10, 11, 11A, 12, 13, 14, 15, 16 and 17 of Act No. 91 of 1964
S. 5 of Act No. 32 of 2014	S. 18 of Act No. 91 of 1964
S. 6 of Act No. 32 of 2014	S. 18A of Act No. 91 of 1964
S. 7 of Act No. 32 of 2014	Ch. IV of Act No. 91 of 1964
S. 8 of Act No. 32 of 2014	S. 19 of Act No. 91 of 1964
S. 9 of Act No. 32 of 2014	S. 19A of Act No. 91 of 1964
S. 10 of Act No. 32 of 2014	S. 20 of Act No. 91 of 1964
S. 11 of Act No. 32 of 2014	S. 21 of Act No. 91 of 1964
S. 12 of Act No. 32 of 2014	S. 21A of Act No. 91 of 1964
S. 13 of Act No. 32 of 2014	S. 22 of Act No. 91 of 1964
S. 14 of Act No. 32 of 2014	S. 23 of Act No. 91 of 1964
S. 15 of Act No. 32 of 2014	S. 24 of Act No. 91 of 1964
S. 16 of Act No. 32 of 2014	S. 25 of Act No. 91 of 1964
S. 17 of Act No. 32 of 2014	S. 26 of Act No. 91 of 1964
S. 18 of Act No. 32 of 2014	S. 27 of Act No. 91 of 1964
S. 19 of Act No. 32 of 2014	S. 35 of Act No. 91 of 1964
S. 20 of Act No. 32 of 2014	S. 35A of Act No. 91 of 1964
S. 21 of Act No. 32 of 2014	S. 36 of Act No. 91 of 1964
S. 22 of Act No. 32 of 2014	S. 36A of Act No. 91 of 1964
S. 23 of Act No. 32 of 2014	S. 37 of Act No. 91 of 1964
S. 24 of Act No. 32 of 2014	S. 37A of Act No. 91 of 1964
S. 25 of Act No. 32 of 2014	S. 38 of Act No. 91 of 1964
S. 26 of Act No. 32 of 2014	S. 38A of Act No. 91 of 1964
S. 27 of Act No. 32 of 2014	S. 39 of Act No. 91 of 1964
S. 28 of Act No. 32 of 2014	Ss. 39A, 39B, 39C and 39D of Act No. 91 of 1964
S. 29 of Act No. 32 of 2014	S. 40 of Act No. 91 of 1964
S. 30 of Act No. 32 of 2014	S. 41 of Act No. 91 of 1964

S. 31 of Act No. 32 of 2014	Ss. 42 and 43 of Act No. 91 of 1964
S. 32 of Act No. 32 of 2014	Inserts ss. 43A and 43B after s. 43 of Act No. 91 of 1964
S. 33 of Act No. 32 of 2014	S. 44 of Act No. 91 of 1964
S. 34 of Act No. 32 of 2014	S. 45 of Act No. 91 of 1964
S. 35 of Act No. 32 of 2014	Ss. 46 and 46A of Act No. 91 of 1964
S. 36 of Act No. 32 of 2014	S. 47 of Act No. 91 of 1964
S. 37 of Act No. 32 of 2014	S. 47A of Act No. 91 of 1964
S. 38 of Act No. 32 of 2014	Ss. 49, 50, 50A and 51 of Act No. 91 of 1964
S. 39 of Act No. 32 of 2014	S. 52 of Act No. 91 of 1964
S. 40 of Act No. 32 of 2014	S. 53 of Act No. 91 of 1964
S. 41 of Act No. 32 of 2014	S. 54 of Act No. 91 of 1964
S. 42 of Act No. 32 of 2014	S. 54B of Act No. 91 of 1964
S. 43 of Act No. 32 of 2014	S. 54C of Act No. 91 of 1964
S. 44 of Act No. 32 of 2014	S. 54E of Act No. 91 of 1964
S. 45 of Act No. 32 of 2014	Ch. VI of Act No. 91 of 1964
S. 46 of Act No. 32 of 2014	Ss. 58 and 59 of Act No. 91 of 1964
S. 47 of Act No. 32 of 2014	Heading to Ch. VIII of Act No. 91 of 1964
S. 48 of Act No. 32 of 2014	Ch. VIII of Act No. 91 of 1964
S. 49 of Act No. 32 of 2014	S. 59A of Act No. 91 of 1964
S. 50 of Act No. 32 of 2014	S. 60 of Act No. 91 of 1964
S. 51 of Act No. 32 of 2014	S. 61 of Act No. 91 of 1964
S. 52 of Act No. 32 of 2014	S. 64 of Act No. 91 of 1964
S. 53 of Act No. 32 of 2014	S. 64A of Act No. 91 of 1964
S. 54 of Act No. 32 of 2014	S. 64B of Act No. 91 of 1964
S. 55 of Act No. 32 of 2014	S. 64C of Act No. 91 of 1964
S. 56 of Act No. 32 of 2014	S. 64D of Act No. 91 of 1964
S. 57 of Act No. 32 of 2014	S. 64F of Act No. 91 of 1964
S. 58 of Act No. 32 of 2014	Ss. 64G, 64H, 64I, 64J, 64K, 64L and 64M of Act No. 91 of 1964
S. 59 of Act No. 32 of 2014	S. 65 of Act No. 91 of 1964
S. 60 of Act No. 32 of 2014	Ss. 66 and 67 of Act No. 91 of 1964
S. 61 of Act No. 32 of 2014	S. 69 of Act No. 91 of 1964
S. 62 of Act No. 32 of 2014	Ss. 71, 72, 73, 74 and 74A of Act No. 91 of 1964
S. 63 of Act No. 32 of 2014	S. 75 of Act No. 91 of 1964
S. 64 of Act No. 32 of 2014	S. 75A of Act No. 91 of 1964
S. 65 of Act No. 32 of 2014	S. 76 of Act No. 91 of 1964
S. 66 of Act No. 32 of 2014	S. 76B of Act No. 91 of 1964
S. 67 of Act No. 32 of 2014	S. 77 of Act No. 91 of 1964
S. 68 of Act No. 32 of 2014	Chs. XA and XB of Act No. 91 of 1964
S. 69 of Act No. 32 of 2014	S. 79 of Act No. 91 of 1964
S. 70 of Act No. 32 of 2014	Ss. 81, 86A, 87, 88, 89 and 90 of Act No. 91 of 1964
S. 71 of Act No. 32 of 2014	S. 93 of Act No. 91 of 1964
S. 72 of Act No. 32 of 2014	Ss. 96, 96A and 97 of Act No. 91 of 1964
S. 73 of Act No. 32 of 2014	S. 98 of Act No. 91 of 1964

S. 74 of Act No. 32 of 2014	S. 99 of Act No. 91 of 1964
S. 75 of Act No. 32 of 2014	S. 99A of Act No. 91 of 1964
S. 76 of Act No. 32 of 2014	Ss. 101A and 101B of Act No. 91 of 1964
S. 77 of Act No. 32 of 2014	S. 102 of Act No. 91 of 1964
S. 78 of Act No. 32 of 2014	S. 105 of Act No. 91 of 1964
S. 79 of Act No. 32 of 2014	S. 106 of Act No. 91 of 1964
S. 80 of Act No. 32 of 2014	S. 107 of Act No. 91 of 1964
S. 81 of Act No. 32 of 2014	Ss. 109, 111 and 112 of Act No. 91 of 1964
S. 82 of Act No. 32 of 2014	S. 113 of Act No. 91 of 1964
S. 83 of Act No. 32 of 2014	S. 113A of Act No. 91 of 1964
S. 84 of Act No. 32 of 2014	S. 117 of Act No. 91 of 1964
S. 85 of Act No. 32 of 2014	S. 118 of Act No. 91 of 1964
S. 86 of Act No. 32 of 2014	S. 120 of Act No. 91 of 1964
S. 87 of Act No. 32 of 2014	S. 122 of Act No. 91 of 1964

Tax Administration Laws Amendment Act, No. 23 of 2015 (provisions not yet proclaimed)	
Proposed amendments by	*Sections to be amended*
S. 20 of Act No. 23 of 2015	S. 1 of Act No. 91 of 1964
S. 22 of Act No. 23 of 2015	S. 4D of Act No. 91 of 1964
S. 23 of Act No. 23 of 2015	S. 27 of Act No. 91 of 1964
S. 24 of Act No. 23 of 2015	S. 99 of Act No. 91 of 1964

Taxation Laws Amendment Act, No. 25 of 2015 (provisions not yet proclaimed)	
Proposed amendments by	*Sections to be amended*
S. 126 of Act No. 25 of 2015	S. 20 of Act No. 91 of 1964

GENERAL NOTE

In terms of s. 15 of Act No. 98 of 1980 the words "department" and "Secretary", wherever they occur, are substituted by the words "Office" and "Commissioner", respectively.

In terms of s. 128 of the Taxation Laws Amendment Act, No. 24 of 2011, every amendment or withdrawal of or insertion in Schedule Nos. 1 to 6, 8 and 10, made under section 48, 49, 56, 56A, 57, 60 or 75 (15) of this Act during the period 1 August 2010 up to and including 31 July 2011, shall not lapse by virtue of section 48 (6), 49, 56 (3) 57 (3), 60 (4)or 75 (16) of this Act.

In terms of s. 5 of the Taxation Laws Second Amendment Act, No. 25 of 2011, any rule made under section 119A of this Act or any amendment or withdrawal of or insertion in such rule during the period 1 June 2010 up to and including 31 July 2011, shall not lapse by virtue of section 119A (3) of this Act.

In terms of s. 28 of the Tax Administration Laws Amendment Act, No. 21 of 2012, any rule made under section 119A of this Act or any amendment or withdrawal of or insertion in such rule during the period 1 August 2011 up to and including 31 July 2012, shall not lapse by virtue of section 119A (3) of this Act.

In terms of s. 143 of the Taxation Laws Amendment Act, No. 22 of 2012, every amendment or withdrawal of or insertion in Schedule Nos. 1 to 6, 8 and 10, made under section 48, 49, 56, 56A, 57, 60 or 75 (15) of this Act during the period 1 August 2011 up to and including 31 July 2012, shall not lapse by virtue of section 48 (6), 49(5A), 56 (3), 57 (3), 60 (4)or 75 (16) of this Act.

In terms of s. 164 of the Taxation Laws Amendment Act, No. 31 of 2013, every amendment or withdrawal of or insertion in Schedule Nos. 1 to 6, 8 and 10, made under section 48, 49, 56, 56A, 57, 60 or 75 (15) of this Act during the period 1 August 2012 up to and including 31 August 2013, shall not lapse by virtue of section 48 (6), 49 (5A), 56 (3), 56A (3), 57 (3), 60 (4)or 75 (16) of this Act.

In terms of s. 20 of the Tax Administration Laws Amendment Act, No. 39 of 2013, any rule made under section 119A of this Act or any amendment or withdrawal of or insertion in such rule during the period 1 August 2012 up to and including 31 August 2013, shall not lapse by virtue of section 119A (3) of this Act.

In terms of s. 127 of the Taxation Laws Amendment Act, No. 25 of 2015, every amendment or withdrawal of or insertion in Schedules No. 1 to 6, 8 and 10, made under section 48, 49, 56, 56A, 57, 60 or 75 (15) of this Act during the period 1 September 2014 up to and including 30 September 2015, shall not lapse by virtue of section 48 (6), 49 (5A), 56 (3), 56A (3), 57 (3), 60 (4) or 75 (16) of this Act.

ACT

To provide for the levying of customs and excise duties and a surcharge; for a fuel levy, for a Road Accident Fund levy, for an air passenger tax and an environmental levy; the prohibition and control of the importation, export, manufacture or use of certain goods; and for matters incidental thereto.

[Long title substituted by s. 40 of Act No. 112 of 1977, by s. 41 of Act No. 84 of 1987, by s. 42 of Act No. 59 of 1990, by s. 66 of Act No. 30 of 2000, by s. 72 of Act No. 32 of 2004 and by s. 28 (1) of Act No. 32 of 2005.]

ARRANGEMENT OF SECTIONS

CHAPTER I
DEFINITIONS
1. Definitions

CHAPTER II
ADMINISTRATION, GENERAL DUTIES AND POWERS OF COMMISSIONER AND OFFICERS, AND APPLICATION OF ACT
1A. . . . . .
1B. . . . . .
2. Commissioner to administer Act
3. Delegation of duties and powers of Commissioners
3A. Duties imposed and powers conferred on Director-General by this Act
3B. . . . . .
4. General duties and powers of officers
4A. Powers of arrest
4B. Possession and use of firearms
4C. Border Patrol
4D. Officers' powers relating to criminal prosecutions
5. Application of Act

CHAPTER III
IMPORTATION, EXPORTATION AND TRANSIT AND COASTWISE CARRIAGE OF GOODS
6. Appointment of places of entry, authorized roads and routes, etc
6A. Special provisions in respect of customs controlled areas
7. Report of arrival or departure of ships or aircraft
7A. Special provisions relating to Advance Passenger Information
8. Cargo Reports
9. Sealing of goods on board ships or aircraft
10. When goods deemed to be imported
11. Landing of unentered goods.
11A.
12. Goods imported or exported overland
13. Goods imported or exported by post
14. Coastwise traffic and coasting ships
15. Persons entering or leaving the Republic and smugglers
16. Opening of packages in absence of importer or exporter
17. State warehouse

18. Removal of goods in bond
18A. Exportation of goods from customs and excise warehouse

CHAPTER IV
CUSTOMS AND EXCISE WAREHOUSES; STORAGE AND MANUFACTURE OF GOODS IN CUSTOMS AND EXCISE WAREHOUSES
19. Customs and excise warehouses
19A. Special provision in respect of customs and excise warehouses in which excisable or fuel levy goods are manufactured or stored
20. Goods in customs and excise warehouses
21. Special customs and excise warehouses
21A. Provision for administration of customs controlled areas within industrial development zones and special economic zones
22. Samples of goods in a customs and excise warehouse
23. Storage or manufacture of prohibited goods
24. Ships' or aircraft stores consumed in the Republic
25. Sorting, packing, etc., in customs and excise storage warehouses
26. Transfer of ownership or pledging or hypothecation of warehoused goods
27. Special provisions in respect of customs and excise manufacturing warehouses
28. Ascertaining quantity of spirits by measuring the mass or volume
29. Classification of spirits
30. Control of the use of spirits for certain purposes
31. . . . . .
32. Ascertaining the strength of spirits for duty purposes
33. Requirements in respect of stills
34. Special provisions regarding spirits manufactured by agricultural distillers
35. Special provisions regarding wine
35A. Special provisions regarding cigarettes and cigarette tobacco
36. Specific provisions regarding beer
36A. 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
37. Duties applicable to goods manufactured in a customs and excise warehouse
37A. Special provisions in respect of marked goods and certain goods that are free of duty
37B. Provisions relating to the manufacture, storage, disposal and use of biofuel, biodiesel or bioethanol

CHAPTER V
CLEARANCE AND ORIGIN OF GOODS; LIABILITY FOR AND PAYMENT OF DUTIES
38. Entry of goods and time of entry
38A. Special provisions in respect of storage and clearance and release of stores or spares and equipment supplied to foreign-going ships and aircraft
39. Importer and exporter to produce documents and pay duties
39A. Sale in transit
39B. . . . . .
39C. . . . . .
39D. Simplified procedures for immediate release of goods
40. Validity of entries
41. Particulars on invoices
42. Entry by bill of sight
43. Disposal of goods on failure to make due entry, goods imported in contravention of any other law and seized and abandoned goods
44. Liability for duty
44A. Joint and several liability for duty or certain amounts
45. Determination of duty applicable
46. Origin of goods
46A. Non-reciprocal preferential tariff treatment of goods exported from the Republic
47. Payment of duty and rate of duty applicable
47A. Prohibition of certain acts in respect of goods not duly entered
47B. Air passenger tax
48. Amendment of Schedule No. 1

48A. . . . . .
49. Agreements in respect of rates of duty lower than general rates of duty and other agreements providing for matters requiring customs administration
50. Provisions relating to the disclosure of information in terms of agreements
50A. Joint, one-stop or juxtaposed international land border posts
51. Agreements with African territories
52. Imposition of a fuel levy by any party to a customs union agreement
53. Discrimination by other countries
54. Special provisions regarding the importation of cigarettes

CHAPTER VA
ENVIRONMENTAL LEVIES
54A. Imposition of environmental levy
54B. Rate of environmental levy
54C. Application of other provisions of this Act
54D. Rebates, refunds and drawbacks
54E. Licensing
54EA. Exemption from licensing and payment of environmental levy
54F. Rules

CHAPTER VI
ANTI-DUMPING, COUNTERVAILING AND SAFEGUARD DUTIES AND OTHER MEASURES
55. General provisions regarding anti-dumping, countervailing and safeguard duties and measures
56. Imposition of anti-dumping duties
56A. Imposition of countervailing duties
57. Imposition of safeguard measures
57A. Imposition of provisional payment

CHAPTER VII
AMENDMENT OF DUTIES
58. Time when new or increased duties become payable
59. Contract prices may be varied to extent of alteration in duty
59A. Registration of persons participating in activities regulated by this Act

CHAPTER VIII
REGISTRATION, LICENSING AND ACCREDITED CLIENTS
60. Licence fees according to Schedule No. 8
61. Customs and excise warehouse licences
62. Agricultural distillers
63. Stills to be licensed
64. Special warehouses for the manufacture of wine
64A. Container depot licenses
64B. Clearing agent licences
64C. Licence to search wreck or to search for wreck
64D. Licensing of remover of goods in bond
64E. Accredited clients
64F. Licensing of distributors of fuels obtained from the licensee of a customs and excise manufacturing warehouse
64G. Licensing of degrouping depot

CHAPTER IX
VALUE
65. Value for duty purposes on any goods imported into the Republic
66. Transaction value
67. Adjustments to price actually paid or payable
68. . . . . .
69. Value for excise duty purposes on any goods manufactured in the Republic
70. . . . . .
71. Value of certain specified goods
72. Value of goods exported

73. Currency conversion
74. Value of goods not liable to ad valorem duty
74A. Interpretation of sections 65, 66 and 67

CHAPTER X

REBATES, REFUNDS AND DRAWBACKS OF DUTY

75. Specific rebates, drawbacks and refunds of duty
75A. Circumstances in which imported goods free of duty are admissible under a rebate item of Schedule No. 4
76. General refunds in respect of imported goods, excisable goods
76A. Recovery of certain amounts not duly payable
76B. Limitation on the period for which refund and drawback claims will be considered and the period within which applications therefor must be received by the Controller
76C. Set-off of refund against amounts owing
77. Set-off of certain amounts

CHAPTER XA

INTERNAL ADMINISTRATIVE APPEAL; ALTERNATIVE DISPUTE RESOLUTION; DISPUTE SETTLEMENT

PART A

INTERNAL ADMINISTRATIVE APPEAL

77A. Definitions
77B. Persons who may appeal
77C. Submission of appeal
77D. Time within which appeal must be considered
77E. Appointment and function of appeal committee
77F. Decision of Commissioner and Committee
77G. Obligation to pay amount demanded
77H. Rules

PART B

ALTERNATIVE DISPUTE RESOLUTION

77I. Alternative Dispute Resolution

PART C

SETTLEMENT OF DISPUTE

77J. Definitions
77K. Purpose of this Part
77L. Circumstances where inappropriate to settle
77M. Circumstances where appropriate to settle
77N. Power to settle and conduct of officials
77O. Procedure for settlement
77P. Register of settlements and reporting

CHAPTER XB

POWERS, DUTIES AND PROCEDURES IN CONNECTION WITH COUNTERFEIT GOODS

(Editorial Note: Chapter XB to be inserted by s. 17 (1) of Act No. 36 of 2007 with effect from a date to be fixed by the President by proclamation in the *Gazette* - date not fixed.)

77Q. . . . . .
77R. . . . . .
77S. . . . . .
77T. . . . . .
77U. . . . . .
77V. . . . . .
77W. . . . . .
77X. . . . . .
77Y. . . . . .

CHAPTER XI

PENAL PROVISIONS

78. Offences not expressly mentioned
79. Less serious offences and their punishment
80. Serious offences and their punishment
81. Non-declaration in respect of certain goods

82. Prohibition with regard to stamps
83. Irregular dealing with or in goods
84. False documents and declarations
85. Beer of higher alcoholic strength than registered
86. Certain specified offences
86A. Publication of names of offenders
87. Goods irregularly dealt with liable to forfeiture
88. Seizure
89. Notice of claim by owner in respect of seized goods
90. Disposal of seized goods
91. Administrative penalties
92. Payment and disposal of fines and penalties
93. Remission or mitigation of penalties and forfeiture
93A. . . . . .
94. Recovery of penalties by process of law
95. Jurisdiction of courts
96. Notice of action and period for bringing action

CHAPTER XII
GENERAL

96A. Approval of container operators
97. Master, container operator or pilot may appoint agent
98. Liability of principal for acts of agent
99. Liability of agent for obligations imposed on principal
99A. Consultant and agent not being clearing agent required to register
100. Agent may be called upon to produce written authority
101. Business accounts, documents, etc., to be available for inspection
101A. Electronic communication for the purposes of customs and excise procedures
101B. Special provisions relating to the processing and protection of personal information
102. Sellers of goods to produce proof of payment of duty
103. Liability of company, partnership, etc
104. . . . . .
105. Interest on outstanding amounts
106. Sample
107. Expenses of landing, examination, weighing, analysis, etc
107A. Control in respect of manufacturers of certain goods or materials and persons who carry out processes in connection with such goods or materials
108. . . . . .
109. Destruction of goods and detention of ships or vehicles
110. Instruments and tables
111. Production of certificate of officer on registration of certain motor vehicles
112. Wreck
113. Prohibition and restrictions
113A. Powers and duties of officers in connection with counterfeit goods
114. Duty constitutes a debt to the State
114A. Power to appoint agent
114B. Remedies of Commissioner against agent or trustee
115. Entries, oaths, etc., made outside the Republic of full force and effect
116. Manufacture of excisable goods solely for use by the manufacturer thereof
116A. . . . . .
117. Statistics
118. Delegation of powers and assignment of duties
119. Substitution of Schedules
119A. Special provisions for customs modernisation
120. Regulations and rules
121. Repeal of laws
122. Short title and commencement
General Note Schedules 1 to 6, Schedule 7, Schedule 8 and 10
Schedule No. 9 Laws repealed

CHAPTER I
DEFINITIONS

1. Definitions.-(1) In this Act, unless the context otherwise indicates, any reference to customs and excise or matters relating thereto, shall be deemed to include a reference to-

(*a*) surcharge and fuel levy or matters relating thereto;

(*b*) air passenger tax or matters relating thereto in so far as those provisions can be applied and subject to the provisions of section 47B, and-

"agricultural distiller" means any owner or occupier of a farm in the Republic who-

(*a*) is licensed to keep a still on such farm; and

(*b*) is licensed to distill spirits exclusively from prescribed fresh fruit grown by him on such farm;

[Definition of "agricultural distiller" substituted by s. 1 (*b*) of Act No. 59 of 1990, by s. 1 of Act No. 19 of 1994 and by s. 57 of Act No. 30 of 1998.]

Wording of Sections

"bill of entry" includes any SAD form, except as otherwise provided in any Schedule, rule or the Schedule to the rules;

[Definition of "bill of entry" inserted by s. 7 (1) (*a*) of Act No. 21 of 2006 deemed to have come into operation on 1 October, 2006.]

. . . . . .

(Editorial Note: Definition of "break bulk goods" to be inserted by s. 7 (1) (*b*) of Act No. 21 of 2006 with effect from a date to be fixed by the President by proclamation in the *Gazette* - date not fixed.)

. . . . . .

(Editorial Note: Definition of "bulk goods" to be inserted by s. 7 (1) (*b*) of Act No. 21 of 2006 with effect from a date to be fixed by the President by proclamation in the *Gazette* - date not fixed.)

. . . . . .

(Editorial Note: Definition of "bulk goods terminal" to be inserted by s. 7 (1) (*b*) of Act No. 21 of 2006 with effect from a date to be fixed by the President by proclamation in the *Gazette* - date not fixed.)

. . . . . .

(Editorial Note: Definition of "bulk goods terminal operator" to be inserted by s. 7 (1) (*b*) of Act No. 21 of 2006 with effect from a date to be fixed by the President by proclamation in the *Gazette* - date not fixed.)

. . . . . .

(Editorial Note: Definition of "combination terminal" to be inserted by s. 7 (1) (*b*) of Act No. 21 of 2006 with effect from a date to be fixed by the President by proclamation in the *Gazette* - date not fixed.)

. . . . . .

(Editorial Note: Definition of "combination terminal operator" to be inserted by s. 7 (1) (*b*) of Act No. 21 of 2006 with effect from a date to be fixed by the President by proclamation in the *Gazette* - date not fixed.)

"Commissioner" means the Commissioner for the South African Revenue Service;

[Definition of "Commissioner" inserted by s. 1 (1) (*a*) of Act No. 98 of 1980 and substituted by s. 34 (1) of Act No. 34 of 1997.]

Wording of Sections

"common customs area" means the combined areas of the Member States of SACU;

[Definition of "common customs area" inserted by s. 1 (1) (*b*) of Act No. 84 of 1987 and substituted by s. 66 (*a*) of Act No. 32 of 2004.]

Wording of Sections

"container depot" means any container depot contemplated in section 6 (1) (*h*B);

[Definition of "container depot" inserted by s. 1 (*a*) of Act No. 71 of 1975.]

(Editorial Note: Definition of "container depot" to be substituted by s. 7 (1) (*c*) of Act No. 21 of 2006 with effect from a date to be fixed by the President by proclamation in the *Gazette* - date not fixed.)

Wording of Sections

. . . . . .

(Editorial Note: Definition of "container depot operator" to be inserted by s. 7 (1) (*d*) of Act No. 21 of 2006 with effect from a date to be fixed by the President by proclamation in the *Gazette* - date not fixed.)

"container operator" means any person providing international transportation of containerized goods, and approved by the Commissioner, under section 96A, for operating containers in the Republic;

[Definition of "container operator" inserted by s. 1 (*a*) of Act No. 71 of 1975 and substituted by s. 1 of Act No. 89 of 1984.]

Wording of Sections

(Editorial Note: Definition of "container operator" to be substituted by s. 7 (1) (*c*) of Act No. 21 of 2006 with effect from a date to be fixed by the President by proclamation in the *Gazette* - date not fixed.)

Wording of Sections

"container terminal" means any container terminal contemplated in section 6 (1) (*h*A);

[Definition of "container terminal" inserted by s. 1 (*a*) of Act No. 71 of 1975.]

(Editorial Note: Definition of "container terminal" to be substituted by s. 7 (1) (*c*) of Act No. 21 of 2006 with effect from a date to be fixed by the President by proclamation in the *Gazette* - date not fixed.)

Wording of Sections

. . . . . .

(Editorial Note: Definition of "container terminal operator" to be inserted by s. 7 (1) (*e*) of Act No. 21 of 2006 with effect from a date to be fixed by the President by proclamation in the *Gazette* - date not fixed.)

"Collector". . . . . .

[Definition of "Collector" deleted by s. 1 (1) (*a*) of Act No. 57 of 1966.]

"Controller", in relation to any area or any matter, means the officer designated by the Commissioner to be the Controller of Customs and Excise in respect of that area or matter and includes an officer acting under the control or direction of any officer so designated by the Commissioner;

[Definition of "Controller" inserted by s. 1 (1) (*b*) of Act No. 57 of 1966.]

. . . . . .

(Editorial Note: Definition of "customs controlled area" to be inserted by s. 7 (1) (*f*) of Act No. 21 of 2006 with effect from a date to be fixed by the President by proclamation in the *Gazette* - date not fixed.)

"crew" includes every person (except the master or pilot) employed in any capacity on board any ship or aircraft;

"customs duty" means any duty leviable under Part 1 of Schedule No. 1 or Schedule No. 2 on goods imported into the Republic;

[Definition of "customs duty" substituted by s. 1 (*b*) of Act No. 105 of 1969, by s. 1 (*b*) of Act No. 112 of 1977, by s. 1 (1) (*c*) of Act No. 84 of 1987, by s. 1 (*c*) of Act No. 59 of 1990, by s. 66 (*b*) of Act No. 32 of 2004 and by s. 90 (1) (*a*) of Act No. 35 of 2007.]

Wording of Sections

"customs tariff" . . . . . .

[Definition of "customs tariff" substituted by s. 1 (*c*) of Act No. 105 of 1969 and deleted by s. 1 (*d*) of Act No. 59 of 1990.]

Wording of Sections

"degrouping depot" means any degrouping depot for air cargo contemplated in section 6 (1) (*h*C) and licensed under the provisions of this Act;

[Definition of "degrouping depot" inserted by s. 131 (1) (*a*) of Act No. 45 of 2003.]

"degrouping operator" means the licensee of a degrouping depot;

[Definition of "degrouping operator" inserted by s. 131 (1) (*a*) of Act No. 45 of 2003.]

"department" . . . . . .

[Definition of "department" deleted by s. 1 (1) (*b*) of Act No. 98 of 1980.]

Wording of Sections

"depot operator" means the person having charge of any container depot;

[Definition of "depot operator" inserted by s. 1 (*b*) of Act No. 71 of 1975.]

(Editorial Note: Definition of "depot operator" to be deleted by s. 7 (1) (*g*) of Act No. 21 of 2006 with effect from a date to be fixed by the President by proclamation in the *Gazette* - date not fixed.)

Wording of Sections

"duty" means any duty leviable under this Act and subject to-

(*a*) section 47B, any air passenger tax leviable under that section; and

(*b*) subject to Chapter VA, any environmental levy leviable under that Chapter;

[Definition of "duty" substituted by s. 58 (*c*) of Act No. 30 of 2000 and by s. 131 (*b*) of Act No. 45 of 2003.]

Wording of Sections

"entry for home consumption" includes entry under any item in Schedule No. 3, 4 or 6;

[Definition of "entry for home consumption" substituted by s. 1 (*d*) of Act No. 105 of 1969 and by s. 1 (*e*) of Act No. 59 of 1990.]

Wording of Sections

"environmental levy" means any duty leviable under Part 3 of Schedule No. 1 on any goods which have been manufactured in or imported into the Republic; and

[Definition of "environmental levy" inserted by s. 131 (*c*) of Act No. 45 of 2003.]

"environmental levy goods" means any goods specified in Part 3 of Schedule No. 1 which have been manufactured in or imported into the Republic;

[Definition of "environmental levy goods" inserted by s. 131 (*c*) of Act No. 45 of 2003.]

"excisable goods" means any goods specified in Part 2 of Schedule No. 1 imported into or manufactured in the Republic;

[Definition of "excisable goods" substituted by s. 90 (1) (*b*) of Act No. 35 of 2007.]

Wording of Sections

"excise duty" means any duty leviable under Part 2 of Schedule No. 1 on any goods imported into or manufactured in the Republic;

[Definition of "excise duty" substituted by s. 1 (1) (*d*) of Act No. 84 of 1987 and by s. 90 (1) (*c*) of Act No. 35 of 2007.]

Wording of Sections

"excise value" means value as defined in section *sixty-nine*;

"exporter" includes any person who, at the time of exportation-

(*a*) owns any goods exported;

(*b*) carries the risk of any goods exported;

(*c*) represents that or acts as if he is the exporter or owner of any goods exported;

(*d*) actually takes or attempts to take any goods from the Republic;

(*e*) is beneficially interested in any way whatever in any goods exported;

(*f*) acts on behalf of any person referred to in paragraph (*a*), (*b*), (*c*), (*d*) or (*e*),

and, in relation to imported goods, includes the manufacturer, supplier or shipper of such goods or any person inside or outside the Republic representing or acting on behalf of such manufacturer, supplier or shipper;

[Definition of "exporter" substituted by s. 1 (*c*) of Act No. 112 of 1977.]

Wording of Sections

"fuel levy" means, subject to subsection (4), any duty leviable under Part 5A of Schedule No. 1 on any fuel levy goods which have been manufactured in or imported into the Republic;

[Definition of "fuel levy" inserted by s. 1 (1) (*e*) of Act No. 84 of 1987 and substituted by s. 85 (1) (*a*) of Act No. 31 of 2005.]

Wording of Sections

"fuel levy goods" means, subject to subsection (4), any goods specified in Part 5A of Schedule No. 1, except any goods specified in any item of that Part for which a free rate of duty is prescribed as contemplated in section 37A (1) (*a*), which have been manufactured in or imported into the Republic;

[Definition of "fuel levy goods" inserted by s. 1 (1) (*e*) of Act No. 84 of 1987 and substituted by s. 113 (1) (*e*) of Act No. 60 of 2001 and by s. 85 (1) (*b*) of Act No. 31 of 2005.]

Wording of Sections

"goods" includes-

(*a*) anything classifiable within any heading or subheading of Part 1 of Schedule No. 1; and

(*b*) generally all wares, articles, merchandise, animals, currency, matter or things;

[Definition of "goods" substituted by s. 1 (*a*) of Act No. 98 of 1970 and by s. 22 (1) (*a*) of Act No. 61 of 2008 deemed to have come into operation on 21 October, 2008.]

Wording of Sections

"Government Brandy Board" . . . . . .

[Definition of "Government Brandy Board" substituted by s. 1 (*b*) of Act No. 98 of 1970 and deleted by s. 32 of Act No. 60 of 1989.]

Wording of Sections

"home consumption" means consumption or use in the Republic;

"illicit goods", in relation to imported or excisable 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;

[Definition of "illicit goods" substituted by s. 1 (*e*) of Act No. 105 of 1969, by s. 1 (*d*) of Act No. 112 of 1977, by s. 1 (1) (*f*) of Act No. 84 of 1987 and by s. 1 (*f*) of Act No. 59 of 1990.]

Wording of Sections

"importer" includes any person who, at the time of importation-

(*a*) owns any goods imported;

(*b*) carries the risk of any goods imported;

(*c*) represents that or acts as if he is the importer or owner of any goods imported;

(*d*) actually brings any goods into the Republic;

(*e*) is beneficially interested in any way whatever in any goods imported;

(*f*) acts on behalf of any person referred to in paragraph (*a*), (*b*), (*c*), (*d*) or (*e*);

"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);

[Definition of "International Trade Administration Commission" inserted by s. 141 (1) (*d*) of Act No. 45 of 2003.]

"land" includes off-loading from any vehicle;

"L.C.L. container" means any container containing goods consigned from one or more exporters to more than one importer;

[Definition of "L.C.L. container" inserted by s. 1 (*c*) of Act No. 71 of 1975.]

"manufacture", when used as a noun, includes-

(*a*) in the discretion of the Commissioner, any process-

(i) in the manufacture or assembly of any excisable goods, environmental levy goods, fuel levy goods or Road Accident Fund levy goods;

(ii) in the conversion of any goods into excisable goods, environmental levy goods, fuel levy goods or Road Accident Fund levy goods;

(iii) whereby the dutiable quantity or value of any imported goods specified in section B of Part 2 of Schedule No. 1, excisable goods, environmental levy goods, fuel levy goods or Road Accident Fund levy goods is increased in any manner;

(iv) in the recovery of excisable goods, environmental levy goods, fuel levy goods or Road Accident Fund levy goods from excisable goods or any other goods;

(v) in the packing or measuring off of any imported goods specified in section B of Part 2 of Schedule No. 1, excisable goods, environmental levy goods, fuel levy goods or Road Accident Fund levy goods; or

(vi) in the generation of electricity liable to environmental levy; or

(*b*) any process as may be prescribed in any Part of Schedule No. 1 wherein such duty or levy is specified; or

(*c*) any other process in respect of goods contemplated in paragraph (a) that the Commissioner may prescribe by rule,

and, when used as a verb, has a corresponding meaning; and **"manufacturer"** has a corresponding meaning;
[Definition of "manufacture" substituted by s. 1 (*f*) of Act No. 105 of 1969, by s. 1 of Act No. 110 of 1979, by s. 1 (1) (*g*) of Act No. 84 of 1987, by s. 1 (*g*) of Act No. 59 of 1990 and by s. 22 (1) (*b*) of Act No. 61 of 2008 deemed to have come into operation on 21 October, 2008.]

Wording of Sections

"master", in relation to any ship, means any person (other than a pilot) having charge of such ship;
(Editorial Note: Definition of "master" to be substituted by s. 7 (1) (*h*) of Act No. 21 of 2006 with effect from a date to be fixed by the President by proclamation in the *Gazette* - date not fixed.)

Wording of Sections

"Minister" means the Minister of Finance;

"Office" means the Office of the Commissioner for Customs and Excise mentioned in section 1A;
[Definition of "Office" inserted by s. 1 (1) (*c*) of Act No. 98 of 1980.]

"officer" means a person employed on any duty relating to customs and excise 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;
[Definition of "officer" substituted by s. 1 (*g*) of Act No. 105 of 1969, by s. 1 (*e*) of Act No. 112 of 1977, by s. 1 (1) (*h*) of Act No. 84 of 1987 and by s. 1 (*h*) of Act No. 59 of 1990.]

Wording of Sections

"ordinary duty" . . . . . .
[Definition of "ordinary duty" deleted by s. 1 (*i*) of Act No. 59 of 1990.]

Wording of Sections

"owner" includes any person lawfully acting on behalf of the owner;

"package" means any container, wrapping or outer cover and its contents, or any bundle or single piece in the case of unpacked goods;

"person" includes an insolvent estate, the estate of a deceased person and any trust;
[Definition of "person" inserted by s. 4 (1) (*a*) of Act No. 36 of 2007.]

"pilot", in relation to any aircraft, means any person having charge of such aircraft;
(Editorial Note: Definition of "pilot" to be substituted by s. 7 (1) (*i*) of Act No. 21 of 2006 with effect from a date to be fixed by the President by proclamation in the *Gazette* - date not fixed.)

Wording of Sections

"plant" includes vessels, utensils, appliances and fittings;

"prescribed" means prescribed by this Act;

"regulation" means a regulation made by the Minister under this Act;

"Road Accident Fund levy" means, subject to subsection (4), any duty leviable under Part 5B of Schedule No. 1 on any Road Accident Fund levy goods which have been manufactured in or imported into the Republic;
[Definition of "Road Accident Fund levy" inserted by s. 85 (1) (*c*) of Act No. 31 of 2005.]

"Road Accident Fund levy goods" means, subject to subsection (4), any goods specified in Part 5B of Schedule No. 1;
[Definition of "Road Accident Fund levy goods" inserted by s. 85 (1) (*c*) of Act No. 31 of 2005.]

. . . . . .
(Editorial Note: Definition of "road vehicle terminal" to be inserted by s. 7 (1) (*j*) of Act No. 21 of 2006 with effect from a date to be fixed by the President by proclamation in the *Gazette* - date not fixed.)

. . . . . .
(Editorial Note: Definition of "road vehicle terminal operator" to be inserted by s. 7 (1) (*j*) of Act No. 21 of 2006 with effect from a date to be fixed by the President by proclamation in the *Gazette* - date not fixed.)

"rule" means a rule made by the Commissioner under this Act;

"SACU" means the Southern African Customs Union between the Republic of Botswana, the Kingdom of Lesotho, the Republic of Namibia, the Republic of South Africa and the Kingdom of Swaziland;

[Definition of "SACU" inserted by s. 66 (*c*) of Act No. 32 of 2004.]

"SACU Agreement" means the Southern African Customs Union Agreement published in Schedule No. 10;

[Definition of "SACU Agreement" inserted by s. 66 (*c*) of Act No. 32 of 2004.]

"sales duty" . . . . . .

[Definition of "sales duty" inserted by s. 1 (*h*) of Act No. 105 of 1969 and deleted by s. 1 (*i*) of Act No. 59 of 1990.]

Wording of Sections

"sales duty goods" . . . . . .

[Definition of "sales duty goods" inserted by s. 1 (*h*) of Act No. 105 of 1969 and deleted by s. 1 (*i*) of Act No. 59 of 1990.]

Wording of Sections

"Secretary" . . . . . .

[Definition of "Secretary" deleted by s. 1 (1) (*d*) of Act No. 98 of 1980.]

Wording of Sections

"ship" means any ship, vessel or boat (including a flying boat) of any kind whatsoever;

"South African Revenue Service" means the South African Revenue Service established by section 2 of the South African Revenue Service Act, 1997.

[Definition of "South African Revenue Service" inserted by s. 34 (1) of Act No. 34 of 1997.]

"State warehouse" means any premises provided by the State for the deposit of goods for the security thereof and of the duties due thereon, or pending compliance with the provisions of any law in respect of such goods;

"still" means any apparatus for, or capable of, distilling spirits and includes any part thereof;

"still maker" means a person who manufactures or imports stills for sale and includes a person who repairs stills for reward;

"surcharge" means any duty leviable under Part 4 of Schedule No. 1 on any goods which have been imported into the Republic;

[Definition of "surcharge" inserted by s. 1 (*f*) of Act No. 112 of 1977.]

"surcharge goods" means any goods specified in Part 4 of Schedule No. 1 which have been imported into the Republic;

[Definition of "surcharge goods" inserted by s. 1 (*f*) of Act No. 112 of 1977.]

"this Act" includes any proclamation, government notice, regulation or rule issued or made or agreement concluded or deemed to have been concluded thereunder, any agreement contemplated in section 49, or any taxation proposal contemplated in section 58 which is tabled in the National Assembly;

[Definition of "this Act" substituted by s. 1 (1) (*c*) of Act No. 57 of 1966, by s. 46 (*a*) of Act No. 53 of 1999 and by s. 60 (1) of Act No. 59 of 2000.]

Wording of Sections

. . . . . .

(Editorial Note: Definition of "transit shed" to be inserted by s. 7 (1) (*k*) of Act No. 21 of 2006 with effect from a date to be fixed by the President by proclamation in the *Gazette* - date not fixed.)

. . . . . .

(Editorial Note: Definition of "transit shed operator" to be inserted by s. 7 (1) (*k*) of Act No. 21 of 2006 with effect from a date to be fixed by the President by proclamation in the *Gazette* - date not fixed.)

"vehicle" means any aircraft, train, motor car, van, truck, cart, barrow or other conveyance of any kind whatsoever, and includes the fittings, furnishings and equipment thereof, and also pack animals and their harness and tackle;

"Wine and Spirit Board" means the board referred to in section 2 of the Liquor Products Act, 1989;

[Definition of "Wine and Spirit Board" inserted by s. 32 of Act No. 60 of 1989.]

"wine grower" means a farmer who cultivates vines on land in his own occupation and who produces on such

land wine from grapes grown on such vines or delivers grapes grown on such vines to a wine-growers' co-operative agricultural society for the manufacture of wine;

[Definition of "wine-grower" substituted by s. 1 (*b*) of Act No. 95 of 1965.]

"worts" means any liquid substance containing saccharine matter before fermentation has commenced.

[Sub-s. (1) amended by s. 1 (*a*) of Act No. 112 of 1977, by s. 1 (1) (*a*) of Act No. 84 of 1987, by s. 1 (*a*) of Act No. 59 of 1990 and by s. 58 (*a*) of Act No. 30 of 2000.]

Wording of Sections

(2) In this section, except in the definition of **"package",** and in sections 4, 6, 7, 18, 38, 44, 64A and 87 (2) and 107, **"container"** means transport equipment of tariff heading 86.09-

(*a*) having an internal volume of not less than one cubic metre; and

(*b*) designed for the transport of goods by any means of carriage, without intermediate reloading,

and in this Act **"containerized"** has a corresponding meaning.

[Sub-s. (2) added by s. 1 (*d*) of Act No. 71 of 1975 and amended by s. 46 (*b*) of Act No. 53 of 1999 and by s. 10 of Act No. 9 of 2007.]

Wording of Sections

(3) For the purposes of the SACU Agreement-

(*a*) **"customs duty"** includes, except for the purposes of articles 32, 33 and 34 of the said agreement, any duty leviable under Part 3, 5 or 8 of Schedule No. 1 on goods imported;

(*b*) **"excise duty"** includes, except for the purposes of articles 32, 33 and 34 of the said agreement, any duty leviable under Part 3, 5 or 8 of Schedule No. 1 on goods manufactured in the common customs area.

[Sub-s. (3) added by s. 1 of Act No. 112 of 1977, substituted by s. 1 (1) of Act No. 84 of 1987, amended by s. 1 of Act No. 68 of 1989 and by s. 1 of Act No. 59 of 1990 and substituted by s. 66 (*d*) of Act No. 32 of 2004.]

Wording of Sections

(Editorial Note: Sub-s. (3) to be substituted by s. 4 (1) (*b*) of Act No. 36 of 2007 with effect from a date to be fixed by the President by proclamation in the *Gazette* - date not fixed.)

Wording of Sections

(4) Except as otherwise provided in this section or in any other section or as may be provided in any Schedule or rule, any provision in this Act for fuel levy, fuel levy goods or Part 5 of Schedule No. 1 shall be deemed to include in that provision, in respect of-

(*a*) fuel levy, the Road Accident Fund levy;

(*b*) fuel levy goods, Road Accident Fund levy goods; or

(*c*) Part 5 of Schedule No. 1, Part 5A and Part 5B of that Schedule.

[S. 1 amended by s. 1 (*a*) of Act No. 105 of 1969. Sub-s. (4) inserted by s. 85 (1) (*d*) of Act No. 31 of 2005.]

Wording of Sections

(5) The expression "goods under customs control", "goods subject to customs control" or "goods under control of the Commissioner" and any cognate expression shall, unless the context otherwise indicates, be deemed to include, but is not limited to-

(*a*) any ship, vehicle or container contemplated in section 1 (2) that is entering or leaving the Republic;

(*b*) any goods to which this Act relates that are-

(i) on any ship or vehicle or in any container contemplated in section 1 (2) that is entering or leaving the Republic;

(ii) in, on or at any premises licensed, registered or approved, or which should have been so licensed, registered or approved, for any purpose in terms of this Act;

(iii) in, on or at any premises or at any place appointed, prescribed or designated in terms of section 6;

(iv) in transit within or through the Republic or conveyed for transhipment to any place outside the Republic in such manner as may be specified by rule;

(v) in, on or at a State warehouse or any place deemed in terms of section 43 (2) to be a State warehouse;

(vi) in, on or at any place where goods are kept after having been detained or seized under the provisions of this Act; or

(vii) deemed in terms of any provision of this Act to be under customs control,

whether or not declared in terms of any provision of this Act or, if so declared, whether or not release thereof has been granted.

[Sub-s. (5) added by s. 7 (1) (*m*) of Act No. 21 of 2006 with effect from 15 January, 2008 and substituted by s. 22 (1) (*c*) of Act No. 61 of 2008.]

Wording of Sections

CHAPTER II
ADMINISTRATION, GENERAL DUTIES AND POWERS OF COMMISSIONER AND OFFICERS, AND APPLICATION OF ACT

1A. . . . . . .

[S. 1A inserted by s. 2 (1) of Act No. 98 of 1980 and repealed by s. 34 (1) of Act No. 34 of 1997.]

Wording of Sections

1B. . . . . . .

[S. 1B inserted by s. 2 (1) of Act No. 98 of 1980, substituted by s. 2 of Act No. 59 of 1990 and repealed by s. 34 (1) of Act No. 34 of 1997.]

Wording of Sections

2. Commissioner to administer Act.-(1) The Commissioner shall, subject to the control of the Minister, be charged with the administration of this Act, including the interpretation of the Schedules thereto.

(1A) The Commissioner may, for the purposes of the administration of this Act, make such arrangements or enter into such agreements with any railway, port, airline or postal authority, depot operator or container operator or any other person or authority as he may deem necessary.

[Sub-s. (1A) inserted by s. 1 of Act No. 45 of 1995.]

(2) The Controller shall perform his duties and exercise his powers under this Act with due regard to any instructions issued by the Commissioner.

3. Delegation of duties and powers of Commissioners.-(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 other person under a delegation from or under the control or direction of the Commissioner.

[Sub-s. (1) substituted by s. 132 (*a*) of Act No. 45 of 2003.]

Wording of Sections

(2) (*a*) Any decision made and any notice or communication signed or issued by such officer or person may be withdrawn or amended by-

(i) the officer of person concerned;

(ii) the branch manager to whom the officer of person in (i) reports;

(iii) the officer or person in charge of customs operations or excise operations; or

(iv) the Commissioner personally,

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 subsection, to have been made, signed or issued by the Commissioner.

[Para. (*a*) substituted by s. 27 of Act No. 21 of 2012.]

Wording of Sections

(*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.

[Sub-s. (2) substituted by s. 132 (*a*) of Act No. 45 of 2003.]

Wording of Sections

(3) . . . . . .

[Sub-s. (3) added by s. 114 of Act No. 60 of 2001, substituted by s. 42 (*a*) of Act No. 30 of 2002 and deleted by s. 132 (*b*) of Act No. 45 of 2003.]

Wording of Sections

(4) . . . . . .

[Sub-s. (4) added by s. 42 (*b*) of Act No. 30 of 2002 and deleted by s. 132 (*b*) of Act No. 45 of 2003.]

Wording of Sections

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

(2) Any decision made under subsection (1) by any such officer may be withdrawn or amended by that 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.

[S. 3A inserted by s. 3 (1) of Act No. 59 of 1990 and substituted by s. 23 of Act No. 61 of 2008.]

Wording of Sections

3B. . . . . . .

[S. 3B inserted by s. 8 of Act No. 21 of 2006 and deleted byt s. 24 of Act No. 61 of 2008.]

Wording of Sections

4. General duties and powers of officers.-(1) Officers shall act under the control and direction of the Commissioner.

[Sub-s. (1) substituted by s. 34 (1) of Act No. 34 of 1997.]

Wording of Sections

(2) No officer shall have a direct financial interest in-

(*a*) the importation or exportation of goods;

(*b*) the manufacture of excisable goods, environmental levy goods, fuel levy goods or Road Accident Fund levy goods; or

(*c*) the trade in imported goods, goods for export, excisable goods, environmental levy goods, fuel levy goods or Road Accident Fund levy goods.

[Sub-s. (2) substituted by s. 2 of Act No. 105 of 1969, by s. 4 (*a*) of Act No. 59 of 1990 and by s. (5) (1) (*a*) of Act No. 36 of 2007.]

Wording of Sections

(3) The Commissioner or any officer shall not disclose any information relating to any person, firm or business acquired in the performance of his duties, except in the performance of his or her duties under this Act or by order of a competent court:

Provided that the provisions of this subsection shall not be construed as preventing the Commissioner (in such form and under such procedural arrangements as the Commissioner may prescribe) from, on good cause shown-

(i) disclosing such information in relation to any person as may be required by the Statistician General in connection with the collection of statistics in complying with the provisions of the Statistics Act, 1999 (Act No. 6 of 1999), or any regulation thereunder;

[Para. (i) substituted by s. 5 (1) (*b*) of Act No. 36 of 2007.]

Wording of Sections

(ii) disclosing to the Director-General of the Department of Trade and Industry such information in relation to imports and exports and importers and exporters as may be required by such Director-General for the determination of any trade policy;

(iii) applying *ex parte* to a judge in chambers for an order allowing the Commissioner to disclose to the National Commissioner of the South African Police Service, contemplated in section 6 (1) of the South African Police Service Act, 1995 (Act No. 68 of 1995), or the National Director of Public Prosecutions, contemplated in section 5 (2) (*a*) of the National Prosecuting Authority Act, 1998 (Act No. 32 of 1998),

such information the disclosure of which may reveal evidence-

(*a*) that an offence, other than an offence in terms of this Act or any other Act administered by the Commissioner or any other offence in respect of which the Commissioner is a complainant, has been or may be committed, or where such information may be relevant to the investigation or prosecution of such an offence, and such offence is a serious offence in respect of which a court may impose a sentence exceeding five years imprisonment; or

(*b*) of an imminent and serious public safety or environmental risk,

and where the public interest in the disclosure of the information outweighs any potential harm to the person concerned should such information be disclosed: Provided that any information or document provided by any person in terms of this Act which is disclosed in terms of this subsection, shall not, unless a competent court otherwise directs, be admissible in any criminal proceedings against such person, to the extent that such information or document constitutes an admission by such person of the commission of an offence contemplated in paragraph (*a*);

[Para. (iii) substituted by s. 5 (1) (*c*) of Act No. 36 of 2007 (English only) and amended by s. 24 (1) (*a*) of Act No. 8 of 2010 deemed to have come into operation on 1 June, 2003.]

Wording of Sections

(iv) . . . . . .

[Para. (iv) deleted by s. 60 (*a*) of Act No. 16 of 2004.]

Wording of Sections

(v) disclosing to the Governor of the South African Reserve Bank or any other person to whom the powers, functions and duties have been delegated by the Minister in terms of Exchange Control Regulations, 1961, issued in terms of section 9 of the Currency and Exchanges Act, 1933 (Act No. 9 of 1933), such information as may be required for purposes of exercising any power or performing any function or duty in terms of those Regulations;

[Para. (v) added by s. 39 of Act No. 12 of 2003, amended by s. 24 (1) (*a*) of Act No. 8 of 2010 and by s. 3 (*a*) of Act No. 25 of 2011.]

Wording of Sections

(vi) disclosing to the Chief Commissioner of the International Trade Administration Commission such information in relation to imports and exports and importers and exporters as may be required by that Chief Commissioner for purposes of performing any function conferred the Chief Commissioner by or in terms of the International Trade Administration Act, 2002 (Act No. 71 of 2002); and

[Para. (vi) added by s. 24 (1) (*a*) of Act No. 8 of 2010 and amended by s. 3 (*b*) of Act No. 25 of 2011.]

Wording of Sections

(vii) disclosing to the Director of the Financial Intelligence Centre, the information required for the performance of the functions of the Financial Intelligence Centre in terms of the Financial Intelligence Centre Act, 2001 (Act No. 38 of 2001); or

[Para. (vii) added by s. 3 (*c*) of Act No. 25 of 2011.]

(viii) disclosing to the head of any organ of state administering legislation regulating the movement of goods or persons into or out of the Republic, the information necessary for enforcing that legislation:

[Para. (viii) added by s. 3 (*c*) of Act No. 25 of 2011.]

Provided further that the Commissioner shall disclose information in respect of any class of persons to the Director-General of the National Treasury, to the extent necessary for the purposes of tax policy design or revenue estimation.

[Sub-s. (3) amended by s. 2 of Act No. 110 of 1979, by s. 3 (1) of Act No. 98 of 1980, by s. 2 (*a*) of Act No. 84 of 1987, by s. 34 (1) of Act No. 34 of 1997, by s. 58 (*a*) of Act No. 30 of 1998, substituted by s. 115 (1) (*a*) of Act No. 60 of 2001 and amended by s. 9 (1) (*a*) of Act No. 21 of 2006 with effect from 15 January, 2008.]

Wording of Sections

(3A) The Statistician-General or the Director-General of the Department of Trade and Industry or the National Treasury as defined in the Exchange Control Regulations, 1961, or the Governor of the South African Reserve Bank or the National Commissioner of the South African Police Service or the National Director of Public Prosecutions or the Director-General of the National Treasury or the Chief Commissioner of the International Trade Administration Commission or the Director of the Financial Intelligence Centre or the head of any organ of state or any person acting under the direction and control of such Statistician-General or Director-General of the Department of Trade and Industry or Governor of the South African Reserve Bank or National Commissioner of the South African Police Service or National Director of Public Prosecutions or the Director-General of the National Treasury or the Chief Commissioner of the International Trade Administration Commission or the Director of the Financial Intelligence Centre or the head of any organ of state shall not disclose any information supplied under the proviso to subsection (3) to any person or permit any person to have access thereto, except in the exercise of his or her powers or the carrying out of his or her duties under any Act from which such powers or duties are derived.

[Sub-s. (3A) inserted by s. 1 of Act No. 105 of 1992, substituted by s. 58 (*b*) of Act No. 30 of 1998, by s. 115 (1) (*a*) of Act No. 60 of 2001, by s. 5 (1) (*d*) of Act No. 36 of 2007, by s. 24 (1) (*b*) of Act No. 8 of 2010 and by s. 3 (*d*) of Act No. 25 of 2011.]

Wording of Sections

(3B) The provisions of subsection (3) shall not be construed as preventing the Commissioner from using any information obtained by him in the exercise of his powers or the performance of his duties under this Act for the purposes of any other law administered by him.

[Sub-s. (3B) inserted by s. 1 of Act No. 98 of 1993, deleted by s. 2 of Act No. 45 of 1995, re-inserted by s. 34 (1) of Act No. 34 of 1997 and substituted by s. 43 of Act No. 30 of 2002.]

Wording of Sections

(3C) For the purposes of the proviso to subsection (3), the Commissioner may, subject to the provisions of section 3 (2), delegate the powers vested in him by that proviso, to any officer.

[Sub-s. (3C) inserted by s. 115 (1) (*b*) of Act No. 60 of 2001.]

(3D) The provisions of this section shall not apply in respect of any information relating to any person, where that person has consented that such information may be published or made known to any other person.

[Sub-s. (3D) inserted by s. 115 (1) (*b*) of Act No. 60 of 2001.]

(3E) Notwithstanding anything to the contrary contained in subsection (3), the Auditor-General shall in the performance of the Auditor-General's duties in terms of section 3 of the Auditor-General Act, 1995 (Act No. 12 of 1995) have access to the documents in the possession or custody of the Commissioner or a Controller.

[Sub-s. (3E) inserted by s. 133 (*a*) of Act No. 45 of 2003.]

(4) (*a*) An officer may, for the purposes of this Act enter any premises subject to the other provisions of this section.

(*a*A) An officer may enter premises in terms of paragraph (*a*) only on authority of a warrant issued by a magistrate or judge, provided that in the case of the following categories of premises an officer may enter the premises without a warrant:

(i) Premises managed or operated by the State or a public entity within the meaning of the Public Finance Management Act, 1999 (Act No 1 of 1999) as part of a port, airport, railway station or land border post and on which an activity to which this Act applies is carried out or allowed;

(ii) premises licensed or registered in terms of this Act;

(iii) premises occupied by a person licensed or registered in terms of this Act and used for purposes of the business for which that person is licensed or registered; and

(iv) premises entered by an officer with the consent of the owner or person in physical control of the premises after that owner or person was informed that there is no obligation to admit the officer in the absence of a warrant.

(*a*B) An officer may without a warrant enter any premises for which a warrant is required in terms of paragraph (*a*A) if the officer on reasonable grounds believes-

(i) that a warrant will be issued by a magistrate or judge if a warrant is applied for; and

(ii) that the delay in obtaining the warrant is likely to defeat the purpose for which the officer seeks to enter the premises.

(*a*C) An officer may for purposes of this Act-

(i) after having gained entry to any premises in terms of this subsection, conduct an inspection, examination, enquiry or a search;

(ii) while the officer is on the premises or at any other time require from any person the production then and there, or at a time and place fixed by the officer, of any book, document or thing which by this Act is required to be kept or exhibited or which relates to or which the officer has reasonable cause to suspect of relating to matters dealt with in this Act and which is or has been on the premises or in the possession or custody or under the control of any such person or his employee;

(iii) at any time and at any place require from any person who has or is believed to have the possession or custody or control of any book, document or thing relating to any matter dealt with in this Act, the production thereof then and there, or at a time and place fixed by the officer; and

(iv) examine and make extracts from and copies of any such book or document and may require from any person an explanation of any entry therein and may attach any such book, document or thing as in the opinion of the officer may afford evidence of any matter dealt with in this Act.

(*b*) An officer may take with him or her on to any premises an assistant or a member of the police force,

provided that only those assistants and members of the police force whose presence, in the reasonable opinion of the officer, is necessary for purposes of conducting the inspection, examination, enquiry or search on the premises may enter the premises.

(*c*) When entering any premises in terms of paragraph (*a*B), the officer shall comply with the following requirements:

(i) The officer may enter the premises only during ordinary business hours unless in the reasonable opinion of the officer entry at any other time is necessary for purposes of this Act;

(ii) the officer shall, upon seeking admission to the premises, inform the person in charge of the premises of the purpose of the entry;

(iii) if the purpose of the entry is, or if the officer after having gained entry decides, to search the premises for goods, records or any other things in respect of which an offence in terms of this Act is suspected to have been committed or that may be used as evidence for the prosecution of such an offence-

(*aa*) the officer shall hand to the person in charge a written statement signed by the officer stating that a search of the premises is to be conducted unless, in the officer's reasonable opinion, there are circumstances of urgency which may result in the search being frustrated if its commencement is delayed until such a statement can be prepared;

(*bb*) the officer's actions shall be confined to such searching, inspection, enquiries and examination as are reasonably necessary for the purpose of the search;

(*cc*) the officer may, either before or after complying with item (*aa*), take such steps as the officer considers necessary to prevent persons present on the premises from concealing, destroying or tampering with any documents, data or things located on the premises;

(*dd*) the person in charge shall have the right to be present, or to appoint a delegate to be present, during and to observe the search;

(*ee*) the officer shall compile an inventory of all items removed from the premises and shall, prior to leaving the premises, sign the inventory and hand a copy thereof to the person in charge: Provided that if it is not possible in the circumstances to compile, sign and hand such inventory to the person in charge before leaving the premises, the officer shall seal the items to be removed and as soon as possible after removal of the items from the premises, compile the inventory in the presence of the person in charge of the premises, if that person requested to be present, and sign and hand a copy of the inventory to that person;

(*ff*) the officer shall compile a schedule of all copies and extracts made in the course of the search and shall, prior to leaving the premises, sign and hand a copy thereof to the person in charge; and

(*gg*) the officer must conduct the search with strict regard for decency and order.

(*d*) A judge or magistrate may issue a warrant referred to in paragraph (*a*A) only on written application by an officer setting out under oath or affirmation the grounds why it is necessary for an officer to gain access to the relevant premises.

(*e*) If the purpose of the entry is to conduct a search of the premises for goods, records or any other things in respect of which an offence in terms of this Act is suspected to have been committed or that may be used as evidence for the prosecution of such an offence, the magistrate or judge may issue such warrant if it appears from the information on oath that-

(i) there are reasonable grounds for suspecting that an offence in terms of this Act has been committed;

(ii) a search of the premises is likely to yield such goods, records or other things; and

(iii) the search is reasonably necessary for the purposes of this Act.

[Sub-s. (4) amended by s. 2 (*b*) of Act No. 84 of 1987 and substituted by s. 16 (*a*) of Act No. 39 of 2013.]

Wording of Sections

(5) Any person in connection with whose business any premises are occupied or used, and any person employed by him shall at any time furnish such facilities as may be required by the officer for entering the premises and for the exercise of his powers under this section.

(6) (*a*) If an officer, after having declared his or her official capacity and his or her purpose and having demanded admission into any premises and having complied with any applicable requirements of subsection (4), is not immediately admitted, the officer and any person assisting the officer may at any time, but at night only in the presence of a member of the police force, break open any door or window or break through any wall on the premises for the purpose of entry and search.

(*b*) An officer or any person assisting the officer may at any time break up any ground or flooring on any premises for the purpose of a search if the officer in his or her reasonable opinion considers such breaking up to be necessary for the purposes of this Act; and if any room, place, safe, chest, box or package is locked and the keys thereof are not produced on demand, may open such room, place, safe, chest, box or package in any manner.

[Sub-s. (6) substituted by s. 16 (*b*) of Act No. 39 of 2013.]

Wording of Sections

(7) An officer may require any person to appear before him at any time and place fixed by the officer and may then and there question that person, either alone or in the presence of any other person, as he thinks fit, with respect to any matter dealt with in this Act.

(8) An officer may question, either alone or in the presence of any other person, as he thinks fit, with respect to any matter dealt with in this Act, any person whom he finds on any premises entered in terms of this section or whom he has reasonable grounds for believing to be or to have been employed on any premises in respect of which any provision of this Act is applicable, or whom he has reasonable grounds for believing to be or to have been in possession, custody or control of anything, in respect of which any such provision is applicable.

(8A) (*a*) An officer may stop and detain and examine any goods while under customs control 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*).

[Para. (*a*) substituted by s. 10 of Act No. 10 of 2006 and by s. 9 (1) (*b*) of Act No. 21 of 2006 with effect from 15 January, 2008.]

Wording of Sections

(*b*) (i) The release of goods may be stopped at any time while such goods are under customs control.

(ii) (*aa*) (A) For the purposes of this subsection, unless the context otherwise indicates, "examine" includes using an X-ray scanner or any other non-intrusive inspection methods.

(B) No person shall enter any restricted area where non-intrusive equipment is operated unless authorised by the Controller.

(*bb*) The Commissioner may by rule prescribe-

(A) any requirement any person must comply with in connection with such non-intrusive inspection;

(B) notwithstanding the provisions of section 8, any additional advance information required in respect of any goods that will be imported or exported in such form and at such time as may be specified in such rule;

(C) any other matter which the Commissioner considers necessary and useful for the purpose of the effective and efficient use of such equipment and the results obtained from its operation.

(*cc*) Notwithstanding anything to the contrary in this Act, any non-intrusive or other examination may take place in the absence of any importer, exporter, port or airport authority, container operator, agent or any licensee or any other person having control of the goods concerned.

(*dd*) Any person who-

(A) without authorisation by the Controller enters any restricted area where non-intrusive equipment is operated;

(B) with the intent to deceive, does anything to prevent equipment from producing a true image of the contents of any container or package,

shall be guilty of an offence and liable on conviction-

(C) in the case of item (A) to a fine not exceeding R10 000 or imprisonment for a period not exceeding three years or both such fine or imprisonment; and

(D) in the case of item (B) to a fine not exceeding R100 000 or treble the value of the goods in respect of which the offence was committed whichever is the greater or imprisonment for a period not exceeding five years or both such fine and imprisonment and the goods concerned shall be liable to forfeiture in accordance with the provisions of this Act.

[Sub-para. (ii) substituted by s. 9 (1) (*c*) of Act No. 21 of 2006 with effect from 15 January, 2008.]

Wording of Sections

(*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*) may be substituted for the detention under this subsection.

(*d*) The provisions of this subsection shall not be construed as affecting any other provision of this Act, including the provisions of this section, relating to the detention, examination, or seizure of goods.

[Sub-s. (8A) inserted by s. 133 (*b*) of Act No. 45 of 2003.]

(Editorial Note: Para (*e*) to be added by s. 5 (1) (*e*) of Act No. 36 of 2007 with effect from the date on which section 17 (1) of Act No. 36 of 2007, comes into operation - date not fixed.)

Wording of Sections

(9) (*a*) An officer-

(i) (*aa*) commanding any customs patrol boat referred to in section 4C, may stop any ship within the territorial waters or contiguous zones of the Republic;

(*bb*) may board that ship or any other ship in the Republic; and

(ii) may stop and board any vehicle in the Republic, and may search any such ship or vehicle or any person found therein or thereon-

(*aa*) for goods that should have been entered or otherwise declared, but have not been so entered or declared; or

(*bb*) for goods on which the duty should have, but has not, been paid;

(*cc*) in respect of which he or she has reasonable cause to believe that there has been a contravention of any provision of this Act or any provision of any other law relating to the importation or exportation of goods,

and may freely remain on such ship or vehicle in pursuance of his or her duties.

[Para. (*a*) substituted by s. 25 (1) of Act No. 61 of 2008 and comes into operation on 31 March, 2009.]

Wording of Sections

(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.

(*b*) If any vehicle, room, cabin, place, safe, chest, box, 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, package or container in any manner.

(*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.

[Sub-s. (9) substituted by s. 4 (*b*) of Act No. 59 of 1990.]

Wording of Sections

(10) (*a*) An officer may stop any person whom he has reason to suspect of having dutiable goods or goods in respect of which a contravention under this Act has been committed, secreted about him or in his possession and he may search such person.

(*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.

[Para. (*b*) added by s. 4 (*c*) of Act No. 59 of 1990.]

(10A) (*a*) When conducting an external search of a person an officer may, subject to paragraph (*b*), make use of-

(i) any mechanical, electrical, imaging or electronic equipment that can produce an indication that the person may be concealing any specific thing or substance on or in his or her body or in any goods that that person has with him or her;

(ii) sniffer dogs or other animals trained to use their senses for the detection of any specific thing or substance; or

(iii) any other search aid that may be prescribed by rule.

(*b*) A search aid referred to in paragraph (*a*) may only be used by an officer trained to use such aid in the conduct of a search.

[Sub-s. (10A) inserted by s. 21 of Act No. 23 of 2015.]

(11) (*a*) Any person may, before being searched in terms of this section, require the officer concerned to take him before the Controller, who may in his discretion discharge such person or direct that he be searched: Provided that the provisions of this paragraph shall apply only if such person is stopped within a harbour or airport control area and during the prescribed working hours of the Controller.

(*b*) A female shall only be searched by a female.

(12) An officer may lock up, seal, mark, fasten or otherwise secure any warehouse, store, room, cabin, place, vessel, appliance, utensil, fitting, vehicle or goods if he has reason to believe that any contravention under this Act has been or is likely to be committed in respect thereof or in connection therewith.

(12A) (*a*) Where, on the exportation of any goods from the Republic, any certificate, declaration or other proof has been furnished regarding the origin of such goods to comply with the provisions of any agreement contemplated in section 46, 49 or 51 or any other requirement or any practice, an officer may, for the purposes of verifying or investigating such certificate, declaration or other proof, require-

(i) the exporter; or

(ii) any other person appearing to the officer to have been concerned in any way with-

(*aa*) the production or manufacture or exportation of such goods;

(*bb*) any goods from which directly or indirectly such goods have been produced or manufactured; or

(*cc*) the furnishing of such certificate, declaration or other proof,

to furnish such information in such a manner and within such time as the officer may determine, and to produce on demand for inspection and to allow the making of copies or extracts from such invoices, bills of lading, bills of entry, books of account or other documents in whatever form, as the officer may specify.

(*b*) No person may, without good cause shown, refuse to comply with any such requirement of an officer.

[Sub-s. (12A) inserted by s. 47 of Act No. 53 of 1999.]

(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.

[Sub-s. (13) added by s. 4 (*d*) of Act No. 59 of 1990.]

4A. Powers of arrest.-(1) Notwithstanding anything to the contrary contained in this Act, the Commissioner-

(*a*) may determine a category of officers who have the power to carry out an arrest for the purposes of enforcing this Act; and

(*b*) must furnish each such officer with an appropriate certificate and identification card stating that the officer is authorised to carry out an arrest for the purpose of enforcing this Act.

(2) In exercising the powers of arrest contemplated in subsection (1), an officer shall be deemed to be a peace officer as defined in section 1 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977), and such officer shall be subject to any relevant provision in Chapter 5 of that Act applicable to a peace officer.

(3) Any person arrested by an officer must as soon as possible be brought to a police station or, in the case of an arrest by warrant, to any other place expressly mentioned in the warrant and further be dealt with in the manner contemplated in section 50 and other provisions of the Criminal Procedure Act, 1977 (Act No. 51 of 1977).

[S. 4A inserted by s. 26 (1) of Act No. 61 of 2008 and comes into operation on 31 March, 2009.]

4B. Possession and use of firearms.-(1) (*a*) The Commissioner may determine a category of officers authorised to possess firearms for the purposes of enforcing this Act.

(*b*) The possession and use of firearms by officers shall be subject to the provisions of sections 95 to 101 of the Firearms Control Act, 2000 (Act No. 60 of 2000), and the regulations made thereunder, to the extent that those provisions relate to an Official Institution.

(2) Any power conferred or duty imposed in the Firearms Control Act, 2000 (Act No. 60 of 2000), on the head of an Official Institution or on an Official Institution shall be deemed to be conferred or imposed on the Commissioner.

(3) (*a*) An officer to whom the Commissioner issues a permit to possess a firearm, must carry such permit on his or her person when he or she is in possession of a firearm.

(*b*) The permit contemplated in paragraph (*a*) is proof that such an officer is authorised to possess an official firearm.

(*c*) If, for any reason, an officer is unable to produce such a permit when required to do so, a statement by the Commissioner to the effect that such a permit has been issued is sufficient proof that the officer is authorised to have the firearm in his or her possession.

(4) The Commissioner may authorise the use of non-lethal weapons by officers in such circumstances and in such a manner as may be prescribed by rule.

(5) The Commissioner may make rules to facilitate the administration of this section, including rules-

(*a*) concerning the acquisition, record-keeping, issuing of permits, carrying, possession, use, safe-keeping, transport, theft, loss and disposal of firearms and ammunition;

(*b*) concerning the manner of reporting the firing of an official firearm and the procedures to be followed in respect thereof;

(*c*) concerning the type of non-lethal weapons that may be used by officers, the manner of their use and the safety and control measures that must be complied with in respect of such weapons;

(*d*) prescribing the manner in which official firearms, ammunition and related equipment must be marked and identified;

(*e*) regarding the training of officers contemplated in this section, including-

(i) the training and the certification requirements for the safe use of firearms and ammunition;

(ii) the levels of training; and

(iii) the standards required to ensure competency and certification in respect of any particular task; or

(*f*) in respect of any other matter which the Commissioner may consider reasonably necessary and useful for the efficient and effective administration of the provisions contained in this section.

[S. 4B inserted by s. 26 (1) of Act No. 61 of 2008 and comes into operation on 31 March, 2009.]

4C. Border Patrol.-(1) (*a*) Notwithstanding anything to the contrary contained in any other law, the Commissioner may patrol the borders of the Republic and acquire any equipment necessary for patrolling the land and sea borders of the Republic, including any-

(i) patrol boats, aircraft and other vehicles; and

(ii) arms and ammunition required to equip or supply any customs patrol boat, aircraft or other vehicle.

(*b*) When patrolling the borders of the Republic an officer may arrest any person in accordance with the provisions of section 4A.

(2) (*a*) The customs officer commanding any customs patrol boat having hoisted and carrying or displaying the South African Revenue Service (SARS) customs ensign or flag may pursue any vessel where-

(i) that vessel does not immediately come to a stop when signalled, ordered or required to do so; or

(ii) the operator of the vessel refuses to permit the vessel to be boarded.

(*b*) The customs officer commanding any customs patrol boat involved in pursuing a vessel as contemplated in paragraph (*a*) may, as a last resort and after having fired a warning, fire at or into the vessel to compel it to come to a stop.

(3) (*a*) Any customs patrol boat may exercise on behalf of the Republic, or on behalf of a foreign state, the right of hot pursuit of any vessel in accordance with Article 111 of the United Nations Convention on the Law of the Sea.

(*b*) The seizure of such a vessel and the arrest of any person on board such a vessel may be effected by any customs officer on board a customs patrol boat.

(4) Notwithstanding anything to the contrary contained in any other law-

(*a*) customs patrol boats, aircraft and vehicles are exempted from any-

(i) registration, licensing or other requirement or any related fee normally applicable to the possession or movement of vessels, aircraft or vehicles, if clearly marked and identifiable as a customs patrol boat, aircraft or vehicle; or

(ii) mooring, docking, landing or road toll fee, or any similar charge, whilst used for official duties; and

(*b*) officers serving on board customs patrol boats are exempted from any provisions in any other law relating to their competency or certification if adequately trained and tested in accordance with the standards prescribed by rule in order to ensure their competency and certification.

(5) The Commissioner may make rules-

(*a*) as to all matters required or permitted by this section to be prescribed by rule;

(*b*) in respect of any other matter which the Commissioner may consider reasonably necessary and useful for the efficient and effective administration of the provisions contained in this section.

[S. 4C inserted by s. 26 (1) of Act No. 61 of 2008 and comes into operation on 31 March, 2009.]

4D. Officers' powers relating to criminal prosecutions.-An officer may-

(*a*) investigate for purposes of a criminal prosecution whether an offence in terms of this Act has been committed;

(*b*) lay criminal charges for the prosecution of any such offence; and

(*c*) provide such assistance as may be required by the prosecuting authority for the prosecution of any such offence.

[S. 4D inserted by s. 17 of Act No. 39 of 2013.]

5. Application of Act.-Notwithstanding anything to the contrary in any other law contained, for the purposes of this Act-

(*a*) . . . . . .

[Para. (*a*) deleted by s. 5 of Act No. 59 of 1990.]

Wording of Sections

(*b*) the continental shelf as referred to in section 8 of the Maritime Zones Act, 1994 (Act No. 15 of 1994),

[Para. (*b*) substituted by s. 1 of Act No. 44 of 1996.]

Wording of Sections

shall be deemed to be part of the Republic.

(*c*) Any installation or device of any kind whatever, including any floating or submersible drilling or production platform, constructed or operating upon, beneath or above the said continental shelf for the purpose of exploring it or exploiting its natural resources shall be deemed to be constructed or operating within the Republic.

(*d*) Any goods mined or produced in the operation of such installation or device and conveyed therefrom to the shore whether by pipeline or otherwise and any person or other goods conveyed by any means to and from such installation or device shall be deemed to be so conveyed within the Republic.

[S. 5 substituted by s. 2 (1) of Act No. 68 of 1989.]

Wording of Sections

CHAPTER III
IMPORTATION, EXPORTATION AND TRANSIT AND COASTWISE CARRIAGE OF GOODS

6. Appointment of places of entry, authorized roads and routes, etc.-(1) The Commissioner may, subject to such conditions as he may specify, by rule appoint or prescribe-

(*a*) places to be places of entry for the Republic, through which goods may be imported or exported or where goods may be landed for transit or coastwise carriage, where foreign-going ships may call, where persons entering or leaving the Republic may disembark or embark or where goods may be entered for customs and excise purposes;

(Editorial Note: Para. (*a*A) to be inserted by s. 10 (1) (*c*) of Act No. 21 of 2006 with effect from a date to be fixed by the President by proclamation in the *Gazette* - date not fixed.)

(*b*) the roads or routes (including railways) over which persons may enter or leave the Republic or imported goods or goods intended for export or transit carriage may enter or leave the Republic or may be carried from any one point to any other point or means of carriage of such goods;

(*c*) places as warehousing places where customs and excise warehouses may be established;

(*d*) places for such particular and limited purposes and for such periods as may be specified;

(*e*) places to be customs and excise airports at which aircraft entering the Republic shall first land, from which aircraft leaving the Republic shall finally depart, through which goods may be imported or exported or where goods may be landed for transit or coastwise carriage or where persons entering or leaving the Republic may disembark or embark;

(*f*) places at appointed places of entry or at customs and excise airports for the landing or embarkation of persons and the landing, loading or examination of goods (including baggage);

(*g*) places where secure premises to be known as transit sheds may be established into which goods before due entry thereof, may be removed from a ship, aircraft or vehicle or to which such goods may be removed after removal from such ship, aircraft or vehicle;

[Para. (*g*) substituted by s. 116 (1) (*a*) of Act No. 60 of 2001 and by s. 134 (*a*) of Act No. 45 of 2003.]

Wording of Sections

(Editorial Note: Para. (*g*) to be substituted by s. 10 (1) (*d*) of Act No. 21 of 2006 with effect from a date to be fixed by the President by proclamation in the *Gazette* - date not fixed.)

Wording of Sections

(*g*A) wharfs on which goods imported or exported, whether or not containerised, including goods in bulk, may be landed from or loaded into any ship by, and be under the control of, a wharf operator;

[Para. (*g*A) inserted by s. 116 (1) (*b*) of Act No. 60 of 2001 (as amended by s. 74 (1) of Act No. 30 of 2002).]

Wording of Sections

(Editorial Note: Para. (*g*A) to be deleted by s. 10 (1) (*e*) of Act No. 21 of 2006 with effect from a date to be fixed by the President by proclamation in the *Gazette* - date not fixed.)

Wording of Sections

(*h*) entrances and exits, general or special, to or from any dock or wharf area or customs and excise airport;

(Editorial Note: Para. (*h*) to be substituted by s. 10 (1) (*f*) of Act No. 21 of 2006 with effect from a date to be fixed by the President by proclamation in the *Gazette* - date not fixed.)

Wording of Sections

(*h*A) container terminals where containers may be landed for transit, coastwise carriage, delivery to a container depot or, after their contents have been duly entered, delivery to importers, or where containers may be shipped for export;

[Para. (*h*A) inserted by s. 2 (*a*) of Act No. 71 of 1975]

(*h*B) places where container depots may be established for the storage, detention, unpacking or examination of containers or the contents of containers, for the delivery to importers of the contents of containers after such contents have been duly entered or for the packing of containers for export;

[Para. (*h*B) inserted by s. 2 (*a*) of Act No. 71 of 1975.]

(*h*C) places where degrouping depots may be established to which air cargo may be removed from a transit shed before due entry thereof for-

(*a*) the storage, detention, unpacking or examination of consolidated packing or its contents;

(*b*) the removal to another such degrouping depot or the delivery to importers of such contents after due entry thereof;

(*c*) such other activities as may be specified by rule;

[Para. (*h*C) inserted by s. 116 (1) (*c*) of Act No. 60 of 2001 and substituted by s. 134 (*b*) of Act No. 45 of 2003.]

Wording of Sections

. . . . . .

(Editorial Note: Para (*h*D) to be inserted by s. 10 (1) (*g*) of Act No. of Act No. 21 of 2006 with effect from a date to be fixed by the President by proclamation in the *Gazette* - date not fixed.)

. . . . . .

(Editorial Note: Para (*h*E) to be inserted by s. 10 (1) (*g*) of Act No. of Act No. 21 of 2006 with effect from a date to be fixed by the President by proclamation in the *Gazette* - date not fixed.)

. . . . . .

(Editorial Note: Para (*h*F) to be inserted by s. 10 (1) (*g*) of Act No. of Act No. 21 of 2006 with effect from a date to be fixed by the President by proclamation in the *Gazette* - date not fixed.)

(*i*) the hours during which any place, road, route, shed, entrance or exit appointed or prescribed under any paragraph of this subsection may be used for the purposes specified in such paragraph.

(Editorial Note: Sub-s. (1) to be amended by s. 10 (1) (*b*) of Act No. 21 of 2006 with effect from a date to be fixed by the President by proclamation in the *Gazette* - date not fixed.)

Wording of Sections

(1A) Any place outside the Republic may be deemed by the Commissioner to be a place of entry for the Republic through which goods may be imported or exported, where goods may be landed for transit or coastwise carriage or where goods may be entered for customs and excise purposes.

[Sub-s. (1A) inserted by s. 1 of Act No. 52 of 1986.]

(2) If any places, roads, routes, means of carriage, sheds, entrances, exits or container terminals, as the case may be, have been appointed or prescribed by the Commissioner under any paragraph of subsection (1), only such places, roads, routes, means of carriage, sheds, entrances, exits or container terminals so appointed or prescribed may, subject to the provisions of subsection (3), be used or employed for the purposes for which they **have been so appointed or prescribed under such paragraph, and if any hours have been prescribed under** paragraph (*i*) of subsection (1) during which any place, road, route, shed, entrance or exit referred to in the said paragraph (*i*) may be used, such place, road, route, shed, entrance or exit shall be used only during such hours.

[Sub-s. (2) substituted by s. 2 (*b*) of Act No. 71 of 1975.]

Wording of Sections

(3) and (4) . . . . . .

[Sub-ss. (3) and (4) deleted by s. 6 of Act No. 59 of 1990.]

(5) The owner or occupier of a transit shed appointed in terms of this section shall, if required by the Commissioner, provide accommodation for any officer whom the Commissioner considers it necessary to station at such shed.

[Sub-s. (5) substituted by s. 3 of Act No. 45 of 1995.]

Wording of Sections

. . . . . .

(Editorial Note: Sub-s. (6) to be added by s. 10 (1) (*h*) of Act No. of Act No. 21 of 2006 with effect from a date to be fixed by the President by proclamation in the *Gazette* - date not fixed.)

(Editorial Note: S. 6 to be amended by s. 10 (1) (*a*) of Act No. 21 of 2006 with effect from a date to be fixed by the President by proclamation in the *Gazette* - date not fixed.)

Wording of Sections

6A. Special provisions in respect of customs controlled areas.-(1) The Commissioner may control the importation, exportation, manufacture or use of goods and the movement of persons or goods in a customs controlled area.

(2) The Commissioner may after consultation with any person or authority who administers any activity in any customs controlled area, determine the manner in which any such controlled area-

(*a*) must be secured; and

(*b*) must be signposted so as to give persons present in the area a clear indication that it is an area under customs control.

(3) (*a*) An officer stationed at an entrance or exit contemplated in section 6 (1) (*h*) may stop any person from

entering or leaving a customs controlled area and he or she may search such person or a vehicle under the control of such person.

(*b*) If such person fails to stop, the officer may take such action, including the use of force, as may reasonably be necessary to stop such person or vehicle.

(4) Any person entering, leaving or present in a customs controlled area must comply with such controls and procedures as the Commissioner may prescribe by rule.

(5) The Commissioner may by rule-

(*a*) specify the limits of any customs controlled area;

(*b*) prescribe-

(i) any conditions relating to the entry or exit of goods and persons into or from a customs controlled area;

(ii) measures relating to the appropriate identification of persons entering, present in or leaving a customs controlled area;

(iii) any other matter which is necessary to prescribe or useful to achieve the efficient and effective control of goods and persons in a customs controlled area.

[S. 6A inserted by s. 11 (1) of Act No. 21 of 2006.]

7. Report of arrival or departure of ships or aircraft.-(1) The master of any ship arriving at any place of entry appointed in terms of section 6, whether laden or in ballast, shall within 24 hours after the ship's arrival, unless the Controller has given permission to the contrary, and the pilot of any aircraft arriving in the Republic, whether with or without goods or passengers, shall within three hours after landing at any place appointed as a customs and excise airport in terms of the said section 6 or within such further time as the Controller may allow-

(*a*) make due report in writing as may be prescribed by rule of the arrival, with as many duplicates or extracts as the Controller may require;

[Para. (*a*) substituted by s. 4 (*a*) of Act No. 45 of 1995.]

Wording of Sections

(*b*) make and subscribe to a declaration as to the truth of the report before the Controller and answer all such questions concerning the ship or aircraft, the cargo and stores, and the crew, passengers and voyage or flight as may be put to him by the Controller; and

(*c*) produce, if required, the official log books for the voyage or flight, the stowage plans and any other documents in his possession relating to the cargo, stores, crew, passengers and voyage or flight.

[Sub-s. (1) amended by s. 4 of Act No. 98 of 1980.]

Wording of Sections

(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 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.

[Sub-s. (1A) inserted by s. 7 of Act No. 59 of 1990.]

(1B) Notwithstanding subsections (1) and (1A), an arrival report and a schedule report or departure report relating to any foreign-going ship or aircraft calling at any place in the Republic shall be submitted electronically by such persons at such times as may be prescribed by rule.

(Sub-s. (1B) inserted by s. 12 (1) of Act No. 21 of 2006 with effect from 1 October, 2008.)

(2) . . . . . .

[Sub-s. (2) amended by s. 3 of Act No. 71 of 1975 and by s. 1 of Act No. 101 of 1985 and deleted by s. 4 (*b*) of Act No. 45 of 1995.]

Wording of Sections

(2A) Subject to the provisions of section 9, any goods which have not been recorded in any manifest or list of

containers as may be prescribed by rule shall be declared to the Controller and delivered to him.

[Sub-s. (2A) inserted by s. 3 (*a*) of Act No. 105 of 1969 and substituted by s. 4 (*c*) of Act No. 45 of 1995.]

Wording of Sections

(3) The master of any ship and the pilot of any aircraft bound from any place within to any place outside the Republic shall appear before the Controller and deliver to him a report outwards as may be prescribed by rule together with a full account of the cargo laden on board that ship or aircraft and shall make and subscribe to a declaration as to the truth of such report and account and answer all such questions as may be put to him by the Controller.

[Sub-s. (3) substituted by s. 3 (*b*) of Act No. 105 of 1969, by s. 1 (*a*) of Act No. 105 of 1976 and by s. 4 (*c*) of Act No. 45 of 1995.]

Wording of Sections

(4) . . . . . .

[Sub-s. (4) deleted by s. 1 (*b*) of Act No. 105 of 1976.]

Wording of Sections

(5) The provisions which shall apply in connection with the departure of any ship or foreign-going aircraft from any place within to any other place within the Republic shall be as prescribed by rule.

[Sub-s. (5) substituted by s. 4 (*d*) of Act No. 45 of 1995.]

Wording of Sections

(6) (*a*) The master of a ship or the pilot of a foreign-going aircraft shall not cause or permit the ship or aircraft to depart from any appointed place of entry or any place appointed as a customs and excise airport without first obtaining a certificate of clearance as may be prescribed by rule or transire for the intended voyage or flight from the Controller, and the master or pilot, as the case may be, shall not after departure call or land at any place in the Republic other than an appointed place of entry or a place appointed as a customs and excise airport, unless forced to do so by stress of weather, accident or other circumstances beyond his control.

(*b*) The provisions which shall apply where such master or pilot has been so forced to call or land at a place other than an appointed place of entry or a place appointed as a customs and excise airport shall be as prescribed by rule.

[Sub-s. (6) substituted by s. 4 (*d*) of Act No. 45 of 1995.]

Wording of Sections

(7) If a ship or aircraft in respect of which a clearance has been issued at any place in terms of this section does not depart from that place within thirty-six hours of the time when the clearance was issued, or within such further time as the Controller may allow, such clearance shall lapse and the master or pilot shall obtain fresh clearance before causing or permitting the ship or aircraft to depart.

(8) . . . . . .

[Sub-s. (8) deleted by s. 4 (*e*) of Act No. 45 of 1995.]

Wording of Sections

(9) The master of a ship or the pilot of an aircraft may, with the permission of the Controller and subject to such conditions as he may impose, retain on board goods consigned to any port or airport for landing at any other port or airport or land at any port or airport goods not consigned thereto.

[Sub-s. (9) substituted by s. 4 (*f*) of Act No. 45 of 1995.]

Wording of Sections

(10) (*a*) The Controller may grant transires, on such conditions as he may impose, in respect of any ship exclusively engaged in activities as may be prescribed by rule.

(*b*) The Controller may by notice to the master or owner of the ship or any member of the crew on board such ship revoke any such transire.

[Sub-s. (10) substituted by s. 4 (*f*) of Act No. 45 of 1995.]

Wording of Sections

(11) The Commissioner may exempt by rule any ship or aircraft or any class or kind of ship or aircraft from all or any of the provisions of this section.

[Sub-s. (11) substituted by s. 4 (*f*) of Act No. 45 of 1995.]

Wording of Sections

7A. Special provisions relating to Advance Passenger Information.-(1) In this section and the rules thereto, unless the context indicates otherwise-

"Advance Passenger Information" means an electronic message, including any updated or revised version

thereof, transmitted to the Commissioner by an operator within the periods and containing the particulars the Commissioner may prescribe by rule;

"airline" means any air transport enterprise offering or operating an international air passenger service to and from the Republic;

"operator" means the person having the management of an aircraft at any time, and includes any airline or the person who owns or hires such aircraft or in whose name the aircraft is registered in terms of the regulations made under the Aviation Act, 1962 (Act No. 74 of 1962);

"operator system information" means any information an operator keeps electronically relating to-

(*a*) any flights scheduled by the operator (including information about schedules, aircraft arrival and departure terminals and routes);

(*b*) persons taking, or proposing to take, any flights scheduled by the operator;

(*c*) baggage, cargo or anything else carried, or proposed to be carried, on any flights scheduled by the operator and the tracking and handling of those things;

"passenger" means a person arriving on an aircraft from a place outside the Republic or departing on an aircraft to a place outside the Republic and includes, unless the context otherwise indicates, a crew member.

(2) The operator of any aircraft referred to in section 7 (1) or (3) shall transmit electronically Advance Passenger Information which may be used by the Commissioner for the purposes of-

(*a*) facilitating the processing of passengers arriving or departing on such aircraft;

(*b*) preventing, detecting, investigating or punishing any offences committed under this Act or any other law by such passengers;

(*c*) facilitating any border security measures at an international airport; or

(*d*) protecting the health and safety of passengers and members of the public.

(3) Any Advance Passenger Information shall be subject to compliance with section 101B.

(4) The operator shall communicate Advance Passenger Information within the periods the Commissioner may prescribe by rule.

(5) (*a*) An operator of an aircraft contemplated in subsection (2), may apply to the Commissioner for an extension regarding the obligation to communicate electronically Advance Passenger Information to the Commissioner if-

(i) such an application is delivered to the Commissioner-

(*aa*) within a period of one month from the date this section comes into operation; or

(*bb*) if the first flight to or from the Republic is after that date, within one month from the date of such flight;

(ii) the operator shows good cause as to why the extension is necessary;

(iii) the operator demonstrates when he or she will be able to comply with this section; and

(iv) the operator complies with such conditions and interim measures as the Commissioner may impose.

(*b*) An operator who has been granted an extension as contemplated in paragraph (*a*), shall provide officers with ongoing access to that operator's operator system information for the duration of the extension.

(6) Nothing in this section-

(*a*) affects any existing obligation imposed under this Act on a person to report or declare the arrival or departure of an aircraft (whether scheduled or actual) and any goods carried on, or passengers travelling on, such an aircraft;

(*b*) limits or alters any of the powers conferred on officers under this Act.

(7) Any person who-

(*a*) is required by this section to submit and fails to submit Advance Passenger Information in respect of a flight or a passenger on that flight;

(*b*) dishonestly or fraudulently prepares, transmits or alters any Advance Passenger Information; or

(*c*) is a passenger and furnishes passenger information which he or she knows is false in a material respect, shall be guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding five years or to both a fine and such imprisonment.

(8) The Commissioner may make rules-

(*a*) as to all matters required or permitted by this section to be prescribed by rule;

(*b*) in respect of any other matter which the Commissioner may consider reasonably necessary and useful for the efficient and effective administration of the provisions contained in this section.

(S. 7A inserted by s. 27 of Act No. 61 of 2008.)

8. Cargo Reports.-(1) Notwithstanding the provisions of sections 7 and 12, the Commissioner may by rule prescribe requirements in respect of the report of cargo and may prescribe that-

(*a*) any report including any manifest or other report listing and describing cargo carried by or loaded or to be loaded on to any ship or vehicle arriving at or departing from any place in the Republic, as the case may be; or

(*b*) any outturn report or other report concerning goods landed from or unpacked from or packed into or loaded on to or to be packed into or to be loaded on to any such ship or vehicle, as the case may be; or

(*c*) any outturn report or other report in respect of any imported goods received or unpacked while under the control of any person after landing thereof at any place licensed in terms of this Act,

shall be in such form containing such particulars and shall be submitted to the Controller by such person in such circumstances and at such times as may be specified in such rule.

(2) Where the Commissioner prescribes that any report must be submitted prior to cargo for export being packed into or loaded on to a ship or vehicle, no cargo shall be so packed or loaded before-

(*a*) such report is received by the Controller; and

(*b*) release of the cargo has been granted as prescribed in the rules.

(3) (*a*) Any such outturn report or other report shall reflect full particulars concerning any excess or deficiency in respect of any goods landed, received, unpacked, packed or loaded, as the case may be, according to any manifest or other report contemplated in subsection (1).

(*b*) Where any imported goods reported in any manifest or other report are not landed or-

(i) any such goods not reported are landed; or

(ii) any container or package is landed with visible evidence of tampering or any deficiency is suspected,

any person completing any outturn report on landing of the goods shall examine and report on such goods in the presence of the carrier or the agent of the carrier, as may be prescribed by rule.

(4) (*a*) Any exporter who-

(i) packs or loads cargo or causes cargo to be packed or loaded in contravention of subsection (2); or

(ii) fails to report cargo or makes any false or misleading statement in connection with any report to which this section relates,

shall be guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding five years or to both such fine and imprisonment.

(*b*) Such cargo shall be liable to forfeiture in accordance with the provisions of this Act.

[S. 8 repealed by s. 8 of Act No. 59 of 1990, inserted by s. 36 of Act No. 19 of 2001 and substituted by s. 11 (1) of Act No. 9 of 2007 with effect from 1 October, 2008.]

Wording of Sections

. . . . . .

(Editorial Note: Sub-s. (2) to be added, the current section becoming sub-s (1), by s. 13 (1) (*b*) of Act No. 21 of 2006 with effect from a date to be fixed by the President by proclamation in the *Gazette* - date not fixed.)

. . . . . .

(Editorial Note: Sub-s. (3) to be added by s. 13 (1) (*b*) of Act No. 21 of 2006 with effect from a date to be fixed by the President by proclamation in the *Gazette* - date not fixed.)

. . . . . .

(Editorial Note: Sub-s. (4) to be added by s. 13 (1) (*b*) of Act No. 21 of 2006 with effect from a date to be fixed by the President by proclamation in the *Gazette* - date not fixed.)

(Editorial Note: S. 8 to be amended by s. 13 (1) (*a*) of Act No. 21 of 2006.)

9. Sealing of goods on board ships or aircraft.-(1) On arrival of any ship at any place in the Republic-

(*a*) the master thereof shall declare as prescribed by rule all sealable goods on board the ship which are unconsumed stores of such ship; and

(*b*) the master and every member of the crew thereof shall declare as prescribed by rule all sealable goods which are his personal property or in his possession,

and the Controller may seal up all such sealable goods.

[Sub-s. (1) substituted by s. 2 of Act No. 101 of 1985 and by s. 5 (*a*) of Act No. 45 of 1995.]

(2) The Controller may permit surplus stores to be entered for home consumption or for warehousing.

(3) For the purposes of this section "sealable goods" means any goods which are prescribed by rule to be saleable goods.

[Sub-s. (3) substituted by s.5 (*b*) of Act No. 45 of 1995.]

(4) The Controller may, by direction of the Commissioner, in addition to sealable goods, seal up any goods which are unconsumed stores of any ship or aircraft or which are in the possession of the master or pilot of such ship or aircraft or of any member of the crew thereof or of any passenger on board thereof.

(5) While the ship or aircraft in question remains at any place in the Republic, no person shall, except in accordance with the rules break or disturb any seal placed by the Controller on any goods in terms of this section.

(6) Except as provided in subsection (2), no stores of any nature may be landed without the permission of the Controller and all goods acquired on a ship or aircraft shall, if landed, be declared to the Controller for purposes of payment of any duty due thereon.

(7) The Commissioner may exempt any ship or aircraft or exempt by rule any class or kind of ship or aircraft from all or any of the provisions of this section.

[Sub-s. (7) inserted by s. 5 (*c*) of Act No. 45 of 1995.]

10. When goods deemed to be imported.-(1) For the purposes of this Act all goods consigned to or brought into the Republic shall be deemed to have been imported into the Republic-

(*a*) in the case of goods consigned to a place in the Republic in a ship or aircraft, at the time when such ship or aircraft on the voyage or flight in question, first came within the control area of the port or airport authority at that place, or at the time of the landing of such goods at the place of actual discharge thereof in the Republic if such ship or aircraft did not on that voyage or flight call at the place to which the goods were consigned or if such goods were discharged before arrival of such ship or aircraft at the place to which such goods were consigned;

(*b*) in the case of goods not consigned to a place in the Republic but brought thereto by and landed therein from a ship or aircraft, at the time when such goods were so landed;

(*c*) subject to the provisions of subsection (2), in the case of goods brought to the Republic overland, at the time when such goods entered the Republic;

(*d*) in the case of goods brought to the Republic by post, at the time of importation in terms of paragraph (*a*), (*b*) or (*c*) according to the means of carriage of such goods; and

(*e*) in the case of goods brought to the Republic in any manner not specified in this section, at the time specified in the General Notes to Schedule No. 1 or, if no such time is specified in the said General Notes in respect of the goods in question, at the time such goods are considered by the Commissioner to have entered the Republic.

[Para. (*e*) added by s. 2 (*c*) of Act No. 57 of 1966.]

(2) For the purposes of subsection (1), a place outside the Republic deemed by the Commissioner under section 6 (1A) or 50A to be a place of entry for goods consigned to the Republic, shall be deemed to be a place in the Republic in respect of goods consigned to or entered at such place for removal to the Republic overland.

[Sub-s. (2) substituted by s. 2 of Act No. 52 of 1986 and by s. 6 of Act No. 36 of 2007.]

11. Landing of unentered goods.-(1) All goods imported into the Republic by ship or aircraft shall, if landed before due entry thereof, be placed in a transit shed, container terminal, container depot or State warehouse, or removed to any other place approved by the Controller.

(2) All goods landed from a ship or aircraft before due entry of such goods and placed in a transit shed or other approved place in accordance with the provisions of subsection (1) shall be deemed to be still in the ship or aircraft, and as long as such goods remain in such shed or place, the master or pilot, as the case may be, shall remain responsible therefor in all respects and liable for the duty thereon as if the goods had not been removed from such ship or aircraft.

[S. 11 amended by s. 2 of Act No. 105 of 1976 and substituted by s. 6 of Act No. 45 of 1995.]

Wording of Sections

(Editorial Note: S. 11 to be substituted by s. 14 (1) of Act No. 21 of 2006 with effect from a date to be fixed by the President by proclamation in the *Gazette* - date not fixed.)

Wording of Sections

11A. . . . . . .

(Editorial Note: S. 11A to be inserted by s. 15 (1) of Act No. 21 of 2006 with effect from a date to be fixed by the President by proclamation in the *Gazette* - date not fixed.)

12. Goods imported or exported overland.-(1) (*a*) Where any goods are imported by train the railway authority concerned shall furnish the Controller with which documents as may be prescribed by rule relating to such goods.

(*b*) The station master or other person in control of railway premises shall not permit any such goods to be removed from such premises 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.

[Sub-s. (1) amended by s. 10 of Act No. 59 of 1990 and substituted by s. 7 (*a*) of Act No. 45 of 1995.]

Wording of Sections

(2) The conductor, guard or other person in charge of a train shall on demand by any officer furnish him with all information at his disposal in respect of any goods on such train.

(3) (*a*) The person in charge of any vehicle (other than an aircraft or a railway train) whether or not conveying any goods, which arrives by land at any place in the Republic shall come to the office of the Controller nearest to the point at which he crossed the border or the office of the Controller which is most conveniently situated in relation to that point before unloading any goods or in any manner disposing of such vehicle or goods, and make a full written report to such Controller concerning the vehicle or goods, the journey and the destination of the goods, and shall make and subscribe to a declaration as to the truth of the report.

(*b*) Such persons shall fully and truthfully answer all questions put to him and produce any way-bills or other documents demanded of him by such Controller.

(4) No person shall remove a vehicle referred to in subsection (3) from the office referred to in that subsection until due entry has been made of such vehicle and the goods carried thereon or until permission for removal has been granted by the Controller.

(5) (*a*) Every person arriving in the Republic overland, on foot or otherwise shall, whether or not he has any goods in his possession, come to the office of the Controller nearest to the point at which he crossed the border or the office of the Controller which is most conveniently situated in relation to that point, and there report to the Controller the circumstances in which he entered the Republic.

(*b*) If he has any goods in his possession, he shall furnish the said Controller with full particulars thereof, and shall fully and truthfully answer all questions put to him by such Controller.

(*c*) Such person shall not in any manner dispose of any goods in his possession until they have been released by the Controller.

(6) The provisions of subsection (5) shall not apply to persons arriving in the Republic by train or by air who pass through or disembark at a place where a Controller is stationed.

(7) No person in charge of any vehicle (other than an aircraft or a train), whether or not conveying any goods for exportation overland shall remove any such vehicle or goods beyond the borders of the Republic unless due entry has been made of such vehicle and the goods carried thereon or permission for removal has been granted by the Controller.

[Sub-s. (7) substituted by s. 7 (*b*) of Act No. 45 of 1995.]

Wording of Sections

(8) The controller may grant a general permission to any person referred to in subsections (4) and (7) in respect of such vehicles.

[Sub-s. (8) added by s. 7 (*c*) of Act No. 45 of 1995.]

13. Goods imported or exported by post.-(1) For the purposes of entry and collection of duty on goods imported into the Republic by post, any form or label completed by the sender in respect of the postal item in question and on which the particulars necessary for the assessment of duty are set forth, shall be deemed to be an entry made under the provisions of this Act, and the particulars on any such form or label shall, for the purposes of this Act, be taken as the declaration to be made by the importer under section 38: Provided that the Commissioner may by rule exclude from the provisions of this subsection any goods of a class or kind specified in such rule or any such goods imported in circumstances so specified.

[Sub-s. (1) substituted by s. 3 (*a*) of Act No. 101 of 1985 and by s. 8 (*a*) of Act No. 45 of 1995.]

Wording of Sections

(2) . . . . . .

[Sub-s. (2) substituted by s. 2 of Act No. 112 of 1977 and deleted by s. 3 (*b*) of Act No. 101 of 1985.]

Wording of Sections

(3) (*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 or 4 unless exempted by the Commissioner by rule, shall be so entered at a customs and excise office before a Controller.

(*b*) Notwithstanding anything contained in subsection (1), any goods imported by post by such class of addressee, or any goods imported by post and of such class or kind, as may be prescribed by the Commissioner by rule, shall be entered at a customs and excise office before a Controller.

[Sub-s. (3) substituted by s. 3 of Act No. 57 of 1966, by s. 5 of Act No. 105 of 1969 and by s. 3 (*c*) of Act No. 101 of 1985, amended by s. 3 (*a*) of Act No. 52 of 1986 and by s. 11 of Act No. 59 of 1990 and substituted by s. 8 (*b*) of Act No. 45 of 1995.]

Wording of Sections

(4) (*a*) In the case of goods exported by post, any form or label affixed to or completed in respect of a postal item and on which a description of the contents and their value are set forth, shall be deemed to be a bill of entry for export as required by this Act.

(*b*) Notwithstanding the provisions of paragraph (*a*), the Commissioner may prescribe by rule goods which shall be entered for export at a customs and excise office before a Controller.

[Sub-s. (4) substituted by s. 3 (*d*) of Act No. 101 of 1985 and by s. 8 (*b*) of Act No. 45 of 1995.]

Wording of Sections

(5) Notwithstanding anything contained in subsection (1) or in any other law but subject to the provisions of subsection (3), any person importing goods by post shall submit the invoice in respect of such goods to the postmaster concerned, and no person shall receive, remove, take, deliver or in any manner deal with or in such goods unless the correct duty has been paid to that postmaster.

[Sub-s. (5) added by s. 3 (*b*) of Act No. 52 of 1986.]

(Editorial Note: Sub-s. (5) to be substituted by s. 28 (1) (*a*) of Act No. 61 of 2008 with effect from a date to be fixed by the President by proclamation in the *Gazette* - date not fixed.)

Wording of Sections

(6) Any postmaster may at any time detain any imported postal item under his control and cause such postal item to be removed to the Controller, who may examine such postal item, and if the goods therein are found not to agree in all respects with the particulars relating to the value, description or quantity appearing on the form or label referred to in subsection (1) or the invoice concerned, such goods shall notwithstanding anything to the contrary in any other law contained be liable to forfeiture.

[Sub-s. (6) added by s. 3 (*b*) of Act No. 52 of 1986 and substituted by s. 8 (*c*) of Act No. 45 of 1995.]

Wording of Sections

(Editorial Note: Sub-s. (6) to be substituted by s. 28 (1) (*b*) of Act No. 61 of 2008 with effect from a date to be fixed by the President by proclamation in the *Gazette* - date not fixed.)

Wording of Sections

14. Coastwise traffic and coasting ships.-(1) The conveyance of goods by ship between the coastal ports of

the Republic shall be deemed to be coastwise traffic and all ships employed in such traffic shall be deemed to be coasting ships: Provided that no ship arriving from a place outside the Republic, although bound for more than one coastal port in the Republic and no ship clearing from any coastal port in the Republic for a port outside the Republic, although bound for one or more intermediate coastal ports in the Republic, shall be deemed a coasting ship nor shall its voyage between ports in the Republic be deemed a coastwise voyage.

(2) A foreign-going ship may also carry coastwise goods while on a voyage between ports in the Republic subject to the rules relating to such goods.

[Sub-s. (2) substituted by s. 9 (*a*) of Act No. 45 of 1995.]

Wording of Sections

(3) . . . . . .

[Sub-s. (3) deleted by s. 9 (*b*) of Act No. 45 of 1995.]

Wording of Sections

(4) Any dutiable goods which have not been entered for home consumption shall-

(*a*) not be loaded on board any ship for carriage coastwise unless they have been entered for removal or deemed to have been so entered in terms of this Act; and

(*b*) be reported by the master to the Controller at the port of discharge in the Republic as prescribed by rule.

[Sub-s. (4) added by s. 9 (*c*) of Act No. 45 of 1995.]

15. Persons entering or leaving the Republic and smugglers.-(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-

(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;

[Sub-para. (ii) amended by s. 20 of Act No. 34 of 2004.]

Wording of Sections

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

[Sub-para. (iii) amended by s. 20 of Act No. 34 of 2004.]

Wording of Sections

(iv) were required to be declared before leaving the Republic as contemplated in paragraph (*b*).

[Sub-para. (iv) added by s. 20 of Act No. 34 of 2004.]

[Para. (*a*) amended by s. 29 (*a*) of Act No. 61 of 2008.]

Wording of Sections

(*b*) before leaving, all goods which he or she proposes taking with him or her beyond the borders of the Republic, including goods which are-

(i) carried on behalf of another person;

(ii) intended for remodel, process or repair abroad;

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

(iv) goods which a person who temporarily entered the Republic was required to declare upon entering the Republic as contemplated in paragraph (*a*) (iv).

[Para. (*b*) substituted by s. 29 (*b*) of Act No. 61 of 2008.]

Wording of Sections

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.

[Sub-s. (1) substituted by s. 2 of Act No. 98 of 1970, by s. 2 of Act No. 89 of 1984, by s. 4 (*a*) of Act No. 101 of 1985 and by s. 12 of Act No. 59 of 1990.]

Wording of Sections

(1A) Any declaration made in terms of subsection (1) shall, for the purposes of this Act, be deemed to be an

entry for home consumption or export, as the case may be.

[Sub-s. (1A) inserted by s. 4 (*b*) of Act No. 101 of 1985.]

(2) The Controller shall have the power, in all cases where a person is detected or is concerned in or is suspected by the Controller of an attempt to import, export, land, ship or remove goods illegally or to evade the payment of duties on any goods, forthwith to take the person concerned before a magistrate's court to be summarily or otherwise dealt with, or to secure such person in a police station or other suitable place, until he can be taken before such court.

16. Opening of packages in absence of importer or exporter.-The Controller may in the absence of the importer or exporter of any package imported into or landed in or exported from or suspected by the Controller to have been imported into or landed in or exported from the Republic, open and examine such package at the importer's or exporter's risk and expense: Provided that wherever possible the Controller shall first make all reasonable efforts to ascertain the whereabouts of such importer or exporter and afford the said importer or exporter the opportunity of himself appearing before the Controller and opening the package in question.

[S. 16 substituted by s. 3 of Act No. 68 of 1989.]

Wording of Sections

17. State warehouse.-(1) (*a*) Whenever any goods are taken to and secured in any State warehouse, the Commissioner may require rent to be paid for such period as the goods remain therein, at the rates fixed by rule.

(*b*) Goods removed from the State warehouse shall be subject to the rate in force at the time of payment of the rent.

[Sub-s. (1) substituted by s. 86 of Act No. 31 of 2005.]

Wording of Sections

(2) Any officer who has the custody of any goods in any State warehouse may refuse delivery thereof from such warehouse until he has been furnished with proof that-

(*a*) the person claiming the goods is lawfully entitled to such goods;

(*b*) all relevant provisions of this Act or any law relating to the importation or exportation or transit or coastwise carriage of goods have been complied with;

(*c*) freight and other charges (including landing and wharfage charges) and rent due in respect of the goods have been paid.

[Sub-s. (2) amended by s. 10 (*a*) of Act No. 45 of 1995.]

Wording of Sections

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

[Sub-s. (3) substituted by s. 3 of Act No. 110 of 1979.]

Wording of Sections

(4) If a warrant or permission for the removal of any goods from a State warehouse has been granted by the Controller, and the person to whom such warrant or permission has been granted does not immediately remove the said goods from the warehouse, they may, notwithstanding any other provisions of this Act, be dealt with as if they were goods in respect of which entry has not been made under the provisions of this Act.

[Sub-s. (4) substituted by s. 10 (*b*) of Act No. 45 of 1995.]

Wording of Sections

18. Removal of goods in bond.-(1) Notwithstanding anything to the contrary in this Act contained-

(*a*) except as otherwise prescribed by rule-

(i) the importer or owner of any imported goods landed in the Republic;

(ii) the licensee of any customs and excise manufacturing warehouse in which excisable or fuel levy goods are manufactured;

(iii) the licensee of any storage warehouse in which excisable or fuel levy goods are stored;

(iv) the licensee or owner of any imported goods stored in a customs and excise storage warehouse;

or

(v) any clearing agent licensed in terms of section 64B appointed by such importer, owner or licensee,

may enter such goods for removal in bond and may remove such goods or cause such goods to be removed-

(*aa*) in the case of goods contemplated in subparagraph (i), to any place in the Republic appointed as a place of entry or warehousing under this Act or to any place outside the Republic: Provided that any goods which are in transit through the Republic as contemplated in subsection (1A), may only be so entered and removed or caused to be so removed by such licensed clearing agent; or

(*bb*) in the case of goods contemplated in subparagraphs (ii), (iii) or (iv), to any warehousing place in the Republic or to any place in any other country in the common customs area appointed as a warehousing place for rewarehousing at that place in another such warehouse.

[Para. (*a*) substituted by s. 6 of Act No. 105 of 1969 and by s. 4 (1) (*a*) of Act No. 84 of 1987, amended by s. 13 of Act No. 59 of 1990, substituted by s. 37 (1) (*a*) of Act No. 19 of 2001 and by s. 102 (*a*) of Act No. 74 of 2002.]

Wording of Sections

(*b*) the master of a ship or pilot of an aircraft from which any goods were landed at a place in the Republic to which such goods were not consigned may remove such goods in bond to the place to which they were consigned provided evidence is produced to the Controller before entry for removal of the identity of such goods and that the goods in question were consigned to the place to which they are proposed to be removed;

[Para. (*b*) substituted by s. 37 (1) (*b*) of Act No. 19 of 2001.]

Wording of Sections

(*c*) except if the Commissioner determines otherwise by rule, the owner of or any person beneficially interested in any goods which are in transit through the Republic from any other territory in Africa to any place outside the Republic may remove such goods in bond from the place where they entered the Republic to the place where they are destined to leave the Republic;

[Para. (*c*) substituted by s. 37 (1) (*b*) of Act No. 19 of 2001.]

Wording of Sections

(*d*) a container operator may remove any container in bond to the container depot or container terminal to which it was consigned, without furnishing the security provided for in subsection (6) of this section, and the manifest of the goods packed in such container shall be deemed to be due entry for removal in bond of that container;

[Para. (*d*) added by s. 4 of Act No. 71 of 1975 and substituted by s. 3 of Act No. 112 of 1977 and by s. 11 (*a*) of Act No. 45 of 1995.]

Wording of Sections

(Editorial Note: Para. (*d*) to be substituted by s. 16 (1) of Act No. 21 of 2006 with effect from a date to be fixed by the President by proclamation in the *Gazette* - date not fixed.)

Wording of Sections

(*e*) the pilot of any aircraft may remove in bond any goods landed from any aircraft at a place in the Republic and for which an air cargo transfer manifest has been completed, to their place of entry for the Republic, without furnishing the security provided for in subsection (6), and such air cargo transfer manifest shall be deemed to be due entry for removal in bond of such goods;

[Para. (*e*) added by s. 4 of Act No. 71 of 1975 and substituted by s. 11 (*a*) of Act No. 45 of 1995.]

Wording of Sections

(Editorial Note: Para. (*e*) to be substituted by s. 16 (1) of Act No. 21 of 2006 with effect from a date to be fixed by the President by proclamation in the *Gazette* - date not fixed.)

Wording of Sections

(*f*) any goods entered for removal in bond may, except if exempted by rule, when carried by road only be transported by a licensed remover of goods in bond contemplated in section 64D, whether or not the goods are wholly or partly transported by road.

[Para. (*f*) added by s. 102 (*b*) of Act No. 74 of 2002.]

(1A) For the purposes of subsection (1) (*a*) imported goods landed in the Republic includes goods in transit through the Republic which are destined for removal to a consignee in any country outside the Republic.

[Sub-s. (1A) inserted by s. 48 of Act No. 53 of 1999.]

(2) In addition to any liability for duty incurred by any person under any provision of this Act, but subject to

the provisions of section 99 (2), the person who enters any goods for removal in bond or who may remove in bond any goods contemplated in subsection (1) and who removes or causes such goods to be so removed, shall subject to the provisions of subsection (3), be liable for the duty on all goods which are so entered and so removed in bond.

[Sub-s. (2) substituted by s. 102 (*c*) of Act No. 74 of 2002.]

Wording of Sections

(3) (*a*) Subject to subsection (4), any liability for duty in terms of subsection (2) shall cease if-

(i) goods destined for a place in the common customs area, have been duly entered at that place; or

(ii) (*aa*) goods destined for a place beyond the borders of the common customs area have been duly taken out of that area; or

(*bb*) in circumstances and in accordance with procedures which the Commissioner may determine by rule the goods have been duly accounted for in the country of destination.

(*b*) Any person who is liable for duty as contemplated in subsection (2) must-

(i) obtain valid proof that liability has ceased as specified in paragraph (*a*) (i) or (ii) within the period and in compliance with such requirements as may be prescribed by rule;

(ii) keep such proof and other information and documents relating to such removal as contemplated in section 101 and the rules made thereunder available for inspection by an officer; and

(iii) submit such proof and other information and documents to the Commissioner at such time and in such form and manner as the Commissioner may require; or

(iv) (*aa*) notify the Commissioner immediately if liability has not ceased as required in terms of paragraph (*a*) (i) or (ii) or valid proof has not been obtained as contemplated in subparagraph (i); and

(*bb*) submit payment of duty and value-added tax payable in terms of the Value-Added Tax Act, 1991 (Act No. 89 of 1991), together with such notification as if the goods were entered for home consumption on the date of entry for removal in bond.

(*c*) Subject to subsection (4), there shall be no liability for duty on any goods where such liability was discovered as a result of, or following upon any such inspection by an officer or a request by the Commissioner as contemplated in paragraph (*b*) (ii) and (iii), respectively, where that liability occurred on a date earlier than two years prior to the date on which such inspection commenced or such request was made.

[Sub-s. (3) amended by s. 4 (1) (*b*) of Act No. 84 of 1987, by s. 11 (*b*) of Act No. 45 of 1995, by s. 119 (1) (*b*) of Act No. 60 of 2001 and substituted by s. 26 (*a*) of Act No. 18 of 2009.]

Wording of Sections

(4) If-

(*a*) liability has not ceased as contemplated in subsection (3) (*a*); or

(*b*) the goods have been diverted or deemed to have been diverted as contemplated in subsection (13),

such person shall, except if payment has been made as contemplated in subsection (3) (*b*) (iv), upon demand pay-

(i) the duty and value-added tax due in terms of the Value-Added Tax Act, 1991 (Act No. 89 of 1991), as if the goods were entered for home consumption on the date of entry for removal in bond;

(ii) any amount that may be due in terms of section 88 (2); and

(iii) any interest due in terms of section 105:

Provided that such payment shall not indemnify a person against any fine or penalty provided for in this Act.

[Sub-s. (4) substituted by s. 3 of Act No. 105 of 1976, by s. 11 (*c*) of Act No. 45 of 1995 and by s. 26 (*b*) of Act No. 18 of 2009.]

Wording of Sections

(5) No goods shall be removed in bond in terms of this section from the place where they were landed in the Republic or where they entered the Republic until they have been entered for removal in bond and such entry shall be deemed to be due entry in respect of such goods at that place for the purposes of this Act.

(6) No entry for removal in bond shall be tendered by or may be accepted from a person who has not furnished such security as the Commissioner may require and the Commissioner may at any time require that the form, nature or amount of such security shall be altered in such manner as he may determine.

(7) The removal in bond of goods shall be subject to the rules and such conditions as the Commissioner may impose in respect of such goods or any class or kind of such goods or goods removed in circumstances specified by him and the Controller may refuse to accept entry for the removal in bond of goods from a remover who has failed to comply with such rules or conditions or who has committed an offence referred to in section 80.

[Sub-s. (7) substituted by s. 11 (*d*) of Act No. 45 of 1995.]

Wording of Sections

(8) Goods removed in bond shall not be delivered or removed from the control of the Controller at the place of destination in the Republic except upon due entry according to the first account taken of such goods on landing or on entry for removal in bond thereof or according to the contents of the packages containing such goods as reflected on the invoice issued by the supplier in respect of such goods, and payment of any duty due, including, subject to the provisions of section 75 (18) any duty due on any deficiency.

[Sub-s. (8) substituted by s. 2 of Act No. 95 of 1965 and by s. 21 of Act No. 34 of 2004.]

Wording of Sections

(9) . . . . . .

[Sub-s. (9) deleted by s. 11 (*e*) of Act No. 45 of 1995.]

Wording of Sections

(10) The State or any officer shall in no case be liable for any loss of or damage of whatever nature to any goods removed in bond or for any loss or damage sustained by reason of wrong removal or delivery.

(11) Notwithstanding the provisions of this section, the Commissioner may, subject to such conditions as he may impose, in respect of goods in transit through the Republic from any other territory in Africa to any destination outside the Republic, or any class or kind of such goods or any such goods removed in bond in circumstances specified by him, allow such goods to be entered for removal in bond at a place other than the place where the goods entered the Republic.

(12) The Commissioner may determine the roads and routes and the means of carriage of any goods removed in bond or any class or kind of such goods or any such goods carried in circumstances specified by him.

(13) (*a*) (i) No person shall, without the permission of the Commissioner, divert any goods removed in bond to a destination other than the destination declared on entry for removal in bond or deliver such goods or cause such goods to be delivered in the Republic except into the control of the Controller at the place of destination.

(ii) Goods shall be deemed to have been so diverted where-

(*aa*) no permission to divert such goods has been granted by the Commissioner as contemplated in subparagraph (i) and the person concerned fails to produce valid proof and other information and documents for inspection to an officer or to submit such proof, information and documents to the Commissioner as required in terms of subsection (3) (*b*) (ii) and (iii), respectively;

(*bb*) any such proof is the result of fraud, misrepresentation or non-disclosure of material facts; or

(*cc*) such person makes a false declaration for the purpose of this section.

(iii) Where any person fails to comply with or contravenes any provision of this subsection the goods shall be liable to forfeiture in accordance with this Act.

[Para. (*a*) substituted by s. 26 (*c*) of Act No. 18 of 2009.]

Wording of Sections

(*b*) (i) Notwithstanding the provisions of paragraph (*a*), the Commissioner may, in such circumstances and subject to such conditions as the Commissioner may prescribe by rule permit goods in transit through the Republic or any class or kind of such goods to be delivered to any place approved by him for the purposes of-

(*aa*) carrying out activities for the purpose of preserving or maintaining the goods;

(*bb*) inspection of the goods;

(*cc*) cleaning the goods;

(*dd*) sorting the goods;

(*ee*) tallying the goods;

(*ff*) re-packing the goods;

(*gg*) sealing the goods or the transport unit;

(*hh*) exercising control over the movement of goods into, in and from such place; and

(*ii*) any other activity that may be necessary to prepare and forward the goods for transit.

[Sub-para. (i) substituted by s. 26 (*d*) of Act No. 18 of 2009.]

Wording of Sections

(ii) The goods shall not be removed from such place to the place where they are destined to leave the Republic unless the duty on any deficiency has been paid to the Controller.

[Para. (*b*) added by s. 11 (*f*) of Act No. 45 of 1995.]

(14) The Commissioner may specify the particulars to be reflected on the entry for removal in bond and the documents to be produced by the remover upon entry for removal in bond in respect of any goods removed in bond, or any class or kind of such goods or any such goods removed in circumstances or to a destination specified by him.

18A. Exportation of goods from customs and excise warehouse.-(1) Notwithstanding any liability for duty incurred thereby by any person in terms of any other provision of this Act, any person who exports any goods from a customs and excise warehouse to any place outside the common customs area shall, subject to the provisions of subsection (2), be liable for the duty on all goods which he or she so exports.

[Sub-s. (1) substituted by s. 27 (*a*) of Act No. 18 of 2009.]

Wording of Sections

(2) (*a*) Subject to the provisions of subsection (3), any liability for duty in terms of subsection (1) shall cease if-

(i) the said goods have been duly taken out of the common customs area; or

(ii) in circumstances and in accordance with procedures which the Commissioner may determine by rule, the goods have been duly accounted for in the country of destination.

(*b*) An exporter who is liable for duty as contemplated in subsection (1) must-

(i) obtain valid proof that liability has ceased as specified in paragraph (*a*) (i) or (ii) within the period and in compliance with such requirements as may be prescribed by rule;

(ii) keep such proof and other information and documents relating to such export as contemplated in section 101 and the rules made thereunder available for inspection by an officer; and

(iii) submit such proof and other information and documents to the Commissioner at such time and in such form and manner as the Commissioner may require; or

(iv) (*aa*) notify the Commissioner immediately if liability has not ceased as required in terms of paragraph (*a*) (i) or (ii) or valid proof has not been obtained as contemplated in subparagraph (i); and

(*bb*) submit payment of duty and value-added tax payable in terms of the Value-Added Tax Act, 1991 (Act No. 89 of 1991), together with such notification as if the goods were entered for home consumption on the date of entry for export.

(*c*) Subject to subsection (3), there shall be no liability for duty on any goods where such liability was discovered as a result of, or following upon, any such inspection by an officer or a request by the Commissioner as contemplated in paragraph (*b*) (ii) and (iii), respectively, where that liability occurred on a date earlier than two years prior to the date on which such inspection commenced or such request was made.

[Sub-s. (2) substituted by s. 12 (*a*) of Act No. 45 of 1995, by s. 120 of Act No. 60 of 2001 and by s. 27 (*b*) of Act No. 18 of 2009.]

Wording of Sections

(3) If-

(*a*) the liability has not ceased as contemplated in subsection (2) (*a*); or

(*b*) the goods have been diverted or deemed to have been diverted as contemplated in subsection (9),

such person shall, except if payment has been made as contemplated in subsection (2) (*b*) (iv), upon demand pay-

(i) the duty and value-added tax due in terms of the Value-Added Tax Act 1991 (Act No. 89 of 1991), as if the goods were entered for home consumption on the date of entry for export;

(ii) any amount that may be due in terms of section 88 (2); and

(iii) any interest due in terms of section 105:

Provided that such payment shall not indemnify a person against any fine or penalty provided for in this Act.

[Sub-s. (3) substituted by s. 12 (*a*) of Act No. 45 of 1995 and by s. 27 (*c*) of Act No. 18 of 2009.]

Wording of Sections

(4) No goods shall be exported in terms of this section-

(*a*) until they have been entered for export; and

(*b*) unless, except as otherwise provided in the rules, they are removed for export by a licensed remover in bond as contemplated in section 64D.

[Sub-s. (4) substituted by s. 38 (1) of Act No. 19 of 2001.]

Wording of Sections

(5) No such entry for export shall be tendered by or may be accepted from a person who has not furnished such security as the Commissioner may require, and the Commissioner may at any time require that the form, nature or amount of that security be altered in such manner as he may determine.

(6) The said exportation of goods shall be subject to the rules and such conditions as the Commissioner may impose in respect of the goods concerned or any class or kind of those goods or those goods exported in circumstances specified by him, and the Controller may refuse to accept bills of entry for the said exportation of goods from an exporter who has failed to comply with the said rules or conditions or who has committed an offence referred to in section 80.

[Sub-s. (6) substituted by s. 12 (*b*) of Act No. 45 of 1995.]

Wording of Sections

(7) . . . . . .

[Sub-s. (7) deleted by s. 12 (*c*) of Act No. 45 of 1995.]

Wording of Sections

(8) The Commissioner may determine the roads and routes and the means of carriage of any goods so exported or any class or kind of those goods or any such goods carried in circumstances specified by him.

(9) (*a*) No person shall, without the permission of the Commissioner, divert any goods for export to a destination other than the destination declared on entry for export or deliver such goods or cause such goods to be delivered in the Republic or any other country in the common customs area.

(*b*) Goods shall be deemed to have been so diverted where-

(i) no permission to divert such goods has been granted by the Commissioner as contemplated in paragraph (*a*) and the person concerned fails to produce valid proof and other information and documents for inspection to an officer or to submit such proof, information and documents to the Commissioner as required in terms of subsection (2) (*b*) (ii) and (iii), respectively;

(ii) any such proof is the result of fraud, misrepresentation or non-disclosure of material facts; or

(iii) such person makes a false declaration for the purpose of this section.

(*c*) Where any person fails to comply with or contravenes any provision of this subsection the goods shall be liable to forfeiture in accordance with this Act.

[Sub-s. (9) substituted by s. 27 (*d*) of Act No. 18 of 2009.]

Wording of Sections

(10) The Commissioner may specify the documents to be produced by the exporter upon entry for exportation in respect of any goods so exported or any class or kind of those goods or any such goods exported in circumstances or to a destination specified by him.

[S. 18A inserted by s. 5 of Act No. 84 of 1987.]

CHAPTER IV
CUSTOMS AND EXCISE WAREHOUSES; STORAGE AND MANUFACTURE OF GOODS IN CUSTOMS AND EXCISE WAREHOUSES

19. Customs and excise warehouses.-(1) The Commissioner may license at any place appointed for that purpose under the provisions of this Act, warehouses (to be known as customs and excise warehouses) approved by him for the storage of such dutiable imported or such dutiable locally-produced goods or for the manufacture of such dutiable goods from such imported or such locally-produced materials or such imported and such locally-produced materials as he may approve in respect of each such warehouse.

[Sub-s. (1) substituted by s. 7 of Act No. 105 of 1969.]

Wording of Sections

(2) Such warehouses may be licensed either for the storage of dutiable goods (to be known as customs and excise storage warehouses) or for the manufacture of dutiable goods (to be known as customs and excise manufacturing warehouses), but the Commissioner may license a storage and a manufacturing warehouse on the same premises provided they are separated in a manner approved by him.

(3) The Controller may, in addition to any lock used by the licensee, cause any customs and excise warehouse to be locked with a State lock for such period as he deems fit, and no person shall remove or break such lock or enter such warehouse or remove any goods therefrom without the permission of the Controller while it is so locked.

(4) (*a*) The Controller may at any time take stock of the goods in any customs and excise warehouse and duty shall, subject to the provisions of subsection (5) of section *twenty*, forthwith be paid upon any deficiency.

(*b*) If the stock is found to be greater than the quantity which should be in such warehouse, the excess shall, subject to the provisions of subsection (18) of section *seventy-five*, be debited to stock and the duty thereon paid on entry for home consumption.

[Para. (*b*) substituted by s. 3 of Act No. 95 of 1965.]

(5) The State or any officer shall in no case be liable for any loss of or damage of whatever nature to any goods in a customs and excise warehouse or for any loss or damage sustained by reason of wrong delivery of such goods.

(6) In addition to any liability for duty incurred by any person under any other provision of this Act, the licensee of a customs and excise warehouse shall, subject to the provisions of subsection (7), be liable for the duty on all goods stored or manufactured in such warehouse from the time of receipt into such warehouse of such goods or the time of manufacture in such warehouse of such goods, as the case may be.

(7) Subject to the provisions of subsection (8), any liability for duty in terms of subsection (6) shall cease when it is proved by the licensee concerned that the goods in question have been duly entered in terms of section 20 (4) and have been delivered or exported in terms of such entry.

[Sub-s. (7) substituted by s. 13 (*a*) of Act No. 45 of 1995.]

Wording of Sections

(8) If the licensee concerned fails to submit any such proof as is referred to in subsection (7) within the period for which goods of that class or kind may be stored or kept in a customs and excise warehouse or if the licensee commits an offence under this Act in respect of any goods stored or kept in such warehouse he shall upon demand by the Controller forthwith pay the duty due on such goods.

[Sub-s. (8) substituted by s. 13 (*a*) of Act No. 45 of 1995.]

Wording of Sections

(9) (*a*) Except with the permission of the Commissioner, which shall only be granted in circumstances which he on good cause shown considers to be reasonable and subject to such conditions as he may impose in each case, no imported goods entered for storage or excisable or fuel levy goods manufactured in a customs and excise warehouse, excluding spirits or wine in the process of maturation or maceration, shall be retained in any customs and excise warehouse for a period of more than two years from the time the imported goods were first entered for storage or from the time the excisable or fuel levy goods were deemed to have been manufactured in terms of section 44 (2).

(*b*) . . . . . .

[Sub-s. (9) added by s. 13 (*b*) of Act No. 45 of 1995 and substituted by s. 39 (1) of Act No. 19 of 2001. Para. (*b*) deleted by s. 30 (1) (*a*) of Act No. 61 of 2008.]

Wording of Sections

(10) . . . . . .

(Editorial Note: Sub-s. (10) to be added by s. 30 (1) (*b*) of Act No. 61 of 2008 with effect from a date to be fixed by the President by proclamation in the *Gazette* - date not fixed.)

19A. Special provision in respect of customs and excise warehouses in which excisable or fuel levy goods are manufactured or stored.-(1) (*a*) Notwithstanding anything to the contrary contained in this Act the Commissioner may by rule, in respect of any excisable goods specified in Section A of Part 2 of Schedule No. 1 or fuel levy goods or any class or kind of such goods manufactured in the Republic-

(i) determine whether any such goods specified in such rule shall be entered or deemed to have been entered for home consumption at the time of issuing any prescribed document and removal from, or on receipt in, or at any time determined in such rule in respect of-

(*aa*) any customs and excise manufacturing warehouse;

(*bb*) any customs and excise manufacturing warehouse to which the goods have been removed from any other such warehouse after a particular stage of manufacture during the process of manufacture of any such goods; or

(*cc*) any customs and excise storage warehouse licensed by the Commissioner for any special or limited purpose to which such goods are allowed to be removed by the Commissioner after manufacture;

[Sub-para. (i) inserted by s. 40 (1) of Act No. 19 of 2001 (as amended by s. 64 (1) (*a*) of Act No. 30 of 2002).]

Wording of Sections

(ii) restrict the licensing of customs and excise storage warehouses in respect of such goods or any class

or kind of such goods to such persons and for such special or limited purposes as may be specified in such rule;

(iii) prescribe-

(*aa*) the time and manner of payment of duty in respect of goods so entered or deemed to have been so entered;

(*bb*) any deferment of payment of duty, the conditions on which such deferment is granted and the period, or differentiated periods of deferment, in respect of any licensee or any class or kind of such goods;

(*cc*) the accounts to be kept and the accounts and other documents to be submitted with such payment;

(*dd*) any procedures or requirements or documents relating to the entry and removal of goods from and to any such customs and excise warehouse or for export or for use under rebate of duty;

(*ee*) all other matters which are required or permitted in terms of this section to be prescribed by rule;

(*ee*A) . . . . . .

(Editorial Note: Item (*ee*A) to be inserted by s. 31 (1) of Act No. 61 of 2008 with effect from a date to be fixed by the President by proclamation in the *Gazette* - date not fixed.)

(*ff*) any other matter which the Commissioner may consider necessary and useful to achieve the effective and efficient administration of the provisions of this section.

(*b*) Except as otherwise provided in this section or in any such rule, the provisions of section 38 (4) shall apply *mutatis mutandis* to any goods removed from any customs and excise warehouse as contemplated in paragraph (*a*).

(*c*) Notwithstanding anything to the contrary in this Act contained, goods in a customs and excise manufacturing warehouse which have been entered or deemed to have been entered for home consumption on the date of receipt in such warehouse or at the time prescribed as contemplated in paragraph (*a*) (i) or any goods manufactured from such goods may, subject to such conditions and procedures as the Commissioner may prescribe by rule, be removed in bond or exported from such warehouse by the licensee, as if such goods have not been so entered or deemed to have been so entered for home consumption.

[Para. (*c*) added by s. 64 (1) (*b*) of Act No. 30 of 2002.]

(Date of commencement of sub-s. (1) in respect of tobacco products liable to excise duty as specified in items 104.30 and 104.35 of Section A of Part 2 of Schedule No. 1: 1 October, 2002; in respect of beer and spirits liable to excise duty as specified respectively in items 104.10 and 104.20 of Section A of Part 2 of Schedule No. 1: 26 February, 2003; and in respect of petroleum and other goods liable to excise duty as specified in item 105.10 of Section A of Part 2 of Schedule 1: 2 April, 2003.)

(2) If any duty is not paid on the date prescribed in the rules for this section, the amount unpaid shall constitute a debt due to the State, and-

(*a*) the Commissioner may, without prior notice to the licensee-

(i) where payment is not made on or before the prescribed date on two occasions in a calendar year, prohibit for any reasonable period the removal of any goods from such warehouse unless the goods are duly entered and the duty paid prior to such removal;

(ii) claim the amount from the surety where security is furnished in the form of a surety bond or take such legal steps, including enforcement of the provisions of the Act, as the Commissioner may deem necessary and appropriate in the circumstances;

(*b*) the licensee shall-

(i) notwithstanding the provisions of section 91, but subject to the provisions of section 93, be liable to payment of an amount not exceeding 10 per cent of the duty concerned as a penalty;

(ii) be liable to interest from the day following the date on which payment should have been made as contemplated in section 105;

(*c*) the Commissioner may impose any reasonable conditions when removing the prohibition referred to in paragraph (*a*) (i).

(Date of commencement of sub-s. (1) in respect of tobacco products liable to excise duty as specified in items 104.30 and 104.35 of Section A of Part 2 of Schedule No. 1: 1 October, 2002; in respect of beer and spirits liable to excise duty as specified respectively in items 104.10 and 104.20 of Section A of Part 2 of Schedule No. 1:

26 February, 2003; and in respect of petroleum and other goods liable to excise duty as specified in item 105.10 of Section A of Part 2 of Schedule 1: 2 April, 2003.)

(3) (*a*) When this section comes into operation the excisable or fuel levy goods concerned shall not be removed to any customs and excise warehouse unless such warehouse is another such manufacturing warehouse or a storage warehouse licensed for any special or limited purpose as contemplated in subsection (1).

(*b*) The Commissioner may-

(i) approve any existing licence for any customs and excise storage warehouse as a storage warehouse for such special or limited purposes;

(ii) cancel the licence of any customs and excise storage warehouse which is not licensed for such special or limited purpose within three months after the date upon which this section comes into operation or within any longer period as the Commissioner may on good cause shown consider reasonable.

(Date of commencement of sub-s. (1) in respect of tobacco products liable to excise duty as specified in items 104.30 and 104.35 of Section A of Part 2 of Schedule No. 1: 1 October, 2002; in respect of beer and spirits liable to excise duty as specified respectively in items 104.10 and 104.20 of Section A of Part 2 of Schedule No. 1: 26 February, 2003; and in respect of petroleum and other goods liable to excise duty as specified in item 105.10 of Section A of Part 2 of Schedule 1: 2 April, 2003.)

(4) (*a*) The Commissioner may allow any imported goods to be mixed with locally produced excisable or fuel levy goods of the same class or kind in a customs and excise manufacturing warehouse licensed for the manufacture of such locally-produced goods on payment of any difference in duty between the duty leviable on such imported goods and locally-produced goods;

(*b*) Notwithstanding anything to the contrary in this Act contained, any such goods when so mixed shall be subject to the duties leviable and the manufacturing, accounting and removal procedures prescribed in terms of this Act in respect of excisable goods or fuel levy goods, as the case may be, manufactured in such warehouse.

[S. 19A inserted by s. 40 (1) of Act No. 19 of 2001 (as amended by s. 64 (1) of Act No. 30 of 2002).]

Wording of Sections

20. Goods in customs and excise warehouses.-(1) (*a*) Any dutiable imported or dutiable locally-produced goods and any beverages produced from excisable spirits in pursuance of any permission granted under the provisions of section 31 (2), being goods or beverages of a class or kind approved by the Commissioner in respect of each warehouse, may be entered for storage in a customs and excise warehouse with deferment of payment of duty and no such goods or beverages shall be removed to or placed in a customs and excise warehouse until they have been so entered.

[Para. (*a*) substituted by s. 4 (*a*) of Act No. 95 of 1965 and by s. 8 (*a*) of Act No. 105 of 1969.]

Wording of Sections

(*b*) Such entry shall be deemed to be due entry in respect of such goods at the place of importation or manufacture for the purposes of this Act.

(2) (*a*) (i) Upon the entry and landing of imported goods for storage in or the transfer of dutiable locally-produced goods to a customs and excise warehouse or the transfer of dutiable manufactured goods from a customs and excise manufacturing warehouse to a customs and excise storage warehouse, the licensee of any such warehouse in which such goods are stored or to which such goods are so transferred shall take and record an accurate account of such goods, which shall include, subject to any deduction that may be allowed under section 75 (18), the debiting to stock of any excess found on receipt of such goods at such warehouse.

(ii) The said licensee shall immediately upon the receipt of such goods report to the Controller any such excess so found.

[Para. (*a*) substituted by s. 8 (*b*) of Act No. 105 of 1969 and by s. 1 (*a*) of Act No. 86 of 1982.]

Wording of Sections

(*b*) Subject to the provisions of subsection (18) of section *seventy-five* and of subsection (5), no allowance for loss or diminution of any nature which occurs while such goods are being transported to or kept in any such warehouse or transported from one warehouse to another or removed in bond shall be allowed.

[Para. (*b*) substituted by s. 4 (*b*) of Act No. 95 of 1965.]

(3) Goods on which no duty is payable and of a class or kind approved by the Commissioner in respect of each warehouse, may, subject to such conditions and to the keeping of such records as the Commissioner may in each case determine, without entry, be taken into a customs and excise warehouse for the purpose of being used in the manufacture of or in conjunction with dutiable goods.

[Sub-s. (3) substituted by s. 4 (*c*) of Act No. 95 of 1965.]

(4) Subject to section 19A, no goods which have been stored or manufactured in a customs and excise

warehouse shall be taken or delivered from such warehouse except in accordance with the rules and upon due entry for any of the following purposes-

(*a*) home consumption and payment of any duty due thereon;

(*b*) rewarehousing in another customs and excise warehouse or removal in bond as provided in section 18;

[Para. (*b*) substituted by s. 6 (*a*) of Act No. 84 of 1987.]

Wording of Sections

(*c*) . . . . . .

[Para. (*c*) deleted by s. 6 (*b*) of Act No. 84 of 1987.]

Wording of Sections

(*d*) export from customs and excise warehouse (including supply as stores for foreign-going ships or aircraft).

[Sub-s. (4) amended by s. 14 (*a*) of Act No. 45 of 1995 and by s. 41 (1) of Act No. 19 of 2001.]

Wording of Sections

(4)*bis* No person shall, without the written permission of the Controller, divert any goods entered for removal from or delivery to a customs and excise warehouse, except goods entered for payment of the duty due thereon, to a destination other than the destination declared on entry of such goods or deliver or cause such goods to be delivered in the Republic except in accordance with the provisions of this Act.

[Sub-s. (4)*bis* inserted by s. 4 (*d*) of Act No. 95 of 1965 and substituted by s. 14 (*b*) of Act No. 45 of 1995.]

Wording of Sections

(5) Subject to the provisions of any item in any Schedule, the duty on any deficiency in a customs and excise warehouse shall be paid forthwith on demand after detection of such deficiency.

[Sub-s. (5) substituted by s. 4 (*e*) of Act No. 95 of 1965 and by s. 8 (*c*) of Act No. 105 of 1969, amended by s. 14 of Act No. 59 of 1990, by s. 14 (*c*) of Act No. 45 of 1995 and by s. 59 of Act No. 30 of 1998 and substituted by s. 88 of Act No. 31 of 2005.]

Wording of Sections

(6) Goods packed for retail sale shall not be entered for storage in a storage warehouse unless they are packed in outer containers normally used in the wholesale trade in respect of such goods.

(7) . . . . . .

[Sub-s. (7) deleted by s. 1 (*b*) of Act No. 86 of 1982.]

Wording of Sections

21. Special customs and excise warehouses.-(1) The Commissioner may, subject to such conditions as he may in each case impose, license at any place in the Republic special customs and excise warehouses for such special purposes and for such period as he may specify, provided such security as he may require, is furnished.

(2) Unless the Commissioner otherwise indicates when licensing a special customs and excise warehouse for the storage or manufacture of goods, the provisions of this Act in respect of customs and excise storage or manufacturing warehouses or the storage or manufacture of goods in such warehouses, shall apply to such special warehouse and to the storage or manufacture of goods therein, as the case may be.

[Sub-s. (2) added by s. 9 of Act No. 105 of 1969.]

(3) (*a*) Notwithstanding anything to the contrary contained in this Act, the Commissioner may, subject to such exception or adaptation prescribed in this subsection or as the Commissioner may prescribe by rule, licence a special customs and excise storage warehouse in terms of the provisions of this Act for the storage-

(i) for export of any imported goods which are free of duty; or

(ii) of any other goods for such purposes as may be prescribed by rule.

(*b*) Notwithstanding anything to the contrary contained in any other provision of this Act, imported goods free of duty stored in such warehouse shall, for the purposes of the application of any provision of this Act, be deemed to be goods liable to duty.

(*c*) For the purposes of paragraph (*a*) only importers accredited in terms of section 64E may store goods which are free of duty in such warehouse.

(*d*) (i) Notwithstanding the provisions of section 19 (9) (*a*), no goods to which this subsection relates shall be stored in such warehouse for a period of longer than 6 months from the time the goods were first entered for storage.

(ii) The Commissioner may, on application by the importer before the period of 6 months expires, on good cause shown extend such period for not longer than 3 months.

(iii) Where the importer fails to export the goods before the period of 6 months or any extended period lapses, the importer shall be guilty of an offence and shall-

(*aa*) cause such goods to be abandoned or destroyed as provided in this Act; or;

(*bb*) enter such goods for export or such purposes as may be authorised under the rules for this section or any other provision of this Act, unless those goods are restricted or prohibited under any law.

[Sub-para. (iii) substituted by s. 1 of Act No. 10 of 2005. Item (*bb*) substituted by s. 17 of Act No. 21 of 2006.]

Wording of Sections

(*e*) The Commissioner may prescribe by rule-

(i) the goods and activities that are allowed in such warehouse;

(ii) the person, other than the importer of duty free goods, who may store the goods specified in these rules in such warehouse;

(iii) the requirements to be complied with by applicants and licensees;

(iv) the procedures applicable to the operation of and removal of goods from such warehouse;

(v) the rules of conduct to be observed by the licensee;

(vi) all matters which are required or permitted in terms of this subsection to be prescribed by rule; and

(vii) any other matter which the Commissioner may reasonably consider to be necessary and useful to achieve the efficient and effective administration of the provisions of this subsection.

[Sub-s. (3) added by s. 44 of Act No. 30 of 2002 and substituted by s. 22 of Act No. 34 of 2004.]

Wording of Sections

21A. Provision for administration of customs controlled areas within industrial development zones and special economic zones.-(1) For the purposes of this section, unless the context otherwise indicates-

"Customs Controlled Area" or **"CCA"** means an area within an IDZ, designated by the Commissioner in concurrence with the Director General: Trade and Industry, which area is controlled by the Commissioner;

"Industrial Development Zone" or **"IDZ"** means an area designated by the Minister of Trade and Industry in terms of the Manufacturing Development Act, 1993 (Act No. 187 of 1993);

[Definition of "Industrial Development Zone" substituted by s. 2 (*a*) of Act No. 10 of 2005 and by s. 18 (*a*) of Act No. 21 of 2006.]

Wording of Sections

"IDZ operator", **"CCA enterprise"** or any other expression as may be necessary, relating to any activity inside or outside an IDZ or a CCA shall have the meaning assigned thereto in any Schedule or rule.

[Definition of "IDZ operator", "CCA enterprise" substituted by s. 7 of Act No. 36 of 2007.]

Wording of Sections

(1A) (*a*) For the purposes of this subsection, "Special Economic Zones Act" means an Act of Parliament that makes provision for special economic zones.

(*b*) Notwithstanding anything to the contrary in this section or any other provision of this Act, for the purposes of the Special Economic Zones Act, the Commissioner may by rule-

(i) after consultation with any person or authority administering any activity in a special economic zone, designate a special economic zone or any part of a special economic zone as a CCA;

(ii) regulate the customs and excise administration of the CCA, including but not limited to the control of the movement of goods and persons into, within or from the CCA, goods produced or manufactured or consumed and any other activity therein to which this Act relates;

(iii) prescribe requirements in all respects to ensure the security of the CCA; and

(iv) provide for any other matter that may be necessary and useful for the effective and efficient administration of a CCA.

(*c*) Except as may be otherwise provided in any Schedule or rule, the provisions of this section regarding a CCA shall apply, with the necessary changes, to a CCA designated in terms of paragraph (*b*).

[Sub-s. (1A) inserted by s. 18 (1) (*b*) of Act No. 39 of 2013 with effect from the date on which the Special Economic Zones Act, 2014 (Act No. 16 of 2014), comes into operation: 9 February, 2016 (Proclamation No. R.6 in *Government Gazette* 39667 of 9 February, 2016).]

Wording of Sections

(2) Any reference in this section, any Schedule or any rule to **"regulations"** or **"regulation"** shall, unless otherwise specified, be a reference to the Industrial Development Zone Programme published by Government Notice No. R.1224 of 1 December 2000 and any amendment thereto.

[Sub-s. (2) substituted by s. 2 (*b*) of Act No. 10 of 2005 and by s. 18 (*b*) of Act No. 21 of 2006.]

Wording of Sections

(3) Where any provision of the Manufacturing Development Act, 1993, or any regulation made thereunder for the purpose of the IDZ is inconsistent or in conflict with any provision of this Act governing the administration of the CCA, including any matter relating to the liability or levying of duty or any rebate, refund or drawback of duty, the provisions of this Act shall prevail over the provision of the Manufacturing Development Act, 1993, or the regulations made thereunder.

(4) Notwithstanding anything to the contrary contained in this section or any other provision of this Act, goods to which subsection (7) relates shall, subject to any exception or adaptation prescribed in any Schedule or rule even if free of duty, be deemed to be goods liable to duty for the purposes of the application of any provision of this Act.

[Sub-s. (4) substituted by s. 112 (*a*) of Act No. 32 of 2004.]

Wording of Sections

(5) Any reference in this section to liability for duty or termination of liability for duty or in any Schedule or rule to which it relates shall, subject to any exemption or exception allowed in terms of the Value-Added Tax Act, 1991 (Act No. 89 of 1991), and notwithstanding anything to the contrary contained in that Act, be deemed to include a reference to the liability or termination of liability for value-added tax.

(6) A CCA shall be subject to such controls and procedures, as the Commissioner may prescribe by rule.

(7) Any goods to which this section or any other provision of this Act relates, whether or not such goods are free of duty, which are-

(*a*) brought into a CCA;

(*b*) produced or manufactured, stored, or moved for any purpose therein; or

(*c*) removed therefrom,

shall, except to the extent that this section, any Schedule or any rule may otherwise provide, be subject to the provisions of this Act and any procedure that may be prescribed in terms of such provisions.

(8) Any person, including, where relevant, a CCA enterprise or an IDZ operator, who for the purposes of any activity within a CCA-

(*a*) brings any goods to which this section or any other provision of this Act relates into or receives any such goods in the CCA, including any licensed or registered premises therein;

(*b*) produces or manufactures any goods therein;

(*c*) removes any goods therefrom; or

(*d*) otherwise deals with goods to which this section relates,

shall, except where any provision of this Act otherwise provides-

(i) be liable for the fulfilment of all obligations imposed in terms of this section or any other provision of this Act in respect of such goods;

(ii) in addition to any liability incurred by any other person in terms of the provisions of this Act, be liable for the duty on such goods.

(9) The liability for duty in respect of any goods to which this section relates of an IDZ operator or a CCA enterprise or such other person shall cease-

(*a*) if the IDZ operator or CCA enterprise or such other person proves that, as the case may be-

(i) the duty on the goods concerned has been paid;

(ii) the goods have been duly consumed or otherwise used in the manufacture or production of any goods by the CCA enterprise in accordance with any relevant provision of this Act;

[Sub-para. (ii) substituted by s. 18 (*c*) of Act No. 21 of 2006.]

Wording of Sections

(iii) the goods have been duly exported;

(iv) the goods have, where relevant, been removed and received in any other premises registered or licensed under the provisions of this Act; or

(v) any goods brought temporarily into the CCA are removed therefrom in accordance with the provisions of this Act and any conditions imposed by the Commissioner;

(*b*) where liability otherwise ceases in terms of any provision of this Act, including in terms of any provision of any Schedule or rule made for the purposes of this section;

(*c*) where the goods are abandoned or destroyed under the provisions of this Act.

(10) . . . . . .

[Sub-s. (10) deleted by s. 112 (*b*) of Act No. 32 of 2004.]

Wording of Sections

(10) Notwithstanding anything to the contrary contained in this Act or the Manufacturing Development Act, 1993 (Act No. 187 of 1993), or any regulation or any other law, the Minister may, at the request of the Minister of Trade and Industry, in respect of any goods produced or manufactured in or removed for home consumption or exported from or brought into or used in any activity in the CCA, by notice in the *Gazette*-

(*a*) in a schedule which shall be deemed to be incorporated in Schedule No. 1 as Part 9 thereof and to constitute an amendment of Schedule No. 1, specify the duty leviable on goods manufactured or produced in, or any other goods brought into a CCA on entry for home consumption;

(*b*) in any item in a separate Part of each of Schedule No. 3, 4, 5 or 6, as the case may be, which shall be deemed to be an amendment of such Schedule, provide for a rebate, refund or drawback of duty in respect of any goods brought into, produced or manufactured or used in or removed from a CCA, in the circumstances and for the purposes and on compliance with any conditions that may be specified in such Part or item.

[Sub-s. (10), previously sub-s. (11), renumbered by s. 112 (*c*) of Act No. 32 of 2004.]

Wording of Sections

(11) Any amendment contemplated in subsection (10) may be made with retrospective effect from such date as may be specified in such notice.

[Sub-s. (11), previously sub-s. (12), renumbered by s. 112 (*c*) of Act No. 32 of 2004 and substituted by s. 2 (*c*) of Act No. 10 of 2005.]

Wording of Sections

(12) Notwithstanding the provisions of sections 48 and 75 (15) any amendment to the said Part 9 or Schedule No. 3, 4, 5 or 6 shall unless otherwise specified in any amendment to any Schedule be made under the provisions of this section.

[Sub-s. (12), previously sub-s. (13), renumbered by s. 112 (*c*) of Act No. 32 of 2004.]

Wording of Sections

(13) The provisions of section 48 (6) shall apply *mutatis mutandis* to any amendment to which subsections (10), (11), and (12) relates.

[Sub-s. (13), previously sub-s. (14), renumbered by s. 112 (*c*) of Act No. 32 of 2004 and substituted by s. 2 (*d*) of Act No. 10 of 2005.]

Wording of Sections

(15) . . . . . .

[Sub-s. (15) deleted by s. 112 (*b*) of Act No. 32 of 2004.]

Wording of Sections

(16) . . . . . .

[Sub-s. (16) deleted by s. 112 (*b*) of Act No. 32 of 2004.]

Wording of Sections

(14) The Commissioner may make rules-

(*a*) to designate a CCA;

(*b*) to ensure the security and control of a CCA;

(*c*) to regulate the customs and excise administration of the CCA in connection with goods received or removed or manufactured or produced or consumed or any other activity to which this section or any other provisions of this Act relates;

(*d*) notwithstanding anything contained to the contrary in this section or any other provision of this Act, requiring that-

(i) any person who participates in any activity within or having access to a CCA must be licensed or registered in terms of this Act;

(ii) any premises or area in the CCA used for any activity specified in such rule must be licensed as a customs and excise warehouse;

(*e*) to prescribe after consultation with the Director-General: Trade and Industry conditions and procedures regulating the activities and registration or licensing in respect of any enterprise or any other person partaking in any activity in, or having access to a CCA;

(*f*) after consultation with the Director-General: Trade and Industry in addition to or in substitution of any power, duty or function relating to the South African Revenue Service or any officer thereof or any procedure or process prescribed in the regulations;

(*g*) after consultation with the Director-General: Trade and Industry regarding duties or functions of the IDZ operator or a CCA enterprise;

(*h*) in respect of all matters which are required or permitted in terms of this section to be prescribed by rule;

(*i*) regarding any other matter which may be necessary and useful for the purpose of the effective and efficient administration of a CCA.

[Sub-s. (14), previously sub-s. (17), renumbered by s. 112 (*c*) of Act No. 32 of 2004.]

Wording of Sections

(15) (*a*) The Commissioner may refuse any application for a licence or registration required in terms of this section or cancel or suspend any such licence or registration.

(*b*) The provisions of sections 59A (2) or 60 (2), as the case may be, shall apply *mutatis mutandis* for the purposes of paragraph (*a*).

[Sub-s. (15), previously sub-s. (18), renumbered by s. 112 (*c*) of Act No. 32 of 2004.]

Wording of Sections

(16) Any person who, in connection with any activity to which this section relates-

(*a*) makes any false statement or makes use of any declaration or document containing such statement; or

(*b*) contravenes or fails to comply with any provision of this section or any other provision of the Act,

shall be guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding 5 years, or to both such fine and such imprisonment and the goods in respect of which the offence was committed shall be liable to forfeiture in accordance with this Act.

[Sub-s. (16), previously sub-s. (19), renumbered by s. 112 (*c*) of Act No. 32 of 2004. S. 21A inserted by s. 121 (1) of Act No. 60 of 2001 and amended by s. 18 (1) (*a*) of Act No. 39 of 2013.]

Wording of Sections

(Editorial Note: S. 21A is amended by s. 112 of Act No. 32 of 2004. The intention of the Legislature was that these amendments to s. 21A be effected in s. 121 (1) of Act No. 60 of 2001 before s. 21A was inserted into the Customs and Excise Act, No. 91 of 1964.)

22. Samples of goods in a customs and excise warehouse.-The Controller may, in accordance with the rules, permit samples of goods in a customs and excise warehouse to be taken by the owner of such goods and may permit payment of duty thereon to be deferred until the goods from which such samples have been taken are entered for delivery from that warehouse for any purpose.

23. Storage or manufacture of prohibited goods.-The Commissioner may allow the storage or manufacture in a customs and excise warehouse of goods the importation, manufacture or disposal of which is prohibited or restricted under any law, provided such goods are stored or manufactured in such warehouse for export or supply as stores for foreign-going ships or aircraft only.

24. Ships' or aircraft stores consumed in the Republic.-If any goods shipped as stores for any foreign-going ship or aircraft from a customs and excise warehouse under the provisions of section 20 (4) or any goods shipped as stores for such ship or aircraft outside the Republic (except any such goods which are used for the operation of such ship and are, save as provided in the rules, not for consumption by or for sale or disposal to the master or

members of the crew or passengers of or visitors to such ship) are consumed, sold or disposed of on such ship in any port in the Republic or on such aircraft at any place in the Republic when the aircraft is not airborne or on such aircraft on a flight between any places in the Republic, the master of such ship or the pilot of such aircraft, as the case may be, shall be liable for the duty on such goods so consumed, sold or disposed of and shall, upon demand by the Controller forthwith pay the duty due on such goods: Provided that the Commissioner may by rule exempt any class or kind of stores or ship or aircraft or any stores or ship or aircraft to which circumstances specified in such rule apply from any provision of this section.

[S. 24 substituted by s. 5 of Act No. 95 of 1965 and amended by s. 15 of Act No. 45 of 1995.]

Wording of Sections

25. Sorting, packing, etc., in customs and excise storage warehouses.-Subject to the provisions of this Act, the Controller may permit the licensee of a customs and excise storage warehouse or the owner of any goods in such warehouse to sort, separate, pack or repack any goods in such warehouse and to make such alterations therein or such arrangements as may be necessary for the preservation of those goods or for the sale, exportation or other lawful disposal thereof.

[S. 25 substituted by s. 6 of Act No. 95 of 1965 and by s. 16 of Act No. 45 of 1995.]

Wording of Sections

26. Transfer of ownership or pledging or hypothecation of warehoused goods.-(1) Except with the prior permission of the Commissioner and subject to such conditions as may be prescribed by rule-

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

(i) his ownership of such goods is transferred to any other person;

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

(*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.

[Sub-s. (1) amended by s. 17 of Act No. 45 of 1995.]

Wording of Sections

(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.

[S. 26 substituted by s. 1 of Act No. 89 of 1983.]

Wording of Sections

27. Special provisions in respect of customs and excise manufacturing warehouses.-(1) Subject to the provisions of this Act, goods liable to excise 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 may with the permission of the Commissioner be manufactured in a special customs and excise warehouse licensed under this Act.

[Sub-s. (1) substituted by s. 10 (*a*) of Act No. 105 of 1969, amended by s. 7 (*a*) of Act No. 84 of 1987 and substituted by s. 15 (*a*) of Act No. 59 of 1990.]

Wording of Sections

(2) Subject to the provisions of this Act, the Commissioner may, on such conditions as he may impose, permit the manufacture under the provisions of this Chapter of any goods in any customs and excise manufacturing warehouse if any of the goods used in such manufacture are liable to duty or if the goods so manufactured are dutiable.

(3) Any dutiable goods brought into and intended for use in a customs and excise manufacturing warehouse in the manufacture of goods liable to excise duty or fuel levy shall be entered for home consumption and any duty due thereon shall be paid prior to such use.

[Sub-s. (3) substituted by s. 10 (*b*) of Act No. 105 of 1969, by s. 7 (*b*) of Act No. 84 of 1987 and by s. 15 (*b*) of Act No. 59 of 1990.]

Wording of Sections

(4) No manufacturing of goods shall take place in a customs and excise manufacturing warehouse until all premises and plant intended for use in connection with such manufacturing and the purpose for which they are to

be used have been approved by and registered with the Commissioner.

(5) . . . . . .

[Sub-s. (5) deleted by s. 18 (*a*) of Act No. 45 of 1995.]

Wording of Sections

(6) All operations in customs and excise manufacturing warehouses are subject to the right of supervision by officers.

(7) (*a*) Every licensee of a customs and excise manufacturing warehouse shall, if required by the Commissioner, provide suitable office accommodation and board and lodging for any officer stationed at or visiting such warehouse for the purposes of this Act.

[Para. (*a*) substituted by s. 18 (*b*) of Act No. 45 of 1995.]

Wording of Sections

(*b*) A person so providing board and lodging for an officer shall be entitled to fair remuneration therefor.

(8) . . . . . .

[Sub-s. (8) deleted by s. 18 (*c*) of Act No. 45 of 1995.]

Wording of Sections

(9) No licensee shall, without the written permission of the Controller in a customs and excise manufacturing warehouse, carry on any business except that for which the warehouse is licensed and the premises and plant are registered.

[Sub-s. (9) substituted by s. 18 (*d*) of Act No. 45 of 1995.]

Wording of Sections

(10) No person shall, except with the written permission of the Controller-

(*a*) use any premises or plant required to be registered in terms of the provisions of this Chapter for any purpose other than that detailed in such registration;

(*b*) effect any alteration to any structure on such premises or to any such plant;

(*c*) bring into or have in such premises, any plant other than that detailed in such registration or remove any plant from such premises;

(*d*) place below the surface of the ground any pipe or tube for conveying any material or product in a warehouse unless such pipe or tube is enclosed in casing capable of being easily opened so that the pipe or tube is exposed to view.

[Sub-s. (10) amended by s. 18 (*e*) of Act No. 45 of 1995.]

Wording of Sections

(11) The Commissioner may by rule prescribe the days on which and the hours during which all or any of the operations in a customs and excise manufacturing warehouse (including the removal of goods) shall be carried out.

(12) No distilling operation shall be commenced until the whole or any part of the distilling system or plant, as the Commissioner may require, has been provided, at the expense of the licensee, with fittings and requirements to permit of the insertion or affixing of customs and excise meters, gauges, rods, locks and seals according to the rules for the purpose of securing such system or plant, and until such system or plant has been duly secured by the Controller.

[Sub-s. (12) substituted by s. 18 (*f*) of Act No. 45 of 1995.]

Wording of Sections

(13) If any meter, rod, lock or fitting is tampered with or damaged, or if any pipe, cock, fastening or fitting connected with a still or vessel is pierced or damaged, the licensee shall forthwith repair or renew the article in question or an officer may effect the repair or renewal at the expense of the licensee.

[Sub-s. (13) substituted by s. 18 (*f*) of Act No. 45 of 1995.]

Wording of Sections

(14) If any such tampering, damage or piercing has been directly or indirectly caused by the wilful act, or by the neglect or with the connivance of the licensee or his employee, such licensee, in addition to liability for the cost of the repair or renewal, shall be guilty of an offence.

(15) The burden of showing that any such tampering, damage or piercing was not caused as aforesaid shall rest upon the licensee.

(16) The Commissioner may, subject to such conditions as he may impose, exempt the manufacture of any class or kind of goods from any provision of this section.

[Sub-s. (16) added by s. 10 (*c*) of Act No. 105 of 1969.]

28. Ascertaining quantity of spirits by measuring the mass or volume.-(1) The quantity of spirits in any container may be calculated by measuring the mass or volume.

(2) The quantity must be calculated and may be adjusted by a tolerance of 0,25% in accordance with such procedures as may be prescribed by rule and the quantity so calculated and so adjusted shall be deemed to be the true quantity of such spirits for the purposes of this Act.

[S. 28 substituted by s. 1 of Act No. 103 of 1972. Sub-s. (2) substituted by s. 19 of Act No. 45 of 1995 and by s. 89 of Act No. 31 of 2005.]

Wording of Sections

29. Classification of spirits.-No spirits distilled in the Republic shall, for the purposes of this Act, be classed as being spirits of the product of the vine until such spirits have been so certified by the Controller, and any spirits not so certified shall be deemed to be spirits other than of the product of the vine.

30. Control of the use of spirits for certain purposes.-(1) No person shall use spirits, distilled from the product of the vine, in the manufacture of alcoholic beverages unless such spirits have been certified by the Wine and Spirit Board to be suitable for use as aforesaid: Provided that if the Board declines to certify any spirits as suitable for such use as aforesaid, the manufacturer may redistil such spirits or treat the same by any method approved by the Board, and thereafter the Board may certify the spirits as suitable for use in the manufacture of alcoholic beverages.

[Sub-s. (1) amended by s. 32 of Act No. 60 of 1989 and by s. 20 of Act No. 45 of 1995.]

Wording of Sections

(2) The blending of brandy in terms of section 9 (1) (*b*) of the Wine and Spirits Control Act, 1970 (Act No. 47 of 1970), and the production from spirits of any other beverage or any other non-excisable goods shall be subject to such supervision by an officer as the Commissioner may in each case consider necessary.

[Sub-s. (2) substituted by s. 2 of Act No. 86 of 1982.]

Wording of Sections

(3) The provisions of subsection (1) shall not apply to an agricultural distiller or a wine-grower who manufactures alcoholic beverages under the provisions of this Act for his private use.

31. . . . . . .

[S. 31 amended by s. 7 of Act No. 95 of 1965 and by s. 4 of Act No. 57 of 1966 and repealed by s. 19 of Act No. 21 of 2006.]

Wording of Sections

32. Ascertaining the strength of spirits for duty purposes.-The strength of any spirits or spirituous preparations shall, for duty purposes, be ascertained in the manner prescribed by the Commissioner.

[S. 32 amended by s. 2 of Act No. 103 of 1972 and substituted by s. 1 of Act No. 7 of 1974 and by s. 5 of Act No. 98 of 1980.]

Wording of Sections

33. Requirements in respect of stills.-Subject to the provisions of section 63, no person shall distil spirits in a still which does not comply with the requirements prescribed by rule as to use, capacity or construction: Provided that the Commissioner may by rule exempt any person or still from all or any of the provisions of this section.

[S. 33 substituted by s. 21 of Act No. 45 of 1995.]

Wording of Sections

34. Special provisions regarding spirits manufactured by agricultural distillers.-(1) The manufacture of spirits by an agricultural distiller shall be subject to such supervision by an officer as the Controller may in each case consider necessary.

Sub-s. (1) substituted by s. 22 of Act No. 45 of 1995.]

Wording of Sections

(2) An allowance may be made by the Controller for natural waste and evaporation on all spirits of his own distillation stored by an agricultural distiller on his farm, to the extent specified in Schedule No. 6, if no part of such loss was wilfully or negligently caused.

Sub-s. (2) substituted by s. 22 of Act No. 45 of 1995.]

Wording of Sections

(3) No agricultural distiller shall use his still for distilling spirits from any material other than produce grown on the farm of which he is the owner or occupier and which is of a kind prescribed by rule in respect of the class of agricultural distiller to which he belongs.

Sub-s. (3) substituted by s. 22 of Act No. 45 of 1995.]

Wording of Sections

(4) Subject to the provisions of this Act and the Liquor Act 1989 (Act No. 27 of 1989), the provisions of section 20 (4) of this Act shall *mutatis mutandis* apply in respect of spirits manufactured from grapes by any class of agricultural distiller specified by the Commissioner by rule, and for the purpose of such application any reference in the said subsection to a customs and excise warehouse shall be deemed to be a reference to the farm on which such spirits are manufactured.

[Sub-s. (4) substituted by s. 3 of Act No. 86 of 1982 and by s. 22 of Act No. 45 of 1995]

Wording of Sections

(5) Spirits manufactured by an agricultural distiller in the Republic from any prescribed fruit shall be solely for his private use on the farm where such fruit was produced and such spirits were manufactured.

[Sub-s. (5) substituted by s. 2 of Act No. 19 of 1994 and by s. 60 of Act No. 30 of 1998.]

Wording of Sections

(6) Notwithstanding the provisions of subsection (5), the Commissioner may allow spirits so manufactured to be used or disposed of in such circumstances and at such places as he may deem fit and subject to such conditions as he may impose in each case.

[Sub-s. (6) added by s. 1 of Act No. 69 of 1988.]

35. Special provisions regarding wine.-(1) (*a*) The Commissioner may, subject to such conditions as he may impose in each case, license the premises of a wine-grower, wine-growers' co-operative agricultural society, the Deciduous Fruit Board or a person who holds a licence under any law to deal in wine in wholesale quantities, as a special customs and excise warehouse for the purpose of manufacturing wine.

(*b*) Special warehouses licensed under this subsection shall, for the purposes of this Chapter be deemed to be customs and excise manufacturing warehouses.

(2) . . . . . .

[Sub-s. (2) substituted by s. 3 of Act No. 103 of 1972 and deleted by s. 23 of Act No. 45 of 1995.]

Wording of Sections

35A. Special provisions regarding cigarettes and cigarette tobacco.-(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.

[Sub-s. (1) substituted by s. 24 of Act No. 45 of 1995 and by s. 135 of Act No. 45 of 2003.]

Wording of Sections

(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.

[Sub-s. (2) substituted by s. 135 of Act No. 45 of 2003.]

Wording of Sections

(3) No cigarettes or cigarette tobacco shall be sold or disposed of or removed from the customs and excise manufacturing warehouse in question in partly or completely manufactured condition except in accordance with the provisions of this Act.

(4) No person shall-

(*a*) counterfeit or make any facsimile of any die or impression stamp determined under subsection (2);

(*b*) be in possession of, use or offer for sale or for use-

(i) any die or impression stamp counterfeited in contravention of paragraph (*a*); or

(ii) any facsimile of any die or impression stamp made in contravention of that paragraph.

[S. 35A inserted by s. 5 of Act No. 112 of 1977.]

36. Specific provisions regarding beer.-(1) For the purposes of this section, **"beer"** means beer made from malt classified under the specified in tariff item 104.10 of Part 2 of Schedule No. 1.

[Sub-s. (1) substituted by s. 49 (*a*) of Act No. 53 of 1999.]

Wording of Sections

(2) (*a*) Every manufacturer shall, in respect of beer manufactured by the manufacturer in the Republic, register with the Commissioner the brand names whereunder such beer will be sold or disposed of for home consumption, together with the alcoholic strength by volume and the quantity which will be indicated on each container size of the beer so sold or disposed of under any such name, and no beer shall be so sold or disposed of unless so registered.

(*b*) (i) The provisions of paragraph (*a*) shall apply *mutatis mutandis* if any of such registered particulars should change.

(ii) Any such change shall be registered within the time prescribed by rule.

(*c*) Where beer is subject to further fermentation after being packaged, the alcoholic strength by volume to be registered and indicated on the container shall be the strength which the beer is reasonably expected to have when consumed.

(*d*) No brew of beer shall be packaged for home consumption if the alcoholic strength by volume thereof exceeds such registered strength after deduction of any tolerance prescribed by rule.

(*e*) If beer in bulk is removed in bond from a customs and excise manufacturing warehouse the alcoholic strength by volume shall be tested before removal and recorded on all documents of removal and reflected in the records required to be kept in terms of the rules.

[Sub-s. (2) substituted by s. 2 (*a*) of Act No. 44 of 1996 and by s. 49 (*a*) of Act No. 53 of 1999.]

Wording of Sections

(3) No beer shall be sold or disposed of by any manufacturer for home consumption except in a container which indicates the brand name, the alcoholic strength by volume and quantity of such beer, and any invoice or other document relating to such sale or disposal of such beer shall indicate the registered brand name thereof.

[Sub-s. (3) substituted by s. 49 (*a*) of Act No. 53 of 1999.]

Wording of Sections

(4) Any description on any container of beer bearing an indication of a brand name, alcoholic strength by volume and quantity registered with the Commissioner shall be deemed to be a declaration for the purpose of assessment of duty.

[Sub-s. (4) substituted by s. 49 (*a*) of Act No. 53 of 1999.]

Wording of Sections

(5) The Commissioner may exempt beer of any class or kind from any or all of the provisions of subsections (2) and (3).

(6) (*a*) If the actual alcoholic strength by volume of any beer in any container not intended for export as contemplated in subsection (9), bearing an indication of a name and alcoholic strength by volume registered with the Commissioner under this section is ascertained, after deduction of any tolerance prescribed by rule, to be higher than the alcoholic strength by volume registered in relation to beer of such name the manufacturer shall be liable for the duty on the full quantity of the brew or blend of brews of beer from which such container was filled according to the actual strength as ascertained in respect of the contents of such container.

[Para. (*a*) substituted by s. 2 (*b*) of Act No. 44 of 1996 and by s. 49 (*b*) of Act No. 53 of 1999.]

(*b*) If the Commissioner is unable to establish such full quantity from the records of the manufacturer he may determine a quantity which shall be deemed to be such full quantity.

(*c*) Any beer of any brew or blend of brews of beer referred to in paragraph (*a*) and not delivered from the stocks of such manufacturer shall be liable to forfeiture.

(7) (*a*) Every manufacturer shall-

(i) test the alcoholic strength by volume of each brew using a method approved by the Commissioner and record the results of each test as prescribed by rule;

(ii) keep a record of the actual quantity of beer in each container size packaged for sale or disposal for home consumption.

(*b*) (i) Where the average of the test results for any registered brand name over any two successive periods of three months show that the average alcoholic strength by volume, although within any tolerance prescribed by rule, exceeds the registered strength after deduction of any average allowance as may be prescribed by rule, duty shall, if the Commissioner so determines, be payable in respect of such excess strength on all the beer accounted for during such periods.

(ii) Payment of such duty shall be shown separately on, and included with, the first account presented to the Controller after the end of such period.

(iii) Where the average alcoholic strength by volume so exceeds the registered strength, the manufacturer shall change the registration within the time prescribed by rule.

(*c*) (i) Where the actual total quantity of beer of each container size sold or disposed of for home consumption during any period of three months exceeds the calculated total quantity, according to the registration for such container size, and after deduction of any average allowance as may be prescribed by rule, duty shall be payable on the excess quantity.

(ii) Such excess quantity shall be shown separately on, and payment of duty thereon included with, the first account presented to the Controller after the end of such period.

(*d*) A manufacturer shall not be entitled to any refund of duty if the alcoholic strength referred to in paragraph (*b*) or the quantity referred to in paragraph (*c*) is less than the registered strength or quantity, as the case may be.

[Sub-s. (7) added by s. 49 (*c*) of Act No. 53 of 1999.]

(8) (*a*) An officer may take samples of any beer at any time and send such samples for analysis to a person designated under paragraph (*b*).

(*b*) The Commissioner may designate any person to analyse such samples.

[Sub-s. (8) added by s. 49 (*c*) of Act No. 53 of 1999.]

(9) Any beer intended for export shall only be exported in containers with a distinguishing mark approved by the Commissioner.

[Sub-s. (9) added by s. 49 (*c*) of Act No. 53 of 1999.]

(10) The Commissioner may be rule prescribe the following in relation to beer:

(*a*) The manner in which alcoholic strength by volume and quantity are determined for the purposes of registration;

(*b*) the tolerance allowable on registered alcoholic strength by volume;

(*c*) the average allowances for the purposes of subsection (7) (*b*) (i) and (*c*) (i);

(*d*) records to be kept and reports to be furnished of ingredients used, production, test results of the alcoholic strength by volume of brews, quantities manufactured and put in containers, losses and beer returned;

(*e*) the procedure or method for the taking of samples by an officer; the method of analysis of such sample; the form for reporting on the analysis of such sample by a designated person; the results of such analysis; and any other particulars as may be required on such form;

(*f*) the time and circumstances within which any change of the alcoholic strength by volume or quantity is required to be registered;

(*g*) any other reasonable measure for controlling the manufacturing processes or the removal of beer for home consumption or export.

[S. 36 amended by s. 4 of Act No. 103 of 1972 and by s. 6 of Act No. 98 of 1980 and substituted by s. 25 of Act No. 45 of 1995. Sub-s. (10) added by s. 49 (*c*) of Act No. 53 of 1999.]

Wording of Sections

36A. 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.-(1) Every manufacturer of excisable goods specified in Section B of Part 2 of Schedule No. 1, and every owner of 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, shall license his premises as a special customs and excise warehouse 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 or owner shall manufacture or deal in or with excisable goods specified in Section B of Part 2 of Schedule No. 1 unless he has so licensed his premises.

[Sub-s. (1) substituted by s. 2 of Act No. 98 of 1993 and amended by s. 26 (*a*) of Act No. 45 of 1995.]

Wording of Sections

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

(*a*) where the value added by any process in the manufacture of 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 excisable goods specified in Section B of Part 2 of Schedule No. 1 presents in his opinion exceptional difficulties in the collection of 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 determine, and the processes which shall be deemed to be included for the purposes of calculating the value 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;

[Para. (*a*) substituted by s. 26 (*b*) of Act No. 45 of 1995.]

Wording of Sections

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

(i) where the production and disposal of any 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 premises of two or more persons concerned, and thereupon each such person shall be jointly and severally liable for the excise duty specified in Section B of Part 2 of Schedule No. 1 on all the 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*;

(ii) include in a special customs and excise warehouse licence issued under this Act in respect of the premises of any manufacturer of 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 excise duty specified in Section B of Part 2 of Schedule No. 1 on such goods so stored;

(iii) in such circumstances as he may deem expedient, license the premises of any dealer in 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 excise duty specified in Section B of Part 2 of Schedule No. 1 on such excisable goods specified in Section B of Part 2 of Schedule No. 1 as the Commissioner may determine, and be liable for the excise duty specified in Section B of Part 2 of Schedule No. 1 on such goods;

(iv) make such temporary or permanent adjustment to the 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.

(3) Excisable goods specified in Section B of Part 2 of Schedule No. 1 manufactured in the Republic by any 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 excise duty specified in Section B of Part 2 of Schedule No. 1 thereon.

[Sub-s. (3) substituted by s. 26 (*c*) of Act No. 45 of 1995.]

Wording of Sections

(4) Excisable goods specified in Section B of Part 2 of Schedule No. 1 manufactured in the Republic by any person for sale or disposal and in the circumstances which in the opinion of the Commissioner constitute a business

venture, or any class or kind of such goods, may, subject to such conditions as he may impose by rule, be exempted by the Commissioner from the payment of excise duty specified in Section B of Part 2 of Schedule No. 1 thereon if-

(*a*) the average value 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 Commissioner may prescribe by rule, not exceeded such amount as he may so prescribe; or

(*b*) the value 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

(*c*) such circumstances as may be prescribed by rule apply.

[S. 36A inserted by s. 11 of Act No. 105 of 1969, substituted by s. 4 of Act No. 52 of 1986, amended by s. 2 (1) of Act No. 69 of 1988 and substituted by s. 16 of Act No. 59 of 1990. Sub-s. (4) substituted by s. 26 (*c*) of Act No. 45 of 1995.

Wording of Sections

37. Duties applicable to goods manufactured in a customs and excise warehouse.-(1) In respect of any goods manufactured in a customs and excise warehouse there shall be paid, subject to the provisions of section *seventy-five*, on entry for home consumption thereof, duty at the undermentioned rates, namely-

(*a*) if such manufactured goods are not liable to excise duty, the customs rate of duty applicable in terms of Schedules Nos. 1 and 2 on any imported goods used in the manufacture of such manufactured goods and the excise rate of duty applicable in terms of Schedule No. 1 on any excisable goods used in the manufacture of such manufactured goods; and

(*b*) if such manufactured goods are liable to excise duty, the excise rate of duty applicable in terms of Schedule No. 1 on such manufactured goods.

(2) Notwithstanding the provisions of subsection (1), but subject to the provisions of subsection (4), the Commissioner may, on such conditions as he may in each case impose, for the purpose of preserving any goods in a customs and excise storage warehouse or of reconditioning such goods which, as a result of contamination or deterioration or for any other reason, have become unsaleable or not readily saleable or for the purpose of fulfilling special orders, permit such goods, excluding any marked goods referred to in section 37A, to be reconditioned or to be mixed or blended in such warehouse with other goods, and in that event duty shall be paid, in lieu of the duties prescribed in subsection (1), according to the first account taken of any such goods or the total quantity of such reconditioned, mixed or blended goods, whichever quantity is the greater, as follows, namely-

(*a*) if such reconditioned, mixed or blended goods are not liable to excise duty, at the customs rate of duty applicable in terms of Schedules Nos. 1 and 2, on any imported goods contained in such reconditioned, mixed or blended goods, and at the excise rate of duty applicable in terms of Schedule No. 1, on any excisable goods contained in such reconditioned, mixed or blended goods; and

(*b*) if such reconditioned, mixed or blended goods are liable to excise duty, at the excise rate of duty applicable in terms of Schedule No. 1, on the total quantity of such reconditioned, mixed or blended goods, and, in addition thereto, duty in an amount equal to the amount by which the customs duty at the rate applicable in terms of Schedules Nos. 1 and 2, on any imported goods contained in such reconditioned, mixed or blended goods, exceeds the excise duty at the rate applicable in terms of this paragraph on such proportion of such reconditioned, mixed or blended goods as is represented by such imported goods contained therein:

Provided that such reconditioned, mixed or blended goods shall, in either case, qualify for any rebate of duty specified in respect of such goods in any applicable item of Schedule No. 3, 4 or 6.

[Sub-s. (2) amended by s. 8 (1) (*a*) of Act No. 84 of 1987 and by s. 61 (*a*) of Act No. 30 of 1998.]

Wording of Sections

(3) Where the Commissioner has permitted any goods to be reconditioned or to be mixed or blended in a customs and excise storage warehouse with other goods, such warehouse shall, without being licensed as a customs and excise manufacturing warehouse and without approval of the premises or plant thereon, be regarded for the purposes of this Act as a licensed customs and excise manufacturing warehouse: Provided that no rebate for any loss or deficiency in respect of petrol and any distillate fuel so reconditioned, mixed or blended exceeding the rebate specified in section 75 (18) (*d*) and (*f*), respectively, shall be allowed on such goods.

[Sub-s. (3) amended by s. 8 (1) (*b*) of Act No. 84 of 1987.]

Wording of Sections

(4) (*a*) Notwithstanding anything to the contrary in this Chapter contained, the Commissioner may, on such conditions as he may in each case impose, permit the mixing or blending in such circumstances and at such place as he may specify of any mineral oil products, including fuel levy goods, but excluding any marked goods referred to in section 37A, with one another or with other goods whether or not such products or goods are in a customs and

excise warehouse or have been entered for home consumption and have passed out of customs and excise control for any purpose, including that of rendering such goods saleable or more readily saleable or of fulfilling special orders.

[Para. (*a*) substituted by s. 8 (1) (*c*) of Act No. 84 of 1987 and by s. 61 (*b*) of Act No. 30 of 1998.]

Wording of Sections

(*b*) The provisions of subsection (2) in so far as they relate to the duty payable and the rebate of duty shall *mutatis mutandis* apply in respect of mineral oil products mixed or blended under this subsection.

(*c*) Any duty paid in respect of any goods so used for mixing or blending shall be deemed to have been paid in respect of any duty payable in accordance with the provisions of paragraph (*b*) in respect of the mineral oil products obtained by such mixing or blending.

(*d*) Nothing in this section contained shall be construed as authorizing a refund of any amount by which any duty already paid or assessed in respect of any goods so used for mixing or blending exceeds the duty payable under this subsection.

(*e*) Any such mineral oil product used in such mixing or blending shall be deemed to consist entirely of imported goods unless it is proved that it consists entirely of excisable goods or it is proved that it contains such a small proportion of imported goods that the Commissioner considers it negligible, in which event such mineral oil product shall be deemed to consist entirely of excisable goods.

[Para. (*e*) substituted by s. 27 (*a*) of Act No. 45 of 1995.]

Wording of Sections

(5) . . . . . .

[Sub-s. (5) deleted by s. 8 (1) (*d*) of Act No. 84 of 1987.]

Wording of Sections

(6) If any goods to which this Act relates have become mixed by an act or omission which by the exercise of reasonable care could not have been avoided, the Commissioner may apply the provisions of subsection (2), in so far as that subsection relates to the duty payable and any rebate of duty, as if such goods were mixed in a customs and excise storage warehouse with his permission.

[Sub-s. (6) substituted by s. 7 of Act No. 98 of 1980 and by s. 27 (*b*) of Act No. 45 of 1995.]

Wording of Sections

(7) Notwithstanding anything to the contrary in this Act contained, the Commissioner may, subject to such conditions as he may in each case impose, regard the mixing of mineral oil products of different classes or kinds as a result of transport by pipeline (except a pipeline used in connection with the loading or discharge of ships or vehicles) or the mixing of imported and locally manufactured mineral oil products of the same class or kind in the ordinary course of transport or storage or distribution in the Republic as not constituting manufacture of a new product, provided the quantities of the constituent products entered before they became so mixed are separately accounted for.

[Sub-s. (7) added by s. 8 of Act No. 95 of 1965 and substituted by s. 27 (*b*) of Act No. 45 of 1995.]

Wording of Sections

(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, surcharge or fuel levy at the rate applicable in terms of Schedule No. 1 on any 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 surcharge or fuel levy in terms of the said Schedule.

[Sub-s. (8) added by s. 12 of Act No. 105 of 1969 and substituted by s. 8 (1) (*e*) of Act No. 84 of 1987 and by s. 17 of Act No. 59 of 1990.]

Wording of Sections

(9) No person shall recondition, mix or blend any fuel levy goods otherwise than in terms of the provisions of this section.

[Sub-s. (9) added by s. 8 (1) (*f*) of Act No. 84 of 1987.]

37A. Special provisions in respect of marked goods and certain goods that are free of duty.-(1) (*a*) Notwithstanding anything to the contrary in this Act contained, where-

(i) any goods are classified under and specified in any heading or subheading of Chapter 27 of Part 1 of Schedule No. 1;

(ii) such goods are also classified under and specified in any item of Part 2 and Part 5 of Schedule No. 1;

(iii) such heading or subheading has been expressly quoted in any such item; and

(iv) a free rate of duty is prescribed in respect of each such heading or subheading and such item,

such goods shall, as may be prescribed by rule, on importation into or manufacture in the Republic or on being marked, be accounted for in any customs and excise warehouse licensed in terms of this Act.

(*b*) For the purposes of this section the Commissioner may, on such conditions as he may impose in each case in order to ensure the proper control over the storage, marking and removal of the goods contemplated in paragraph (*a*), approve any such warehouse and any licensee or class of licensee of such warehouse;

(*c*) Unless so approved by the Commissioner, no person shall deal with any such goods in any manner contemplated in paragraph (*b*).

(2) (*a*) If any goods are described in any heading or subheading or item referred to in subsection (1) (*a*) as marked, the unmarked goods concerned shall be marked by the approved licensee in the approved warehouse by the addition of such marker, in such proportion which is equal to or exceeds, and in accordance with such procedure and control measures, as may in each case be prescribed by rule.

(*b*) Any goods contemplated in subsection (1) shall each be stored separately from all other goods and shall be subject *mutatis mutandis* to the provisions of this Act relating to dutiable goods stored in and removed from a customs and excise warehouse, as may be prescribed by rule.

(*c*) (i) Subject to the provisions of subparagraph (iii), any reference to "marked goods" or "marker" in this or any other section or any heading or subheading of Chapter 27 of Part 1 or in any item of Part 2 or Part 5 of Schedule No. 1 or in any note to such Chapter or Part or in any rule, shall be deemed to be a reference to unmarked goods referred to in subparagraph (ii) which have been marked and the marker which is required to be added as contemplated in paragraph (*a*);

(ii) Any reference to "unmarked goods" in this or any other section or in any heading or subheading of Chapter 27 of Part 1 or in any item of Part 2 or Part 5 of Schedule No. 1 or in any note to such Chapter or Part or in any rule, shall be deemed to be a reference to goods which, except for the reference to marked, are of the same description as marked goods and are specified as unmarked goods of such description in any such heading, subheading or item;

(iii) Whenever it is necessary for the purpose of establishing any contravention of any provision of this section, any goods shall be deemed to contain marked goods when such goods contain a proportion of the marker equal to or exceeding that as may be prescribed by rule.

(*d*) Such addition of a marker shall be deemed not to constitute mixing or blending for the purposes of-

(i) section 37; or

(ii) the classification of any goods under any heading, subheading or item of Schedule No. 1, except as provided in this section.

(*e*) The application of the free rate of duty specified in any heading or subheading of Chapter 27 of Part 1 or in any item of Part 2 and Part 5 of Schedule No. 1 in respect of any goods described as marked goods, shall be subject to the provisions of this section.

(3) (*a*) Any person who sells or disposes of in any manner, whether or not for any consideration, any marked goods at any one time in excess of the quantity prescribed by rule, shall issue an invoice to the purchaser, or to any other person to whom the goods are so disposed of, containing such particulars as may be prescribed by rule.

(*b*) Any person who so sells or disposes of marked goods shall keep a copy of such invoice and any person to whom such invoice is issued shall keep such invoice for such period as may be prescribed by rule.

(*c*) Any person referred to in paragraph (*a*) and any other person who is at any time in possession of or has under his control any marked goods in excess of the quantity prescribed by rule, shall complete and keep such books, accounts and other documents in such form, reflecting such particulars and for such period and shall comply with any such other requirements, as may be prescribed by rule.

(*d*) The provisions of paragraph (*a*) shall not apply to stock loan transactions between approved licensees of customs and excise warehouses.

(4) (*a*) No person shall-

(i) mix any marked goods in any proportion with distillate fuel or petrol;

(ii) mix any marked goods in any proportion with any lubricity agent for use as fuel in any engine;

(iii) mix any marked goods in any proportion with any lubricity agent, or be in possession of any marked goods mixed in any proportion with any lubricity agent, or be in possession of marked goods for mixing with any lubricity agent in any circumstances or for any purpose, otherwise than in accordance with this section and the rules;

(iv) use any marked goods, whether or not mixed with any other goods in any proportion, as fuel in any

engine;

(v) sell or dispose of in any manner whether or not for any consideration or acquire any marked goods or any marked goods mixed with any lubricity agent, for use as fuel in any engine;

(vi) be in possession of or sell any marked goods mixed in any proportion with distillate fuel or petrol;

[Sub-para. (vi) substituted by s. 122 (1) (*a*) of Act No. 60 of 2001.]

Wording of Sections

(vii) be in possession of any marked goods or marked goods mixed in any proportion with any lubricity agent for use as fuel in any engine;

(viii) remove or neutralise or attempt to remove or neutralise any marker in any marked goods;

(ix) add any substance to any marked goods which can prevent or impede the detection of the marker;

(x) be in possession of any marked goods or sell or dispose of in any manner whether or not for any consideration or acquire any marked goods in which is present any substance which or the colour of which can prevent or impede the detection of the marker;

(xi) mix any unmarked goods with any marked goods; or

(xii) unless approved by, and subject to such conditions as may be imposed by, the Commissioner, import any goods containing the marker.

(*b*) Any person who so mixes or uses or sells or disposes or acquires or possesses any marked goods or so adds any substance to any marked goods or so removes or neutralises or attempts to remove or to neutralise any marker or any person to whom any invoice referred to in subsection (3) (*a*) has been issued in respect of the marked goods concerned, shall, in addition to any other liability incurred in terms of this Act, be liable, as the Commissioner may determine, for the payment of an amount not exceeding the duty that may be leviable on any distillate fuel, petrol, lubricity agent or unmarked goods in accordance with the provisions of Schedule No. 1, whichever yields the greatest amount of duty, in respect of all marked goods which-

(i) 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; and

(ii) were previously sold or disposed of or purchased or were in the possession or under the control of such person or on any premises in the possession or under the control of such person at any time, unless it is shown within 30 days from the date of any demand for payment of any amount in terms of this section that the goods concerned have not been dealt with contrary to the provisions of paragraph (*a*).

(*c*) (i) If different rates of duty on such distillate fuel, petrol, lubricity agents or unmarked goods were in force during any period in respect of which the duties are calculated for the purposes of the payment referred to in paragraph (*b*), the highest rate in force at the relevant time shall be applied for the purposes of calculating the duty payable as provided in paragraph (*b*).

(ii) For the purposes of calculating the duty payable on any marked goods mixed with distillate fuel, petrol, unmarked goods or lubricity agent in any tank, including the fuel tank of any engine, such duty shall be calculated, on the total quantity of such mixed goods, in accordance with the provisions of paragraph (*b*).

(*d*) Notwithstanding anything to the contrary in this Act contained, any person who, contrary to subsection (3) and the rules, fails to-

(i) keep any invoice issued or a copy thereof;

(ii) issue any invoice;

(iii) complete and keep the books, accounts and documents; or

(iv) forthwith furnish any officer at such officer's request with such invoice or copy thereof and the books, accounts and documents, required to be completed and kept,

shall, in addition to any other liability incurred in terms of this Act, in respect of the goods to which such failure relates, be liable, as the Commissioner may determine, for the payment of an amount not exceeding the duty that may be leviable on any distillate fuel, petrol, lubricity agents or unmarked goods in accordance with the provisions of Schedule No. 1, whichever yields the greatest amount of duty, unless it is shown within 30 days of the date of any demand for payment of such amount in terms of this section that the goods concerned have not been dealt with contrary to the provisions of this section.

(*e*) Any amount of which any person is liable in terms of this section shall be payable upon demand by the Commissioner.

(*f*) Payment of any amount in respect of the marked goods referred to in paragraph (*b*) (i) shall not

absolve the person concerned from compliance with the provisions of paragraph (*a*).

(5) (*a*) For the purposes of this section an officer may-

(i) take samples of any goods in any tank or other container or in any fuel tank of any engine;

(ii) analyse such samples or send them for analysis to any person designated under paragraph (*c*) (ii);

(iii) stop and detain any vehicle or mobile apparatus with or without the assistance of any traffic officer or member of the South African Police Service or the South African National Defence Force;

(iv) detain any ship with or without the assistance of any member of the South African Police Service or the South African National Defence Force.

(*b*) The provisions of section 106 (2) shall *mutatis mutandis* apply to any sample taken under this subsection.

(*c*) The Commissioner may-

(i) by rule prescribe the form for reporting on any vehicle or mobile apparatus stopped or premises visited, or any person concerned with such vehicle, mobile apparatus or premises; or on any procedure or method for the taking or analysis of any sample by an officer; or on the results of such analysis and any other particulars as may be required on such form;

(ii) designate any person to analyse any such sample;

(iii) by rule prescribe the form for reporting on the analysis of such sample by such designated person, the results of such analysis and any other particulars as may be required on such form;

(iv) by rule prescribe the method for sealing any tank or container.

(*d*) Any person who is any way concerned with any marked goods or any vehicle or mobile apparatus or any premises where any tank or other container is situated, shall furnish an officer on demand with any particulars which he is able to provide for the purposes of the completion of the report referred to in paragraph (*c*).

(6) (*a*) Whenever an officer has detained any ship, vehicle, mobile, apparatus, engine, tank or other container or goods in terms of this Act for the purposes of investigating any matter to which this section relates, he shall not, if any goods are tested for the presence of a marker, take any action to enforce any other provision of this Act, unless he is in possession of a report by the person designated under subsection (5) (*c*) (ii) or by any person in the employ of and authorised by such designated person, on the prescribed form, which contains particulars indicating that the goods concerned have been dealt with contrary to the provisions of this section.

(*b*) Any person who is any way concerned with such goods as contemplated in subsection (4) (*b*) shall be liable in respect thereof for payment of an amount calculated on the same basis as provided in that subsection.

(*c*) Any goods otherwise found by an officer to have been dealt with contrary to the provisions of this section and any goods which have been used in so dealing with those goods shall be liable to forfeiture in accordance with this Act.

(*d*) The owner or whoever has possession or control of any goods, ship, vehicle, mobile apparatus, engine, tank or other container, shall be liable for any reasonable costs and expenses, including the costs of analysing any sample, incurred by, and charges due to, the Commissioner in the handling of and dealing with any such goods, ship, vehicle, mobile apparatus, engine, tank or other container for the purposes of this section.

(7) (*a*) Notwithstanding the provisions of subsection (4) and anything to the contrary in any other provision of this Act, whenever any marked goods have become mixed with or contaminated by unmarked goods or any other goods, by an act or omission which by the exercise of reasonable care could not have been avoided, such mixing or contamination shall, in the event that the proportion of the marker present in such mixed or contaminated goods is less than the proportion prescribed by rule in terms of subsection (2) (*a*), but is equal to or exceeds the proportion prescribed by rule in terms of subsection (2) (*c*) (iii), be reported immediately to the Commissioner, unless such mixing or contamination occurs within a licensed customs and excise warehouse, and the licensee complies with the provisions of subparagraphs (i) and (ii) of paragraph (*b*), and a report of each such event is prepared and kept available for inspection by an officer.

(*b*) Such goods shall, subject to the approval of the Commissioner and to such conditions as the Commissioner may in each case impose-

(i) be mixed or blended with other goods by the licensee of a customs and excise warehouse until the proportion of the marker is less than the proportion prescribed by rule in terms of subsection (2) (*c*) (iii), in which case the total quantity of such mixed or blended goods shall be liable to the duty applicable to such goods in terms of Schedule No. 1 on removal from such warehouse; or

(ii) be delivered to any person who is registered as required by the rules, for mixing or blending with other goods where such mixed or blended goods are not capable of use as fuel in any engine.

(*c*) If the Commissioner for any reason finds that such mixed or contaminated marked goods cannot be

dealt with as contemplated in paragraph (*b*) within any reasonable period determined by the Commissioner, such goods shall on expiry of such period be regarded as having been abandoned to the Commissioner and may thereafter be disposed of in such manner as the Commissioner considers reasonable in the circumstances.

(*d*) The licensee of the customs and excise warehouse, the purchaser or any other person to whom the marked goods were disposed of or whoever had control thereof when such mixing or contamination occurred shall be liable for any reasonable costs and expenses incurred by and charges due to the Commissioner in respect of any handling of and dealing with such goods in accordance with the provisions of paragraph (*b*) or (*c*).

(*e*) Any person who deals with such mixed or contaminated goods contrary to the provisions of paragraph (*b*), shall, in addition to any other liability incurred in terms of this Act, be liable in respect of the total quantity of such goods for payment of an amount calculated on the same basis as provided in subsection (4) (*b*).

(8) (*a*) Where any goods may be disposed of in terms of section 90, the Commissioner may, notwithstanding the provisions of that section, but subject to such conditions as the Commissioner may in each case impose, which may include conditions requiring payment of any amount determined by the Commissioner-

(i) dispose of such goods for mixing or blending with other goods as contemplated in subsection (7) (*b*);

(ii) dispose of such goods in any other manner which the Commissioner considers reasonable in the circumstances; or

(iii) order the destruction of such goods.

(*b*) The person from whom the goods were seized shall be liable for any reasonable costs and expenses incurred by and charges due to the Commissioner in respect of the handling of and dealing with such good as contemplated in paragraph (*a*).

(9) (*a*) No person may acquire or sell or dispose of in any manner, whether or not for any consideration, or be in possession of or have under his control or use-

(i) any goods, other than marked goods, for which provision is made free of duty in Schedule No. 1 as contemplated in subsection (1) (*a*); or

(ii) any marked goods mixed with any lubricity agent,

except in accordance with the provisions of this section and the rules.

(*b*) In addition to the provisions of this subsection and any rule made thereunder, except as otherwise provided in any rule, any marked goods mixed or intended to be mixed with any lubricity agent shall be subject to the provisions of this section and the rules relating to marked goods.

(*c*) Where any person is required by any rule made under paragraph (*d*) to register with the Commissioner, the Commissioner may-

(i) require before registration that such person furnishes security in such form, nature or amount as the Commissioner may determine;

(ii) at any time require that such security be altered or renewed in such manner as the Commissioner may determine;

(iii) determine the particulars to be furnished on application for registration and the requirements to be complied with before such application is considered;

(iv) register such person subject to such conditions as the Commissioner may in each case impose;

(v) refuse to register any person or class of persons and cancel the registration of any person who has dealt with any goods contrary to the provisions of this section or the rules or any other provision of this Act and refuse re-registration of such person.

(*d*) The Commissioner may for the purposes of this section, by rule, prescribe the following:

(i) The persons who are required to register and the goods and activities in respect of which they are required to register;

(ii) quantities which shall be subject to any such rule;

(iii) the conditions on which and the purposes for which any marked goods may be mixed with any lubricity agent;

(iv) the conditions on which and the purposes for which any person may sell or dispose of in any manner, whether or not for any consideration, or be in possession of or use, any goods contemplated in this section;

(v) any invoice to be issued, the particulars on such invoice, the person who shall keep such invoice or copy thereof, the persons who are required to complete and keep books, accounts and other

documents, the form in which they shall be kept, the particulars to be reflected therein and the period for which they are required to be kept;

(vi) restrictions in respect of the removal and export of any goods to which this section applies;

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

(viii) any other matter which the Commissioner may consider necessary and useful to regulate the lawful and prevent the unlawful distribution and consumption of any goods to which this section applies.

(*e*) (i) No goods referred to in paragraph (*a*) (i) shall be used for any other purpose than that for which they are removed from a customs and excise warehouse and in accordance with the conditions imposed by the Commissioner and those prescribed in the rules, except with the prior permission of the Commissioner and on payment of the duties leviable in terms of Schedule No. 1 in respect of unmarked goods: Provided that if the Commissioner so permits, the goods may be mixed or blended with other goods in which case the provisions of subsection (7) shall *mutatis mutandis* apply to such goods.

(ii) If any goods referred to in paragraph (*a*) (i) are dealt with contrary to the provisions of this section and the rules, any person who had possession or control of such goods at the time they were so dealt with, shall, in addition to any other liability incurred in terms of this Act, be liable in respect of such goods for payment of an amount calculated on the same basis as provided in subsection (4) (*b*).

(10) No person shall be entitled to any compensation for any loss or damage arising out of any *bona fide* action of an officer or any person who assists him under the provisions of this section.

(11) The provisions of section 44A shall *mutatis mutandis* apply in respect of the liability incurred by any person in terms of this section.

(12) For the purposes of this section-

"engine" referred to in subsection (4) (*a*) and (*c*) (ii), (5) (*a*) (i) and (6) (*a*) means any engine in any machine, machinery, plant, equipment, apparatus, vehicle or ship, classifiable under any heading or subheading of Chapters 84 to 87 and 89 of Part 1 of Schedule No. 1;

[Definition of "engine" substituted by s. 122 (1) (*b*) of Act No. 60 of 2001.]

Wording of Sections

"invoice" means a document, whether in its original form or in a form approved by the Commissioner, and which contains such particulars as may be prescribed by rule;

"ship" includes any ship classifiable under any heading or subheading of Chapter 89 of Part 1 of Schedule No. 1;

"vehicle" includes any vehicle classifiable under any heading or subheading of Chapters 86 and 87 of Part 1 of Schedule No. 1.

[S. 37A substituted by s. 50 (1) of Act No. 53 of 1999.]

Wording of Sections

37B. Provisions relating to the manufacture, storage, disposal and use of biofuel, biodiesel or bioethanol.- (1) For the purposes of this Act, unless the context otherwise indicates-

"biofuel" means any goods used as liquid fuel manufactured from any vegetable or other material, not being any material from which mineral fuels, oils or other goods are obtained as provided in Chapter 27 of Part 1 of Schedule No. 1;

"biodiesel" means a biofuel as specified in and described in any note to any heading or in any subheading of Part 1 of Schedule No. 1, any item of Section A of Part 2 or Part 5 of the said Schedule No. 1 or any item of Schedule No. 3, 4, 5 or 6 capable of use as a substitute for or an additive to distillate fuel;

"bioethanol" means a biofuel as specified in and described in any note to any heading or in any subheading of Part 1 of Schedule No. 1, any item of Section A of Part 2 or Part 5 of the said Schedule No. 1 or any item of Schedule No. 3, 4, 5 or 6 capable of use as a substitute for or additive to petrol;

"distillate fuel" or **"diesel"** means distillate fuel defined in the Notes to Chapter 27 of Part 1 of Schedule No. 1 and liable to customs duty as specified in the said Part 1 and to excise duty and fuel levy as specified in Section A of Part 2 and Part 5, respectively, of Schedule No. 1;

"manufacture" in relation to biofuel includes mixing biofuel with distillate fuel or petrol;

"petrol" means petrol as defined in the Notes to Chapter 27 of Part 1 of Schedule No. 1 and liable to customs duty as specified in the said Part 1 and to excise duty and fuel levy as specified in Section A of Part 2 and Part 5, respectively, of Schedule No. 1.

(2) (*a*) (i) Except where otherwise provided-

(*aa*) in this section;

(*bb*) by the Minister in any amendment of any Schedule in terms of any provision of this Act; or

(*cc*) by the Commissioner in any rule,

the provisions of this Act governing the administration of excisable goods or fuel levy goods, including the manufacture, levying of duty and granting of any rebate or refund of duty on such goods, shall apply *mutatis mutandis* to biofuel.

(ii) For the purposes of paragraph (i) unless otherwise specified in any Schedule or rule such provisions relating to distillate fuel or petrol shall be deemed to include respectively a reference to biodiesel or bioethanol or any mixtures thereof with distillate fuel or petrol.

[Para. (*a*) substituted by s. 114 (*a*) of Act No. 32 of 2004.]

Wording of Sections

(*b*) The Commissioner may, by rule exempt any person or class of persons from licensing in respect of any manufacturing process in the production of biofuel or any goods used in the production of biofuel.

[Para. (*b*) substituted by s. 20 (1) (*a*) of Act No. 21 of 2006 and deemed to have come into operation on 29 March, 2006.]

Wording of Sections

(*c*) The Commissioner may, except if any provision of this Act otherwise provides, in respect of biofuel manufactured in the Republic by any person registered for such a purpose under section 59A-

(i) (*aa*) by rule exempt for any period such person from payment of duty in respect of any quantity of biofuel manufactured by him or her;

(*bb*) cancel any such exemption under circumstances prescribed by rule;

(ii) prescribe, subject to paragraph (*b*), conditions and other requirements in respect of such exemption;

(iii) prescribe procedures relating to the manufacture and removal of biofuel for home consumption.

[Para. (*c*) inserted by s. 114 (*b*) of Act No. 32 of 2004 and substituted by s. 20 (1) (*b*) of Act No. 21 of 2006 and deemed to have come into operation on 29 March, 2006.]

Wording of Sections

(3) Notwithstanding anything to the contrary contained in this Act, the Minister may, in any amendment of any Schedule under any provision of this Act, specify-

(*a*) in which proportion distillate fuel and biodiesel or petrol and bioethanol may be mixed to be classifiable under any tariff heading or item;

(*b*) a different rate of duty and extent of rebate or refund on the basis of the proportionate content of distillate fuel or biodiesel or petrol or bioethanol in any such mixture.

(4) The Commissioner may-

(*a*) require any manufacturer or seller of biofuel to register in terms of section 59A;

[Para. (*a*) substituted by s. 114 (*c*) of Act No. 32 of 2004 and by s. 20 (1) (*c*) of Act No. 21 of 2006.]

Wording of Sections

(*b*) make rules-

(i) to exempt any person who is required to licence under any provision of this Act from furnishing security;

(ii) concerning payment of duty, accounts to be kept and procedures regulating the manufacture, storage, disposal or use of biofuel;

(iii) to delegate, subject to section 3 (2), any power which may be exercised and assign any duty that shall be performed by the Commissioner in terms of this Act to any officer;

(iv) regarding all matters which are required or permitted in terms of this section to be prescribed by rule;

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

[S. 37B inserted by s. 103 (1) of Act No. 74 of 2002.]

38. Entry of goods and time of entry.-(1) (*a*) Every importer of goods shall within seven days of the date on which such goods are, in terms of section ten deemed to have been imported except in respect of goods in a container depot as provided for in section 43 (1) (*a*) or within such time as the Commissioner may prescribe by rule in respect of any means of carriage or any person having control thereof after landing, make due entry of those goods as contemplated in section 39: Provided that, subject to the permission of the Controller-

(i) containers temporarily imported;

(ii) human remains;

(iii) goods which in the opinion of the Commissioner are of no commercial value;

(iv) goods imported under an international carnet; and

(v) goods of a value for duty purposes not exceeding R500, and on which no duty is payable in terms of Schedule No. 1,

[Para. (v) added by s. 4 (*c*) of Act No. 105 of 1976, amended by s. 9 (*a*) of Act No. 84 of 1987 and substituted by s. 3 of Act No. 44 of 1996.]

Wording of Sections

need not be so entered.

[Para. (*a*) amended by s. 5 of Act No. 71 of 1975 and by s. 123 (*a*) of Act No. 60 of 2001.]

Wording of Sections

(*a*A) The Commissioner may, in respect of dutiable goods imported by air of a value for duty purposes not exceeding R500 and for which immediate clearance is requested, allow a licensee of any premises licensed under the provisions of this Act to remove such goods for home consumption and to pay the duties due at such time on compliance with such conditions as the Commissioner may specify by rule and impose in each case.

[Para. (*a*A) inserted by s. 123 (*b*) of Act No. 60 of 2001.]

(*b*) (i) Any importer may, at any place appointed under the provisions of this Act for the entry of goods, make such entry of goods which 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.

[Para. (*b*) substituted by s. 18 (*a*) of Act No. 59 of 1990.]

Wording of Sections

(Editorial Note: Sub-s. (1) to be substituted by s. 32 (1) (*a*) of Act No. 61 of 2008 with effect from a date to be fixed by the President by proclamation in the *Gazette* - date not fixed.)

Wording of Sections

(2) . . . . . .

[Sub-s. (2) substituted by s. 18 (*b*) of Act No. 59 of 1990 and deleted by s. 123 (*c*) of Act No. 60 of 2001.]

Wording of Sections

(3) (*a*) Every exporter of any goods shall, before such goods are exported from the Republic, deliver, during the hours of any day prescribed by rule, 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 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 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.

[Para. (*a*) amended by s. 18 (*c*) of Act No. 59 of 1990 and by s. 28 (*a*) of Act No. 45 of 1995.]

Wording of Sections

(Editorial Note: Para. (*a*) to be substituted by s. 32 (1) (*b*) of Act No. 61 of 2008 with effect from a date to be fixed by the President by proclamation in the *Gazette* - date not fixed.)

Wording of Sections

(*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 time when such goods are delivered to the port authority, a depot operator, the master of the ship concerned or a container operator, as the case may be;

[Sub-para. (i) substituted by s. 28 (*b*) of Act 45 of 1995.]

Wording of Sections

(ii) in the case of goods to be exported in an aircraft, 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 the time when such goods are delivered to the railway authority;

[Sub-para. (iii) substituted by s. 28 (*c*) of Act 45 of 1995.]

Wording of Sections

(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 when such goods are loaded on the vehicle concerned.

[Sub-s. (3) substituted by s. 2 of Act No. 89 of 1983.]

Wording of Sections

(Editorial Note: Para. (*b*) to be substituted by s. 32 (1) (*c*) of Act No. 61 of 2008 with effect from a date to be fixed by the President by proclamation in the *Gazette* - date not fixed.)

Wording of Sections

(*c*) . . . . . .

(Editorial Note: Para. (*c*) to be inserted by s. 32 (1) (*d*) of Act No. 61 of 2008 with effect from a date to be fixed by the President by proclamation in the *Gazette* - date not fixed.)

(4) (*a*) The Commissioner may by rule permit any excisable goods or fuel levy goods and any class or kind of imported goods, which he may specify by rule, 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 rule, 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 be a due entry from the time of removal of those goods from the customs and excise warehouse.

[Para. (*a*) substituted by s. 9 (*b*) of Act No. 84 of 1987, by s. 18 (*d*) of Act No. 59 of 1990 and by s. 28 (*d*) of Act No. 45 of 1995.]

Wording of Sections

(*b*) No such goods may be removed from a customs and excise warehouse or appropriated for use by the owner prior to or without the issuing of such certificate, invoice or other document.

[Sub-s. (4) substituted by s. 13 of Act No. 105 of 1969.]

Wording of Sections

(5) . . . . . .

(Editorial Note: Sub-s. (5) to be added by s. 91 (1) (*a*) of Act No. 60 of 2008 with effect from a date to be fixed by the President by proclamation in the *Gazette* - date not fixed.)

(6) . . . . . .

(Editorial Note: Sub-s. (6) to be added by s. 91 (1) (*b*) of Act No. 60 of 2008 with effect from a date to be fixed by the President by proclamation in the *Gazette* - date not fixed.)

38A. Special provisions in respect of storage and clearance and release of stores or spares and equipment supplied to foreign-going ships and aircraft.-(1) (*a*) This section applies to stores or spares and equipment-

(i) stored in a licensed special customs and excise storage warehouse contemplated in section 21 (1) and supplied by the licensee; or

(ii) if goods in free circulation, supplied by any person, including a person who is the licensee of such warehouse (referred to in this section as the "exporter"),

to foreign-going ships or aircraft.

(*b*) Notwithstanding anything to the contrary contained in this Act, stores or spares and equipment free of duty may be stored in such a warehouse as may be prescribed by rule.

(*c*) Unless otherwise specified by rule, stores or spares and equipment in such a warehouse may only be removed and delivered by the licensee.

(*d*) Except as otherwise provided in this section or any rules made thereunder, any provision relating to a special customs and excise storage warehouse contemplated in section 21 (1) and of sections 18A, 38, 59A, 60, 64E and 101 shall, as may be applicable, apply *mutatis mutandis* to the storage in, and the removal of goods from, such warehouse.

(*e*) (i) In this section and any provision of any Schedule or rule relating to stores, or stores or spares and equipment for foreign-going ships or aircraft, "foreign-going ship", "foreign-going aircraft", "goods in free circulation", "spares and equipment", "stores" and any other expression required to be defined shall, unless the context otherwise indicates, have the meaning assigned thereto in the rules for this section.

(ii) In this section, unless the context otherwise indicates, "goods" means the "stores or spares and equipment" contemplated in this section.

(2) (*a*) Notwithstanding anything to the contrary contained in this Act, the Commissioner may by rule permit the licensee of such a warehouse or an exporter to supply goods to foreign-going ships or aircraft on the issuing by that licensee or exporter of a dispatch and delivery note or such other document as the Commissioner may prescribe or approve by rule, if the licensee or exporter-

(i) is accredited in terms of section 64E;

(ii) for the purpose of electronic communication with the Commissioner, is a registered user in accordance with the provisions of section 101A and the rules made thereunder;

(iii) complies with such conditions as the Commissioner may prescribe generally by rule or require in a specific instance; and

(iv) keeps such books, accounts or other documents or data created by a computer of goods received, including goods returned, and removals as the Commissioner may prescribe generally by rule or require in a specific instance.

(*b*) Any document issued by the licensee or exporter as contemplated in paragraph (*a*) shall, for the purpose of section 20 (4) and subject to paragraph (*c*), be deemed to be due entry for export from the time of removal of such goods from the special customs and excise storage warehouse or the place from where the goods in free circulation are exported, as the case may be.

(*c*) (i) Any licensee who removes such goods from such a warehouse, or an exporter who exports such goods, by means of the issuing of a dispatch and delivery note or other document referred to in paragraph (*a*) shall deliver to the Controller a validating bill of entry export declaring those goods at the time, in the manner and containing such particulars as may be specified by rule in respect of such dispatch and delivery note or other document.

(ii) Where any goods for which such a dispatch and delivery note or other document is issued is lost, destroyed, stolen or damaged after removal the licensee or exporter must at the same time pay the duty due on the goods.

(3) The Commissioner may-

(*a*) permit the return of stores or spares and equipment supplied by the licensee or exporter as contemplated in this section to the licensed premises or other place, as the case may be;

(*b*) require the submission of dispatch and delivery notes or other documents electronically by such a person or class of persons in respect of such goods, in such circumstances and on such conditions and subject to compliance with such procedures as may be prescribed by rule.

(4) The Commissioner may by rule prescribe for the purposes of this section or section 21 (1)-

(*a*) definitions as contemplated in subsection (1);

(*b*) goods to which this section relates and any requirement to control the storage, removal and return of such goods;

(*c*) (i) the form of and the particulars to be stated on the dispatch and delivery note, any invoice or other document;

(ii) the documents that must accompany the movement in each case of any stores, spares and equipment when removed for delivery by the licensee or exporter;

(*d*) books, accounts and other documents and data to be kept;

(*e*) all matters required or permitted by this section to be prescribed by rule;

(*f*) any other matter which the Commissioner may consider reasonably necessary and useful for the effective administration of the provisions contained in this section.

[S. 38A inserted by s. 28 of Act No. 18 of 2009.]

39. Importer and exporter to produce documents and pay duties.-(1) (*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 rule, 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.

[Para. (*a*) substituted by s. 4 (*a*) of Act No. 110 of 1979, by s. 19 of Act No. 59 of 1990 and by s. 29 (*a*) of Act No. 45 of 1995.]

Wording of Sections

(*b*) At the same time the said person shall deliver such duplicates of the bill of entry as may be prescribed or as may be required by the Controller and shall pay all duties due on the goods: Provided that the Commissioner may, on such conditions, including conditions relating to security, as may be determined by him, allow the deferment of payment of duties due in respect of such relevant bills of entry and for such periods as he may specify.

[Para. (*b*) amended by s. 10 (1) of Act No. 84 of 1987.]

Wording of Sections

(*c*) The said person shall further produce the transport document or such other document in lieu thereof as may be approved by the Commissioner, invoices as prescribed, shipper's statement of expenses incurred by him, copy of the confirmation of sale or other contract of purchase and sale, importer's written clearing instructions, unless exempted by rule, and such other documents relating to such goods as the Controller may require in each case and answer all such questions relating to such goods as may be put to him by the Controller, and furnish in such manner as the Commissioner may determine such information regarding the tariff classification of such goods as the Commissioner may require.

[Para. (*c*) substituted by s. 1 (*a*) of Act No. 85 of 1968, by s. 1 of Act No. 93 of 1978, by s. 4 (*b*) of Act No. 110 of 1979 and by s. 29 (*b*) of Act No. 45 of 1995.]

Wording of Sections

(*c*A) The Commissioner may, subject to such conditions as he may determine, allow the said person to produce in lieu of any document required to be produced in terms of paragraph (*c*), a document purporting to be a copy of any such document and obtained by means of microfilming or any other process, and which shall, subject to compliance with such conditions, for all purposes have all the effects of the original document concerned.

[Para. (*c*A) inserted by s. 8 of Act No. 98 of 1980.]

(*d*) The said person shall also, in respect of any such class or kind of goods as may be specified by the Commissioner by rule or any goods to which circumstances so specified apply, produce to the Controller for retention by him, such a sample as may be so specified and a true copy of any invoice or other document relating to such goods or of any blueprint, illustration, drawing, plan or illustrated and descriptive literature so specified in respect of such goods and relating to such goods.

[Para. (*d*) substituted by s. 1 (*a*) of Act No. 85 of 1968.]

Wording of Sections

(2) (*a*) If any goods intended for export are liable to any export duty under this Act, the amount thereof shall be stated in the bill of entry relating to such goods and shall be payable upon presentation of such entry to the Controller.

(*b*) No such bill of entry shall be valid, nor shall any person export such goods, until the duty has been paid to the Controller.

(2A) (*a*) Any person who removes goods from a customs and excise warehouse by means of the issuing of a certificate, invoice or other document referred to in section 38 (4) shall present to the Controller a validating bill of entry in the prescribed form at the time and in the manner specified by rule in respect of any such certificate, invoice or other document, and shall pay at the prescribed time to the Controller the duty due on the goods to which such certificate, invoice or other document relates.

[Para. (*a*) substituted by s. 29 (*c*) of Act No. 45 of 1995.]

Wording of Sections

(Editorial Note: Para. (*a*) to be substituted by s. 33 (1) of Act No. 61 of 2008 with effect from a date to be fixed by the President by proclamation in the *Gazette* - date not fixed.)

Wording of Sections

(*b*) The said person shall present to the Controller such validating bill of entry setting forth the full particulars indicated thereon, and the declaration shall be duly signed by the prescribed person and there shall be as many duplicates and such supporting documents as may be prescribed or as may be required by the Controller.

[Sub-s. (2A) inserted by s. 14 of Act No. 105 of 1969.]

(2B) The Commissioner may specify the documents to be produced by the exporter upon entry for exportation in respect of any goods exported or any class or kind of goods exported or any goods exported in circumstances or to a destination specified by him.

[Sub-s. (2B) inserted by s. 3 of Act No. 69 of 1988.]

(3) The Commissioner may by rule specify the manner in which bills of entry for goods of any such class or kind as may be specified in such rule, or goods imported or exported in such manner or such circumstances as may be so specified, shall be delivered.

[Sub-s. (3) substituted by s. 1 (*b*) of Act No. 85 of 1968.]

Wording of Sections

39A. Sale in transit.-Notwithstanding anything to the contrary in this Act contained, the importer of any goods purchased from any South African consignee after shipment of those goods but before the date of entry thereof, shall produce to the Controller the invoice relating to such purchase, and the price actually paid or payable for those goods by virtue of such purchase shall, for the purposes of section 65 (1), be the transaction value of those goods.

[S. 39A inserted by s. 5 of Act No. 101 of 1985.]

39B. . . . . . .

(Editorial Note: S. 39B to be inserted by s. 34 (1) (*a*) of Act No. 61 of 2008 with effect from a date to be fixed by the President by proclamation in the *Gazette* - date not fixed.)

39C. . . . . . .

(Editorial Note: S. 39C to be inserted by s. 34 (1) (*b*) of Act No. 61 of 2008 with effect from a date to be fixed by the President by proclamation in the *Gazette* - date not fixed.)

39D. Simplified procedure for immediate release of goods.-

(1) . . . . . .

(Editorial Note: Sub-s. (1) to be inserted by s. 34 (1) (*c*) of Act No. 61 of 2008 with effect from a date to be fixed by the President by proclamation in the *Gazette* - date not fixed.)

(2) . . . . . .

(Editorial Note: Sub-s. (2) to be inserted by s. 34 (1) (*c*) of Act No. 61 of 2008 with effect from a date to be fixed by the President by proclamation in the *Gazette* - date not fixed.)

(3) (*a*) Notwithstanding anything to the contrary contained in this Act, an importer who is unable to make due entry of goods imported may apply to the Commissioner for the immediate release of such goods as contemplated in paragraph (*b*), if the-

(i) importer provides sufficient reasons why immediate release of the goods is required;

(ii) importer applies for such immediate release within the periods contemplated in section 38 (1) (*a*);

(iii) Commissioner is satisfied that the importer will subsequently make due entry of the goods as required by section 39;

(iv) importer satisfies the Commissioner that the importation of the goods concerned is not prohibited or restricted in terms of any other law, or if so restricted, provides the Commissioner with the required documentation authorising the importation thereof;

(v) importer or agent lodges such security as the Commissioner may require in respect of any duties due on such goods pending the delivery of the bill of entry contemplated in subparagraph (iii) and payment of such duties; and

(vi) application for immediate clearance is accompanied by such essential documentation as may be prescribed by rule or determined by the Commissioner in a specific instance; or

(vii) importer complies with such other requirements as may be prescribed by rule.

(*b*) Application for immediate release in the circumstances contemplated in paragraph (*a*), shall be made on a bill of entry, in the prescribed form endorsed in a manner prescribed by rule to-

(i) indicate that its purpose is solely to apply to the Commissioner for immediate release of the goods described therein; and

(ii) furnish an undertaking to comply with the provisions of this section and the rules made thereunder.

(*c*) A bill of entry endorsed in the manner contemplated in paragraph (*b*) shall be deemed not to be due entry.

(*d*) An importer who has been granted immediate release of goods in terms of the provisions in this subsection must make due entry of such goods within the period contemplated in section 38 (1) (*a*) and such bill of entry shall be deemed to be effective from the date that release is granted.

(*e*) The Commissioner may prescribe by rule the manner of release and conditions in terms of which release of such goods may be authorised.

(*f*) Where the importer applies to the Commissioner for an extension before expiry of the period contemplated in section 38 (1) (*a*), the Commissioner may extend that period by not more than seven days where the Commissioner is satisfied that reasonable grounds exist on which the importer is not able to obtain the necessary information or documents to make due entry of the goods.

(4) (*a*) The Commissioner may refuse any application for immediate release of goods in a manner contemplated in subsection (3) where the importer has failed to comply with any condition prescribed therein or the rules or any condition imposed by the Commissioner.

(*b*) Where the Commissioner has refused such an application, the importer concerned shall, within five days of such refusal-

(i) make due entry of the goods as contemplated in section 39; or

(ii) otherwise deal with the goods as the Commissioner may direct,

failing which the goods shall be regarded as uncleared.

[S. 39D inserted by s. 34 (1) (*c*) of Act No. 61 of 2008.]

40. Validity of entries.-(1) No entry shall be valid unless-

(*a*) in the case of imported or exported goods, the description and particulars of the goods and the marks and particulars of the packages declared in that entry correspond with the description and particulars of the goods and the marks and particulars of the packages as reported in terms of section *seven* or *twelve* or in any certificate, permit or other document, by which the importation or exportation of those goods is authorized;

(*b*) the goods have been properly described in the entry by the denomination and with the characters, tariff heading and item numbers and circumstances according to which they are charged with duty or are admitted under any provision of this Act or are permitted to be imported or exported;

(*c*) the true value of the goods on which duty is leviable or which is required to be declared under the provisions of this Act and the true territory of origin, territory of export and means of carriage have been declared;

(*d*) in the case of goods purchased by or sold, consigned or disposed of to any person in the Republic, a correct and sufficient invoice thereof, as prescribed, has been produced to the Controller;

[Para. (*d*) substituted by s. 2 of Act No. 93 of 1978.]

Wording of Sections

(Editorial Note: Para. (*d*) to be substituted by s. 35 (1) (*a*) of Act No. 61 of 2008 with effect from a date to be fixed by the President by proclamation in the *Gazette* - date not fixed.)

Wording of Sections

(*e*) the correct duty due has been paid: Provided that no bill of entry shall be invalid by reason of any deferment referred to in the proviso to section 39 (1) (*b*).

[Para. (*e*) amended by s. 11 (*a*) of Act No. 84 of 1987.]

Wording of Sections

(2) Goods taken or delivered or removed by virtue of an entry which is not valid out of any ship, aircraft, vehicle, transit shed, container terminal, container depot, customs and excise warehouse or other place where they have been deposited with the sanction of the Controller, shall be deemed to be goods landed or taken without due entry thereof: Provided that if such goods are included in any entry embracing more than one package, and it is shown that the invalidity arose without wilful default or negligence of anyone connected with the goods, and that such invalidity does not exist as to all the packages in that entry then only the packages not validly entered shall be deemed to have been landed or taken without due entry.

[Sub-s. (2) amended by s. 6 of Act No. 71 of 1975.]

Wording of Sections

(3) (*a*) Subject to the provisions of sections 76 and 77 and on such conditions as the Commissioner may impose and on payment of such fees as he may prescribe by rule-

(i) an importer or exporter or a manufacturer of goods shall on discovering that a bill of entry delivered by him or her-

(*aa*) does not in every respect comply with section 39; or

(*bb*) is invalid in terms of subsection (1) of this section,

adjust that bill of entry without delay by means of-

(A) a voucher of correction; or

(B) cancellation of such bill of entry and substitution of a fresh bill of entry; or

(C) in such other manner as the Commissioner may prescribe; or

[Sub-para. (i) substituted by. s. 35 (1) (*b*) of Act No. 61 of 2008.]

Wording of Sections

(ii) if-

(*aa*) 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 of use under rebate of duty under section 75; or

(*bb*) an importer, exporter or manufacturer on good cause shown, requests substitution thereof by another bill of entry in circumstances other than those contemplated in item (*aa*),

the Commissioner 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.

[Sub-para. (ii) substituted by s. 3 (*a*) of Act No. 89 of 1983 and by. s. 35 (1) (*b*) of Act No. 61 of 2008.]

Wording of Sections

Provided that acceptance of such voucher or fresh bill of entry shall not indemnify such importer or exporter or manufacturer against any fine or penalty provided for in this Act.

[Para. (*a*) substituted by s. 4 of Act No. 86 of 1982 and amended by s. 30 of Act No. 45 of 1995.]

Wording of Sections

(*a*A) 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-

(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,

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;

(*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

(*cc*) any Schedule is amended with such retrospective effect,

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.

[Para. (aA) inserted by s. 3 (b) of Act No. 89 of 1983.]

(*b*) No application for such substitution as is referred to in paragraph (*a*) (ii) or in that paragraph as read with paragraph (*a*A) 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 where the application relates to-

(i) a substitution contemplated in paragraph (*a*) (ii) (*aa*), within a period of six months-

(*aa*) from the date of entry for home consumption as provided in section 45 (2), of the goods to which the application relates; or

(*bb*) in the case of any amendment of a determination referred to in item (*aa*) of paragraph (*a*A) or of a new determination referred to in item (*bb*) of the said paragraph (*a*A), 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

(*cc*) in the case of an amendment referred to in item (*cc*) of the said paragraph (*a*A), from the date on which such amendment is published by notice in the *Gazette*; and

(ii) a substitution contemplated in paragraph (*a*) (ii) (*bb*), within a period of one month from the date the goods were entered on the bill of entry for which substitution is required or within such longer period as the Commissioner may prescribe by rule or determine in a specific instance.

[Sub-s. (3) amended by s. 9 of Act No. 95 of 1965. Para. (*b*) added by s. 5 of Act No. 105 of 1976, substituted by s. 3 (*c*) of Act No. 89 of 1983, amended by s. 11 (*b*) of Act No. 84 of 1987 and by s. 4 of Act No. 68 of 1989 and substituted by s. 35 (1) (*c*) of Act No. 61 of 2008.]

Wording of Sections

41. Particulars on invoices.-(1) The exporter of any goods imported into or exported from the Republic or the owner of any excisable 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 rules 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: Provided that different requirements may be prescribed in the rules in respect of invoices and certificates relating to goods of different classes or kinds or goods to which different circumstances specified in the rules apply.

[Sub-s. (1) substituted by s. 15 of Act No. 105 of 1969, amended by s. 12 of Act No. 84 of 1987 and by s. 20 of Act No. 59 of 1990 and substituted by s. 31 (*a*) of Act No. 45 of 1995.]

Wording of Sections

(2) Every exporter or manufacturer shall allocate to any goods of a class or kind specified in the rules for the purposes of this subsection and exported to or from or manufactured in the Republic a distinctive and permanent identification number, code, description, character or other mark in such manner and in accordance with such method as may be prescribed in the rules and such number, code, description, character or other mark shall be quoted or reproduced in all prescribed invoices relating to such goods and in all such other documents relating to such goods as may be specified in the rules.

[Sub-s. (2) substituted by s. 41 (*a*) of Act No. 45 of 1995.]

Wording of Sections

(3) All particulars in any prescribed invoice and certificate in respect of imported goods shall relate to the goods in the condition in which they are imported into the Republic and for the purposes of section 107 (2) no change in such condition shall be deemed to have taken place between the time of importation and the time of any examination or analysis decided upon by the Controller or the Commissioner unless the importer is able to satisfy the Commissioner of any such change and the extent thereof: Provided that the Commissioner may refuse to act upon the result of any such examination or analysis if the particulars in such invoice are thereby proved to be incorrect.

[Sub-s. (3) amended by s. 41 (*b*) of Act No. 45 of 1995.]

Wording of Sections

(4) (*a*) All particulars necessary to make a valid entry and all particulars in respect of the transaction value 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 value shall be declared by the exporter in any prescribed invoice in respect of any imported goods and such particulars shall, except where the Commissioner otherwise determines, relate to the final amount of such transaction value 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.

[Para. (*a*) substituted by s. 6 (*a*) of Act No. 112 of 1977, by s. 3 of Act No. 93 of 1978 and by s. 5 (1) (*a*) of Act No.

86 of 1982.]

Wording of Sections

(*b*) Any particulars referred to in paragraph (*a*) and declared in any prescribed invoice or certificate in respect of any imported goods shall be subject to any credit or debit note passed by the exporter or to any refund made or becoming due by the exporter or any amount paid or becoming due to the exporter (directly or indirectly, in money or in kind or in any other manner) or to any change of any nature whatever in such particulars in respect of such goods after the date of issue of such invoice or certificate and the exporter shall whenever any such note is passed, or refund is made or becomes due or amount is paid or becomes due or change takes place forthwith issue an amended invoice or certificate to the importer who shall produce such amended invoice or certificate to the Controller within one month of receipt thereof and report the circumstances to him.

(*c*) If any particulars referred to in paragraph (*a*) of any imported goods are not declared in the prescribed invoice or certificate in respect thereof or if any change in the particulars declared in any prescribed invoice or certificate relating to any imported goods which occurs after the date of issue of any such invoice or certificate is not forthwith reported to the Controller by the importer of such goods or if the Commissioner has reason to believe that an offence referred to in section 86 (*f*) or (*g*) has been committed in respect of any imported goods the Commissioner may determine a transaction value, origin, date of purchase, quantity, description or the characteristics of such goods according to the best information available to him, which shall, subject to the provisions of this Act, be deemed to be the transaction value, origin, date of purchase, quantity, description or the characteristics of such goods.

[Para. (*c*) substituted by s. 6 (*b*) of Act No. 112 of 1977, by s. 5 (1) (*b*) of Act No. 86 of 1982 and by s. 17 of Act No. 32 of 2005.]

Wording of Sections

(*d*) . . . . . .

[S. 41 substituted by s. 2 of Act No. 85 of 1986. Para. (*d*) added by s. 6 (*c*) of Act No. 112 of 1977 and deleted by s. 22 of Act No. 21 of 2006.]

Wording of Sections

42. Entry by bill of sight.-(1) If any importer makes and subscribes to a declaration that he cannot for want of full information make due entry of any goods, the Controller may accept an entry by bill of sight for those goods by the best description which can be given, and may grant a warrant in respect thereof so that the same may be landed and brought to a place indicated by the Controller at the risk and expense of the importer for the purpose of being seen and examined by him there in the presence of the Controller.

(2) (*a*) The importer shall make due entry of those goods within three days of the date on which they were brought to the place of examination which shall be regarded as a special State warehouse for the purpose of securing the duties thereon until the goods are duly entered and removed or delivered in accordance with this Act.

(*b*) In default of due entry such goods may after three months of the date of receipt thereof into the said place of examination be disposed of in the manner described in section *forty-three*.

(3) No goods entered by bill of sight in terms of this section shall be removed without due entry after sight, and the penalties prescribed in this Act in respect of the incorrect or false entry of goods are also applicable in respect of the said due entry after sight.

43. Disposal of goods on failure to make due entry, goods imported in contravention of any other law and seized and abandoned goods.-(1) If entry of any imported goods has not been made under the provisions of section 38-

(*a*) in the case of goods in a container depot within 28 days from the date the goods were landed; or

(Editorial Note: Para. (*a*) to be amended by s. 92 (1) (*a*) of Act No. 60 of 2008 with effect from a date to be fixed by the President by proclamation in the *Gazette* - date not fixed.)

Wording of Sections

(*b*) in the case of any other goods, on expiry of the period stated in, or prescribed in any rule contemplated in, subsection (1) of the said section,

the master, pilot or other carrier, container operator, depot operator, person in control of a container terminal or transit shed or other person who has control of such goods in terms of any provision of this Act shall furnish a list thereof together with all available documents to the Controller and shall remove the goods to-

(i) the State warehouse; or

(ii) such other place indicated by the Controller; or

(Editorial Note: Para. (*b*) to be amended by s. 92 (1) (*a*) of Act No. 60 of 2008 with effect from a date to be fixed

by the President by proclamation in the *Gazette* - date not fixed.)

Wording of Sections

(*c*) the Controller may-

(i) where any such person fails to remove the goods as required in terms of subparagraph (i) or (ii), at the risk and expense of such person, so remove the goods; or

(ii) allow the goods, subject to such conditions as the Controller may impose, to remain under the control of such person.

(Editorial Note: Para. (*c*) to be amended by s. 92 (1) (*b*) of Act No. 60 of 2008 with effect from a date to be fixed by the President by proclamation in the *Gazette* - date not fixed.)

Wording of Sections

(Editorial Note: Para. (*d*) to be added by s. 92 (1) (*b*) of Act No. 60 of 2008 with effect from a date to be fixed by the President by proclamation in the *Gazette* - date not fixed.)

[Sub-s. (1) substituted by s. 32 (*a*) of Act No. 45 of 1995 and by s. 124 (*a*) of Act No. 60 of 2001 and amended by s. 45 (*a*) of Act No. 30 of 2002.]

Wording of Sections

(2) (*a*) Whenever any goods are so removed to or allowed to remain at any place other than the State warehouse such a place shall, subject to the provisions of this section, be deemed to be a State warehouse for the purposes of this Act.

(*b*) Any person who has control of any premises where such goods are stored shall-

(i) be responsible for such goods as if the goods were kept in a State warehouse from the date the Controller so indicates or so allows the goods to remain at such place;

(ii) be liable for the duty on such goods as long as the goods remain at such place;

(iii) be entitled to payment of the outstanding amount due in respect of the storage of those goods at the time of sale from the proceeds of the sale of those goods as charges according to the order contemplated in subsection (3).

[Sub-para. (iii) substituted by s. 92 (1) (*c*) of Act No. 60 of 2008.]

Wording of Sections

(*b*A) (i) Where any person who has control of premises as contemplated in paragraph (*b*) is entitled to payment in terms of that paragraph, that person may not, whether or not he or she receives any amount from the proceeds of sale as contemplated in that paragraph, collect any storage charges from the purchaser of the goods on a sale.

(ii) Where the goods are cleared and delivery granted by the Controller before the time of sale of the goods as contemplated in paragraph (*b*), the person having control thereof is entitled to collect his or her storage charges in respect of the goods and no State warehouse rent is payable for the time the goods remained under control of that person.

[Para. (*b*A) inserted by s. 92 (1) (*d*) of Act No. 60 of 2008.]

(*c*) (i) The Commissioner shall compile a list of all the goods in the State warehouse or deemed to be in the State warehouse as provided in this section reflecting the date of importation, the distinguishing marks and numbers, a description of the goods, the name and address of the importer, if known, the name of the carrier and any other relevant person contemplated in subparagraph (*ee*), the location of the goods and any other information available and shall-

(*aa*) obtain and keep a copy of the manifest, transport document, outturn report and any other document available relating to the exportation, carriage and importation of the goods;

(*bb*) update the list weekly;

(*cc*) display the list on a notice board in the office of the Controller and at the State warehouse;

(*dd*) place the list on the SARS website specified by rule and keep a print-out of such list and every amendment thereof;

(*ee*) notify by facsimile transmission or other means the importer, where the importer and the importer's address are known, and any other person known to the Commissioner to be involved or who may reasonably be expected to be involved in the exportation or importation including, where relevant, the container operator, any port authority, a transit shed operator, any other person in control of freight landed from any carrier, the carrier or agent for the carrier, the clearing agent and the exporter or supplier of the goods.

(ii) The contents of the list so displayed and included in the website shall be deemed to be sufficient

notification to the importer or any other person who has any right or interest in the goods concerned that unless the goods are duly entered in accordance with the provisions of this Act they will be disposed of in terms of this section.

[Sub-s. (2) amended by s. 6 of Act No. 86 of 1982, by s. 32 (*b*) of Act No. 45 of 1995 and substituted by s. 124 (*a*) of Act No. 60 of 2001.]

Wording of Sections

(2A) The Commissioner may-

(*a*) by rule amend or substitute any requirement or prescribe any additional requirement relating to any document or procedure contemplated in subsection (2);

(*b*) notwithstanding anything to the contrary contained in section 4 (3) or in any other law, for the purposes of this section, disclose by publication or otherwise any information acquired regarding any person, goods, firm or business to which this section relates.

[Sub-s. (2A) inserted by s. 124 (*b*) of Act No. 60 of 2001.]

(3) If after the expiration of 60 days from the date of removal to the State warehouse or other place indicated by the Controller or, where no such removal has taken place, from the date of expiry of the period prescribed in section 38 (1), any goods remain unentered the Commissioner may cause them, except if they have been imported in contravention of any law, to be sold, and if so sold the proceeds thereof shall be applied in discharge of any duty, expenses incurred by the Commissioner, charges due to the Commissioner (including any State warehouse rent), a port or railway authority, the Department of Transport, a container operator or a depot operator, or any person other than a container operator or depot operator who had control over premises where the goods were so stored as contemplated in subsection (2), freight and salvage as provided for in section 16 of the Wreck and Salvage Act, 1996 (Act No. 94 of 1996), in that order, and the surplus if any, shall, upon application be paid to the owner of the said goods: Provided that-

(*a*) if any goods cannot be sold at a price regarded by the Commissioner as reasonable having regard to the duty, expenses and charges in respect of such goods, the Commissioner may direct that the goods concerned be destroyed or appropriated to the State without payment of any duty;

[Para. (*a*) substituted by s. 124 (*c*) of Act No. 60 of 2001.]

Wording of Sections

(*b*) where any goods are sold at a price which is insufficient to cover the duty, such expenses, charges and freight, the Commissioner may apply the proceeds in discharge thereof in the order mentioned.

[Para. (*b*) substituted by s. 32 (*d*) of Act No. 45 of 1995 and by s. 124 (*c*) of Act No. 60 of 2001.]

Wording of Sections

(*c*) no payment of overplus in respect of goods sold shall be made to the owner of the goods, unless the application for such payment is supported by proof of ownership of the goods and is received by the Commissioner within two years from the date of sale of the goods.

[Sub-s. (3) amended by s. 6 of Act No. 105 of 1976, by s. 7 of Act No. 112 of 1977, by s. 32 (*c*) of Act No. 45 of 1995, by s. 34 (1) of Act No. 34 of 1997, by s. 124 (*c*) of Act No. 60 of 2001, by s. 23 of Act No. 34 of 2004 and by s. 92 (1) (*e*) of Act No. 60 of 2008.]

Wording of Sections

(4) Notwithstanding anything to the contrary in this Act contained-

(*a*) if any goods referred to in subsection (3) are of a perishable or dangerous nature, or if the Commissioner considers that, unless the goods are sold at once, the proceeds would not be sufficient to cover the duties and charges due or charges which may become due in respect of those goods, he may forthwith direct the sale thereof and apply the proceeds as provided in subsection (3);

(*b*) if any goods are sold in terms of this section subject to compliance by the purchaser with any condition, and the purchaser fails to comply with such condition within a period of three months from the date of sale of such goods, such sale shall be null and void and the net proceeds of sale may be refunded to the purchaser and the Commissioner may direct that the goods in question be destroyed or appropriated to the State or be dealt with in such manner as he may deem fit.

(5) (*a*) Where the Commissioner on reasonable grounds determines that any goods to which this section relates or any goods which are detained as contemplated in section 113 (8), have been imported or exported in contravention of any law other than this Act, the Commissioner may, except in the case of goods detained under section 113A for the purposes of the Counterfeit Goods Act, 1997 (Act No. 37 of 1997), request the South African Police Service or the authority administering such law-

(i) to take delivery of such goods for the purposes of instituting any civil proceedings or criminal prosecution or to take any other action in terms of such law within 60 days or such further time as the Commissioner may specify in such request;

(ii) if it is not intended to act as contemplated in subparagraph (i) to advise the reasons therefor within

such period; or

(iii) to authorise the Commissioner, as contemplated in paragraph (*e*), to deal with such goods under the provisions of this section.

[Para. (*a*) amended by s. 45 (*b*) of Act No. 30 of 2002.]

Wording of Sections

(Editorial Note: Sub-s. (a) to be amended by s. 8 (1) (*a*) of Act No. 36 of 2007 with effect from the date on which section 17 (1) of Act No. 36 of 2007 comes into operation - date not fixed.)

Wording of Sections

(*b*) When delivery is taken as contemplated in paragraph (*a*), such goods shall not be allowed to enter into home consumption in the Republic unless they have been duly entered, and any duty and value-added tax payable thereon have been paid to the Controller under whose control they were at the time of such delivery.

(*c*) (i) The Commissioner shall at the time of such request notify any relevant person contemplated in subsection (2) (*c*) (i) (*ee*) of such request and that if delivery of the goods is not taken the goods will be disposed of as provided for in this section.

(ii) (*aa*) Particulars of such goods shall be included in a separate section of the list contemplated in subsection (2) (*c*) (i) and cross-referenced to any other unentered goods included in such list.

(*bb*) The provisions of subsection (2) (*c*) (i) shall otherwise *mutatis mutandis* apply to the goods to which this subsection relates.

(*cc*) Notwithstanding subparagraph (i), the contents of the list so displayed and placed on the website shall be deemed to be sufficient notification to the importer or any other person who has any right or interest in the goods concerned that the goods will be disposed of in terms of this section.

(*d*) If the South African Police Service or such authority fails to take such delivery or after taking delivery does not institute civil proceedings or criminal prosecution or take any other action under the relevant law within any reasonable period allowed by the Commissioner or has authorised the Commissioner to deal with such goods under the provisions of this section as contemplated in paragraph (*e*) and no person has given notice of intention to claim release of the goods within 60 days after inclusion thereof in the list referred to in paragraph (*c*), such goods shall notwithstanding anything to the contrary in this Act or in the relevant other law contained, be deemed to be condemned and forfeited under the provisions of this Act and the Commissioner may dispose thereof as provided in this section.

(*e*) Notwithstanding the provisions of any other law, the authority administering such other law or the South African Police, may authorise the Commissioner to deal with any goods imported or exported in contravention of such law in terms of the provisions of this section.

[Sub-s. (5) added by s. 124 (*d*) of Act No. 60 of 2001.]

(6) (*a*) Where any goods are seized and detained under the Counterfeit Goods Act, 1997, as contemplated in section 113A of this Act and the importer is not known or cannot despite reasonable efforts be located and no criminal or civil proceedings are instituted or no instruction is received for the release of the goods as contemplated in section 9 (2) of the Counterfeit Goods Act, 1997, such goods shall, notwithstanding anything to the contrary in this Act or the said Counterfeit Goods Act, 1997, contained, be subject to this section.

[Para. (*a*) substituted by s. 45 (*c*) of Act No. 30 of 2002 and by s. 92 (1) (*f*) of Act No. 60 of 2008.]

Wording of Sections

(*b*) Where goods are seized and detained in the circumstances contemplated in paragraph (*a*), such goods shall, notwithstanding anything to the contrary contained in the Counterfeit Goods Act, 1997, be removed for detention to the State warehouse.

[Para. (*b*) substituted by s. 45 (*c*) of Act No. 30 of 2002.]

Wording of Sections

(*c*) Subsection (5) (*c*) shall apply *mutatis mutandis* in respect of goods to which this subsection relates.

[Para. (*c*) substituted by s. 45 (*c*) of Act No. 30 of 2002.]

Wording of Sections

(*d*) If no person gives any notice of the intention to claim release of the goods within 60 days after inclusion in the list referred to in paragraph (*c*), such goods shall be deemed to be condemned and forfeited under the provisions of this Act.

[Sub-s. (6) added by s. 124 (*d*) of Act No. 60 of 2001.]

(Editorial Note: Sub-s. (6) to be substituted by s. 8 (1) (*b*) of Act No. 36 of 2007 with effect from the date on which section 17 (1) of Act No. 36 of 2007 comes into operation - date not fixed.)

Wording of Sections

(7) (*a*) Any goods appropriated to the State as contemplated in subsection (3) (*a*), any goods condemned and forfeited as contemplated in subsections (5) and (6), any goods condemned and forfeited as contemplated in sections 89 and 90 and any goods referred to in subsection (10) (*a*), may be disposed of as provided in paragraph (*b*) by the Commissioner in consultation with the Directors-General of the National Treasury and of Trade and Industry or, where appropriate, with a Director-General of any other department.

(Editorial Note: Para. (*a*) to be substituted by s. 8 (1) (*c*) of Act No. 36 of 2007 with effect from the date on which section 17 (1) of Act No. 36 of 2007 comes into operation - date not fixed.)

Wording of Sections

(*b*) Such goods may-

(i) (*aa*) except any goods appropriated to the State or goods which have been imported in contravention of any other law, be sold by public auction or by tender for home consumption in the Republic;

(*bb*) be sold by public auction or by tender for export to a destination outside the common customs area;

(ii) be destroyed;

(iii) be transferred for use to any organ of State on payment of any expenses incurred by the Commissioner in connection with such goods;

(iv) be made available at the premises where they are kept to the Department of Welfare or any other body determined by the Commissioner for the purposes of providing disaster relief or basic human necessities for indigent persons in the Republic or for donation to any country in need of aid for such persons; or

(v) be disposed of for any other purpose or in any other manner which the Commissioner considers to be in the public interest.

(*c*) If the Commissioner so determines, the importer or exporter, as the case may be, or if the importer or exporter cannot be found or is unable to pay, the South African Police Service or any authority administering the other laws referred to in subsection (5) shall reimburse the Commissioner for expenses incurred in storing and disposing of or otherwise dealing with such goods.

(*d*) Except for the liability for duty in terms of the proviso to section 87 (1), no duty shall be payable on any goods to which this subsection relates on disposal as contemplated in paragraph (*b*), but any duty paid on such goods shall not be refundable.

[Sub-s. (7) added by s. 124 (*d*) of Act No. 60 of 2001. Para. (*d*) substituted by s. 14 of Act No. 44 of 2014.]

Wording of Sections

(8) The provisions of subsections (5), (6) and (7) shall, subject to the provisions of sections 89 and 90, *mutatis mutandis* apply to any goods detained or seized under this Act that were imported, exported, manufactured or used, or otherwise dealt with in contravention of the provisions of this Act and any other law: Provided that where the Commissioner is satisfied on reasonable grounds that the owner did not know that the goods were imported in contravention of this Act and such other law and the Commissioner is satisfied that the goods do not constitute a danger to public health or the public and complies with any compulsory specification contemplated in the Standards Act, 1993, the Commissioner may, instead of disposing of the goods as contemplated in subsection (7), deliver the goods to the owner in accordance with the provisions of section 93.

[Sub-s. (8) added by s. 124 (*d*) of Act No. 60 of 2001.]

(Editorial Note: Sub-s. (8) to be substituted by s. 8 (1) (*d*) of Act No. 36 of 2007 with effect from the date on which section 17 (1) of Act No. 36 of 2007 comes into operation - date not fixed.)

Wording of Sections

(9) The provisions of subsection (7) (*b*) (iv) shall apply to any goods donated to the Commissioner by the owner of any intellectual property right after an appropriate order of court as contemplated in section 10 of the Counterfeit Goods Act, 1997.

[Sub-s. (9) added by s. 124 (*d*) of Act No. 60 of 2001.]

(Editorial Note: Sub-s. (9) to be substituted by s. 8 (1) (*e*) of Act No.36 of 2007 with effect from the date on which section 17 (1) of Act No. 36 of 2007 comes into operation - date not fixed.)

Wording of Sections

(10) (*a*) The provisions of subsection (3), (4), (5) or (6), as the case may be, and subsection (7) shall *mutatis mutandis* apply in respect of any goods abandoned to the Commissioner under any provision of this Act and any goods referred to in section 42 or 107 (1) (*b*).

(*b*) The provisions of sections 89, 90 and 96 shall notwithstanding anything to the contrary contained in the laws concerned, *mutatis mutandis* apply in respect of any claim for the release of goods to which subsection (5) or (6) relates.

[Sub-s. (10) added by s. 124 (*d*) of Act No. 60 of 2001.]

(11) The Commissioner may make rules-

(*a*) to delegate or assign, subject to section 3 (2), any of the powers that may be exercised or assign any of the duties that shall be performed by the Commissioner under this section to any officer;

(*b*) regarding all matters which are required or permitted in this section to be prescribed by rule;

(*c*) to regulate any matter that the Commissioner may consider reasonably necessary and useful for the purposes of administering the provisions of this section.

[Sub-s. (11) added by s. 124 (*d*) of Act No. 60 of 2001.]

44. Liability for duty.-(1) Liability for duty on any goods to which section 10 relates shall commence from the time when such goods are in terms of that section deemed to have been imported into the Republic: Provided that, subject to the provisions of subsection (7), any such liability shall cease if it is proved that such goods (excluding, save in so far as the rules otherwise provide, goods which are missing from any individual package and in respect of which any customs duty, surcharge or fuel levy, each taken separately, does not exceed twenty-five rand) were not landed at any place in the Republic.

[Sub-s. (1) substituted by s. 5 (*a*) of Act No. 57 of 1966 and by s. 16 (*a*) of Act No. 105 of 1969, amended by s. 8 (*a*) of Act No. 112 of 1977, substituted by s. 13 (*a*) of Act No. 84 of 1987 and amended by s. 21 (1) (*a*) of Act No. 59 of 1990 and by s. 33 (*a*) of Act No. 45 of 1995.]

Wording of Sections

(2) Any excisable 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 or fuel levy goods, and liability for duty shall commence at the said stage.

[Sub-s. (2) substituted by s. 16 (*a*) of Act No. 105 of 1969, by s. 13 (*b*) of Act No. 84 of 1987 and by s. 21 (1) (*b*) of Act No. 59 of 1990.]

Wording of Sections

(3) The master of a ship or pilot of an aircraft or carrier of goods by means of any other vehicle shall be liable for the duty on all goods which are removed from that ship, aircraft or vehicle at a place in the Republic to which they are not consigned, and such liability shall continue until the goods have been duly entered or otherwise accounted for.

[Sub-s. (3) substituted by s. 33 (*b*) of Act No. 45 of 1995.]

Wording of Sections

(4) The master, pilot or carrier concerned shall be liable for the duty on all goods deemed in terms of section 10 to have been imported, except goods in respect of which a bill of lading, air consignment note or other document was issued on loading of such goods onto the ship, aircraft or vehicle by means of which they were imported stating that the said goods were accepted for conveyance at the risk of the owner thereof in all respects and not only as regards risk in respect of damage to such goods, provided such goods have not been landed and placed in a transit shed appointed or prescribed under section 6 (1).

[Sub-s. (4) substituted by s. 5 (*a*) of Act No. 110 of 1979.]

Wording of Sections

(Editorial Note: Sub-s. (4) to be substituted by s. 64 (1) (*a*) of Act No.20 of 2006 with effect from a date to be fixed by the President by proclamation in the *Gazette* - date not fixed.)

(4A) . . . . . .

(Editorial Note: Sub-s. (4A) to be inserted by s. 64 (1) (*b*) of Act No. 20 of 2006 with effect from a date to be fixed by the President by proclamation in the *Gazette* - date not fixed.)

(5) The liability of the master or pilot or other carrier for duty in terms of subsection (4) shall cease-

(*a*) upon lawful delivery of the goods, after due entry thereof has been made, to the importer or his agent; or

(*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 receipt thereof by a degrouping operator;

[Para. (*b*) substituted by s. 136 (*a*) of Act No. 45 of 2003.]

Wording of Sections

(*c*) upon delivery of the goods, if containerized, to a container operator; or

[Para. (*c*) added by s. 7 (*b*) of Act No. 71 of 1975 and substituted by s. 8 (*b*) of Act No. 112 of 1977.]

Wording of Sections

(*d*) . . . . . .

[Para. (*d*) added by s. 7 (*b*) of Act No. 71 of 1975 and deleted by s. 136 (*b*) of Act No. 45 of 2003.]

Wording of Sections

(Editorial Note: Sub-s. (5) to be substituted by s. 64 (1) (*c*) of Act No. 20 of 2006 with effect from a date to be fixed by the President by proclamation in the *Gazette* - date not fixed.)

Wording of Sections

(5A) The liability of a container operator for duty in terms of subsection (6) (*a*) shall cease-

(*a*) in respect of goods which are containerized, upon lawful delivery thereof, after due entry thereof has been made, to the importer or his agent; or

(*b*) in respect of goods containerized in-

(i) L.C.L. containers; and

(ii) other containers delivered to a container operator as contemplated in subsection (5) (*c*) and specified in a list to be compiled by the container operator concerned,

upon delivery thereof to a depot operator; or

[Para. (*b*) substituted by s. 3 (*a*) of Act No. 89 of 1984.]

Wording of Sections

(*c*) 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.

[Sub-s. (5A) inserted by s. 7 (*c*) of Act No. 71 of 1975.]

(Editorial Note: Sub-s. (5A) to be substituted by s. 64 (1) (*d*) of Act No. 20 of 2006 with effect from a date to be fixed by the President by proclamation in the *Gazette* - date not fixed.)

Wording of Sections

(5B) The liability of a depot operator for duty in terms of subsection (6) (*b*) shall cease-

(*a*) in respect of goods containerized in L.C.L. containers and the other containers referred to in subsection (5A) (*b*) (ii), upon lawful delivery thereof, after due entry thereof has been made, to the importer or his agent; or

[Para. (*a*) substituted by s. 3 (*b*) of Act No. 89 of 1984.]

Wording of Sections

(*b*) 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.

[Sub-s. (5B) inserted by s. 7 (*c*) of Act No. 71 of 1975.]

(Editorial Note: Sub-s. (5B) to be substituted by s. 64 (1) (*e*) of Act No. 20 of 2006 with effect from a date to be fixed by the President by proclamation in the *Gazette* - date not fixed.)

Wording of Sections

(5C) (*a*) The degrouping operator shall be liable for the duty on all goods received by the-

(i) degrouping operator at the degrouping depot;

(ii) degrouping operator from the transit shed operator (as defined by rule) where the degrouping operator takes delivery from the transit shed operator at the transit shed;

(Editorial Note: Sub-para. (ii) to be substituted by s. 64 (1) (*f*) of Act No. 20 of 2006 with effect from a date to be fixed by the President by proclamation in the *Gazette* - date not fixed.)

Wording of Sections

(iii) degrouping operator from another degrouping operator.

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

(i) upon receipt of such goods by any other degrouping operator in accordance with the procedures prescribed by rule in terms of section 64G;

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

(iii) in respect of any 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;

(iv) on complying with any condition or procedure prescribed by rule in terms of section 64G.

[Sub-s. (5C) inserted by s. 136 (*c*) of Act No. 45 of 2003.]

(5D) . . . . . .

(Editorial Note: Sub-s. (5D) to be inserted by s. 64 (1) (*g*) of Act No. 20 of 2006 with effect from a date to be fixed by the President by proclamation in the *Gazette* - date not fixed.)

(6) In all cases where the master, pilot or other carrier is not liable for the duty on any imported goods or where the liability of the said master, pilot or other carrier has ceased in respect of such goods in terms of this section, liability for duty thereon shall, subject to the provisions of Chapter VII, rest-

(*a*) in the case contemplated in subsection (5) (*c*), on the container operator concerned;

(*b*) in the case contemplated in subsection (5A) (*b*), on the depot operator concerned; and

(*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.

[Sub-s. (6) substituted by s. 10 (*a*) of Act No. 95 of 1965 and by s. 7 (*d*) of Act No. 71 of 1975. Para. (*c*) substituted by s. 21 (1) (*c*) of Act No. 59 of 1990.]

Wording of Sections

(Editorial Note: Sub-s. (6) to be substituted by s. 64 (1) (*h*) of Act No. 20 of 2006 with effect from a date to be fixed by the President by proclamation in the *Gazette* - date not fixed.)

Wording of Sections

(7) Notwithstanding anything to the contrary in this section contained, no importer shall be granted a refund of customs duty, excise duty, surcharge or fuel levy paid in respect of any goods missing from any individual imported package, if such customs duty, excise duty, surcharge or fuel levy, each taken separately, does not exceed twenty-five rand.

[Sub-s. (7) substituted by s. 5 (*b*) of Act No. 57 of 1966, by s. 16 (*b*) of Act No. 105 of 1969, by s. 8 (*c*) of Act No. 112 of 1977, by s. 13 (*c*) of Act No. 84 of 1987, by s. 21 (1) (*d*) of Act No. 59 of 1990 and by s. 91 (1) (*a*) of Act No. 35 of 2007.]

Wording of Sections

(8) The manufacturer, owner, seller or purchaser of any excisable 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.

[Sub-s. (8) substituted by s. 10 (*b*) of Act No. 95 of 1965, by s. 16 (*b*) of Act No. 105 of 1969, by s. 5 (*b*) of Act No. 10 of 1979, by s. 5 (*a*) of Act No. 52 of 1986, by s. 13 (*d*) of Act No. 84 of 1987 and by s. 21 (1) (*e*) of Act No. 59 of 1990.]

Wording of Sections

(8A) Notwithstanding anything to the contrary in this Act contained, any person who owns, purchases, removes, receives, takes, delivers or deals with or in any imported goods or excisable goods which should have been duly entered in any other Member State of SACU, shall be liable for the duty on such goods brought into the Republic from such State, and if the question arises whether such goods have been duly entered, it shall be presumed, unless the contrary is proved, that such goods have not been so entered, and such goods shall be subject to the provisions of this Act as if they were goods which have, contrary to the provisions of subsection 47A (1), not been duly entered in the Republic.

[Sub-s. (8A) inserted by s. 5 (*b*) of Act No. 52 of 1986 and substituted by s. 13 (*e*) of Act No. 84 of 1987, by s. 3 of Act No. 98 of 1993 and by s. 91 (1) (*b*) of Act No. 35 of 2007.]

Wording of Sections

(9) For the purposes of subsection (5) an entry by bill of sight shall be deemed to be due entry.

(10) Any duty for which any person is liable in terms of this section shall be payable upon demand by the Commissioner.

(11) (*a*) Notwithstanding anything to the contrary contained in this Act, but subject to the provisions of sections 47 (10) and (11), 65 (7) and (7A) and 69 (6) and (7) and subsection (12) of this section, except where this subsection otherwise provides in respect of any matter to which any of such provisions relate, there shall be no liability for any underpayment of duty on any goods-

(i) after a period of two years from the date of acceptance of a bill of entry; or

(ii) where such underpayment was discovered as a result of, during the course of, or following upon, an inspection and that underpayment occurred on a date earlier than two years prior to the date on which such inspection commenced:

[Sub-para. (ii) substituted by s. 12 of Act No. 9 of 2005.]

Wording of Sections

Provided that such liability shall, subject to paragraph (*c*), not cease even if an underpayment is discovered after an earlier assessment and payment of an amount in respect of any inspection during the period concerned, where such underpayment is the result of-

(*aa*) fraud;

(*bb*) misrepresentation;

(*cc*) non-disclosure of any material facts; or

(*dd*) any false declaration for the purposes of the Act.

[Para. (*a*) substituted by s. 67 (*a*) of Act No. 32 of 2004.]

Wording of Sections

(*b*) Where any period is prescribed in this Act for books, accounts or other documents in whatever form to be kept available for production to or inspection by an officer, any such period shall, subject to the provisions of paragraph (*c*), be calculated from a date prior to the date on which production is demanded or the inspection commences.

(*c*) Except where the Commissioner may otherwise determine in exceptional circumstances, where any underpayment arises from the circumstances contemplated in the proviso to paragraph (*a*), there shall be no limitation on the period of liability for underpayment of duty or the period for which any books, accounts or any other documents, in whatever form available, are required to be produced to or may be inspected by an officer.

[Sub-s. (11) added by s. 51 of Act No. 53 of 1999. Para. (*c*) substituted by s. 67 (*b*) of Act No. 32 of 2004.]

Wording of Sections

(11A) Notwithstanding anything to the contrary contained in this Act, there shall be no liability for any underpayment on any goods if the duty which should have been paid was, in accordance with the practice generally prevailing at the time of entry for home consumption, not paid or the full amount of duty which should have been paid at the time of entry for home consumption was, in accordance with such practice, not paid, unless the Commissioner is satisfied that the amount of duty which should have been paid was not paid, or that the full amount of duty was not paid due to fraud or misrepresentation or non-disclosure of material facts or any false declaration for purposes of this Act.

[Sub-s. (11A) inserted by s. 93 of Act No. 60 of 2008.]

(12) Any person who makes a false statement concerning the origin of goods or who makes use of any declaration or document containing any such statement as a result of which such person obtains entry of imported goods at a preferential rate of duty as specified in Part 1 of Schedule No. 1 in accordance with the provisions of any agreement contemplated in section 49 or 51 shall, for a period of three years prior to the date on which such false statement was made or made use of, in addition to any other liability incurred in terms of this Act, be liable for the payment of duties at the general rate specified in Part 1 of Schedule No. 1 in respect of the goods at the time of entry: Provided that the Commissioner may on good cause shown reduce such period.

[Sub-s. (12) added by s. 51 of Act No. 53 of 1999.]

44A. Joint and several liability for duty or certain amounts.-Subject to the provisions of sections 36A (2) (*b*) (i) and 99 (2) (*b*), whenever in terms of this Act liability for duty or any amount demanded under section 88 (2) (*a*) devolves on two or more persons, each such person shall, unless he proves that his relevant liability has ceased in terms of this Act, be jointly and severally liable for such duty or amount, any one paying, the other or others to be absolved *pro tanto*.

[S. 44A inserted by s. 14 of Act No. 84 of 1987 and substituted by s. 34 of Act No. 45 of 1995.]

Wording of Sections

45. Determination of duty applicable.-(1) (*a*) Notwithstanding anything to the contrary in this Act contained, all goods consigned to or imported into the Republic or stored or manufactured in a customs and excise warehouse or removed in bond shall upon being entered for home consumption be liable to such duties (including anti-dumping duties, countervailing duties and safeguard duties specified in Schedule No. 2 and new or increased duties referred to in section 58 (1) and duties imposed under the provisions of section 53) as may at the time of such entry be leviable upon such goods.

[Para. (*a*) substituted by s. 1 of Act No. 61 of 1992.]

Wording of Sections

(*b*) Notwithstanding the provisions of paragraph (*a*) but subject to the provisions of section 40, any dutiable goods imported into or manufactured in the Republic and which were removed, taken or delivered without due entry for home consumption having been made in respect of such goods, shall be liable to such duties as may

be leviable upon such goods at the time of such removal, taking or delivery or at the time of assessment by an officer, whichever yields the greater amount of duty.

[Sub-s. (1) substituted by s. 9 of Act No. 112 of 1977 and by s. 6 of Act No. 101 of 1985.]

Wording of Sections

(2) For the purposes of this section, the time of entry for home consumption of-

(*a*) goods imported by post (and not entered at a customs and excise office before a Controller) shall be deemed to be the time when such goods are assessed for duty; and

(*b*) goods imported otherwise shall be deemed to be the time when the bill of entry concerned is delivered to the Controller in terms of section 39 (1) (*a*) and at a place indicated by the Controller, irrespective of whether that bill of entry is returned by the Controller in order to be adjusted as required by the Controller, provided it is redelivered, so adjusted, to the Controller within five days calculated as prescribed by rule, after the day on which it was so returned by the Controller.

[Sub-s. (2) substituted by s. 7 of Act No. 86 of 1982. Para. (*b*) substituted by s. 35 of Act No. 45 of 1995.]

Wording of Sections

46. Origin of goods.-(1) For the purposes of this Act, except where any agreement contemplated in section 49 or 51 otherwise provides, goods shall not be regarded as having been produced or manufactured in any particular territory unless-

(*a*) at least twenty-five per cent (or such other percentage as may be determined under subsection (2), (3) or (4)) of the production cost of those goods, determined in accordance with the rules, is represented by materials produced and labour performed in that territory;

(*b*) the last process in the production or manufacture of those goods has taken place in that territory; and

(*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.

[Sub-s. (1) amended by s. 2 (*a*) of Act No. 61 of 1992, substituted by s. 36 (*a*) of Act No. 45 of 1995 and amended by s. 52 (*a*) of Act No. 53 of 1999. Para. (*c*) substituted by s. 137 (*a*) of Act No. 45 of 2003.]

Wording of Sections

(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;

[Sub-s. (2) substituted by s. 5 (1) of Act No. 68 of 1989, by s. 2 (*b*) of Act No. 61 of 1992, by s. 36 (*a*) of Act No. 45 of 1995 and by s. 137 (*b*) of Act No. 45 of 2003.]

Wording of Sections

(3) The State President may, by agreement with the government of any territory, increase or reduce for the purposes of section *fifty-one* the percentage prescribed in subsection (1) of this section in so far as that territory is concerned, in regard to any class or kind of goods to which that subsection applies.

(4) The Commissioner may-

(*a*) in respect of any excisable or other goods produced or manufactured in the Republic or any class or kind of such goods or any such goods in respect of which circumstances specified by rule apply, increase or reduce by rule the percentage prescribed in subsection (1);

(*b*) exclude by rule any goods or class or kind of goods referred to in paragraph (*a*) from the provisions of subsection (1);

(*c*) prescribe by rule that any goods or class or kind of goods referred to in paragraph (*a*) shall not be regarded as having been produced or manufactured in the Republic unless such processes in connection with the production or manufacture as may be specified in such rule have taken place in the Republic;

(*d*) for the purposes of any tariff preferences allowed by any country in respect of goods exported from the Republic other than tariff preferences provided in terms of agreements contemplated in section 49 or 51, prescribe by rule certificates of origin, the authority to print such certificates or other forms, the documents to be produced upon entry for exportation, particulars to be stated on such entry and any other requirements which may be necessary for the administration of such exports.

[Para. (*d*) added by s. 52 (*b*) of Act No. 53 of 1999.]

(5) (*a*) Any person entering any imported goods which are-

(i) liable to any provisional payment as contemplated in section 57A or to anti-dumping duty imposed under section 56 or countervailing duty imposed under section 56A or safeguard measure imposed under section 57; or

(ii) subject to any restriction in terms of any other law when imported from a specified country or specified countries; and

(iii) imported from a country or countries other than the country or countries or supplier in respect of which such payment, duty or restriction is prescribed,

shall produce to the Controller at the time of presenting the bill of entry a declaration of origin in respect of such goods.

(*b*) The Commissioner may by rule prescribe for the purposes of this subsection-

(i) a declaration or other forms; and

(ii) any other matter which the Commissioner may consider reasonably necessary and useful to achieve the efficient and effective administration of this subsection.

[Sub-s. (5) deleted by s. 36 (*b*) of Act No. 45 of 1995, added by s. 52 (*c*) of Act No. 53 of 1999 and substituted by s. 9 of Act No. 36 of 2007.]

Wording of Sections

46A. Non-reciprocal preferential tariff treatment of goods exported from the Republic.-(1) In this section, unless the context otherwise indicates-

"circumvention" includes any circumvention of any provision of an enactment by-

(*a*) trans-shipment, rerouting, false declaration concerning the country or place of origin or falsification of official documents; or

(*b*) making any false declaration concerning fibre content, quantities, description or classification of goods;

[Definition of "circumvention" substituted by s. 18 of Act No. 32 of 2005.]

Wording of Sections

"enactment" includes the provisions of any legislative act by a government of a country providing for preferential tariff treatment, any administrative requirements of the customs administration of such country, any legislation or agreement incorporated by reference in such provisions and any amendment to such provisions, requirements, legislation or agreement, kept by the Commissioner as contemplated in subsection (2);

"obtained", "produced" or **"manufactured",** and any cognate expression in respect of any goods, includes those goods supplied by a supplier;

[Definition of "obtained", "produced" or "manufactured" inserted by s. 10 (*a*) of Act No. 36 of 2007.]

"preferential tariff treatment" means the non-reciprocal preferential tariff treatment of goods exported from the Republic allowed on importation into any country in terms of and on compliance with the requirements of any enactment of the government of such country;

"producer" or **"manufacturer"** of goods includes a supplier of those goods;

[Definition of "producer", or "manufacturer" inserted by s. 10 (*b*) of Act No. 36 of 2007.]

"supplier" means a supplier of goods as prescribed in the rules and includes, where any such rule so provides, a producer or manufacturer of goods;

[Definition of "supplier" inserted by s. 10 (*b*) of Act No. 36 of 2007.]

"trans-shipment" has the meaning assigned thereto in section 113 (*b*) (4) of the African Growth and Opportunity Act contained in the Trade and Development Act of 2000 of the United States of America, kept by the Commissioner as contemplated in subsection (2).

(2) (*a*) Commissioner shall-

(i) keep two copies of any enactment and any amendment thereto received from the customs administration of the country allowing preferential tariff treatment;

(ii) record the date advised by such administration on which any such enactment or amendment becomes or became effective in such country for the purposes of such treatment; and

(iii) effect any such amendment to the enactment.

(*b*) Any enactment or amendment thereto shall for the purposes of this Act be effective from the date so recorded.

(*c*) Wherever in any legal proceedings any question arises as to the contents of any enactment or as to the date upon which any enactment or any amendment thereto became effective, a copy of the enactment or the enactment as amended and any date so recorded shall be accepted as *prima facie* proof of the contents thereof and of the effective date of the enactment or the amendment thereto.

(*d*) Any such copy kept by the Commissioner shall be accessible to any interested person during official working hours.

(*e*) The Commissioner may publish any enactment or part thereof or amendment thereto in the *Gazette*.

(3) (*a*) Notwithstanding anything to the contrary in this Act contained, the application of any provision of this Act relating to any importer, producer, manufacturer, exporter, licensee or other principal or any agent or the importation or exportation of goods, the preferential tariff treatment of goods, goods obtained, produced or manufactured, due entry or any other provision or customs procedure or any power, duty or function in connection therewith, shall, unless otherwise provided in, or in any rule made in terms of, this section for the purposes of giving effect to any enactment, be subject to compliance with the provisions of such enactment or any part or provision thereof, as the case may be.

(*b*) The provisions of section 4 (12A) shall apply *mutatis mutandis* in respect of any goods exported from the Republic for the purpose of benefiting from the preferential tariff treatment contemplated in an enactment and any person referred to in section 4 (12A) (*a*) shall be deemed to have agreed to comply with the requirements governing the allowing of such treatment by the government of the country to which the goods are exported, including requirements relating to-

(i) maintaining complete books, accounts and other documents in respect of-

(*aa*) the production or manufacture and any materials used in the production or manufacture of the goods exported;

(*bb*) the purchase of, cost of, value of and payment for the goods exported and all materials, including indirect materials used in the production or manufacture of the goods exported;

(*cc*) proof of the originating status of such goods in accordance with the relevant rules of origin; and

(*dd*) the exportation of the goods;

(ii) permitting and assisting customs officers of the country of importation to investigate-

(*aa*) such books, accounts and other documents; and

(*bb*) any circumvention contemplated in subsection (8).

(4) In administering the provisions of any enactment or any part or provision thereof and the application of any provisions of this Act to give effect thereto the Commissioner may, notwithstanding anything to the contrary in this Act contained-

(*a*) decide on or determine any matter or perform any duty or function or impose any condition in connection with the provisions so administered, including any decision or determination or the performance of any duty or function or the imposing of any condition in respect of-

(i) any heading in Part 1 or any item of any other Part of Schedule No. 1 applicable to any goods imported or produced, obtained, manufactured, exported or used in the production or manufacture of any goods, or the customs value of any such imported goods;

(ii) any action or procedure concerning-

(*aa*) the origin or proof of origin of goods imported or exported;

(*bb*) the importation or production or manufacture or exportation of goods and the ex-factory price of goods or the cost or value of materials;

(*cc*) tariff quotes;

(*dd*) any circumvention and any action taken in respect thereof;

(*ee*) rendering mutual and technical assistance in respect of any customs co-operation, including any investigation, as required by any enactment, by any officer of the customs administration of the country allowing such preferential tariff treatment;

(*ff*) the keeping and the production of books, accounts and other documents and the furnishing of information in respect of any matter to which this section relates;

(*gg*) requirements in connection with any agency where any person is represented in the exportation of any goods involving proof of origin;

(*hh*) furnishing of a certificate of origin including in respect of multiple shipments of identical goods over a specified period;

(*ii*) any document relating to origin issued retrospectively;

(*jj*) the issue of or refusal to issue a visa;

(iii) any other power, duty or function or procedure provided in any enactment or part or provision thereof contemplated in subsection (1) which requires either expressly or by implication customs administrative action in respect of goods produced, manufactured or exported for the purposes of such enactment;

(*b*) make rules-

(i) concerning any matter referred to in paragraph (*a*);

(ii) where reference is made to customs or competent authorities, to domestic, national or customs law or any like reference or any other matter which requires either expressly or by implication application of customs legislation;

(iii) in connection with the entry of goods imported or exported and documents to be produced in support thereof;

(iv) prescribing forms or procedures or specifying any condition or provision of this Act to be complied with for the purposes of such enactment;

(v) to delegate or assign subject to section 3 (2), any power, duty or function to any officer or other person;

(vi) regarding any other matter which may be reasonably necessary for the purposes of administering such provisions;

(*c*) subject to such conditions as the Commissioner may in each case impose, enter into any agreement with any person, with the concurrence of any producer, manufacturer or exporter, as the case may be, to perform any function or provide any service for the purposes of establishing and reporting on the origin of goods or issuance of any proof of origin.

(5) Whenever any report is required by the importing country from time to time in terms of any enactment of such country in connection with the producer, manufacturer or exporter or any other person concerned with the export of goods for the purposes of preferential tariff treatment or the production, manufacture or export of such goods and the furnishing of such report is authorised by the Minister, the Commissioner shall, notwithstanding anything to the contrary in this Act or any other law contained, furnish to the customs administration of such country such report containing such particulars as may be required in terms of any enactment kept by the Commissioner as contemplated in subsection (2).

(6) (*a*) (i) Every producer, manufacturer or exporter of goods to which this section relates, shall be registered with the Commissioner for the purposes of this section.

(ii) No such goods may, from a date to be specified by rule, be exported unless the producer, manufacturer or exporter thereof is registered.

(*b*) Application for such registration shall be made on the form prescribed by the Commissioner by rule and the applicant shall comply with all the requirements specified therein and any additional requirements that may be prescribed in any other rule and as may be determined by the Commissioner in each case.

(*c*) Any registered producer, manufacturer or exporter of such goods shall comply with such requirements as the Commissioner may prescribe by rule and determine in each case.

(*d*) The Commissioner may-

(i) refuse to register any applicant and for that purpose the provisions of section 60 (2) shall apply *mutatis mutandis* to such application for registration;

(ii) cancel the registration of any producer, manufacturer or exporter of such goods-

(*aa*) if any books, accounts or other documents are not kept or produced as required by or in terms of this Act; or

(*bb*) who is convicted of an offence or where forfeiture of any amount deposited or secured by such person is ordered by way of penalty under the provisions of section 91 in respect of any circumvention or contravention contemplated in subsection (8);

(iii) subject to any prohibition imposed for the purposes of subsection 8 (*b*), re-register any person at any

time after such cancellation on such conditions as the Commissioner may impose in each case.

(7) No goods shall be exported with the object of obtaining any benefit of preferential tariff treatment in terms of an enactment unless the goods comply with the provisions of origin or any other provision of such enactment or of this Act governing the acquisition of origin or any other requirement which is to be complied with for the purposes of giving effect to such provisions.

(8) (*a*) Any person who, in connection with any goods produced or manufactured or exported for the purposes of obtaining any preferential tariff treatment therefor in the country of importation in terms of any enactment-

(i) makes any false statement or makes use of any declaration or document containing such statement or performs any other act for the purposes of circumvention of any provision of such enactment relating to the origin, production, manufacture or exportation of such goods;

(ii) contravenes or fails to comply with any other provision of this Act; or

(iii) attempts to circumvent or contravene any provision contemplated in subparagraphs (i) and (ii), as the case may be,

shall be guilty of an offence and liable on conviction to a fine not exceeding R100 000 or three times the export value of the goods in respect of which the offence was committed, whichever is the greater, or to imprisonment for a period not exceeding 10 years, or to both such fine and such imprisonment and the goods in respect of which the offence was committed shall be liable to forfeiture in accordance with this Act.

(*b*) The Commissioner may on conviction of any exporter or where forfeiture of any amount deposited or secured by such exporter is ordered by way of penalty under the provisions of section 91 in respect of any circumvention contemplated in paragraph (*a*) prohibit, for a period not exceeding 5 years from the date of such conviction or order of forfeiture for any such circumvention involving trans-shipment, such exporter, any successor of such exporter and any other entity, owned or operated by the principal of the exporter, from exporting any goods for the purposes of obtaining any benefit in terms of any enactment.

(9) The Commissioner may make any rules under this section with retrospective effect as from 1 October 2000 or any date thereafter.

[S. 46A inserted by s. 61 (1) of Act No. 59 of 2000, except in so far as any offence is created by s. 46A (8).]

47. Payment of duty and rate of duty applicable.-(1) Subject to the provisions of this Act, duty shall be paid for the benefit of the National Revenue Fund on all imported goods, all excisable goods, all surcharge goods, all environmental levy goods, all fuel levy goods and all Road Accident Fund levy goods in accordance with the provisions of Schedule No. 1 at the time of entry for home consumption of such goods: Provided that the Commissioner may condone any underpayment of such duty where the amount of such underpayment in the case of-

(*a*) goods imported by post is less than fifty cents;

(*b*) goods imported in any other manner is less than five rand; or

(*c*) excisable goods is less than two rand.

[Sub-s. (1) substituted by s. 17 (*a*) of Act No. 105 of 1969 and by s. 10 (*a*) of Act No. 112 of 1977, amended by s. 9 (*a*) of Act No. 98 of 1980, by s. 15 (1) (*a*) of Act No. 84 of 1987, by s. 22 (*a*) of Act No. 59 of 1990, by s. 37 of Act No. 45 of 1995, by s. 63 (*a*) of Act No. 30 of 1998 and by s. 138 (1) (*a*) of Act No. 45 of 2003 and substituted by s. 90 (1) (*a*) of Act 31 of 2005.]

Wording of Sections

(2) . . . . . .

[Sub-s. (2) deleted by s. 9 (*b*) of Act No. 98 of 1980, inserted by s. 53 (*a*) of Act No. 53 of 1999 and deleted by s. 94 of Act No. 60 of 2008.]

Wording of Sections

(3) (*a*) Any rate of duty other than the general rate specified in respect of any heading or subheading in any column of Part 1 of Schedule No. 1 shall apply to imported goods to which such heading or subheading relates if such goods qualify for the benefit of such rate in accordance with-

(i) any provision of origin contained in any part of the schedule to the General Notes of Schedule No. 1 and any other provision referred to in section 48 (1A) applicable to such column, any provision relating to tariff quotas, any applicable provision in the said Part 1 and any Note to such Part or schedule; and

(ii) any rule made in terms of section 49 to give effect to any provision of origin of any agreement contemplated in the said section or in connection with any tariff quotas or any other condition or

procedure that may be applicable to any goods specified in the said column.

(*b*) The expression "any provision of origin" includes provisions relating to "originating products", "originating status", "rules of origin" or like expressions, and "goods obtained, produced or manufactured" in any part of the said schedule to the General Notes of Schedule No. 1 and, unless the context otherwise indicates, any provision in this Act in respect of the origin of goods.

(*c*) Any reference in any agreement contemplated in section 49 or 51 to the "most-favoured-nation rate of duty" or the "MFN tariff" or the "MFN rate of duty" or like expressions shall, unless otherwise specified in Part 1 of Schedule No. 1, for the purposes of this Act, be deemed to be a reference to the rates of duty specified in respect of any heading or subheading in the column for general rates of duty in the said Part 1 of Schedule No. 1.

[Sub-s. (3) substituted by s. 2 of Act No. 7 of 1974, amended by s. 9 (*c*) of Act No. 98 of 1980 and by s. 4 (1) (*a*) of Act No. 69 of 1988 and substituted by s. 53 (*b*) of Act No. 53 of 1999.]

Wording of Sections

(4) . . . . . .

[Sub-s. (4) substituted by s. 9 (*d*) of Act No. 98 of 1980 and deleted by s. 4 (1) (*b*) of Act No. 69 of 1988.]

Wording of Sections

(5) Any export duty which may become payable in terms of section 48 (4) shall be paid for the benefit of the National Revenue Fund, at the time of entry for export, on such goods as may be specified in Part 6 of Schedule No. 1 in terms of the provisions of the said section.

[Sub-s. (5) substituted by s. 17 (*b*) of Act No. 105 of 1969, by s. 10 (*b*) of Act No. 112 of 1977, by s. 15 (1) (*b*) of Act No. 84 of 1987 and by s. 63 (*b*) of Act No. 30 of 1998.]

Wording of Sections

(6) Any duty payable in terms of section 53, any anti-dumping duty payable in terms of section 56, any countervailing duty payable in terms of section 56A and any safeguard duty payable in terms of section 57 shall be paid for the benefit of the National Revenue Fund in accordance with the provisions of the said sections.

[Sub-s. (6) substituted by s. 8 of Act No. 86 of 1982, by s. 3 of Act No. 61 of 1992 and by s. 63 (*b*) of Act No. 30 of 1998.]

Wording of Sections

(7) To the extent that any goods, classifiable under any tariff heading or subheading of Part 1 of Schedule No. 1 that is expressly quoted in any tariff item, environmental levy item, fuel levy item, Road Accident Fund levy item or item of Part 2, 3, 5A, 5B or 6 of the said Schedule or in any item in Schedule No. 2, are specified in any such tariff item, environmental levy item, fuel levy item, Road Accident Fund levy item or item, the item concerned shall be deemed to include only such goods classifiable under such tariff heading or subheading.

[Sub-s. (7) substituted by s. 17 (*c*) of Act No. 105 of 1969, by s. 10 (*c*) of Act No. 112 of 1977, by s. 15 (1) (*c*) of Act No. 84 of 1987, by s. 22 (*b*) of Act No. 59 of 1990, by s. 126 (1) (*a*) of Act No. 60 of 2001, by s. 138 (1) (*b*) of Act No. 45 of 2003 and by s. 90 (1) (*b*) of Act No. 31 of 2005.]

Wording of Sections

(8) (*a*) The interpretation of-

(i) any tariff heading or tariff subheading in Part 1 of Schedule No. 1;

(ii) (*aa*) any tariff item or fuel levy item or item specified in Part 2, 5 or 6 of the said Schedule, and

(*bb*) any item specified in Schedule No. 2, 3, 4, 5 or 6;

(iii) the general rules for the interpretation of Schedule No. 1; and

(iv) every section note and chapter note in Part 1 of Schedule No. 1,

shall be subject to the International Convention on the Harmonized Commodity Description and Coding System done in Brussels on 14 June 1983 and to the Explanatory Notes to the Harmonised System issued by the Customs Co-operation Council, Brussels (now known as the World Customs Organisation) from time to time: Provided that where the application of any part of such Notes or any addendum thereto or any explanation thereof is optional the application of such part, addendum or explanation shall be in the discretion of the Commissioner.

(*b*) The Commissioner shall obtain and keep in his office two copies of such Explanatory Notes and shall effect thereto any amendment of which he is notified by the said Council from time to time and shall record the date of effecting each such amendment and any such amendment shall, for the purposes of this Act, be effective from the date so recorded.

[Para. (*b*) added by s. 3 (1) of Act No. 10 of 2005 with effect from 12 December, 2001.]

(*c*) Whenever in any legal proceedings any questions arises as to the contents of such Explanatory Notes or as to the date upon which any amendment thereto was effected, a copy of such Explanatory Notes as amended in terms of this subsection shall be accepted as sufficient evidence of the contents thereof and of the effective date of any amendment thereto.

[Sub-s. (8) amended by s. 11 of Act No. 95 of 1965, by s. 7 of Act No. 105 of 1976 and by s. 15 (1) (*d*) of Act No. 84 of 1987, substituted by s. 126 (1) (*a*) of Act No. 60 of 2001 and amended by s. 104 (1) of Act No. 74 of 2002. Para. (*c*) added by s. 3 (1) of Act No. 10 of 2005 with effect from 12 December, 2001.]

Wording of Sections

(9) (*a*) (i) The Commissioner may in writing determine-

(*aa*) the tariff headings, tariff sub-headings or tariff items or other items of any Schedule under which any imported goods, goods manufactured in the Republic or goods exported shall be classified; or

(*bb*) whether goods so classified under such tariff headings, tariff sub-headings, tariff items or other items of Schedule No. 3, 4, 5 or 6 may be used, manufactured, exported or otherwise disposed of or have been used, manufactured, exported or otherwise disposed of as provided in such tariff items or other items specified in any such Schedule.

[Sub-para. (i) substituted by s. 6 of Act No. 68 of 1989 and by s. 126 (1) (*b*) of Act No. 60 of 2001.]

Wording of Sections

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

(iii) Any determination made under this subsection shall operate-

(*aa*) only in respect of the goods mentioned therein and the person in whose name it is issued; and

(*bb*) subject to the provisions of section 44 (11) (*c*) and 76B and subsections (10) and (11), from the date the determination is issued.

[Sub-para. (iii) inserted by s. 126 (1) (*c*) of Act No. 60 of 2001.]

(iv) (*aa*) For the purposes of this subparagraph "alcoholic beverages" means alcoholic beverages as contemplated in Chapter 22 of Part 1 of Schedule No. 1.

(*bb*) Notwithstanding anything to the contrary contained in this Act, every manufacturer or importer of **an alcoholic beverage shall, irrespective of any existing tariff determination at the time this subparagraph** comes into operation, apply for a tariff determination of that beverage in terms of this paragraph.

(*cc*) An application for a tariff determination shall be accompanied by-

(A) detailed information of the brand name, process of manufacture, the ingredients used, the proportion in which they are used, the alcoholic strength and such other particulars as the Commissioner may specify; and

(B) if applicable, a letter from the administering officer referred to in section 3 of the Liquor Products Act, 1989 (Act No. 60 of 1989), confirming that the alcoholic beverage complies with that Act.

(*dd*) Notwithstanding subsection (3) of section 4, but subject, with the necessary changes, to the proviso to subsection (3) and subsections (3A), (3C) and (3D) of that section, the Commissioner may disclose any information provided in terms of item (*cc*) to the Director General of the Department of Agriculture, Forestry and Fisheries.

(*ee*) After the date this subparagraph comes into operation, application for a tariff determination shall be made for an alcoholic beverage-

(A) before release of a clearance for home consumption of the first importation; or

(B) before removal from the excise manufacturing warehouse for any purpose in terms of this Act,

as may be applicable in respect of that alcoholic beverage.

(*ff*) The Commissioner may, for the purposes of implementation of this subparagraph, by rule-

(A) specify a period after the date this subparagraph comes into operation within which and the order in which an application for a tariff determination in respect of any class or kind of alcoholic beverage manufactured or imported shall be submitted; and

(B) prescribe any other matter as contemplated in subsection (13).

(*gg*) If, for any alcoholic beverage, the brand name, process of manufacture, any ingredient or the proportion in which it is used, or the alcoholic strength changes, application for a new tariff determination shall be made before release of a clearance for home consumption or before removal from the excise manufacturing warehouse for any purpose in terms of this Act, as may be applicable in respect of that alcoholic beverage.

(*hh*) This subparagraph may not be read as preventing any officer from performing any function contemplated in section 106.

[Sub-para. (iv) added by s. 15 of Act No. 44 of 2014.]

(*b*) (i) Whenever any determination is made under paragraph (*a*) or any determination is amended or

withdrawn and a new determination is made under paragraph (*d*), any amount due in terms thereof shall, notwithstanding that such determination is being dealt with in terms of any procedure contemplated in Chapter XA or any proceedings have been instituted in any court in connection therewith, remain payable as long as such determination or amended or new determination remains in force: Provided that the Commissioner may on good cause shown, suspend such payment until the date of any final judgment by the High Court or a judgment by the Supreme Court of Appeal.

[Sub-para. (i) substituted by s. 138 (1) (*c*) and (*g*) of Act No. 45 of 2003 and by s. 11 (*a*) of Act No. 36 of 2007.]

Wording of Sections

(ii) Such determination, amendment of a determination or new determination shall cease to be in force from the date-

(*aa*) of the amendment of or the withdrawal and insertion of any Schedule or any amendment of the Explanatory Notes as contemplated in subsection (8) (*b*) with the result that the said determination, amended determination or new determination no longer conforms to the interpretation of the relevant provisions of such Schedule or Explanatory Notes;

(*bb*) when it is no longer compatible with a final judgment by the High Court or a judgment by the Supreme Court of Appeal, from the date of such judgment; or

(*cc*) any amendment of a determination or new determination is made effective under paragraph (*d*) or as a result of the finalisation of any procedure contemplated in Chapter XA.

[Para. (*b*) substituted by s. 126 (1) (*d*) of Act No. 60 of 2001. Item (*cc*) substituted by s. 138 (1) (*d*) and (*h*) of Act No. 45 of 2003 and by s. 11 (*b*) of Act No. 36 of 2007.]

Wording of Sections

(*c*) Whenever a court amends or orders the Commissioner to amend any determination made under subsection (9) (*a*) or (*d*) or any determination is amended or a new determination is made under paragraph (*d*) or as a result of the finalisation of any procedure contemplated in Chapter XA, the Commissioner shall not be liable to pay interest on any amount refundable which remained payable in terms of the provisions of paragraph (*b*) (i) for any period during which such determination remained in force.

[Para. (*c*) substituted by s. 63 (*c*) of Act No. 30 of 1998, by s. 126 (1) (*d*) of Act No. 60 of 2001, by s. 138 (1) (*e*) and (*i*) of Act No. 45 of 2003 and by s. 11 (*c*) of Act No. 36 of 2007.]

Wording of Sections

(*d*) (i) The Commissioner shall-

(*aa*) amend any determination or withdraw it and make a new determination with effect from the date it is no longer in force as provided in paragraph (*b*) (ii) (*aa*) or (*bb*);

(*bb*) except where a determination is being dealt with in terms of any procedure contemplated in Chapter XA, amend any determination or withdraw it and make a new determination if it was made in error or any condition or obligation on which it was issued is no longer fulfilled or on any other good cause shown including any relevant ground for review contemplated in section 6 of the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000).

[Item (*bb*) substituted by s. 138 (1) (*f*) and (*i*) of Act No. 45 of 2003 and by s. 11 (*d*) of Act No. 36 of 2007.]

Wording of Sections

(ii) Any such amendment or new determination contemplated in paragraph (i) (*bb*) may be made with effect from-

(*aa*) subject to the provisions of section 44 (11) (*c*), the date of first entry of the goods in question in circumstances where a false declaration is made for the purposes of this Act;

(*bb*) the date of first entry, if the determination was made-

(A) by an officer who was biased or reasonably suspected of bias; or

(B) for an ulterior purpose or motive, arbitrarily or capriciously or in bad faith;

(*cc*) subject to subsection (12), the date of the determination made under paragraph (*a*) in circumstances where such determination was made in *bona fide* error of law or of fact; or

(*dd*) the date of the amendment of the previous determination or the date of the new determination:

Provided that whenever any amendment of a determination or a new determination is effective from a date resulting in the person to whom the determination was issued-

(*a*) being entitled to a refund of duty, such refund shall be subject to the provisions of section 76B;

(*b*) retrospectively incurring an increased liability for duty, such liability shall, subject to the provisions of section 44 (11) (*c*), be limited to goods entered for home consumption during a period of two years

immediately preceding the date of such amendment or new determination.

[Para. (*d*) substituted s. 126 (1) (*d*) of Act No. 60 of 2001.]

Wording of Sections

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

[Para. (*e*) amended by s. 53 (*c*) of Act No. 53 of 1999.]

Wording of Sections

(*f*) Such appeal shall, subject to section 96 (1), be prosecuted within a period of one year from the date of the determination.

[Sub-s. (9) added by s. 6 (1) of Act No. 110 of 1979 and substituted by s. 4 of Act No. 44 of 1996.]

Wording of Sections

(10) Save where-

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

(*b*) subject to section 44 (11) (*c*), any underpayment arises from the circumstances contemplated in the proviso to section 44 (11) (*a*),

[Para. (*b*) substituted by s. 68 of Act No. 32 of 2004.]

Wording of Sections

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

[Sub-s. (10) added by s. 6 (1) of Act No. 110 of 1979 and substituted by s. 126 (1) (*e*) of Act No. 60 of 2001.]

Wording of Sections

(11) (*a*) Notwithstanding the provisions of subsection (10), any determination made under subsection (9) (*a*) as a result of or during the course of or following upon an inspection of the books, accounts and other documents of an importer, exporter, manufacturer or user of goods, shall, subject to the provisions of section 44 (11) (*c*), be deemed to have come into operation in respect of the goods in question entered for the purposes of this Act two years prior to the date on which the inspection commenced.

(*b*) The expression **"inspection of any books, accounts and other documents",** or any other reference to an inspection in this Act shall be taken to include any act done by an officer in the exercise of any duty imposed or power conferred by this Act for the purposes of the physical examination of goods and documents upon or after or in the absence of entry, the issue of stop notes or other reports, the making of assessments and any pre- or post-importation audit, investigation, inspection or verification of any such books, accounts and other documents required to be kept under this Act.

[Sub-s. (11) added by s. 6 of Act No. 52 of 1986 and substituted by s. 126 (1) (*e*) of Act No. 60 of 2001.]

Wording of Sections

(12) . . . . . .

(Date of commencement of sub-s. (12) to be proclaimed.)

(13) The Commissioner may make rules in respect of-

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

(ii) any other matter which the Commissioner may consider reasonably necessary and useful for the purposes of administering the provisions of this section.

[Sub-s. (13) inserted by s. 126 (1) (*f*) of Act No. 60 of 2001.]

47A. Prohibition of certain acts in respect of goods not duly entered.-(1) Subject to the provisions of this Act, no person shall remove, receive, take, deliver or deal with or in any imported or excisable goods or fuel levy goods unless such goods have been duly entered.

(2) . . . . . .

[S. 47A inserted by s. 7 of Act No. 101 of 1985, amended by s. 16 of Act No. 84 of 1987 and substituted by s. 4 of Act No. 98 of 1993. Sub-s. (2) deleted by s. 38 of Act No. 45 of 1995.]

Wording of Sections

47B. Air passenger tax.-(1) For the purposes of this section, unless the context otherwise indicates-

"agent" means an agent contemplated in subsection (5) (*c*);

"airline" means any air transport enterprise offering or operating an international air service;

"airport" means a customs and excise airport specified in item 200.04 of the Schedule to the rules;

"carriage" means carriage by air;

"chargeable aircraft" means an aircraft designed or adapted to carry any person in addition to the flight crew;

"chargeable passenger", subject to the provisions of subsection (3), means every passenger on a chargeable aircraft departing from an airport in the Republic to a destination in a territory outside the Republic;

"flight", in relation to any-chargeable passenger, means the carriage of such passenger from an airport in the Republic on a chargeable aircraft to any destination in a territory outside the Republic;

"operator", in relation to a chargeable aircraft, means the person having the management of the aircraft for the time being, and includes any airline or any person who owns or hires such aircraft or in whose name the aircraft is registered in terms of the regulations made under the Aviation Act, 1962 (Act No. 74 of 1962);

"passenger", in relation to any chargeable aircraft, means-

(*a*) where the operator is an air transport undertaking, any person carried on the aircraft other than-

(i) a member of the flight crew;

(ii) a cabin attendant; or

(iii) a person not carried for reward who is an employee of the operator and who satisfies such other requirements as may be prescribed by rule; and

(*b*) in any other case, any person carried for reward;

"reward", in relation to the carriage of any person, includes any form of consideration received or to be received wholly or partly in connection with the carriage, irrespective of the person by whom or to whom the consideration has been given or is to be given;

"tax" means air passenger tax.

(2) (*a*) A tax known as air passenger tax shall be charged in accordance with this section on the carriage on a chargeable aircraft of any chargeable passenger.

(*b*) (i) (*aa*) The tax shall be charged on the carriage of each chargeable passenger departing on a flight.

(*bb*) A lower rate of tax may be levied in respect of any flight of which the final destination is any country in Africa.

(*cc*) The rates of tax shall be the rates in force when this section comes into operation until amended as contemplated in subparagraph (ii).

(ii) The Minister may by notice in the *Gazette* amend the rates of tax from a date specified in that notice.

(iii) In considering the imposition of a lower rate as contemplated in subparagraph (i) (*bb*) the Minister shall take into account-

(*aa*) the distance between an airport in a country concerned and an airport in the Republic;

(*bb*) any agreement existing between the Republic and any of the countries concerned;

(*cc*) the price of the flight ticket; and

(*dd*) any other ground which may be regarded as reasonable in the circumstances.

(iv) The provisions of section 48 (6) shall apply with the necessary changes to any notice referred to in subparagraph (ii).

[Para. (*b*) amended by s. 40 (1) of Act No. 12 of 2003, by s. 13 (1) of Act No. 9 of 2005, by s. 87 (1) of Act No. 17 of 2009 and by s. 126 (1) of Act No. 24 of 2011 and substituted by s. 141 of Act No. 22 of 2012.]

Wording of Sections

(*c*) (i) The chargeable passenger shall be liable for the tax which shall be collected by the operator or his agent.

(ii) The operator or his or her agent shall be entitled to collect the tax from a chargeable passenger-

(*aa*) at the time of the acquisition by that chargeable passenger of a ticket for the flight; or

(*bb*) prior to the embarkation of that chargeable passenger on a flight; and

(iii) Where the tax has not been collected at the time contemplated in subparagraph (ii), an operator or his or her agent shall be liable for the tax and may recover the uncollected tax from the chargeable passenger.

[Para. (*c*) substituted by s. 92 (*a*) of Act No. 35 of 2007.]

Wording of Sections

(*d*) Subject to the provisions of this section and the rules, the tax-

(i) becomes due when the aircraft first takes off on the passenger's flight;

(ii) shall be paid-

(*aa*) for the benefit of the National Revenue Fund;

(*bb*) in respect of each chargeable passenger, by the operator or the agent;

(*cc*) in accordance with the rules as contemplated in subsection (7) (*b*) (i).

(*e*) Subject to the provisions of this section and except for the purposes of any customs union agreement contemplated in section 49, the tax shall be deemed to be a duty leviable under this Act.

[Para. (*e*) substituted by s. 92 (*b*) of Act No. 35 of 2007.]

Wording of Sections

(3) (*a*) A child who-

(i) has not attained the age of two years; and

(ii) is not allocated a separate seat before boarding the aircraft,

is not a chargeable passenger.

(*b*) A passenger is not a chargeable passenger if-

(i) not carried for reward-

(*aa*) in pursuance of any requirement imposed under any law; or

(*bb*) for the purposes only of inspecting matters relating to the aircraft or the flight crew;

(ii) whether or not carried for reward, in pursuance of any international agreement, convention or obligation, subject to the approval of the Commissioner and such conditions as he may impose in each case;

(*c*) Any passenger, who is in transit through the Republic and departs from the transit area of the airport on a flight without entering the Republic by passing through immigration, is not a chargeable passenger.

(4) (*a*) The Commissioner shall keep a register of operators.

(*b*) (i) The operator of a chargeable aircraft used for the carriage of any chargeable passenger shall be liable to be registered under this section.

(ii) Application for registration shall be in such form and manner and contain such information as may be prescribed by rule.

(*c*) Any person liable to be registered under this section ceases to be so liable if the Commissioner is, on good cause shown, satisfied that-

(i) such person no longer operates any chargeable aircraft; or

(ii) no chargeable aircraft operated by such person will be used for the carriage of chargeable passengers.

(*d*) Any person who is not registered and who has not applied for registration shall, if he becomes liable to be registered at any time, give notice of that fact to the Commissioner and apply for registration in writing within seven days of the time of becoming so liable.

(*e*) Every pilot of a chargeable aircraft shall, for the purposes of section 7 (3), produce together with the report outwards-

(i) proof of registration of the operator; or

(ii) a certificate from the Commissioner that the operator is not liable to be registered; and

(iii) a passenger manifest in such form and containing such particulars as may be prescribed by rule.

(5) (*a*) An operator who-

(i) is, or is liable to be, registered; and

(ii) does not meet the requirements contemplated in paragraph (*b*),

shall appoint an agent whose place of business is in the Republic as the South African representative of the operator.

(*b*) A person meets the requirements of this subsection if such person-

(i) has any business establishment or other fixed establishment in the Republic; or

(ii) is an individual and is usually resident in the Republic.

(*c*) The Commissioner may register any duly appointed agent of an operator, and if so registered, the agent may act on behalf of the operator for the purposes of this Act.

(*d*) The Commissioner may by rule prescribe the following:

(i) The persons who may be appointed as agent;

(ii) the manner and conditions in or on which a person is to be appointed as agent for an operator;

(iii) the conditions on which agents are registered by the Commissioner; and

(iv) any other matter which is required or permitted in terms of this section to be prescribed by rule.

(*e*) (i) The Commissioner may refuse to register an agent appointed by an operator or cancel or suspend the registration of any agent.

(ii) For the purposes of subparagraph (i), the provisions of section 60 (2) shall apply *mutatis mutandis*.

(*f*) The provisions of sections 44A, 98 and 99 (1) shall apply *mutatis mutandis* to an operator and his agent.

(6) (*a*) No-

(i) operator who is liable to be registered; or

(ii) agent appointed by an operator,

may conduct any business contemplated in this section unless such operator or agent has furnished such security as the Commissioner may require.

(*b*) The Commissioner may at any time require that the form, nature or amount of such security be altered in such a manner as he may determine.

(7) (*a*) Any operator who is registered or liable to be registered and any agent of such operator shall-

(i) keep accounts in such form and such manner; and

(ii) render tax accounts at such time, in such manner and for such periods,

as may be prescribed by rule.

(*b*) (i) Any operator or agent of such operator shall pay any tax due at such time, in such manner and at such place as may be prescribed by rule.

(ii) (*aa*) Any tax due and not accounted for and not paid in accordance with the provisions of this subsection, shall be paid upon demand by the Commissioner.

(*bb*) If such tax is not paid within 14 days after demand for payment was made, it shall be recoverable in terms of the provisions of this Act as if it were a duty payable under this Act.

(iii) Interest on any outstanding tax shall be payable as provided in section 105.

(iv) Any amounts of tax overpaid shall be refundable in the circumstances and on compliance with such conditions as may be prescribed by rule.

(8) (*a*) Any person who-

(i) is knowingly a party to the fraudulent evasion of tax or attempts to commit such evasion or assists any other person in taking steps with a view to such fraudulent evasion; or

(ii) in connection with tax makes a statement he knows to be false or recklessly makes a statement that is false, or, with intent to deceive produces or makes use of a book, account, return or other document that is false,

shall be guilty of an offence and liable on conviction to a fine not exceeding R100 000 or three times the value of the tax to which the offence relates, whichever is the greater, or to imprisonment for a period not exceeding 10 years, or to both such fine and such imprisonment, and the aircraft in respect of which the fraudulent act took place or false statements were made shall be liable to forfeiture in accordance with this Act.

(9) (*a*) Notwithstanding anything to the contrary contained in this section, there shall be no liability for any underpayment of tax or failure to collect tax-

(i) after a period of two years from the date any account was or should have been rendered in respect of such tax; or

(ii) where such underpayment or failure was discovered as a result of, during the course of, or following upon, an inspection and that underpayment or failure occurred on a date earlier than two years prior to the date on which such inspection commenced:

Provided that such liability shall, subject to paragraph (*c*), not cease even if an underpayment is discovered after an earlier assessment and payment of an amount in respect of any inspection during the period concerned, where such underpayment is the result of-

(*aa*) fraud;

(*bb*) misrepresentation;

(*cc*) non-disclosure of any material facts; or

(*dd*) any false declaration for the purposes of this Act.

(*b*) Where any period is prescribed in this Act for books, accounts or other documents in whatever form to be kept available for production to or inspection by an officer, any such period shall, subject to the provisions of paragraph (*c*), be calculated from a date prior to the date on which production is demanded or the inspection commences.

(*c*) Except where the Commissioner may otherwise determine in exceptional circumstances, where any underpayment arises from the circumstances contemplated in the proviso to paragraph (*a*), there shall be no limitation on the period of liability for any underpayment of tax or failure to collect tax or the period for which any books, accounts or any other documents, in whatever form available, are required to be produced to or may be inspected by an officer.

[S. 47B inserted by s. 17 of Act No. 84 of 1987, substituted by s. 5 (1) of Act No. 98 of 1993, repealed by s. 11 (1) of Act No. 27 of 1997 and re-inserted by s. 59 (1) of Act No. 30 of 2000. Sub-s. (9) inserted by s. 92 (*c*) of Act No. 35 of 2007.]

Wording of Sections

48. Amendment of Schedule No. 1.-(1) The Minister may from time to time by notice in the *Gazette* amend the General Notes to Schedule No. 1 and Part 1 of the said Schedule or substitute the said Part 1 and amend Part 2 of the said Schedule in so far as it relates to imported goods-

(*a*) in order to give effect to any agreement amending any agreement approved by section 2 of the Geneva General Agreement on Tariffs and Trade Act, 1948 (Act No. 29 of 1948), or to any agreement or amendment of any agreement contemplated in section 49 and for the purposes of subsection (1) (*a*) or (*b*) of the said section 49;

[Para. (*a*) amended by s. 11 (1) (*a*) of Act No. 112 of 1977, substituted by s. 10 of Act No. 98 of 1980 and by s. 54 (*a*) of Act No. 53 of 1999.]

Wording of Sections

(*b*) in order to give effect to any request by the Minister of Trade and Industry and for Economic Co-ordination;

[Para. (*b*) substituted by s. 4 (*a*) of Act No. 61 of 1992.]

Wording of Sections

(*c*) in order to give effect to any amendment to the Explanatory Notes to the Harmonized System and to the Customs Co-operation Council Nomenclature referred to in section 47 (8) or to the Nomenclature set out in the annex to the Convention on Nomenclature for the Classification of Goods in Customs Tariffs signed in Brussels in 1950;

[Para. (*c*) substituted by s. 1 (*a*) of Act No. 68 of 1973, by s. 8 (*a*) of Act No. 105 of 1976 and by s. 7 (1) (*a*) of Act No. 68 of 1989.]

Wording of Sections

(*d*) by deleting any reference therein to any territory the government of which has cancelled without the consent of the Government of the Republic any preferential customs tariff rate applicable at the commencement of this Act to any goods produced or manufactured in the Republic, on their importation into such territory;

(*e*) whenever he deems it expedient in the public interest otherwise to do so.

[Sub-s. (1) amended by s. 6 (*a*) of Act No. 57 of 1966 and by s. 54 (*a*) of Act No. 53 of 1999. Para. (*e*) added by s. 11 (1) (*b*) of Act No. 112 of 1977.]

Wording of Sections

(1A) (*a*) The Minister may, for the purposes of subsection (1) (*a*) and section 49 (1) (*a*) or (*b*), by like notice amend the General Notes to Schedule No. 1 to incorporate as part of such Notes a schedule thereto entitled "Origin provisions of trade agreements", containing the following in respect of any agreement contemplated in section 49:

(i) In separate parts of such schedule, any such agreement or any protocol or other part or provision of such agreement, including any annex or appendix thereto, concerning the origin of goods;

(ii) any instrument contemplated in section 49 (1) (*b*);

(iii) notes to any such agreement, protocol or other part or provision which may specify-

(*aa*) the agreement, protocol or other part or provision or instrument which governs goods entered according to the provisions of a particular column of Part 1 of Schedule No. 1;

(*bb*) definitions;

(*cc*) interpretation of words or phases or substitutes for words or phrases;

(*dd*) any condition or procedure or provision of this Act to be complied with to give effect to such provisions of origin;

(*ee*) powers, duties or functions of the Commissioner or an officer;

(iv) any amendment, with or without retrospective effect, to such schedule or notes for any reason as may be specified in such amendment.

(*b*) No goods imported or exported shall qualify for the benefit of preferential tariff treatment in terms of such agreement unless they comply with such provisions of origin or any other provision of such agreement or of this Act governing the acquisition of origin, tariff quotas or any other condition which is to be fulfilled for the purposes of giving effect to such agreement.

[Sub-s. (1A) inserted by s. 54 (*b*) of Act No. 53 of 1999.]

(2) The Minister may from time to time by like notice amend or withdraw or, if so withdrawn, insert Part 2, Part 3, Part 4, Part 5A or Part 5B of Schedule No. 1, whenever he deems it expedient in the public interest to do so: Provided that the Minister may, whenever he deems it expedient in the public interest to do so, reduce any duty specified in the said Parts with retrospective effect from such date and to such extent as may be determined by him in such notice.

[Sub-s. (2) substituted by s. 1 (*b*) of Act No. 68 of 1973 and by s. 8 (*b*) of Act No. 105 of 1976, amended by s. 11 (1) (*c*) of Act No. 112 of 1977, by s. 9 (*a*) of Act No. 86 of 1982, by s. 18 (*a*) of Act No. 84 of 1987 and by s. 23 (*a*) of Act No. 59 of 1990 and substituted by s. 140 (*a*) of Act No. 45 of 2003 and by s. 91 (1) of Act No. 31 of 2005.]

Wording of Sections

(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.

[Sub-para. (i) substituted by s. 23 (*b*) of Act No. 59 of 1990.]

Wording of Sections

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

[Par. (*a*) substituted by s. 140 (*b*) of Act No. 45 of 2003. Sub-para. (ii) added by s. 7 (1) (*b*) of Act No. 68 of 1989 and substituted by s. 39 (*a*) of Act No. 45 of 1995.]

Wording of Sections

(*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).

[Sub-s. (2A) inserted by s. 18 (*b*) of Act No. 84 of 1987. Para (*b*) substituted by s. 7 (1) (*c*) of Act No. 68 of 1989

and by s. 140 (*b*) of Act No. 45 of 2003.]

Wording of Sections

(3) . . . . . .

[Sub-s. (3) deleted by s. 8 (*c*) of Act No. 105 of 1976.]

Wording of Sections

(3A) . . . . . .

[Sub-s. (3A) inserted by s. 18 (*a*) of Act No. 105 of 1969, amended by s. 1 (*c*) of Act No. 68 of 1973 and deleted by s. 8 (*c*) of Act No. 105 of 1976.]

Wording of Sections

(4) The Minister may, whenever he deems it expedient in the public interest to do so, by notice in the *Gazette* impose an export duty, on such basis as he may determine, in respect of any goods intended for export or any class or kind of such goods or any goods intended for export in circumstances specified in such notice and any export duty so imposed shall be set out in the form of a schedule which shall be deemed to be incorporated in Schedule No. 1 as Part 6 thereof and to constitute an amendment of Schedule No. 1.

[Sub-s. (4) substituted by s. 18 (*b*) of Act No. 105 of 1969, by s. 11 (1) (*d*) of Act No. 112 of 1977 and by s. 18 (*c*) of Act No. 84 of 1987.]

Wording of Sections

(4A) (*a*) Notwithstanding anything to the contrary in this Act contained, the Minister may, whenever he deems it expedient in the public interest to do so, by notice in the *Gazette*, insert Part 8 of Schedule No. 1, and if so inserted withdraw or amend that Part for the purpose of specifying that any duty leviable under any heading or item of Part 1, 2 or 4 of Schedule No. 1 shall not be leviable under that Part, but shall be leviable under the said Part 8 at the time of entry for home consumption for use by any person, government, department, administration or body as may be specified by him in such notice.

(*b*) For the purposes of this subsection, any amount leviable under any item of the said Part 8, shall be called an ordinary levy.

(*c*) Any such ordinary levy shall be paid for the benefit of the National Revenue Fund as specified in section 47 (1) and shall, for the purposes of that section, be deemed to be a duty paid in accordance with the provisions of Schedule No. 1.

[Para. (*c*) substituted by s. 64 of Act No. 30 of 1998.]

Wording of Sections

(*d*) Notwithstanding the provisions of section 47 (1), any ordinary levy paid in respect of any goods intended for consumption in any territory, other than the Republic, which forms part of the common customs area shall be paid by the Commissioner to the government of such territory at such times as he may determine.

(*e*) The provisions of subsection (6) shall *mutatis mutandis* apply to any notice published under this subsection.

[Sub-s. (4A) inserted by s. 7 (1) (*d*) of Act No. 68 of 1989. Para. (*e*) substituted by s. 3 (*a*) of Act No. 19 of 1994.]

Wording of Sections

(5) (*a*) Whenever any amendment made under this section has an effect which was not foreseen or intended, the Minister may, whether or not such amendment has ceased to have effect as such or has lapsed under subsection (6), after consultation with the Minister of Trade and Industry, by further notice in the *Gazette*, adjust such amendment, to the extent he deems fit, with effect from the date of such amendment or any later date, and any adjustment effected under this subsection shall be deemed to be an amendment under this section.

[Para. (*a*) substituted by s. 4 (*b*) of Act No. 61 of 1992 and by s. 39 (*b*) of Act No. 45 of 1995.]

Wording of Sections

(*b*) The provisions of paragraph (*a*) shall, in so far as they can be applied, apply *mutatis mutandis* in respect of any amendment made by Parliament, which corresponds to an amendment made under this section, before the lapsing in terms of subsection (6) of such last-mentioned amendment.

[Sub-s. (5) substituted by s. 6 (*b*) of Act No. 57 of 1966.]

(6) Any amendment, withdrawal or insertion made under this section in any calendar year shall, unless Parliament otherwise provides, lapse on the last day of the next calendar year, but without detracting from the validity of such amendment, withdrawal or insertion before it has so lapsed.

[Sub-s. (6) substituted by s. 18 (*c*) of Act No. 105 of 1969, by s. 9 (*b*) of Act No. 86 of 1982 and by s. 3 (*b*) of Act No. 19 of 1994.]

Wording of Sections

(7) . . . . . .

[Sub-s. (7) substituted by s. 3 of Act No. 98 of 1970 and deleted by s. 3 (*c*) of Act No. 19 of 1994.]

Wording of Sections

48A. . . . . . .

[S. 48A inserted by s. 19 of Act No. 84 of 1987, amended by s. 8 of Act No. 68 of 1989, by s. 5 of Act No. 61 of 1992 and by s. 4 of Act No. 19 of 1994 and repealed by s. 40 of Act No. 45 of 1995.]

Wording of Sections

49. Agreements in respect of rates of duty lower than general rates of duty and other agreements providing for matters requiring customs administration.-(1) (*a*) Whenever any international agreement which binds the Republic as contemplated in section 231 of the Constitution of the Republic of South Africa, 1996, is an agreement-

(i) which includes the granting of preferential tariff treatment of goods and provisions of origin governing such treatment;

(ii) concerning customs co-operation, including for the exchange of information and the rendering of mutual and technical assistance in respect of customs co-operation;

[Sub-para. (ii) substituted by s. 12 of Act No. 36 of 2007.]

Wording of Sections

(iii) regulating transit trade and transit facilities; or

(iv) which is a customs union agreement with the government of any territory in Africa;

[Sub-para. (iv) substituted by s. 46 (*a*) of Act No. 30 of 2002.]

Wording of Sections

(v) which provides for any other matter which either expressly or by implication requires to be administered by customs legislation;

[Sub-para. (v) added by s. 46 (*b*) of Act No. 30 of 2002.]

such agreement or any protocol or other part or provision thereof is enacted into law as part of this Act when published by notice in the *Gazette* in accordance with the provisions of subsections (1) and (1A) of section 48 or subsection (5) or (5B) of this section.

[Para. (*a*) amended by s. 60 (1) (*a*) of Act No. 30 of 2000, by s. 127 (*a*) of Act No. 60 of 2001 and by s. 12 (*a*) of Act No. 9 of 2007.]

Wording of Sections

(*b*) (i) Any amendment of such agreement or any protocol or other part or provision thereof, any regulations for facilitating implementation, any agreed list of processing relating to originating status of goods, any annex or appendix or other addition to such agreement or protocol or any other matter agreed upon between governments or by any committee of, or a body established by, the parties to such agreement or any decision or condition imposed by such committee or body, is likewise enacted into law as part of this Act when published in accordance with the provisions of subsections (1) and (1A) of section 48 or subsection (5) or (5B) of this section by notice in the *Gazette* as an amendment of such agreement or protocol or part or provision, as the case may be, with effect from any date that may be specified in such notice.

[Sub-para. (i) substituted by s. 60 (1) (*b*) of Act No. 30 of 2000 and by s. 46 (*c*) of Act No. 30 of 2002.]

Wording of Sections

(ii) In this section and in section 48 **"instrument"** includes, according to the context, any agreement or any amendment of such agreement or any protocol or other part or provision thereof or any document containing any regulation, list, decision or any matter agreed upon as contemplated in subparagraph (i).

(*c*) In this section and in sections 47 and 48 **"agreement"** includes, unless the context otherwise indicates, any international agreement, treaty or convention.

[Para. (*c*) substituted by s. 127 (*b*) of Act No. 60 of 2001.]

Wording of Sections

(2) (*a*) The Commissioner shall obtain and keep two copies of such agreement, effect any amendments referred to in section 1 (*b*) thereto, record the date the agreement or any such amendment entered into force and the date of any publication referred to in subsection (1).

(*b*) Whenever in any legal proceedings any question arises as to the contents of such agreement or as to the date on which such agreement or amendment entered into force or the date of such publication, a copy of such agreement as so amended and the record of such dates, shall be accepted as sufficient proof of the contents thereof and the date of publication or the date on which such agreement or amendment entered into force.

(*c*) If the context so requires, the interpretation and application of any provision of any protocol or other part of such agreement referred to in this section or section 48 (1A) shall be subject to other applicable provisions of such agreement.

(3) Notwithstanding anything to the contrary in this Act contained-

(*a*) the application of any provision of this Act relating to any importer, exporter, remover in bond, manufacturer, licensee or other principal or any agent or the importation or exportation of goods, the preferential tariff treatment of goods, goods obtained, produced or manufactured, goods in transit or removed in bond, due entry or security in respect of goods imported, exported, removed in bond or in transit, or any other provision or customs procedure or any power, duty or function in connection therewith, shall, for the purposes of giving effect to any agreement contemplated in section 49 or any protocol or other part or provision thereof, be subject to compliance with the provisions of such agreement or such protocol or other part or provision thereof, as the case may be;

(*b*) any reference in this Act to any protocol or other part or provision of such agreement shall be deemed to include a reference to any instrument referred to in section 49 (1) (*b*) applicable thereto and any provision of such agreement governing such protocol or other part or provision or instrument, as the case may be.

(4) (*a*) If any reference is made in such agreement to any convention, treaty or other agreement which is to be observed in ascertaining the originating status of goods obtained, produced or manufactured and imported or exported in specified instances, the Commissioner shall obtain and keep two copies of such convention, treaty or agreement, effect any amendment thereto and record the date the convention, treaty or agreement entered into force as advised by the Director-General: Trade and Industry.

(*b*) The provisions of subsection (2) (*b*) shall apply *mutatis mutandis* to the copies of such convention, treaty or other agreement.

(*c*) To the extent that any provision of such convention, treaty or other agreement requires to be so observed, it shall be deemed to be incorporated in the agreement concerned.

(5) Where any such agreement or protocol or other part or provision thereof does not relate to the origin of goods as envisaged in section 48 (1A), but otherwise by reference to customs or competent authorities or customs or domestic or national legislation or like expressions or in any other way expressly or by implication requires that it should be administered in terms of this Act, the Minister may by notice in the *Gazette* in Schedule No. 10 to this Act under the title "Agreement or protocols or other parts or provisions thereof contemplated in section 49 (5)" publish-

(*a*) in separate parts of such Schedule, any such agreement or any protocol or other part or provision of such agreement, including any annexure or appendix thereto for the purposes of subsection (1) (*a*);

[Para. (*a*) substituted by s. 24 (*b*) of Act No. 34 of 2004.]

Wording of Sections

(*b*) any instrument contemplated in, and for the purposes of; subsection (1) (*b*);

(*c*) notes to such Schedule No. 10 wherein may be specified-

(i) definitions;

(ii) interpretations of words and phrases or substitutes for words and phrases;

(iii) any condition or procedure or provision of this Act to be complied with in order to give effect to such agreement or protocol or part or provision of such agreement;

(iv) powers, duties or functions of the Commissioner or an officer;

(*d*) any amendment of Schedule No. 10 and any note thereto with or without retrospective effect for any reason as may be specified in such amendment.

(5A) The provisions of section 48 (6) shall apply *mutatis mutandis* in respect of any amendment made under the provisions of subsection (5) (*d*).

(5B) Notwithstanding the provisions of subsection (5), the Minister may include in any notice published under that subsection, the full text of any such agreement or protocol except any protocol or other part thereof, as the case may be, published under subsection 48 (1A), and if so included, the whole agreement or protocol, as the case may be, shall be enacted into law as part of this Act as contemplated in subsection (1) (*a*).

[Sub-s. (5B) inserted by s. 60 (1) (*c*) of Act No. 30 of 2000.]

(6) In administering the provisions of any agreement, including any protocol or other part or provision thereof or any other instrument contemplated in this section, and the application of any procedure to give effect thereto, the Commissioner may, notwithstanding anything to the contrary in this Act contained-

(*a*) decide on or determine any matter or perform any duty or function or impose any condition in connection with the provisions so administered, including any decision on or determination or the performance of any duty or function or the imposing of any condition in respect of-

(i) any heading in Part 1 or any item of any other Part of Schedule No. 1 applicable to any goods imported or exported, obtained, produced or manufactured or used in the production or manufacture of any goods, or the customs value of any such imported goods;

(ii) the first ascertainable price of goods where the customs value is not known or cannot be ascertained;

(iii) any provision which governs or specifies any procedure concerning-

(*aa*) the origin or proof of origin of goods imported or exported;

(*bb*) the importation or exportation or production or manufacture of goods and the ex-factory price of goods;

(*cc*) tariff quotas;

(*dd*) rendering mutual and technical assistance in respect of customs co-operation;

(*ee*) transit carriage of goods, transit trade and transit facilities;

(*ff*) requirements in connection with agency where any person is represented in the importation or exportation of any goods involving proof of origin or in any matter relating to the transit carriage of goods, transit trade or transit facilities;

(*gg*) the approval of exporters to issue invoice declarations or withdrawal or refusal of such approval;

(iv) any other power, duty or function or procedure provided in any such agreement or protocol or other part or provision thereof which requires either expressly or by implication customs administration action to give effect thereto;

(v) the convention, treaty or agreement referred to in subsection (4);

(vi) a binding origin determination and any procedure in connection therewith;

(*b*) make rules-

(i) concerning any matter referred to in paragraph (*a*), including such convention, treaty or agreement;

(ii) where reference is made to customs or competent authorities, to domestic, national or customs law or any like reference or any other matter which requires either expressly or by implication application of customs legislation;

(iii) in connection with the entry of goods imported or exported and documents to be produced in support thereof;

(iv) to regulate the application, determination, entry of goods and other procedures in connection with binding origin determinations;

(v) prescribing forms or procedures or specifying any condition or provision of this Act to be complied with to give effect to such agreement, protocol or other part or provision thereof;

(vi) to delegate, subject to section 3 (2), any power, duty or function to any officer or other person;

(vii) regarding any other matter which may be necessary or useful for the purposes of administering such provisions;

(*c*) subject to such conditions as the Commissioner may in each case impose, enter into any agreement with any person, with the concurrence of any exporter, producer or manufacturer, as the case may be, to perform any function or provide any service for the purposes of establishing and reporting on the origin of goods or issuance of any proof of origin to give effect to such agreement.

(7) (*a*) Notwithstanding the provisions of section 47 (9), 65 (4) or 66 (9), any determination of any heading or item or the customs value of goods imported shall, if such determination concerns goods used in the production or manufacture of any goods, or goods produced or manufactured therefrom, or any other goods, of which the origin is being determined, be made in terms of this section.

(*b*) For the purposes of any appeal against a decision or determination of the Commissioner in administering any of the provisions referred to in this section-

(i) any decision or determination shall, subject to appeal to court, be deemed to be correct for the purposes of this Act, and where any amount is payable in consequence thereof, such amount shall remain payable as long as such decision or determination remains in force: Provided that if it involves disputes with foreign customs authorities, the processes for dispute settlement provided in the agreement shall be followed;

(ii) subject to the provisions of subsection (8), any decision or determination may be amended or withdrawn and a new decision or determination made from the date the decision or determination was given, but such a decision or determination shall *mutatis mutandis* be subject to the provisions of section 76B if any refund of duty is involved;

(iii) an appeal against any such decision or determination shall be to the division of the High Court having jurisdiction to hear appeals in the area wherein the decision or determination was made or the goods in question were entered for home consumption or exported.

(*c*) Such appeal shall, subject to section 96 (1), be prosecuted within a period of one year from the date of the decision or determination.

(8) (*a*) For the purposes of any binding origin determination, unless the context otherwise indicates-

"applicant" means a person who has applied to the Commissioner for a binding origin determination and has valid reasons to do so;

"binding origin determination" means an origin determination binding on the Commissioner when it is issued to the applicant after compliance with the provisions of this subsection and the rules;

"holder" means the person in whose name the binding origin determination is issued.

(*b*) A binding origin determination may be issued by the Commissioner on the written request of an applicant in respect of goods-

(i) imported from a country or countries or group of countries with which agreements have been concluded as contemplated in this section providing for preferential rates of duty on such goods; and

(ii) for which certificates of origin have been issued by, or invoice declarations made by an exporter approved by, the customs authorities of the country or countries or group of countries concerned.

(*c*) A binding origin determination favourable to the holder shall be annulled by the Commissioner if after due enquiry he finds that it was issued on the basis of incorrect or incomplete information.

(*d*) Such annulment shall take effect from the date the determination was made and the holder shall be notified of the annulment.

(*e*) A binding origin determination shall be binding on the Commissioner as against the holder only in respect of-

(i) the determination of the origin of goods for the purposes of the agreement concerned; and

(ii) goods which are entered as required in terms of section 38 (1) after the date on which such determination was supplied by the Commissioner.

(*f*) A binding origin determination shall be valid for a period of three years from the date of issue, but shall cease to be valid where-

(i) the binding determination no longer conforms to the provisions of the agreement or this Act on which it is based as a result of any amendment of such provisions;

(ii) subject to the right of appeal in terms of subsection (7), the Commissioner withdraws it as provided in paragraph (*b*) (ii) of the said subsection;

(iii) it is no longer compatible with-

(*aa*) any interpretation of the provisions of such agreement in respect of the goods in question in the originating country;

(*bb*) any final judgement of the High Court or a judgment of the Supreme Court of Appeal;

(iv) provided the holders is informed in advance, it is revoked or amended in the following circumstances:

(*aa*) Except in the case referred to in paragraph (*c*), the Commissioner shall revoke or amend any determination favourable to the holder if any one or more of the conditions imposed for its issue were not or are no longer fulfilled;

(*bb*) the Commissioner may revoke any determination favourable to the holder if such holder fails to fulfil any obligation imposed under such determination;

(*cc*) the Commissioner may revoke or amend any determination-

(i) if it was issued in error; or

(ii) if it is unfavourable to the holder and for any reason the goods are subsequently proved to qualify for a favourable determination.

(*g*) The date on which binding determination ceases to be valid shall be-

(i) in the case of paragraph (*f*) (i), the date any amendment to such agreement is enacted in this Act or in the case of any other provision of this Act, such provision is so amended; or

(ii) in the case of paragraph (*f*) (iii) (*bb*), the date of the judgement and in the case of paragraph (*f*) (iii) (*aa*) the date of publication of such interpretation.

(*h*) (i) Notwithstanding the provisions of paragraphs (*f*) and (*g*), if the Commissioner so permits, the holder of a binding origin determination may still use such determination for a period of six months from the date specified therein, or until the period of three years expires, whichever is the earlier date provided-

(*aa*) such holder concluded binding contracts for the purchase or sale of the goods in question on the basis of such determination before any such date; and

(*bb*) such determination is used solely for determining import duties.

(ii) Any holder who wishes to make use of the possibility of invoking such determination as provided in subparagraph (i), shall notify the Commissioner and provide the necessary supporting documents to enable a check to be made whether the conditions specified in the said subparagraph (i) have been satisfied.

(9) Notwithstanding anything to the contrary in this Act contained-

(*a*) where any importer who imports any goods which are claimed to have the originating status to qualify for any preferential rate of duty specified in Part 1 of Schedule No. 1 is for any reason unable to produce at the time of entry as contemplated in section 39 any certificate of origin or invoice declaration or other document confirming the originating status of such goods as provided in any agreement contemplated in this section, such goods shall, irrespective of whether a binding origin determination has been issued in respect thereof-

(i) be entered for storage in a licensed customs and excise storage warehouse; or

(ii) with the prior approval of the Controller and on such conditions as the Controller may impose, be entered for customs duty purposes as if such preferential rate applies, subject to the furnishing of a provisional payment or other security approved by the Controller for the amount of the general rate of duty specified in the said Part 1 payable thereon,

pending production of such certificate of origin or invoice declaration or other document confirming the originating status of such goods;

(*b*) if such certificate of origin or invoice declaration or other document confirming originating status is not furnished within the time specified by the Controller, duty shall be payable at the general rates of duty specified in Part 1 of Schedule No. 1 in respect of the goods concerned.

[S. 49 substituted by s. 3 of Act No. 7 of 1974, by s. 12 of Act No. 27 of 1997, by s. 65 of Act No. 30 of 1998 and by s. 55 of Act No. 53 of 1999 and amended by s. 24 (*a*) of Act No. 34 of 2004.]

Wording of Sections

(10) Notwithstanding anything to the contrary contained in this Act, the Commissioner may, for the purposes of administering any provision of any agreement relating to customs administration which is not enacted into law as contemplated in this section-

(*a*) decide on or determine any matter, perform any duty or function, exercise any power or impose any condition in connection with a provision so administered; and

(*b*) make rules concerning any matter contemplated in paragraph (*a*);

[S. 49 substituted by s. 3 of Act No. 7 of 1974, by s. 12 of Act No. 27 of 1997, by s. 65 of Act No. 30 of 1998, by s. 55 of Act No. 53 of 1999 and amended by s. 24 (*a*) of Act No. 34 of 2004. Sub-s. (10) added by s. 12 (*b*) of Act No. 9 of 2007.]

Wording of Sections

50. Provisions relating to the disclosure of information in terms of agreements.-(1) Notwithstanding the provisions of section 4 (3) or any other law relating to confidentiality or secrecy, but subject to section 101B, the Commissioner may, in accordance with-

(*a*) any international agreement in respect of mutual administrative assistance and cooperation or exchange of information in customs matters which is in force and binds the Republic in terms of section 231 of the Constitution of the Republic of South Africa, 1996, hereinafter referred to as the "Constitution"; or

(*b*) any other international agreement which is in force and binds the Republic in terms of section 231 of

the Constitution, and in circumstances where the Commissioner is on good cause shown, satisfied that the international or regional interest or national public interest in the disclosure of information outweighs any potential harm to the person, firm or business to whom or to which such information relates-

(i) disclose, or for the purpose of paragraph (*a*), in writing authorise any officer to disclose, any information relating to any person, firm or business acquired by an officer in carrying out any duty under this Act;

(ii) render mutual and technical assistance in accordance with any agreement contemplated in paragraph (*a*); and

(iii) in writing authorise any officer to exercise any power under this Act which may be considered necessary for the purpose of rendering such assistance or obtaining such information.

(2) (*a*) (i) If any agreement referred to in subsection (1) (*a*) provides for the automatic exchange of information of the cross-border movement of means of transport, goods and persons the Commissioner may determine the information, including the contents of any documents relating to clearance declarations for such movement, that will be allowed to be disclosed as contemplated in subsection(1) (*b*) (i).

(ii) Notwithstanding subsection (1) and subparagraph (i), the Commissioner may not disclose information in terms of this section where any of the grounds for refusal referred to in Chapter 4 of the Promotion of Access to Information Act, 2000 (Act No. 2 of 2000), applies except if disclosure is authorised for the purposes contemplated in section 46 of that Act.

(*b*) For the purposes of this subsection automatic exchange of information may include the systematic supply of clearance information in terms of the agreement by the customs authority of the sending party to the customs authority of the receiving party in an agreed electronic or other structured format in advance of the arrival of the persons, goods or means of transport in the territory of the receiving party.

(*c*) Any information automatically exchanged shall be treated as confidential by the receiving party and may only be used for the purposes of risk analysis by the customs authority of that party except if the party providing the information in writing authorises its use for other purposes or by other authorities in terms of the provisions of the agreement regulating the exchange of such information.

(*d*) The Commissioner may, in respect of the automatic exchange of information-

(i) authorise the use for other purposes or by other authorities of the information provided by the other party to the agreement as contemplated in paragraph (*c*);

(ii) specify conditions on which any information will be exchanged and on which it may be used for any other purpose or by any other authority;

(iii) refuse the exchange of information with a party to any agreement if the information will not be afforded in the territory of that party a level of protection that satisfies the requirements of this Act.

(*e*) For the purposes of this subsection any reference to the "Commissioner" includes any officer contemplated in subsection (1) (*b*).

(3) The Commissioner may for the purposes of subsection (1) (*b*)-

(*a*) disclose information or authorise disclosure to a person authorised to act on behalf of any international agency, institution or organisation with which an agreement has been entered into with the Republic; and

(*b*) specify the purpose for which such disclosure is authorised and the manner in which or the conditions under which such disclosure is to be made.

(4) The Commissioner may make rules in respect of any matter which the Commissioner reasonably considers to be necessary and useful to achieve the efficient and effective administration of this section.

[S. 50 repealed by s. 4 of Act No. 7 of 1974, inserted by s. 66 of Act No. 30 of 1998, substituted by s. 105 of Act No. 74 of 2002 and by s. 16 of Act No. 44 of 2014.]

Wording of Sections

50A. Joint, one-stop or juxtaposed international land border posts.-(1) The Commissioner may by rule in accordance with any international agreement concerning joint, one-stop or juxtaposed international land border posts and places of entry for the Republic and an adjoining state-

(*a*) in respect of such places situated in the territory of the Republic-

(i) allow and appoint any such place as a place of entry for the adjoining state through which goods

may be imported or exported and where goods may be entered for customs and excise purposes in accordance with the national legislation of the adjoining state; and

(ii) allow officers of the competent customs authority of the adjoining state to perform such duties and functions and exercise such powers as may be required and prescribed by the national legislation of the adjoining state to effect entry and clearance of goods through such place and matters incidental thereto; and

(*b*) in respect of such places situated in the territory of the adjoining state-

(i) deem such a place to be a place of entry for the Republic through which goods may be imported or exported and where goods may be entered for customs and excise purposes; and

(ii) allow officers to exercise their powers and perform their duties and functions under the Act in such places.

(2) Notwithstanding anything to the contrary in any other law contained, for purposes of this Act-

(*a*) any such place situated in the territory of an adjoining state shall be deemed to be a place situated in the Republic; and

(*b*) whenever, within such a place, situated within an adjoining state-

(i) any goods are detained for purposes of this Act, such goods shall as soon as practicable be removed to the State Warehouse or other place indicated by the Controller within the territory of the Republic; or

(ii) any person is detained for purposes of this Act, such person shall without delay be secured in an office of the South African Police Service closest to such place.

(3) Whenever such a place is situated within the territory of the Republic, and the national legislation of the adjoining state provides for the detention of goods or persons at such place, the Commissioner shall allow for the removal of such detained goods or persons by the competent customs authorities of the adjoining state from such a place to the territory of the adjoining state.

(4) The Commissioner may in administering the provisions of this section, notwithstanding anything to the contrary in this Act or in any other law contained-

(*a*) decide or determine any matter or perform any duty or impose any condition in connection with the provisions so administered;

(*b*) make rules-

(i) where reference is made in such agreement to customs or competent authorities, to domestic national or customs law or any other matter which requires either expressly or by implication application of customs legislation;

(ii) in connection with the entry of goods imported or exported and documents to be produced in support thereof;

(iii) prescribing forms or procedures or specifying any condition to be complied with to give effect to any agreement contemplated in this section;

(iv) to delegate subject to section 3 (2) any power, duty or function to any officer or any other person; and

(v) regarding any other matter which may be necessary or useful for purposes of administering such places.

[S. 50A inserted by s. 106 of Act No. 74 of 2002.]

51. Agreements with African territories.-(1) The National Executive may conclude an agreement with the government of any territory in Africa in which it is provided that, notwithstanding anything to the contrary in this Act contained-

(*a*) goods produced or manufactured in or imported into the Republic shall be admitted into that territory free of duty or at special rates of duty and goods produced or manufactured in or imported into that territory shall be admitted into the Republic free of duty or at special rates of duty;

(*b*) such arrangements (including arrangements providing for the prohibition or quantitative or other limitation or restriction of the importation of any goods) as may be agreed upon between the parties to the agreement shall apply in respect of the admission of any goods into the territory of one of the parties from the territory of the other party and in respect of the entry of and the collection of duty on goods on importation into the territory of any party from a territory other than the territory of the

other party;

[Para. (*b*) substituted by s. 7 (*a*) of Act No. 57 of 1966.]

(*c*) each party to the agreement shall be compensated in respect of duty on such goods to the extent and in the manner agreed upon between the parties to the agreement.

[Sub-s. (1) amended by s. 13 (*a*) of Act No. 27 of 1997.]

Wording of Sections

(2) Payments made by the government of any territory to the Government of the Republic in terms of any agreement concluded under the provisions of subsection (1) shall accrue to the National Revenue Fund and payments by the Government of the Republic to the government of any territory in terms of any such agreement shall be made as a drawback of revenue as a charge to the National Revenue Fund.

[Sub-s. (2) substituted by s. 1 of Act No. 12 of 1977 and by s. 13 (*b*) of Act No. 27 of 1997.]

Wording of Sections

(3) For the purposes of this Act, any agreement which purports to have been concluded in terms of any law relating to customs and which was being observed by the Republic immediately prior to the coming into operation of this Act as being in force between the Republic and any territory in Africa, shall be deemed to have been concluded in terms of and to be and at all relevant times to have been within the powers conferred by this section.

[Sub-s. (3) substituted by s. 7 (*b*) of Act No. 57 of 1966 and by s. 5 of Act No. 103 of 1972.]

Wording of Sections

(4) Notwithstanding the provisions of any agreement concluded with Southern Rhodesia under subsection (1)-

(*a*) goods produced or manufactured in or imported into that territory shall not, by virtue of any such agreement, be exempt on importation into the Republic from any increased rate of customs duty payable after the commencement of this subsection, and such goods shall be liable to the full difference between such duty calculated at such increased rate and the most favoured nation rate applicable on the date immediately prior to the date on which this subsection comes into operation; and

(*b*) the Minister may vary the quantitative or other limitation or restriction of the importation of any goods agreed upon under paragraph (*b*) of the said subsection (1).

[Sub-s. (4) added by s. 1 of Act No. 89 of 1971.]

52. Imposition of a fuel levy by any party to a customs union agreement.-(*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 49 or 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 arrangements as the Commissioner may determine, apply to those goods until such time as such fuel levy is imposed by that party as provided in this Act.

[Para. (*a*) substituted by s. 41 of Act No. 45 of 1995 and by s. 13 of Act No. 36 of 2007.]

Wording of Sections

(*b*) If any such party to such customs union agreement imposes such fuel 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 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.

[S. 52 repealed by s. 4 of Act No. 7 of 1974 and inserted by s. 24 (1) of Act No. 59 of 1990.]

Wording of Sections

53. Discrimination by other countries.-(1) If the government of any territory has-

(*a*) imposed directly or indirectly on any goods wholly or partly produced or manufactured in the Republic any duty, charge or restriction which is not imposed upon like goods produced or manufactured in any third territory; or

(*b*) discriminated against the commerce of the Republic in such a manner as to place it at a disadvantage in comparison with the commerce of any third territory,

the Minister may in order to give effect to any recommendation of the Minister of Trade and Industry or whenever he deems it fit in the public interest, by notice in the *Gazette* impose-

(i) on all goods or any class or kind of goods imported from the territory whose government has so acted; and

(ii) on all goods or any class or kind of goods whencesoever imported, wholly or partly produced or manufactured in such territory,

additional duties not exceeding the value for duty purposes of such goods, and from a date to be specified in the notice there shall be paid on such goods, upon entry for home consumption thereof, the additional duties at the rates imposed in the notice, in addition to any other duties payable on such goods under the provisions of this Act.

[Sub-s. (1) substituted by s. 37 of Act No. 97 of 1986 and amended by s. 6 of Act No. 61 of 1992 and by s. 42 of Act No. 45 of 1995.]

Wording of Sections

(2) Any additional duty imposed in terms of subsection (1) shall be set out in the form of a schedule which shall be deemed to be incorporated in Schedule No. 1 as Part 7 thereof and to constitute an amendment of Schedule No. 1.

[Sub-s. (2) substituted by s. 19 of Act No. 105 of 1969, by s. 12 of Act No. 112 of 1977 and by s. 20 of Act No. 84 of 1987.]

Wording of Sections

(3) The provisions of section 48 (6) shall *mutatis mutandis* apply in respect of any amendment made under the provisions of this section.

[Sub-s. (3) substituted by s. 5 of Act No. 19 of 1994.]

Wording of Sections

54. Special provisions regarding the importation of cigarettes.-(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.

[Sub-s. (1) substituted by s. 43 of Act No. 45 of 1995 and by s. 141 of Act No. 45 of 2003.]

Wording of Sections

(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.

[Sub-s. (2) substituted by s. 141 of Act No. 45 of 2003.]

Wording of Sections

(3) No imported cigarettes shall be sold or disposed of or removed from the customs and excise warehouse concerned except in accordance with the provisions of this Act.

(4) (*a*) No cigarettes in containers bearing the stamp impression referred to in subsection (2), may be entered for removal in bond as contemplated in section 18 for transit through the Republic.

(*b*) Any cigarettes in containers bearing such stamp impression so entered for removal in bond shall be liable to forfeiture in accordance with the provisions of this Act.

[S. 54 amended by s. 3 of Act No. 85 of 1968 and substituted by s. 13 of Act No. 112 of 1977. Sub-s. (4) inserted by s. 19 of Act No. 32 of 2005.]

Wording of Sections

CHAPTER VA
ENVIRONMENTAL LEVIES

(Date of commencement: 1 June, 2004.)

54A. Imposition of environmental levy.-A levy known as the environmental levy shall be leviable on such imported goods and goods manufactured in the Republic as may be specified in any item of Part 3 of Schedule No. 1.

[S. 54A, formerly s. 47C, inserted by s. 139 (1) of Act No. 45 of 2003 and renumbered by s. 32 (1) (*a*) of Act No. 16 of 2004.]

Wording of Sections

(Date of commencement: 1 June, 2004)

54B. Rate of environmental levy.-(1) The environmental levy shall be levied at a rate as may be specified in any item of Part 3 of Schedule No. 1 and the environmental levy so specified in such item shall be payable in addition to any duty prescribed in respect of the goods concerned in any heading or subheading of Part 1 or Part 2 of Schedule No. 1.

(2) Notwithstanding anything to the contrary contained in this Act, the environmental levy shall, subject to the provisions of this Chapter and except for the purposes of any customs union agreement contemplated in section 49 or any other law, be deemed to be a duty leviable under this Act.

[S. 54B, formerly s. 47D, inserted by s. 139 (1) of Act No. 45 of 2003 and renumbered by s. 32 (1) (*b*) of Act No. 16 of 2004. Sub-s. (2) substituted by s. 14 of Act No. 36 of 2007.]

Wording of Sections

(Date of commencement of s. 54B: 1 June, 2004)

54C. Application of other provisions of this Act.-(1) Subject to such exceptions and adaptations as may be prescribed in this Chapter, any Schedule or any rule, the provisions of this Act relating to-

(*a*) the importation of goods and imported goods;

(*b*) (i) the manufacture of excisable goods; and

(ii) entry for home consumption, removal from any customs and excise manufacturing warehouse and payment of duty contemplated in section 19A,

shall apply *mutatis mutandis* to environmental levy goods imported into or manufactured in the Republic.

[S. 54C, formerly s. 47E, inserted by s. 139 (1) of Act No. 45 of 2003 and renumbered by s. 32 (1) (*c*) of Act No. 16 of 2004.]

Wording of Sections

(Date of commencement of s. 54C: 1 June, 2004)

54D. Rebates, refunds and drawbacks.-The Minister may, notwithstanding anything to the contrary contained in this Act, provide under section 75 (15) for a rebate, refund or drawback of any environmental levy in an item of a separate Part of Schedule No. 3, 4, 5 or 6, which shall be deemed to be an amendment of such Schedule, in the circumstances and for the purposes and on compliance with any conditions that may be specified in such Part or item.

[S. 54D, formerly s. 47F, inserted by s. 139 (1) of Act No. 45 of 2003 and renumbered by s. 32 (1) (*d*) of Act No. 16 of 2004.]

Wording of Sections

(Date of commencement: 1 June, 2004)

54E. Licensing.-(1) From the date this Chapter comes into operation, no environmental levy goods may be manufactured in the Republic except in a customs and excise manufacturing warehouse licensed in terms of this Act.

(2) The applicant for such a license must apply on the form prescribed by rule and must comply with all the provisions of this Act and any requirements the Commissioner may prescribe in each case.

(3) The application must be supported by the agreement and other documents as may be prescribed by rule.

(4) Before such warehouse is licensed the applicant for a license must-

(*a*) furnish such security as contemplated in section 60 (*c*) (i); and

(*b*) pay the licence fee prescribed in Schedule No. 8.

(5) The provisions of section 60 (2) shall apply *mutatis mutandis* in respect of any application for a licence or the suspension or cancellation of a licence.

[S. 54E, formerly s. 47G, inserted by s. 139 (1) of Act No. 45 of 2003 and renumbered by s. 32 (1) (*e*) of Act No. 16 of 2004.]

Wording of Sections

(Date of commencement of s. 54E: 1 June, 2004)

54EA. Exemption from licensing and payment of environmental levy.-(1) Notwithstanding anything to the contrary contained in this Chapter or any other provision of this Act, the Commissioner may by rule-

(*a*) exempt a person or category of persons from-

(i) all or any of the requirements of section 54E; and

(ii) the payment of environmental levy,

for any period in respect of any quantity or class or any quantity of any class of environmental levy goods manufactured by such person or category of persons;

(*b*) prescribe conditions and other requirements in respect of such exemption; and

(*c*) prescribe circumstances under which such exemption may be cancelled.

[S. 54EA inserted by s. 95 of Act No. 60 of 2008, deemed to have come into operation on 21 October, 2008.]

54F. Rules.-The Commissioner may prescribe by rule-

(*a*) any procedure in addition to or in substitution of any existing rule regulating procedures in respect of the importation of goods and imported goods or excisable goods in order to provide for any necessary exception or adaptation in administering the provisions of this Chapter;

(*b*) *mutatis mutandis* for the purposes of this Chapter, any procedure to which section 19A and its rules relate;

(*c*) the form of agreement to be entered into between the applicant and the Commissioner;

(*d*) the accounts and other documents to be kept and to be submitted when payment is made;

(*e*) all matters which are required or permitted in terms of this Chapter to be prescribed by rule;

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

[S. 54F, formerly s. 47H, inserted by s. 139 (1) of Act No. 45 of 2003 and renumbered by s. 32 (1) (*f*) of Act No. 16 of 2004.]

Wording of Sections

(Date of commencement of s. 54F: 1 June, 2004)

CHAPTER VI
ANTI-DUMPING, COUNTERVAILING AND SAFEGUARD DUTIES AND OTHER MEASURES

[Heading substituted by s. 14 of Act No. 112 of 1977, by s. 7 of Act No. 61 of 1992 and by s. 65 of Act No. 20 of 2006.]

55. General provisions regarding anti-dumping, countervailing and safeguard duties and measures.-(1) The goods specified in Schedule No. 2 shall, upon entry for home consumption, be liable, in addition to any other duty payable in terms of the provisions of this Act, to the appropriate anti-dumping, countervailing or safeguard duties provided for in respect of such goods in that Schedule at the time of such entry, if they are imported from a supplier, or originate in a territory, specified in that Schedule in respect of those goods.

(2) (*a*) The imposition of any anti-dumping duty in the case of dumping as defined in the International Trade

Administration Act, 2002 (Act No. 71 of 2002), a countervailing duty in the case of subsidized export as so defined or a safeguard duty or quota in the case of disruptive competition as so defined and the rate at which or the circumstances in which such duty or quota is imposed in respect of any imported goods shall be in accordance with any request by the Minister of Trade and Industry under the provisions of the International Trade Administration Act, 2002.

[Para. (*a*) substituted by s. 69 of Act No. 32 of 2004 and by s. 66 (*b*) of Act No. 20 of 2006.]

Wording of Sections

(*b*) Any such anti-dumping, countervailing or safeguard duty may be imposed in respect of the goods concerned in accordance with such request with effect from the date on which any provisional payment in relation to anti-dumping, countervailing or safeguard duty is imposed in respect of those goods under section 57A.

[Para. (*b*) substituted by s. 3 of Act No. 16 of 1997.]

Wording of Sections

(3) (*a*) Whenever any anti-dumping, countervailing or safeguard duty is imposed on any goods under the provisions of this Chapter, the owner of any such goods stored in a customs and excise warehouse shall produce the invoice and other documents relating to such goods to the Controller not later than the time of entry of all or any part of such goods for removal from such warehouse.

(*b*) The provisions of paragraph (*a*) shall not apply in the case of such goods entered for export from a customs and excise warehouse.

(4) An anti-dumping, countervailing or safeguard duty or quota imposed under the provisions of this Chapter shall not apply to any goods entered under the provisions of any item specified in Schedule No. 3 or 4 unless such item is specified in Schedule No. 2 in respect of such goods.

[Sub-s. (4) substituted by s. 66 (*c*) of Act No. 20 of 2006.]

Wording of Sections

(5) Notwithstanding the provisions of section 56, 5A or 57, the Commissioner may, subject to such conditions as he may impose in each case, exempt from payment of any anti-dumping, countervailing or safeguard duty, any goods which are imported in such circumstances or in such quantities that the importation of such goods does not, in his opinion, constitute regular importation of such goods for trade purposes.

[S. 55 amended by s. 12 of Act No. 95 of 1965 and by s. 6 of Act No. 103 of 1972, substituted by s. 15 of Act No. 112 of 1977 and by s. 8 of Act No. 61 of 1992 and amended by s. 66 (*a*) of Act No. 20 of 2006.]

Wording of Sections

56. Imposition of anti-dumping duties.-(1) The Minister may from time to time by notice in the *Gazette* amend Schedule No. 2 to impose an anti-dumping duty in accordance with the provisions of section 55 (2).

(2) The Minister may, in accordance with any request by the Minister of Trade and Industry**,** from time to time by notice in the *Gazette*-

(*a*) withdraw or reduce, with or without retrospective effect and to such extent as may be specified in the notice; or

(*b*) otherwise amend, from the date of such amendment or any later date to such extent as may be specified in the notice,

any anti-dumping duty imposed under subsection (1).

[Sub-s. (2) substituted by s. 67 of Act No. 20 of 2006.]

Wording of Sections

(3) The provisions of section 48 (6) shall *mutatis mutandis* apply in respect of any amendment, withdrawal or reduction made under the provisions of subsection (1) or (2) of this section.

[S. 56 substituted by s. 16 of Act No. 112 of 1977, amended by s. 4 of Act No. 93 of 1978, by s. 4 of Act No. 89 of 1984 and by s. 7 of Act No. 52 of 1986 and substituted by s. 9 of Act No. 61 of 1992. Sub-s. (3) substituted by s. 6 of Act No. 19 of 1994.]

Wording of Sections

56A. Imposition of countervailing duties.-(1) The Minister may from time to time by notice in the *Gazette* amend Schedule No. 2 to impose a countervailing duty in accordance with the provisions of section 55 (2).

(2) The Minister may, in accordance with any request by the Minister of Trade and Industry from time to time by notice in the *Gazette*-

(*a*) withdraw or reduce, with or without retrospective effect and to such extent as may be specified in the

notice; or

(*b*) otherwise amend, from the date of such amendment or any later date to such extent as may be specified in the notice,

any countervailing duty imposed under subsection (1).

[Sub-s. (2) substituted by s. 68 of Act No. 20 of 2006.]

Wording of Sections

(3) The provisions of section 48 (6) shall *mutatis mutandis* apply in respect of any amendment, withdrawal or reduction made under the provisions of subsection (1) or (2) of this section.

[S. 56A inserted by s. 10 of Act No. 61 of 1992. Sub-s. (3) substituted by s. 7 of Act No. 19 of 1994.]

Wording of Sections

57. Imposition of safeguard measures.-(1) The Minister may from time to time by notice in the *Gazette* amend Schedule No. 2 to impose a safeguard duty or quota in accordance with the provisions of section 55 (2).

[Sub-s. (1) substituted by s. 69 (*b*) of Act No. 20 of 2006.]

Wording of Sections

(2) The Minister may, in accordance with any request by the Minister of Trade and Industry from time to time by notice in the *Gazette*-

(*a*) withdraw or reduce, with or without retrospective effect and to such extent as may be specified in the notice; or

(*b*) otherwise amend, from the date of such amendment or any later date to such extent as may be specified in the notice,

any safeguard duty or quota imposed under subsection (1).

[Sub-s. (2) substituted by s. 69 (*c*) of Act No. 20 of 2006.]

Wording of Sections

(3) The provisions of section 48 (6) shall *mutatis mutandis* apply in respect of any amendment, withdrawal or reduction made under the provisions of subsection (1) or (2) of this section.

[S. 57 substituted by s. 17 of Act No. 112 of 1977 and by s. 11 of Act No. 61 of 1992 and amended by s. 69 (*a*) of Act No. 20 of 2006. Sub-s. (3) substituted by s. 8 of Act No. 19 of 1994.]

Wording of Sections

57A. Imposition of provisional payment.-(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 said 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.

[Sub-s. (1) substituted by s. 3 of Act No. 16 of 1997 and by s. 142 of Act No. 45 of 2003.]

Wording of Sections

(2) The Commissioner shall, in accordance with any request by the said 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.

[Sub-s. (2) substituted by s. 142 of Act No. 45 of 2003.]

Wording of Sections

(3) Such provisional payment shall be paid on goods subject thereto, at the time of entry for home consumption thereof, as security for any anti-dumping, countervailing or safeguard duty which may be retrospectively imposed on such goods under section 56, 56A or 57 and may be set off against the amount of the retrospective anti-dumping, countervailing or safeguard duty payable.

[Sub-s. (3) substituted by s. 3 of Act No. 16 of 1997.]

Wording of Sections

(4) If no anti-dumping, countervailing or safeguard duty is imposed before expiry of the period for which a provisional payment in relation to the goods concerned has been imposed, the amount of such payment shall be refunded.

[Sub-s. (4) substituted by s. 3 of Act No. 16 of 1997.]

(5) If the amount of any such provisional payment on the said goods-

(*a*) exceeds the amount of any anti-dumping, countervailing or safeguard duty retrospectively imposed on such goods under section 56, 56A or 57, the amount of the difference shall be refunded; or

(*b*) is less than the amount of the anti-dumping, countervailing or safeguard duty so imposed, the amount of the difference shall not be collected.

[S. 57A inserted by s. 18 of Act No. 112 of 1977, amended by s. 4 of Act No. 89 of 1983 and substituted by s. 12 of Act No. 61 of 1992. Sub-s. (5) substituted by s. 3 of Act No. 16 of 1997.]

CHAPTER VII
AMENDMENT OF DUTIES

58. Time when new or increased duties become payable.-(1) The Minister may table at any time in the National Assembly a taxation proposal imposing a new duty or increasing the rate of duty already payable upon any goods specified in the said proposal, and such new duty or increased rate of duty shall, subject to the provisions of subsection (2), from the time when the proposal was tabled be payable on all such goods as have not at the said time been entered for home consumption.

[Sub-s. (1) substituted by s. 10 of Act No. 86 of 1982 and amended by s. 21 of Act No. 84 of 1987, by s. 2 (*a*) of Act No. 105 of 1992 and by s. 14 of Act No. 27 of 1997.]

(2) Whenever the Minister tables, under the provision of subsection (1), a taxation proposal relating to imported and excisable goods of the same class or kind, any such goods which the Minister may in the said proposal specify for the purposes of this subsection, shall, though entered for home consumption prior to the time of such proposal and notwithstanding that they have passed out of customs and excise control, become liable to the new duty or the difference between the rate of duty at the time of such proposal and the increased rate provided for in the said proposal, if they have at the time of such proposal not been delivered from the stocks of an importer, manufacturer or such class of dealer as the Minister may in the said proposal specify.

(3) For the purposes of this section any goods which are specified by the Minister in any taxation proposal for the purposes of subsection (2) and which, at the time of the said proposal are in transit to an importer, manufacturer or a class of dealer so specified by the Minister, shall be deemed to form part of the stocks of such importer, manufacturer or dealer, as the case may be, notwithstanding any terms to the contrary of any contract relating to the sale or delivery of such goods.

(4) Whenever the Minister has specified any goods in any taxation proposal for the purposes of subsection (2), every importer or manufacturer or dealer specified in the said proposal shall, in respect of any goods so specified-

(*a*) forthwith take stock of all such goods which have not been delivered from his stocks at the time when the proposal was tabled, and make a clear and accurate record of such imported and excisable goods separately;

(*b*) within seven days of the date on which the proposal was tabled, deliver to the Controller a sworn statement giving separately the description and quantities of the said imported and excisable goods, which were in his stocks at the said time, and any other information which the Commissioner may require of him; and

(*c*) upon or before the last working day of the month following the month in which the proposal was tabled, pay to the Controller the amount of duty payable by him under subsection (2) in respect of the goods in question.

(5) If the Minister specifies in any taxation proposal for the purposes of subsection (2) that any goods so specified shall be liable to the duties so specified if they have not been delivered from the stocks of a wholesale dealer at the time of the said proposal, the provisions of subsection (4) shall apply to the stocks of such wholesale dealer and of any retail dealer conducting his business on the same premises: Provided that the Commissioner may, upon production by such wholesale dealer of such evidence as he may require, exclude from the stocks or the liability for duty of that wholesale dealer for the purposes of subsection (2)-

(*a*) stocks of a class or kind which are sold by such retail dealer only; and

(*b*) such proportion of the total duty payable by such wholesale dealer as is represented by the proportion of retail sales to total sales of the goods concerned during the period of three months immediately preceding the date of such proposal, such proportion to be calculated on the basis of quantities of each commodity concerned.

(6) For the purposes of this section-

(*a*) **"dealer"** means any person who deals in goods to which this Act relates and includes a club, co-operative society of any nature or any statutory body;

(*b*) **"retail dealer"** means, subject to the provisions of paragraph (c), any dealer who deals in or holds licence under any law to deal in retail quantities;

(*c*) **"wholesale dealer"** means any dealer who deals in or holds a licence under any law to deal in wholesale quantities and the business and stocks of a wholesale dealer shall be deemed to include the business and stocks of any retail dealer who conducts business on the same premises on which the wholesale dealer conducts his business as such; and

(*d*) **"deliver"** includes any form of delivery except *traditio brevi manu* and *constitutum possessorium*.

(7) Whenever in any legal proceedings any question arises as to whether the Minister has in fact tabled a taxation proposal as described in this section, or as to the time when such proposal was tabled or the particulars contained in such proposal, a copy of such proposal, certified by the Secretary to Parliament to be a true copy, shall be accepted as sufficient evidence that such proposal was tabled and of the time when it was tabled and of the particulars contained therein.

[Sub-s. (7) amended by s. 19 of Act No. 33 of 1974 and substituted by s. 1 of Act No. 64 of 1974 and by s. 2 (*b*) of Act No. 105 of 1992.]

Wording of Sections

59. Contract prices may be varied to extent of alteration in duty.-(1) Whenever any duty is imposed or increased, directly or indirectly, by amendment in any manner of any Schedule to this Act, on any goods and such goods, in pursuance of a contract made before such duty or increased duty became payable, are thereafter delivered to and accepted by the purchaser, the seller of the goods may, in the absence of agreement to the contrary, recover as an addition to the contract price a sum equal to any amount paid by him by reason of the said duty or increase.

(2) Whenever any duty is withdrawn or decreased, directly or indirectly, by amendment in any manner of any Schedule to this Act, on any goods, and such goods in pursuance of a contract made before the withdrawal or decrease became effective are thereafter delivered to the purchaser, the purchaser of the goods may, in the absence of agreement to the contrary, if the seller has in respect of those goods had the benefit of the withdrawal or decrease, deduct from the contract price a sum equal to the said duty or decrease.

(3) The provisions of this section shall also apply to a contract for the hiring of any goods or the use of any goods in rendering a service at a contract price, and the expressions **"seller"** and **"purchaser"** shall correspondingly be construed as including the person by whom and the person to whom the goods are hired or the service rendered.

59A. Registration of persons participating in activities regulated by this Act.-(1) (*a*) Notwithstanding any registration prescribed in terms of any other provision of this Act, the Commissioner may require all persons or any class of persons participating in any activities regulated by this Act, to register in terms of this section and its rules.

(*b*) The Commissioner may by rule prescribe the following-

(i) any general or particular category of registration;

(ii) the application form for registration, the qualifying requirements for any category of registration and the documents and information to be furnished in support of the application;

(iii) the activities and persons included or excluded from registration;

(iv) any date from which any person or the different dates from which any class of persons shall be required to register under this section and its rules before transacting any business in relation to customs and excise matters;

(v) any reasonable extension of the date or dates specified under the provisions of subparagraph (iv);

(vi) procedures for amendment of registration particulars; and

(vii) any other matter which the Commissioner may consider reasonably necessary and useful to regulate such registration.

(2) (*a*) The Commissioner may-

(i) before registration require any person or class of persons to furnish such security and enter into such agreement as the Commissioner may determine;

(ii) at any time require that the form, nature or amount of such security shall be altered or renewed in such manner as the Commissioner may determine.

(*b*) The Commissioner may refuse any application for registration or cancel or suspend any registration.

(*c*) The provisions of section 60 (2) shall apply *mutatis mutandis* for the purposes of paragraph (*b*).
[S. 59A inserted by s. 45 (1) of Act No. 19 of 2001. Sub-s. (2) substituted by s. 188 of Act No. 60 of 2001. Para. (*c*) substituted by s. 47 of Act No. 30 of 2002.]

Wording of Sections

CHAPTER VIII
REGISTRATION, LICENSING AND ACCREDITED CLIENTS
[Heading substituted by s. 44 of Act No. 19 of 2001.]

60. Licence fees according to Schedule No. 8.-(1) (*a*) No person shall perform any act or be in possession of or use anything in respect of which a licence is prescribed in Schedule No. 8 unless such person has obtained the appropriate licence which shall not be issued unless the prescribed licence fee has been paid.

(*b*) The activities for which a licence is required, the persons who are required to licence, the procedures, conditions, which may include the furnishing of security, and any other requirements relating to such licence, if not prescribed elsewhere in this Act, may be prescribed in the Notes to the item in which such licence is specified in Schedule No. 8 and any rules made by the Commissioner under the provisions of this Act.

(*c*) (i) Any person applying for a licence under any provision of this Act shall, before such licence is issued, furnish security, in the form, nature or amount determined by the Commissioner to protect the state from any loss likely to be incurred as a result of the activities to be licensed.

(ii) The Commissioner may at any time require that the form, nature or amount of such security be altered so as to protect the state as contemplated in subparagraph (i).
[Sub-s. (1) substituted by s. 46 (*a*) of Act No. 19 of 2001. Para. (*c*) added by s. 48 of Act No. 30 of 2002.]

Wording of Sections

(2) The Commissioner may, subject to review by the High Court-

(*a*) refuse any application for a new licence or refuse any application for a renewal of a licence if-

(i) the applicant-

(*aa*) does not comply in respect of such application with the requirements specified by rule or any condition imposed by the Commissioner;

(*bb*) has made a false or misleading statement with respect to any material fact or omits to state any material fact which was required to be stated in the application for a licence;

(ii) the applicant or any employee of such applicant has-

(*aa*) contravened or failed to comply with the provisions of this Act; or

(*bb*) been convicted of an offence under this Act; or

(*cc*) been convicted of an offence involving dishonesty; or

(*dd*) failed to comply with any condition or obligation imposed by the Commissioner in respect of such licence:

Provided that subparagraphs (*aa*) to (*cc*) shall not apply in respect of an employee if the applicant proves that he was not a party to or could not prevent any such act or omission by such employee; or

(*b*) cancel or suspend for a specified period any licence-

(i) if the holder of such licence-

(*aa*) is sequestrated or liquidated; or

(*bb*) no longer carries on the business for which the licence was issued; or

(*cc*) is no longer qualified according to the qualifications prescribed in the rules; or

(*dd*) failed to pay any amount demanded under this Act within 30 days from the date of such demand; or

(ii) if the holder of such licence or the employee of such licensee has-

(*aa*) contravened or failed to comply with the provisions of this Act; or

(*bb*) been convicted of an offence under this Act; or

(*cc*) been convicted of an offence involving dishonesty; or

(*dd*) failed to comply with any condition or obligation imposed by this Act or by the Commissioner in respect of such licence:

Provided that subparagraphs (*aa*) to (*cc*) shall not apply in respect of an employee if the holder proves that he was not a party to or could not prevent any such act or omission by such employee:

Provided that before a licence is cancelled or suspended, except when any demand for any amount remains unpaid for a period exceeding 30 days from the date of the demand, the Commissioner shall-

(*a*) give 21 days notice to the licensee of the proposed cancellation or suspension;

(*b*) provide reasonable information concerning any allegation and grounds for the proposed cancellation or suspension;

(*c*) provide a reasonable opportunity to respond and make representations as to why the licence should not be cancelled or suspended.

[Sub-s. (2) substituted by s. 11 of Act No. 86 of 1982, by s. 44 of Act No. 45 of 1995, by s. 57 of Act No. 53 of 1999 and by s. 46 (*b*) of Act No. 19 of 2001.]

Wording of Sections

(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*.

[Sub-s. (3) added by s. 25 of Act No. 59 of 1990.]

(4) The provisions of section 48 (6) shall *mutatis mutandis* apply in respect of any amendment made under the provisions of subsection (3) of this section.

[S. 60 amended by s. 4 of Act No. 85 of 1968 and substituted by s. 20 of Act No. 105 of 1969. Sub-s. (4) added by s. 25 of Act No. 59 of 1990 and substituted by s. 9 of Act No. 19 of 1994.]

Wording of Sections

61. Customs and excise warehouse licences.-(1) Before a customs and excise warehouse is licensed the person applying for such licence shall furnish such security as the Commissioner may require.

(2) The Commissioner may at any time require that the form, nature or amount of such security shall be altered or renewed in such manner as he may determine.

(3) The Commissioner may by endorsement permit a licence to be transferred from one customs and excise warehouse to another customs and excise warehouse in the area controlled by the same Controller and in the possession of the person to whom the licence has been issued, but no customs and excise warehouse licence shall be transferable from one person to another.

(4) (*a*) Not more than one licence shall be issued in respect of any customs and excise warehouse: Provided that the Commissioner may, on such conditions as the Commissioner may in each case impose, issue a licence-

(i) to the owner or person in possession or control of any customs and excise storage or manufacturing warehouse in which excisable or fuel levy goods are stored or manufactured; and

(ii) to each person who obtains for distribution on own account these goods from any such warehouse.

(*b*) The owner or person in possession or control of such warehouse who is so licensed shall be liable for the fulfilment of all obligations under this Act in respect of such goods in such warehouse. Provided that each person to whom a licence is so issued shall be liable for any liability incurred under this Act in respect of goods so obtained from such warehouse.

[Sub-s. (4) substituted by s. 22 of Act No. 84 of 1987 and by s. 107 of Act No. 74 of 2002.]

Wording of Sections

62. Agricultural distillers.-(1) . . . . . .

[Sub-s. (1) substituted by s. 8 (*a*) of Act No. 57 of 1966 and by s. 7 of Act No. 103 of 1972 and deleted by s. 12 (1) (*a*) of Act No. 86 of 1982.]

Wording of Sections

(2) After the commencement of this Act a licence under this Act as an agricultural distiller shall not be granted to any person-

(*a*) who had not at any time before such commencement been licensed under any law relating to excise as an agricultural distiller; or

(*b*) who, after such commencement, has for any continuous period of more than twelve months not been the holder of a licence as an agricultural distiller issued under this Act.

(3) No licence issued under this Act to any person as an agricultural distiller may be transferred to any other person or from one farm to another, except in circumstances which the Commissioner may deem exceptional or, in the event of the death of the licensee or the expropriation in terms of the Expropriation Act, 1975 (Act No. 63 of 1975), of a farm in respect of which the licence was issued, with the written permission of the Commissioner and subject to such conditions as he may determine.

[Sub-s. (3) substituted by s. 12 (1) (*b*) of Act No. 86 of 1982.]

Wording of Sections

(4) (*a*) Any licence issued under this Act to any person as an agricultural distiller shall, subject to the provisions of subsection (3), lapse upon the death of the licensee or upon conviction of the licensee of any offence under this Act or any law relating to the illicit manufacture, conveyance, supply or possession of intoxicating liquor.

[Para. (*a*) substituted by s. 12 (1) (*c*) of Act No. 86 of 1982.]

Wording of Sections

(*b*) For the purposes of this subsection the imposition of a penalty by the Commissioner under the provisions of section *ninety-one* shall be deemed to be a conviction under this Act.

(5) The provisions of subsections (2) and (4) and of section 63 (3) shall not apply in the case of an agricultural distiller who produces annually a quantity of spirits which exceeds a quantity determined by the Commissioner and who produces such spirits for a purpose approved by the Commissioner.

[Sub-s. (5) substituted by s. 8 (*b*) of Act No. 57 of 1966.]

63. Stills to be licensed.-(1) No person shall own or have in his possession or under his control any still except under a licence prescribed in Schedule No. 8 and subject to the rules: Provided that the Commissioner may by rule exempt from all or any of the provisions of this subsection-

(*a*) any licensed still maker in so far as any still manufactured or imported by him for sale and in his possession is concerned; or

(*b*) any person in so far as any still is concerned which he has proved to the Commissioner is in his possession solely as a curiosity or ornament or is used solely for any such purpose as the Commissioner may specify by rule.

[Sub-s. (1) amended by s. 4 of Act No. 98 of 1970 and substituted by s. 45 of Act No. 45 of 1995. Para. (*b*) substituted by s. 9 of Act No. 57 of 1966.]

Wording of Sections

(2) The provisions of subsections (3) and (4) of section *sixty-two* shall *mutatis mutandis* apply in respect of any licence issued in respect of a still under this Act to any person to whom a licence under this Act has been or had at any time been issued as an agricultural distiller: Provided that the provisions of this subsection shall not apply in respect of any such licence in respect of a still which is held by any such agricultural distiller as is referred to in subsection (5) of section *sixty-two*.

(3) (*a*) If any agricultural distiller to whom a licence in respect of a still has been issued under this Act voluntarily abandons such still to the Commissioner, the Commissioner may, out of moneys appropriated by Parliament for the purpose, pay to that distiller, as compensation the current market value of such still.

[Para. (*a*) substituted by s. 25 of Act No. 34 of 2004.]

Wording of Sections

(*b*) Where any person has so abandoned any still no licence to own a still to be used by him in the capacity of an agricultural distiller shall thereafter be granted to him unless a new licence as an agricultural distiller has, after such abandonment, been issued to him under this Act.

(*c*) Any still abandoned under this subsection shall be destroyed by the Commissioner.

64. Special warehouses for the manufacture of wine.-Unless the permission of the Commissioner has been obtained to manufacture wine in a customs and excise manufacturing warehouse, no person shall manufacture

wine except in a special customs and excise warehouse licensed under this Act.

64A. Container depot licenses.-(1) No person shall store or unpack, or pack for export, such containers as the Commissioner may specify, except at a container depot licensed in terms of subsection (2).

(2) The Commissioner may, subject to such conditions as he may in each case impose, license, for such period as he may in each case determine, at any place appointed for that purpose under the provisions of this Act, container depots approved by him for the storing, unpacking or packing of containers contemplated in subsection (1), provided such security as he may require is furnished.

(3) The Commissioner may at any time require that the form, nature or amount of such security shall be altered or renewed in such manner as he may determine.

(4) The Controller may require any container contemplated in subsection (1) to be detained in any container depot licensed in terms of subsection (2), for its examination or that of its contents.

[S. 64A inserted by s. 8 of Act No. 71 of 1975.]

64B. Clearing agent licences.-(1) No person shall, for the purposes of this Act, for reward make entry or deliver a bill of entry relating to, any goods on behalf of any principal contemplated in section 99 (2), unless licensed as a clearing agent in terms of subsection (2).

[Sub-s. (1) substituted by s. 58 (*a*) of Act No. 53 of 1999.]

Wording of Sections

(2) (*a*) Application for such licence shall be made on the form prescribed by the Commissioner by rule and the applicant shall comply with all the requirements specified therein and with any additional requirements that may be prescribed in any other rule and as may be determined by the Commissioner in each case.

(*b*) The Commissioner may, subject to such conditions as he may prescribe by rule and such obligations as he may in each case impose, license any person applying therefor as a clearing agent.

(*c*) The Commissioner may prescribe by rule-

(i) a date from which the applicant and employees of the applicant must be in possession of a qualification obtained at such time and with at least such qualifying mark as may be stated in such rule;

(ii) any other matter which may be reasonably necessary and useful to achieve the efficient and effective administration of the objects of this section.

[Para. (*c*) added by s. 47 of Act No. 19 of 2001.]

(*d*) For the purposes of paragraph (*c*), **"applicant"** means any natural person or a director of a company or member of a close corporation or a partner of a partnership, who participates in the clearing agents' business of the company, close corporation or partnership, as the case may be.

[Sub-s. (2) substituted by s. 46 of Act No. 45 of 1995 and by s. 58 (*a*) of Act No. 53 of 1999. Para. (*d*) added by s. 47 of Act No. 19 of 2001.]

Wording of Sections

(3) Before any such person is so licensed as a clearing agent, he shall furnish such security as the Commissioner may require.

(4) The Commissioner may at any time require that the form, nature or amount of such security shall be altered or renewed in such manner as he may determine.

(5) A licensed clearing agent shall be liable in respect of any entry made or bill of entry delivered as contemplated in section 99 (2).

[Sub-s. (5) added by s. 58 (*b*) of Act No. 53 of 1999.]

(6) A licensed clearing agent shall disclose the name and category of the principal referred to in section 99 (2) on such bill of entry and if such agent does not so disclose or makes or delivers a bill of entry where the name of another such agent or his own name is stated as the importer, exporter, remover in bond or other principal, as the case may be, he shall be liable for the fulfilment of the obligations imposed on such principal in terms of this Act.

[Sub-s. (6) added by s. 58 (*b*) of Act No. 53 of 1999.]

(7) No security provided by a licensed clearing agent shall be utilised or accepted as security for the fulfilment of any obligations in terms of this Act of any other such agent.

[S. 64B inserted by s. 19 of Act No. 112 of 1977. Sub-s. (7) added by s. 58 (*b*) of Act No. 53 of 1999.]

64C. Licence to search wreck or to search for wreck.-(1) No person shall search any wreck or search for any wreck unless he is licensed with the Commissioner to do so and has furnished such security as the Commissioner may require.

(2) The Commissioner may by rule prescribe the circumstances under which and the conditions on which a licence may be issued to any person entitling him to search or to search for any wreck, but no such licence shall give the holder thereof the exclusive right to search or to search for any particular wreck.

[S. 64C inserted by s. 47 of Act No. 45 of 1995.]

64D. Licensing of remover of goods in bond.-(1) No person, except if exempted by rule, shall remove any goods in bond in terms of section 18 (1) (*a*) or for export in terms of section 18A, or any other goods that may be specified by rule unless licensed as a remover of goods in bond in terms of subsection (3).

(2) (*a*) The expression **"remover in bond"** in this Act shall, unless the context otherwise indicates, include any person that removes any goods contemplated in subsection (1).

(*b*) Any remover in bond exempted from licensing by rule shall, in addition to any provisions of this Act governing the removal or carriage of goods in bond generally, comply with such other relevant requirements as may be prescribed in this section and its rules.

(3) (*a*) Application for such licence shall be made on the form prescribed by the Commissioner by rule and the applicant shall comply with all the requirements specified therein and with any additional requirement that may be prescribed in any other rule and as may be determined by the Commissioner in each case.

(*b*) The Commissioner may subject to such conditions as he may prescribe by rule and such obligations as he may in each case impose licence any person applying therefor as a remover of goods in bond.

(3A) (*a*) The Commissioner may, subject to such conditions as he may prescribe by rule and impose in each case, allow a licensed remover of goods in bond to subcontract the removal or carriage of goods to which this section relates to another licensed remover of goods in bond.

(*b*) When a licensed remover of goods so subcontracts, both such licensed removers shall be jointly and severally liable for the fulfilment of all obligations under this Act as contemplated in subsection (6).

[Sub-s. (3A) inserted by s. 49 (1) (*a*) of Act No. 30 of 2002.]

(4) (*a*) The Commissioner may by rule prescribe technical specifications and other requirements in respect of any vehicle, container or other transport equipment used in the removal or carriage of any goods in bond.

(*b*) The Commissioner may, after the date this section comes into operation, determine a date by rule from which no person shall remove any goods in bond under this Act in any vehicle container or other transport equipment that is not approved by the Commissioner as complying with the specifications and other requirements prescribed in such rule.

(*c*) Any vehicle container or other transport equipment used for the removal of goods in bond under this section shall be marked as prescribed by rule.

(5) (*a*) Before any person is licensed as a remover of goods in bond such person shall furnish such security and enter into such agreement as the Commissioner may require.

(*b*) The Commissioner may at any time require that the form, nature or amount of such security shall be altered or renewed in such manner as he may determine.

(*c*) Notwithstanding the provisions of paragraph (*a*), the Commissioner may, subject to such conditions as he may prescribe by rule and impose in each case, accept such security from any other person in respect of any goods removed or carried by such remover.

[Para. (*c*) added by s. 49 (1) (*b*) of Act No. 30 of 2002.]

(6) (*a*) In addition to any liability incurred under this Act a licensed remover of goods in bond shall be liable for the fulfilment of all obligations imposed under this Act on any other person in respect of any goods removed or carried by such remover including the payment of duties and charges and to any penalties or amounts demanded under section 88 (2) (*a*).

(*b*) The liability of such remover shall in no way affect the liability incurred under this Act in respect of such goods by the master, pilot, container operator, importer, exporter, manufacturer, licensee or any other principal or any agent referred to in section 99.

(7) No security provided by a licensed remover of goods in bond shall be utilised or accepted as security for the fulfilment of any obligation in terms of this Act by any other such remover of goods in bond.

(8) (*a*) The Commissioner may-

(i) refuse any application for a new licence or any application for a renewal of a licence by a remover of goods in bond; or

(ii) suspend or cancel such licence.

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

(9) The Commissioner may make rules-

(*a*) to delegate or assign, subject to section 3 (2), any of the powers that may be exercised or assign any of the duties that shall be performed by the Commissioner in accordance with the provisions of this Act to any officer or any other person;

(*b*) to prescribe forms and procedures or any condition to be complied with by any remover for the purpose of regulating the removal of goods in bond;

(*c*) in respect of all matters which are required or permitted in terms of this section to be prescribed by rule;

(*d*) in respect of any other matter which the Commissioner may consider reasonably necessary and useful for the purposes of administering the provisions of this section.

[S. 64D inserted by s. 48 (1) of Act No. 19 of 2001.]

64E. Accredited clients.-(1) (*a*) The Commissioner may-

(i) confer accredited client status on any applicant therefor who is licensed or registered under any provision of this Act; and

(ii) determine by rule levels of accredited client status and specific criteria applicable to each level.

[Para. (*a*) substituted by s. 36 (1) (*a*) of Act No. 61 of 2008 with effect from 1 August, 2011.]

Wording of Sections

(*b*) Every applicant for accredited client status shall apply for a specific level thereof and, in addition to the criteria prescribed for that level by rule or that may be determined by the Commissioner, prove, as may be applicable, the following:

(i) an appropriate record of compliance with customs and excise procedures;

(ii) that the accounting records and other documents kept for providing evidence of compliance with customs and excise procedures utilise information prepared in a manner consistent with general accounting principles appropriate to the procedure concerned;

[Sub-para. (ii) substituted by s. 19 (*b*) of Act No. 39 of 2013.]

Wording of Sections

(iii) that an effective computer system is in operation capable of performing the functions, and in respect of which an agreement has been concluded, as contemplated in section 101A;

(iv) that the person who will administer the accredited client requirements has sufficient knowledge of customs and excise laws and procedures to implement and maintain an efficient and effective accredited client compliance system;

[Sub-para. (iv) substituted by s. 19 (*c*) of Act No. 39 of 2013.]

Wording of Sections

(v) that the business in respect of which application is made for accredited client status has sufficient financial resources;

(vi) any other measurable requirements which the Commissioner may require in support of the application.

[Para. (*b*) amended by s. 36 (1) (*b*) of Act No. 61 of 2008 and by s. 19 (*a*) of Act No. 39 of 2013.]

Wording of Sections

(*c*) The Commissioner may determine such separate criteria for accredited client status in respect of customs or excise clients as may be prescribed by rule.

[Para. (*c*) added by s. 19 (*d*) of Act No. 39 of 2013.]

(2) The Commissioner may-

(*a*) conduct such investigation as may be reasonably necessary to verify any statements in the

application;

(*b*) enter into any agreement with the applicant which may include, notwithstanding any other provisions of this Act, deferment of payment of any duty or value-added tax payable on the importation of any goods into the Republic and payment thereof as may be specified in such agreement;

(*c*) prescribe by rule the following:

(i) the application form to be completed and the supporting documents to be furnished by each applicant according to the customs and excise procedures applicable to the activities of the applicant;

(ii) the form of agreement to be entered into between the applicant and the Commissioner;

(iii) standards of conduct which may include procedures to be followed in respect of-

(*aa*) the entry of goods;

(*bb*) the payment of duty;

(*cc*) the documents to be processed;

(*dd*) the control of goods; or

(*ee*) goods carried or removed; and

(iv) the benefits conferred upon an accredited client;

[Sub-para. (iv) substituted by s. 50 (*a*) of Act No. 30 of 2002.]

Wording of Sections

(v) any other matter that is necessary in order to regulate the benefits provided in terms of this section;

[Sub-para. (v) added by s. 50 (*b*) of Act No. 30 of 2002.]

(*d*) delegate, by rule, subject to section 3 (2), any power which may be exercised or assign the duties that shall be performed by the Commissioner in accordance with the provisions of this Act to any officer or other person.

(3) (*a*) The Commissioner may refuse any application for accredited client status or any level of accredited client status or cancel or suspend such status.

[Para. (*a*) substituted by s. 36 (1) (*c*) of Act No. 61 of 2008 with effect from 1 August, 2011.]

Wording of Sections

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

(*c*) Any accredited client status conferred by the Commissioner shall remain valid for a period prescribed by rule.

[Para. (*c*) added by s. 36 (1) (*d*) of Act No. 61 of 2008 with effect from 1 August, 2011.]

(4) (*a*) Where accredited client status was conferred by the Commissioner on any applicant prior to the date the amendment to subsection (1) (*a*) came into effect in respect of the levels of client status, that status shall be deemed to be a first level accredited client status.

(*b*) Any application for a higher status must be in accordance with the requirements contemplated in subsection (1).

[S. 64E inserted by s. 48 (1) of Act No. 19 of 2001. Sub-s. (4) added by s. 36 (1) (*e*) of Act No. 61 of 2008 with effect from 1 August, 2011.]

64F. Licensing of distributors of fuels obtained from the licensee of a customs and excise manufacturing warehouse.-(1) For the purposes of this Act, unless the context otherwise indicates-

"licensed distributor" means any person who-

(*a*) is licensed in accordance with the provision of section 60 and this section;

(*b*) obtains at any place in the Republic for delivery to a purchaser in any other country of the common customs area for consumption in such country or for export (including supply as ships' or aircraft stores), fuel, which has been or is deemed to have been entered for payment of excise duty and fuel levy, from stocks of a licensee of a customs and excise manufacturing warehouse; and

(*c*) is entitled to a refund of duty in terms of any provision of Schedule No. 6 in respect of such fuel which

has been duly delivered or exported as contemplated in paragraph (*b*);

"fuel" means any goods classifiable in any item of Section A of Part 2 of Schedule No. 1 liable to excise duty and goods classifiable in any item of Part 5 of Schedule No. 1 liable to fuel levy, used as fuel.

(2) (*a*) No person, except a licensee of a customs and excise warehouse, who removes to any other country in the common customs area or exports any fuel, which has been entered or is deemed to have been entered shall be entitled to any refund of duty unless such person is a licensed distributor as contemplated in this section.

(*b*) Application for such a licence shall be made on the form prescribed by the Commissioner by rule and the applicant shall comply with all the requirements specified therein and with any additional requirement that may be prescribed in any other rule and as may be determined by the Commissioner in each case.

(*c*) Before any licence is issued the applicant must furnish security as contemplated in section 60 (1) (*c*): Provided that the Commissioner may, on good cause shown, to the extent considered reasonable in each case, exempt any person from furnishing such security or reduce the amount of such security.

(3) (*a*) In addition to any other provision of this Act relating to refunds of duty, any refund of duty contemplated in this section shall be subject to compliance with the requirements specified in the item of Schedule No. 6 providing for such refund and any rule prescribing any requirement in respect of the movement of such fuel to any such country or for export.

(*b*) Notwithstanding anything to the contrary contained in this Act, the Commissioner may pay any such refund at such intervals for such periods and on such conditions as may be prescribed by rule.

(4) The Commissioner may make rules-

(*a*) prescribing the forms to be completed and the procedures to be followed and other requirements to be observed for the purposes of administering the provisions of this section and the provisions for a refund of duty in Schedule No. 6;

(*b*) in respect of all matters which are required or permitted in terms of this section to be prescribed by rule;

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

(5) (*a*) (i) Any person who in any application for a refund of duty in terms of the provisions of Schedule No. 6 makes a false statement shall be guilty of an offence and liable on conviction to a fine not exceeding R100 000 or double the amount of any duty refunded as a result of the false statement for refund, whichever is the greater, or to imprisonment for a period not exceeding 10 years, or both such fine and imprisonment and the fuel in respect of which the offence has been committed shall be liable to forfeiture under this Act.

(ii) For the purposes of subparagraph (i), any forfeiture amount in respect of such fuel shall be calculated on the basis of the usual retail price thereof on the date the false statement was submitted or on the date of assessment of such amount, whichever is greater.

[S. 64F inserted by s. 108 (1) of Act No. 74 of 2002.]

64G. 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) (*h*C);

"degrouping operator" shall mean the licensee of a degrouping depot.

(*b*) No person shall from a date prescribed by the Commissioner by rule 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) (*b*).

(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 goods received and such liability shall cease as contemplated in section 44 (5C).

(4) (*a*) Goods in a degrouping depot shall be deemed to be under customs control and the degrouping operator shall comply with any requirements 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 between the degrouping operator and the Commissioner or any condition specified by or directive issued by the Commissioner.

(*b*) Any goods received by the degrouping operator which are in excess of manifested quantities or excess goods manifested or any shortages, of whatever nature, shall be reported and dealt with as prescribed by rule.

(*c*) Subject to any adaptation or other special requirement prescribed by rule, the provisions of section 18 shall apply *mutatis mutandis* to the movement of goods to a degrouping depot or from a degrouping depot to another degrouping depot.

(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 submitted, completed and kept in respect of any activity relating to the operation of the degrouping depot;

(*c*) activities allowed in a degrouping depot;

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

(*e*) any condition and procedure relating to liability for duty;

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

(*g*) 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

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

[S. 64G inserted by s. 143 of Act No. 45 of 2003.]

64H. . . . . . .

(Editorial Note: S. 64H to be inserted by s. 23 (1) of Act No. 21 of 2006 with effect from a date to be fixed by the President by proclamation in the *Gazette* - date not fixed.)

64I. . . . . . .

(Editorial Note: S. 64I to be inserted by s. 24 (1) of Act No. 21 of 2006 with effect from a date to be fixed by the President by proclamation in the *Gazette* - date not fixed.)

64J. . . . . . .

(Editorial Note: S. 64J to be inserted by s. 25 (1) of Act No. 21 of 2006 with effect from a date to be fixed by the President by proclamation in the *Gazette* - date not fixed.)

64K. . . . . . .

(Editorial Note: S. 64K to be inserted by s. 26 (1) of Act No. 21 of 2006 with effect from a date to be fixed by the President by proclamation in the *Gazette* - date not fixed.)

64L. . . . . . .

(Editorial Note: S. 64L to be inserted by s. 27 (1) of Act No. 21 of 2006 with effect from a date to be fixed by the

President by proclamation in the *Gazette* - date not fixed.)

64M. . . . . . .

(Editorial Note: S. 64M to be inserted by s. 28 (1) of Act No. 21 of 2006 with effect from a date to be fixed by the President by proclamation in the *Gazette* - date not fixed.)

CHAPTER IX
VALUE

65. Value for duty purposes on any goods imported into the Republic.-(1) Subject to the provisions of this Act, the value for customs duty purposes of any imported goods shall, at the time of entry for home consumption, be the transaction value thereof, within the meaning of section 66.

(2) If such value of any imported goods of a single denomination is-

(*a*) in excess of one rand, such value shall for the purpose of assessing the amount of duty payable, be calculated to the nearest rand, an amount of 50 cents being regarded as less than one half of one rand;

(*b*) less than one rand, such value shall be calculated as one rand.

(3) Subject to subsection (8), any reference in this Act to customs value or to value for duty purposes, in relation to imported goods, shall be deemed to be a reference to value for customs duty purposes contemplated in subsection (1).

[Sub-s (3) substituted by s. 93 (1) (*b*) of Act No. 35 of 2007.]

(4) (*a*) (i) The Commissioner may in writing determine the transaction value of any imported goods, which is required to be ascertained or may be determined as provided in section 66.

[Sub-para. (i) substituted by s. 96 (*a*) of Act No. 60 of 2008.]

Wording of Sections

(ii) Any determination made under this subsection shall operate-

(*aa*) only in respect of the goods mentioned therein and the person in whose name it is issued; and

(*bb*) subject to the provisions of sections 44 (11) (*c*) and 76B and subsections (7) and (7A), from the date of the determination is issued.

[Para. (*a*) substituted by s. 48 of Act No. 45 of 1995, by s. 59 (*a*) of Act No. 53 of 1999 and by s. 128 (*a*) of Act No. 60 of 2001.]

Wording of Sections

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

(*c*) (i) Whenever any determination is made under paragraph (*a*) or any determination is amended or withdrawn and a new determination is made under subsection (5), any amount due in terms thereof shall, notwithstanding that such determination is being dealt with in terms of any procedure contemplated in Chapter XA or any proceedings have been instituted in any court in connection therewith, remain payable as long as such determination or amended or new determination remains in force: Provided that the Commissioner on good cause shown may suspend such payment until the date of any final judgment by the High Court or a judgment by the Supreme Court of Appeal;

[Sub-para. (i) substituted by s. 144 (1) (*a*) and (*e*) of Act No. 45 of 2003 and by s. 93 (1) (*c*) of Act No. 35 of 2007.]

Wording of Sections

(ii) Such determination, amendment of a determination or new determination shall cease to be in force from the date-

(*aa*) of any amendment of this section or sections 66 and 67 or any instrument contemplated in section 74A with the result that the said determination, amended determination or new determination no longer conforms to the interpretation of the relevant provisions of such section or sections or such instrument;

(*bb*) of a final judgment by the High Court or a judgment by the Supreme Court of Appeal; or

(*cc*) any amendment of a determination or new determination is made effective under subsection (5) or as a result of the finalisation of any procedure contemplated in Chapter XA.

[Item (*cc*) substituted by s. 144 (1) (*b*) and (*f*) of Act No. 45 of 2003 and by s. 93 (1) (*d*) of Act No. 35 of 2007.]

Wording of Sections

(iii) Whenever a court amends or orders the Commissioner to amend any determination made under this subsection or subsection (5) or any determination is amended or a new determination is made under subsection (5) or as a result of the finalisation of any procedure contemplated in Chapter XA, the Commissioner shall not be liable to pay interest on any amount refundable which remained payable in terms of the provisions of subparagraph (i) for any period during which such determination remained in force.

[Para. (*c*) substituted by s. 128 (*b*) of Act No. 60 of 2001. Sub-para. (iii) substituted by s. 144 (1) (*c*) and (*g*) of Act No. 45 of 2003 and by s. 93 (1) (*e*) of Act No. 35 of 2007.]

Wording of Sections

(5) (*a*) the Commissioner shall-

(i) amend any determination or withdraw it and make a new determination with effect from the date it is no longer in force as provided in subsection (4) (*c*) (ii) (*aa*) or (*bb*);

(ii) except where a determination is being dealt with in terms of any procedure contemplated in Chapter XA, amend any determination or withdraw it and make a new determination if it was made in error or any condition or obligation on which it was issued is no longer fulfilled or on any other good cause shown including any relevant ground for review contemplated in section 6 of the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000).

[Sub-para. (ii) substituted by s. 144 (1) (*d*) and (*h*) of Act No. 45 of 2003 and by s. 93 (1) (*f*) of Act No. 35 of 2007.]

Wording of Sections

(*b*) Any such amendment or new determination contemplated in paragraph (*a*) (ii) may be made with effect from-

(i) subject to the provisions of section 44 (11) (*c*), the date of first entry of the goods in question in circumstances where a false declaration is made for the purposes of this Act;

(ii) the date of first entry, if the determination was made-

(*aa*) by an officer who was biased or reasonably suspected of bias; or

(*bb*) for an ulterior purpose or motive, arbitrarily or capriciously or in bad faith;

(iii) the date of the determination made under subsection (4) in circumstances where such determination was made in *bona fide* error of law or of fact;

(iv) the date of the amendment of the previous determination or the date of the new determination:

Provided that whenever any amendment of a determination or a new determination is effective from a date resulting in the person to whom the determination was issued-

(*a*) being entitled to a refund of duty, such refund shall be subject to the provisions of section 76B;

(*b*) retrospectively incurring an increased liability for duty, such liability shall, subject to the provisions of section 44 (11) (*c*), be limited to goods entered for home consumption during a period of two years immediately preceding the date of such amendment or new determination.

[Sub-s. (5) substituted by s. 128 (*c*) of Act No. 60 of 2001.]

Wording of Sections

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

[Para. (*a*) amended by s. 59 (*b*) of Act No. 53 of 1999.]

Wording of Sections

(*b*) Such appeal shall, subject to section 96 (1), be prosecuted within a period of one year from the date of the determination.

[Para. (*b*) substituted by s. 5 of Act No. 44 of 1996.]

Wording of Sections

(7) Save where-

(*a*) a determination has been made under subsection (4) (*a*) or (5); or

(*b*) subject to section 44 (11) (*c*), any underpayment arises from the circumstances contemplated in the

proviso to section 44 (11) (*a*),

[Para. (*b*) substituted by s. 70 of Act No. 32 of 2004.]

Wording of Sections

there shall be no liability for any underpayment of customs duty or excise duty on any goods imported into the Republic, where such underpayment is due to the acceptance of a bill of entry bearing an incorrect value for duty purposes, after a period of two years from the date of entry of such goods.

[Sub-s. (7) substituted by s. 128 (*d*) of Act No. 60 of 2001 and amended by s. 93 (1) (*g*) of Act No. 35 of 2007.]

Wording of Sections

(7A) Notwithstanding the provisions of subsection (7), any determination made under subsection (4) (*a*) as a result of or during the course of or following upon an inspection of the books, accounts and other documents of any importer shall, subject to the provisions of section 44 (11) (*c*), be deemed to have come into operation in respect of the goods in question entered for the purposes of this Act two years prior to the date on which the inspection commenced.

(*b*) The expression **"inspection of any books and documents",** or any other reference to an inspection in this Act shall be taken to include any act done by an officer in the exercise of any duty imposed or power conferred by this Act for the purposes of the physical examination of goods and documents upon or after or in the absence of entry, the issue of stop notes or other reports, the making of assessments and any pre- or post-importation audit, investigation, inspection or verification of any such books, accounts and other documents required to be kept under this Act.

[Sub-s. (7A) inserted by s. 8 (*a*) of Act No. 52 of 1986 and substituted by s. 128 (*d*) of Act No. 60 of 2001.]

Wording of Sections

(8) Notwithstanding the provisions of subsections (1) and (4), the value for the purposes of the duty specified in Section B of Part 2 of Schedule No. 1 shall, in respect of imported goods**,** be the transaction value thereof plus 15 per cent of such value, plus any non-rebated customs duty payable in terms of Part 1 and any excise duty payable in terms of Section A of Part 2 of Schedule No. 1 on such goods, but excluding the duty specified in the said Section B of Part 2 of Schedule No. 1 on such goods.

[Sub-s. (8) substituted by s. 8 of Act No. 101 of 1985, amended by s. 8 (*b*) of Act No. 52 of 1986, by s. 9 of Act No. 68 of 1989, substituted by s. 93 (1) (*h*) and amended by s. 93 (1) (*i*) of Act No. 35 of 2007.]

Wording of Sections

(9) For the purposes of sections 66 and 67, unless the context otherwise indicates-

"buying commission" means any fee paid by an importer to the importer's agent for the service of representing the importer abroad in the purchase of the goods being valued;

[Definition of "buying commission" substituted by s. 96 (*b*) of Act No. 60 of 2008.]

Wording of Sections

"goods of the same class or kind", in relation to imported goods, means goods produced by a particular industry or industry sector in the country from which the imported goods were exported, and falling within the same group or range of goods as the imported goods;

"identical goods", in relation to imported goods, means goods produced in the same country and by the same or a different producer as the imported goods and which are the same in all respects, including physical characteristics, quality and reputation but excluding minor differences in appearance, as the imported goods, but does not include goods incorporating or reflecting engineering, development work, art work, design work, plans or sketches undertaken in the Republic;

"price actually paid or payable", in relation to imported goods, means the total payment made or to be made, either directly or indirectly, by the buyer to or for the benefit of the seller for the goods, but does not include dividends or other payments passing from the buyer to the seller which do no directly relate to the goods;

"similar goods", in relation to imported goods, means goods produced in the same country and by the same or a different producer as the imported goods and which although not alike in all respects to the imported goods have, with due regard to their quality and reputation and the existence of a trade mark, like characteristics and like component materials which enable them to be employed for the same purposes and to be commercially interchangeable, but does not include goods incorporating or reflecting engineering, development work, art work, design work, plans or sketches undertaken in the Republic.

[S. 65 amended by s. 5 of Act No. 85 of 1968, by s. 21 of Act No. 105 of 1969, by s. 20 of Act No. 112 of 1977, by s. 5 of Act No. 93 of 1978 and by s. 7 of Act No. 110 of 1979, substituted by s. 13 (1) of Act No. 86 of 1982 and amended by s. 93 (1) (*a*) in Act No. 35 of 2007.]

Wording of Sections

66. Transaction value.-(1) Subject to the provisions of this Act, the transaction value of any imported goods

shall be the price actually paid or payable for the goods when sold for export to the Republic, adjusted in terms of section 67, provided-

(*a*) there are no restrictions as to the disposal or use of the goods by the buyer other than restrictions which-

(i) are imposed or required by law;

(ii) limit the geographical area in which the goods may be resold; or

(iii) do not substantially affect the value of the goods;

(*b*) the sale or such price of the goods is not subject to any term or condition for which a value cannot be determined;

(*c*) no part of the proceeds of any disposal, use or subsequent resale of the goods by the buyer will accrue directly or indirectly to the seller, unless an appropriate adjustment can be made in terms of section 67;

(*d*) subject to subsection (3), the seller and the buyer are not related within the meaning of subsection (2) (*a*).

(2) (*a*) For the purposes of subsection (1) (*d*), two persons shall be deemed to be related only if-

(i) they are officers or directors of one another's businesses;

(ii) they are legally recognized partners in business;

(iii) the one is employed by the other;

(iv) any person directly or indirectly owns, controls or holds five per cent or more of the equity share capital of both of them;

(v) one of them directly or indirectly controls the other;

(vi) both of them are directly or indirectly controlled by a third person;

(vii) together they directly or indirectly control a third person; or

(viii) they are members of the same family.

(*b*) Persons who are associated in business with one another in that the one is the sole agent, sole distributor or sole concessionary, however described, of the other shall be deemed to be related only if they are so deemed in terms of paragraph (*a*).

(*c*) Every importer of goods which are not exempted by rule shall, when making entry of the goods, declare, in the manner prescribed by rule, whether or not he is related to the supplier of the goods within the meaning of this section.

[Para. (*c*) substituted by s. 49 (*a*) of Act No. 45 of 1995.]

Wording of Sections

(3) Notwithstanding the provisions of subsection (1) (*d*), the fact that a buyer and a seller are related within the meaning of subsection (2) (*a*) shall not in itself be a ground for not accepting the transaction value, where-

(*a*) such relationship did not influence the price paid or payable; or

[Para. (*a*) substituted by s. 49 (*b*) of Act No. 45 of 1995.]

Wording of Sections

(*b*) the importer proves that the transaction value closely approximates to one of the following values, namely-

(i) the transaction value of identical or similar goods sold at comparable trade and quantity levels to unrelated buyers in the Republic at or about the same time as the goods to be valued;

(ii) the value, ascertained in terms of subsection (7), of identical or similar goods imported into the Republic at or about the same time as the goods to be valued;

(iii) the value, ascertained in terms of subsection (8), of identical or similar goods imported into the Republic at or about the same time as the goods to be valued.

[Para. (*b*) amended by s. 49 (*c*) of Act No. 45 of 1995.]

Wording of Sections

(4) (*a*) If the transaction value of any imported goods cannot be ascertained in terms of subsection (1), it shall be the price actually paid or payable for identical goods in a sale for export to the Republic at the same commercial level and in substantially the same quantity and exported at or about the same time as the goods to be

valued, adjusted, with reference to differences in any costs and charges referred to in section 67, on account of differences in distances and modes of transport to the port or place of export.

(*b*) Where no such sale is found, a sale of identical imported goods at either a different commercial or quantity level, or at a different commercial level and quantity level, adjusted to compensate for such differences, shall be used to ascertain the transaction value.

(*c*) If in the application of this subsection more than one transaction value is ascertained, the lowest such value shall be the transaction value of the goods to be valued.

(5) (*a*) If the transaction value of any imported goods cannot be ascertained in terms of subsection (4), it shall be the price actually paid or payable for similar goods in a sale for export to the Republic at the same commercial level and in substantially the same quantity and exported at or about the same time as the goods to be valued, adjusted, with reference to differences in any costs and charges referred to in section 67, on account of differences in distances and modes of transport to the port or place of export.

(*b*) Where no such sale is found, the provisions of paragraphs (*b*) and (*c*) of subsection (4) shall *mutatis mutandis* apply.

(6) If the transaction value of any imported goods cannot be ascertained in terms of subsection (5), it shall be ascertained in terms of subsection (7) or, when it cannot be ascertained in terms of subsection (7), it shall be ascertained in terms of subsection (8): Provided that at the request, in writing, of the importer concerned the order of application of subsections (7) and (8) shall be reversed.

(7) (*a*) If the imported goods or identical or similar imported goods are sold in the Republic in the same condition as that in which they were when imported, the transaction value of the imported goods in terms of this subsection shall be based on the unit price at which the imported goods or identical or similar imported goods are sold in the Republic in the greatest aggregate quantity, at or about the time of importation of the goods to be valued, by the importers thereof to persons not related to them, subject to deductions for-

(i) commissions usually paid or agreed to be paid or additions usually made for profit and general expenses, including the direct and indirect costs of marketing the goods relative to sales in the Republic of imported goods of the same kind or class as the goods to be valued, irrespective of the country of exportation;

(ii) the cost of transportation and the cost of loading, unloading, handling, insurance and associated costs incidental to the transportation of the goods from the port or place of export in the country of exportation to the importer's premises in the Republic; and

(iii) any duties or taxes paid or payable in the Republic by reason of the importation of the goods or sale of the goods within the Republic.

(*b*) If neither the imported goods nor identical nor similar imported goods are sold at or about the time of importation of the goods to be valued, the transaction value of the imported goods in terms of this subsection shall, subject to the provisions of paragraph (*a*), be based on the unit price at which the imported goods or identical or similar imported goods are sold in the Republic in the same condition as that in which they were when imported, at the earliest date after the importation of the goods to be valued, but not later than 90 days after such importation.

(*c*) If neither the imported goods nor identical nor similar imported goods are sold in the Republic in the same condition as that in which they were imported, then, if the importer so requests in writing, the transaction value of the imported goods in terms of this subsection shall be based on the unit price at which the imported goods, after further processing, are sold in the greatest aggregate quantity to persons in the Republic not related to the sellers of such goods, due allowance being made for the value added by such processing and the deductions referred to in paragraph (*a*).

(8) The transaction value of any imported goods in terms of this subsection shall be based on a computed value, computed by means of information supplied by the producer and consisting of the sum of-

(*a*) the cost or value of materials and manufacture or other processing in producing the goods;

(*b*) the cost of-

(i) packing, including that of the labour or materials concerned; and

(ii) containers which are dealt with as being for customs purposes one with the goods in question;

(*c*) the value, apportioned to the imported goods as deemed appropriate by the Commissioner, with due regard to any relevant request by the importer, of any of the following goods and services if supplied directly or indirectly by the importer free of charge or at reduced cost, for use in connection with the production and sale for export of the imported goods, in so far as such value has not been included in the price actually paid or payable, namely-

(i) materials, components, parts and similar articles forming part of the imported goods;

(ii) tools, dies, moulds and similar articles used in the production of the imported goods;

(iii) materials consumed in the production of the imported goods;

(iv) engineering, development work, artwork, design work, plans and sketches undertaken elsewhere than in the Republic and necessary for the production of the imported goods;

(*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;

[Para. (*d*) substituted by s. 5 of Act No. 69 of 1988, by s. 10 (*a*) of Act No. 68 of 1989 and by s. 26 (1) (*a*) of Act No. 59 of 1990.]

Wording of Sections

(*e*) an amount for profit and general expenses equal to that generally applicable in sales of goods of the same class or kind as the imported goods, which are made by producers in the country of exportation.

(9) Where the transaction value of any imported goods cannot be ascertained in terms of the provisions of subsection (8), the Commissioner may determine such value under section 65 (4) (*a*) on the basis of a previous determination or, where there is no previous determination, by such application as he may deem reasonable of any manner of ascertaining the transaction value in terms of subsection (1), (4), (5), (7) or (8), but no such determination shall be based on-

(*a*) the selling price in the Republic of goods produced in the Republic;

(*b*) a system which provides for the acceptance for customs purposes of the higher of two alternative values;

(*c*) the selling price of goods on the domestic market of the country of origin or of exportation of the imported goods;

(*d*) the cost of production, other than computed values which have been determined for identical or similar goods in accordance with subsection (8);

(*e*) the price of the goods for export to a country other than the Republic;

(*f*) a system of minimum customs values; or

(*g*) arbitrary or fictitious values.

[Sub-s. (9) amended by s. 60 of Act No. 53 of 1999.]

Wording of Sections

(10) For the purposes of subsection (7) (*a*) (ii) or (8) (*d*), goods which are exported to the Republic from any country but pass in transit through another country shall, subject to any conditions which may be prescribed by rule, be deemed to have been exported direct from the first-mentioned country.

[Sub-s. (10) substituted by s. 49 (*d*) of Act No. 45 of 1995.]

Wording of Sections

(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-

(*a*) are placed on board ship or on any vehicle which conveys them from or across the border of that country; or

[Para. (*a*) substituted by s. 97 (1) of Act No. 60 of 2008.]

Wording of Sections

(*b*) if they are ships or vehicles moving under their own power, finally leave that country for the Republic.

[S. 66 substituted by s. 21 of Act No. 112 of 1977, amended by s. 8 of Act No. 110 of 1979 and substituted by s. 14 (1) of Act No. 86 of 1982. Sub-s. (11) amended by s. 10 (*b*) of Act No. 68 of 1989 and substituted by s. 26 (1) (*b*) of Act No. 59 of 1990.]

Wording of Sections

67. Adjustments to price actually paid or payable.-(1) In ascertaining the transaction value of any imported goods in terms of section 66 (1), there shall be added to the price actually paid or payable for the goods-

(*a*) to the extent that they are incurred by the buyer but are not included in the price actually paid or payable-

(i) any commission other than a buying commission;

(ii) brokerage;

(iii) the cost of packing, including that of the labour and materials concerned;

(iv) the cost of containers which are dealt with as being for customs purposes one with the goods;

(*b*) the value, apportioned to the imported goods as deemed appropriate by the Commissioner, of any of the following goods and services if supplied directly or indirectly by the importer free of charge or at reduced cost, for use in connection with the production and sale for export of the imported goods, to the extent that such value has not been included in the price actually paid or payable, namely-

(i) materials, components, parts and similar articles forming part of the goods;

(ii) tools, dies, moulds and similar articles used in the production of the goods;

(iii) materials consumed in the production of the goods;

(iv) engineering, development work, art work, design work, plans and sketches undertaken elsewhere than in the Republic and necessary for the production of the goods;

(*c*) royalties and licence fees in respect of the imported goods, including payments for patents, trade marks and copyright and for the right to distribute or resell the goods, due by the buyer, directly or indirectly, as a condition of sale of the goods for export to the Republic, to the extent that such royalties and fees are not included in the price actually paid or payable, but excluding charges for the right to reproduce the imported goods in the Republic;

(*d*) the value of any part of the proceeds of any subsequent resale, disposal or use of the imported goods that accrues directly or indirectly to the seller; and

(*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 at that port or place.

[Para. (*e*) substituted by s. 6 of Act No. 69 of 1988, by s. 11 (*a*) of Act No. 68 of 1989, by s. 27 (1) (*a*) of Act No. 59 of 1990 and by s. 98 (1) (*a*) of Act No. 60 of 2008.]

Wording of Sections

(2) In ascertaining the transaction value of any imported goods in terms of section 66 (1), there shall be deducted from the price actually paid or payable for the goods, to the extent that they are included therein, amounts equal to-

(*a*) the cost of transportation and the cost of loading, unloading, handling, insurance and associated costs incidental to the transportation of the goods from the port or place of export in the country of exportation to the port or place of importation in the Republic;

(*b*) any of the following costs, charges or expenses if identified separately from the balance of the price actually paid or payable for the goods, namely-

(i) any expenditure incurred for the construction, erection, assembly or maintenance of, or technical assistance provided in respect of, the goods after they are imported;

(ii) the cost of transport and insurance of the goods within the Republic;

(iii) any duties or taxes paid or payable by reason of the importation of the goods or sale of the goods in the Republic;

(iv) any duty or tax applicable in the country of exportation from which the goods have been or will be relieved by way of refund, drawback, rebate or remission;

(v) . . . . . .

[Sub-para. (v) deleted by Act No. 60 of 2008.]

Wording of Sections

(vi) interest charged in respect of the price payable for the goods;

(vii) any charge for the right to reproduce the imported goods in the Republic.

(3) For the purposes of subsection (1) (*e*) or (2) (*a*), goods which are exported to the Republic from any country but pass in transit through another country shall, subject to such conditions as may be prescribed by rule, be deemed to have been exported direct from the first-mentioned country.

[Sub-s. (3) substituted by s. 50 of Act No. 45 of 1995.]

Wording of Sections

(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-

(*a*) are placed on board ship or on any vehicle which conveys them from or across the border of that country; or

[Para. (*a*) substituted by s. 98 (1) (*c*) of Act No. 60 of 2008.]

Wording of Sections

(*b*) if they are ships or vehicles moving under their own power, finally leave that country for the Republic.

[S. 67 substituted by s. 6 of Act No. 85 of 1968, repealed by s. 22 of Act No. 112 of 1977 and inserted by s. 15 (1) of Act No. 86 of 1982. Sub-s. (4) amended by s. 11 (*b*) of Act No. 68 of 1989 and substituted by s. 27 (1) (*b*) of Act No. 59 of 1990.]

Wording of Sections

68. . . . . . .

[S. 68 repealed by s. 22 of Act No. 112 of 1977.]

Wording of Sections

69. Value for excise duty purposes on any goods manufactured in the Republic.-(1) (a) For the purpose of assessing the excise duty on any goods manufactured in the Republic and specified in items 126.01, 126.02, 126.03, 126.04 and 126.05 of Section B of Part 2 of Schedule No. 1, the value thereof shall, subject to the provisions of this section, be taken to be the full and final market price (before deduction of any discounts other than cash discounts) at which, at the time of sale, such or similar goods are freely offered for sale, for consumption in the Republic, for purposes of trade in the principal markets of the Republic in the ordinary course of trade, in the usual wholesale quantities and in the condition and the usual packing ready for sale in the retail trade, to any merchant wholesaler in the Republic not deemed to be related as specified in section 66 (2) (a) under fully competitive conditions, plus the cost of packing and packages and all other expenses incidental to placing the goods on any vehicle for delivery to the purchaser, plus any non-rebated excise duty payable in terms of Section A of Part 2 of Schedule No. 1 on such goods, but excluding the non-rebated excise duty payable in terms of Section B of Part 2 of Schedule No. 1 or any value-added tax payable on such goods: Provided that the Commissioner may, where such goods are not sold to such merchant wholesalers in the Republic or are so sold in quantities which he considers to be insignificant in relation to the total quantities of such goods sold in the Republic, regard any other class of purchaser of such goods as such a merchant wholesaler and may make such adjustment to the price charged by the manufacturer to such class of purchaser as he considers reasonable, having regard to the wholesale functions taken over by such manufacturer and such class of purchaser and to such other factors relating to such price as he may deem relevant.

[Para. (*a*) amended by s. 3 (*a*) of Act No. 105 of 1992, by s. 6 (*a*) of Act No. 98 of 1993 and by s. 49 (1) (*a*) of Act No. 19 of 2001.]

Wording of Sections

(*b*) Unless the context otherwise indicates, any reference in this Act to value for excise duty purposes in relation to goods manufactured in the Republic shall be deemed to be a reference to the value for excise duty purposes contemplated in this section.

[Para. (*b*) deleted by s. 3 (*b*) of Act No. 105 of 1992 and inserted by s. 94 (1) (*b*) of Act No. 35 of 2007.]

Wording of Sections

(*c*) For the purpose of paragraph (*a*) the Commissioner may specify-

(i) the quantity which shall be deemed to be the usual wholesale quantity;

(ii) the packing which shall be deemed to be the usual packing ready for sale in the retail trade;

(iii) the cost of packing or packages or any other expenses incidental to placing the goods on any vehicle.

[Para. (*c*) amended by s. 49 (1) (*b*) of Act No. 19 of 2001. Sub-para. (iii) substituted by s. 6 (*b*) of Act No. 98 of 1993.]

Wording of Sections

(*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 2 of Schedule No. 1 other than those specified in paragraph (*a*) and contemplated in paragraph (*d*A), the value thereof shall be the **"invoice price"** which shall mean-

(i) the price paid or payable as contemplated in subsection (2) (*b*), and as the Commissioner may further prescribe by rule, for such goods when sold for home consumption in the ordinary course of trade, in the condition and the usual trade packing ready for sale in the retail trade, to any buyers not deemed to be related as specified in section 66 (2) (*a*);or

(ii) where the buyers are deemed to be related as specified in section 66 (2) (*a*), the price of the goods when sold at comparable trade and quantity levels to unrelated buyers at or about the same time as the sale to such related buyers;

[Para. (*d*) added by s. 49 (1) (*c*) of Act No. 19 of 2001 and amended by s. 145 (1) (*a*) of Act No. 45 of 2003, deemed to have come into operation on 1 July, 2001 (Editorial Note: effective date in s. 145 (2) (*a*) of Act No. 45 of 2003 as amended by s. 96 of Act No. 20 of 2006).]

Wording of Sections

(*d*A) (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 definitions, descriptions, 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 manufacturer's duplicating costs in respect of the duplication of such tapes and discs for a video distribution, plus, to the extent that may be prescribed in such rule, a maximum of 10 per cent of such costs.

(iii) The provisions of paragraph (*d*) (ii) shall, subject to the rules, apply *mutatis mutandis* in respect of any relationship as contemplated in that paragraph between the manufacturer and retailer referred to in subparagraph (ii) (*aa*) or the manufacturer and distributor referred to in subparagraph (ii) (*bb*).

[Para. (*d*A) inserted by s. 145 (1) (*b*) of Act No. 45 of 2003, deemed to have come into operation on 1 July, 2001 (Editorial Note: effective date in s. 145 (2) (*a*) of Act No. 45 of 2003 as amended by s. 96 of Act No. 20 of 2006).]

Wording of Sections

(*e*) The invoice price contemplated in paragraph (*d*) shall-

(i) exclude the non-rebated excise duty payable in terms of Section B of Part 2 of Schedule No. 1 and any value-added tax payable on such goods;

(ii) be reduced by any deduction from such price as may be prescribed by the Commissioner by rule in respect of any goods specified in any such item of Section B of Part 2 of Schedule No. 1.

[Para. (*e*) added by s. 49 (1) (*c*) of Act No. 19 of 2001.]

(2) (*a*) (i) For the purpose of assessing the excise duty on any goods manufactured in the Republic and specified in Section A of Part 2 of Schedule No. 1, the value thereof shall be the price paid or payable for such goods when sold for home consumption in the ordinary course of trade, in the usual trade packing, where applicable, to any buyers not deemed to be related as specified in section 66 (2) (*a*), plus any non-rebated excise duty payable in terms of Section B of Part 2 of Schedule No. 1, but excluding the non-rebated excise duty payable in terms of Section A of Part 2 of Schedule No. 1, fuel levy or any value-added tax payable on such goods.

[Sub-para. (i) substituted by s. 94 (1) (*c*) of Act No. 35 of 2007.]

Wording of Sections

(ii) . . . . . .

[Para. (*a*) substituted by s. 1 (1) of Act No. 111 of 1991 and by s. 3 (*c*) of Act No. 105 of 1992 and deleted by s. 94 (1) (*d*) of Act No. 35 of 2007.]

Wording of Sections

(*b*) For the purpose of paragraph (*a*) **"price paid or payable",** means the total payment made or to be made, either directly or indirectly, by the buyer to or for the benefit of the seller for the goods, but does not include dividends or other payments passing from the buyer to the seller which do not directly relate to the goods.

(3) (*a*) Where goods are sold or otherwise disposed of under such conditions that the value thereof cannot be ascertained or has been incorrectly ascertained in terms of subsection (1) or (2), as the case may be, the Commissioner may, having regard to the relevant provisions of subsection (1) or (2), in writing determine a value.

(*b*) Any determination made under this subsection shall operate-

(i) only in respect of the goods mentioned therein and the person in whose name it is issued;

(ii) subject to the provisions of sections 44 (11) (*c*) and 76B and subsections (6) and (7), from the date the determination is issued.

(*c*) Whenever any determination is made under paragraph (*a*) or any determination is amended or withdrawn and a new determination is made under subsection (4), any amount due in terms thereof shall, notwithstanding that such determination is being dealt with in terms of any procedure contemplated in Chapter XA or any proceedings have been instituted in any court in connection therewith, remain payable as long as such

determination or amended or new determination remains in force: Provided that the Commissioner may suspend such payment until the date of any final judgment by the High Court or a judgment by the Supreme Court of Appeal.

[Para. (*c*) substituted by s. 145 (1) (*c*) and (*g*) of Act No. 45 of 2003 and by s. 94 (1) (*e*) of Act No. 35 of 2007.]

Wording of Sections

(*d*) Such determination, amendment of a determination or new determination shall cease to be in force from the date-

(i) of any amendment of this section or the rules with the result that the said determination, amended determination or new determination no longer conforms to the interpretation of the relevant provisions of this section or such rules;

(ii) of a final judgment by the High Court or a judgment by the Supreme Court of Appeal; or

(iii) any amendment of a determination or new determination is made effective under subsection (4) or as a result of the finalisation of any procedure contemplated in Chapter XA.

[Sub-para. (iii) substituted by s. 145 (1) (*d*) and (*h*) of Act No. 45 of 2003 and by s. 94 (1) (*f*) of Act No. 35 of 2007.]

Wording of Sections

(*e*) Whenever a court amends or orders the Commissioner to amend any determination made under this subsection or subsection (4) or any determination is amended or a new determination is made under subsection (4) or as a result of the finalisation of any procedure contemplated in Chapter XA the Commissioner shall not be liable to pay interest on any amount refundable which remained payable in terms of the provisions of paragraph (*c*) for any period during which such determination remained in force.

[Sub-s. (3) substituted by s. 6 (*c*) of Act No. 98 of 1993, by s. 49 (1) (*d*) of Act No. 19 of 2001 and by s. 129 (*a*) of Act No. 60 of 2001. Para. (*e*) substituted by s. 145 (1) (*e*) and (*i*) of Act No. 45 of 2003 and by s. 94 (1) (*g*) of Act No. 35 of 2007.]

Wording of Sections

(4) (*a*) The Commissioner shall-

(i) amend any determination or withdraw it and make a new determination with effect from the date it is no longer in force as provided in subsection (3) (*d*) (i) or (ii);

(ii) except where a determination is being dealt with in terms of any procedure contemplated in Chapter XA, amend any determination or withdraw it and make a new determination if it was made in error or any condition or obligation on which it was issued is no longer fulfilled or on any other good cause shown including any relevant ground for review contemplated in section 6 of the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000).

[Sub-para. (ii) substituted by s. 145 (1) (*f*) and (*j*) of Act No. 45 of 2003 and by s. 94 (1) (*h*) of Act No. 35 of 2007.]

Wording of Sections

(*b*) Any such amendment or new determination contemplated in paragraph (*a*) (ii) may be made with effect from-

(i) subject to the provisions of section 44 (11) (*c*), the date of first entry of the goods in question in circumstances where a false declaration is made for the purposes of this Act;

(ii) the date of first entry, if the determination was made-

(*aa*) by an officer who was biased or reasonably suspected of bias; or

(*bb*) for an ulterior purpose or motive, arbitrarily or capriciously or in bad faith;

(iii) the date of the determination made under subsection (3) (*a*) in circumstances where such determination was made in *bona fide* error of law or of fact;

(iv) the date of the amendment of the previous determination or the date of the new determination:

Provided that whenever any amendment of a determination or a new determination is effective from a date resulting in the person to whom the determination was issued-

(*a*) being entitled to a refund of duty, such refund shall be subject to the provisions of section 76B;

(*b*) retrospectively incurring an increased liability for duty, such liability shall, subject to the provisions of section 44 (11) (*c*), be limited to goods entered for home consumption during a period of two years immediately preceding the date of such amendment or new determination.

[Sub-s. (4) substituted by s. 129 (*a*) of Act No. 60 of 2001.]

Wording of Sections

(5) (*a*) An appeal against any such determination shall lie to the division of the High Court of South Africa having jurisdiction to hear appeals in the area in which the determination was made, or the goods in question were entered for home consumption.

[Para. (*a*) amended by s. 61 (*a*) of Act No. 53 of 1999.]

Wording of Sections

(*b*) Such appeal shall, subject to section 96 (1), be prosecuted within a period of one year from the date of the determination.

(6) Save where-

(*a*) a determination has been made under subsection (3) (*a*) or (4); or

(*b*) subject to section 44 (11) (*c*), any underpayment arises from the circumstances contemplated in the proviso to section 44 (11) (*a*),

[Para. (*b*) substituted by s. 71 of Act No. 32 of 2004.]

Wording of Sections

there shall be no liability for any underpayment in duty on any goods, where such underpayment is due to the acceptance of a bill of entry bearing an incorrect value for excise duty purposes, after a period of two years from the date of entry of such goods.

[Sub-s. (6) added by s. 61 (*b*) of Act No. 53 of 1999 and substituted by s. 129 (*b*) of Act No. 60 of 2001.]

Wording of Sections

(7) (*a*) Notwithstanding the provisions of subsection (6), any determination made under subsection (3) (*a*) as a result of or during the course of or following upon an inspection of the books, accounts and other documents of any manufacturer, wholesaler or purchaser or any seller or buyer contemplated in subsection (1) or (2) shall, subject to the provisions of section 44 (11) (*c*), be deemed to have come into operation in respect of the goods in question entered for the purposes of this Act two years prior to the date on which the inspection commenced.

(*b*) The expression **"inspection of any books, accounts and other documents"**, or any other reference to an inspection in this Act shall be taken to include any act done by an officer in the exercise of any duty imposed or power conferred by this Act for the purposes of the physical examination of goods and documents upon or after or in the absence of entry, the issue of stop notes or other reports, the making of assessments and any pre- or post-production audit, investigation, inspection or verification of any such books, accounts and other documents required to be kept under this Act.

[S. 69 amended by s. 22 of Act No. 105 of 1969, by s. 6 of Act No. 93 of 1978, by s. 9 of Act No. 101 of 1985, by s. 7 (1) of Act No. 69 of 1988, substituted by s. 12 (1) of Act No. 68 of 1989 and by s. 6 of Act No. 44 of 1996 and amended by s. 94 (1) (*a*) in Act No. 35 of 2007. Sub-s. (7) added by s. 61 (*b*) of Act No. 53 of 1999 and substituted by s. 129 (*b*) of Act No. 60 of 2001.]

Wording of Sections

70. . . . . . .

[S. 70 repealed by s. 7 of Act No. 85 of 1968, inserted by s. 23 of Act No. 105 of 1969, amended by s. 9 (1) of Act No. 105 of 1976, by s. 23 (1) of Act No. 112 of 1977, by s. 7 (1) of Act No. 93 of 1978 and by s. 16 (1) of Act No. 86 of 1982 and repealed by s. 28 of Act No. 59 of 1990.]

Wording of Sections

71. Value of certain specified goods.-(1) The value for duty purposes of any goods imported into the Republic *ex* customs warehouses or *ex* bonded warehouses within the district of Maputo shall be calculated or determined in accordance with this Chapter as if such goods were imported directly into the Republic from the territory whence they were exported to Maputo.

[Sub-s. (1) substituted by s. 10 of Act No. 105 of 1976.]

Wording of Sections

(2) Where any motor vehicle is imported by a natural person for his own use and not for sale, the Commissioner may, notwithstanding the provisions of section 65 (1) and (4) but with due regard to the provisions of section 66, determine a value which shall, subject to a right of appeal to the court, *mutatis mutandis* in accordance with the provisions of section 65 (6), be deemed to be the value for duty purposes of such vehicle: Provided that where any natural person who was the owner of and has used such motor vehicle in any territory outside the Republic, imports such vehicle into the Republic, from a territory other than the territory in which it was produced or manufactured, for his own use, and not for sale, the Commissioner may determine the value for duty purposes of such vehicle as if it were imported into the Republic from the territory in which it was produced or manufactured.

[Sub-s. (2) amended by s. 5 of Act No. 89 of 1984 and by s. 4 of Act No. 105 of 1992.]

Wording of Sections

72. Value of goods exported.-(*a*) For the purposes of this Act, the value of any goods exported from the Republic shall be the price of those goods free on board at the place of despatch from the Republic, which value shall be declared on the bill of entry export.

(*b*) If there is no such free on board price, the export value shall be the value as if the goods would have been sold at a free on board price.

[Para. (*b*) substituted by s. 26 of Act No. 34 of 2004.]

Wording of Sections

(*c*) If the value of any exported goods of a single denomination is, according to the provisions of this section-

(i) in excess of one rand and includes a fraction of a rand, such value shall be calculated to the nearest rand, an amount in excess of fifty cents being regarded as one rand;

(ii) less than one rand, such value shall be calculated as one rand.

[Para. (*c*) added by s. 11 of Act No. 105 of 1976 and substituted by s. 11 of Act No. 98 of 1980.]

Wording of Sections

73. Currency conversion.-(1) When the value of or the price paid or payable for any imported goods is expressed in a foreign currency, it shall, for the purpose of calculating the customs value thereof, be converted into the currency of the Republic at the selling rate at the date of shipment of the goods as determined by the Commissioner, in consultation with the South African Reserve Bank, or if no such rate is determined for such date, the latest rate determined before that date shall be used.

(2) For the purposes of subsection (1) the date of shipment of-

(*a*) non-containerized goods shall be the date of the bill of lading, air waybill, consignment note or such other document as the Commissioner may require;

(*b*) containerized goods shall be the date on which the container is taken on board ship as endorsed on the bill of lading or arrival notification or, if imported otherwise than by sea, the date of the air waybill, consignment note or such other document as the Commissioner may require.

(3) The Commissioner may, for the purpose of any agreement contemplated in section 49 or 51, by rule-

(*a*) publish arrangements in connection with amounts to be used in currencies in respect of goods imported or exported between the Republic and the country or countries or group of countries concerned;

(*b*) prescribe any measures applicable to the implementation of such arrangements.

[S. 73 substituted by s. 24 of Act No. 112 of 1977, by s. 9 of Act No. 110 of 1979 and by s. 51 of Act No. 45 of 1995. Sub-s. (3) added by s. 62 of Act No. 53 of 1999.]

Wording of Sections

74. Value of goods not liable to *ad valorem* duty.-(1) Subject to the provisions of subsection (2), the customs value of any imported goods shall be declared by the importer on entry of such goods.

[Sub-s. (1) substituted by s. 25 of Act No. 112 of 1977 and by s. 17 (1) of Act No. 86 of 1982.]

Wording of Sections

(2) The Commissioner may by rule exempt, to the extent specified in the rules, any class or kind of such goods or any such goods to which circumstances so specified apply, from the provisions of subsection (1).

[Sub-s. (2) substituted by s. 52 of Act No. 45 of 1995.]

Wording of Sections

74A. Interpretation of sections 65, 66 and 67.-(1) The interpretation of sections 65, 66 and 67 shall be subject to the agreement concluded at Geneva on 12 April 1979 and known as the Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade, the Interpretative Notes thereto, the Advisory Opinions, Commentaries and Explanatory Notes, Case Studies and Studies issued under the said Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade.

[Sub-s. (1) substituted by s. 10 (*a*) of Act No. 101 of 1985.]

Wording of Sections

(2) (*a*) The Commissioner shall obtain and keep in his office two copies of such Agreement, Interpretative Notes, Advisory Opinions, Commentaries and Explanatory Notes, Case Studies and Studies and shall effect thereto any amendment thereof of which he is notified by the Secretariat of the Customs Co-operation Council, Brussels.

(*b*) Whenever in any legal proceedings any question arises as to the contents of the said Agreement, or any such Interpretative Note, Advisory Opinion, Commentary, Explanatory Note, Case Study or Study (hereinafter in this paragraph referred to as the relevant document), or as to the date upon which any amendment thereof was effected thereto in terms of paragraph (*a*), a copy of the relevant document, or if amended as contemplated in paragraph (*a*), a copy of the relevant document as so amended, shall, unless the contrary is proved, be accepted as sufficient evidence of the contents thereof or of the effective date of any amendment thereof, as the case may be.

[Sub-s. (2) substituted by s. 10 (*b*) of Act No. 101 of 1985.]

Wording of Sections

(3) The provisions of subsection (1) shall not derogate from the interpretation which would but for that subsection be given to section 65, 66 or 67.

[S. 74A inserted by s. 26 of Act No. 112 of 1977 and substituted by s. 18 (1) of Act No. 86 of 1982.]

Wording of Sections

CHAPTER X
REBATES, REFUNDS AND DRAWBACKS OF DUTY

75. Specific rebates, drawbacks and refunds of duty.-(1) Subject to the provisions of this Act and to any conditions which the Commissioner may impose-

(*a*) any imported goods described in Schedule No. 3 shall be admitted under rebate of any customs duties or excise duty applicable in respect of such goods at the time of entry for home consumption thereof, to the extent and for the purpose or use stated in the item of Schedule No. 3 in which they are specified;

[Para. (*a*) substituted by s. 95 (1) (*a*) of Act No. 35 of 2007.]

Wording of Sections

(*b*) any imported goods described in Schedule No. 4 shall be admitted under rebate of any customs duties, excise duty, fuel levy or Road Accident Fund levy applicable in respect of such goods at the time of entry for home consumption thereof, or if duly entered for export and exported in accordance with such entry, to the extent stated in, and subject to compliance with the provisions of the item of Schedule No. 4 in which such goods are specified;

[Para. (*b*) substituted by s. 13 (1) (*a*) of Act No. 68 of 1989, by s. 61 (1) of Act No. 30 of 2000, by s. 130 (1) (*a*) of Act No. 60 of 2001, by s. 92 (1) (*a*) of Act No. 31 of 2005 and by s. 95 (1) (*a*) of Act No. 35 of 2007.]

Wording of Sections

(*c*) a drawback or a refund of the customs duty, excise duty, surcharge, fuel levy and Road Accident Fund levy actually paid on entry for home consumption on any imported goods described in Schedule No. 5 shall be paid to the person who paid such duties or any person indicated in the notes to the said Schedule, subject to compliance with the provisions of the item of the said Schedule in which those goods are specified; and

[Para. (*c*) substituted by s. 27 (*a*) of Act No. 112 of 1977, by s. 23 (*a*) of Act No. 84 of 1987, by s. 13 (*a*) of Act No. 61 of 1992, by s. 50 (1) (*a*) of Act No. 19 of 2001, by s. 92 (1) (*b*) of Act No. 31 of 2005 and by s. 95 (1) (*a*) of Act No. 35 of 2007.]

Wording of Sections

(*d*) in respect of any excisable goods or fuel levy goods manufactured in the Republic described in Schedule No. 6, a rebate of the excise duty specified in Part 2 of Schedule No. 1 or of the fuel levy and of the Road Accident Fund levy specified respectively in Part 5A and Part 5B of Schedule No. 1 in respect of such goods at the time of entry for home consumption thereof, or if duly entered for export and exported in accordance with such entry, or a refund of the excise duty, fuel levy or Road Accident Fund levy actually paid at the item of entry for home consumption shall be granted to the extent and in the circumstances stated in the item of Schedule No. 6 in which such goods are specified, subject to compliance with the provisions of the said item and any refund under this paragraph may be paid to the person who paid the duty or any person indicated in the notes to the said Schedule No. 6:

Provided that any rebate, drawback or refund of Road Accident Fund levy as contemplated in paragraph (*b*), (*c*) or (*d*), shall only be granted as expressly provided in Schedule No. 4, 5 or 6 in respect of any item of such Schedule.

[Para. (*d*) substituted by s. 23 (*b*) of Act No. 84 of 1987, by s. 50 (1) (*a*) of Act No. 19 of 2001, by s. 130 (1) (*b*) of Act No. 60 of 2001, by s. 92 (1) (*c*) of Act No. 31 of 2005 and by s. 95 (1) (*a*) of Act No. 35 of 2007.]

Wording of Sections

(*e*) . . . . . .

[Para. (*e*) added by s. 24 (*a*) of Act No. 105 of 1969 and deleted by s. 29 (1) (*a*) of Act No. 59 of 1990.]

Wording of Sections

(*f*) . . . . . .

[Para. (*f*) added by s. 23 (*c*) of Act No. 84 of 1987, amended by s. 8 (1) (*a*) and (*b*) of Act No. 69 of 1988, by s. 29 (1) (*b*) of Act No. 59 of 1990, by s. 13 (*b*) of Act No. 61 of 1992 and by s. 53 (*a*) of Act No. 45 of 1995 and deleted by s. 50 (1) (*b*) of Act No. 19 of 2001.]

Wording of Sections

(*g*) . . . . . .

[Para. (*g*) added by s. 23 (*c*) of Act No. 84 of 1987, amended by s. 8 (1) (*c*) of Act No. 69 of 1988 and deleted by s. 53 (*b*) of Act No. 45 of 1995.]

Wording of Sections

(1A) Notwithstanding anything to the contrary contained in this Act or any other law-

(*a*) (i) a refund of the fuel levy leviable on distillate fuel in terms of Part 5A of Schedule No. 1; and

(ii) a refund of the Road Accident Fund levy leviable on distillate fuel in terms of Part 5B of Schedule No. 1; or

(iii) only a refund of such Road Accident Fund levy,

shall be granted in accordance with the provisions of this section and of item 670.04 of Schedule No. 6 to the extent stated in that item;

[Para. (*a*) substituted by s. 92 (1) (*d*) of Act No. 31 of 2005, amended by s. 70 (1) (*a*) of Act No. 20 of 2006 and substituted by s. 95 (1) (*b*) of Act No. 35 of 2007.]

Wording of Sections

(*b*) such refunds shall be granted to any person who-

(i) has purchased and used such fuel in accordance with the provisions of this section and the said item of Schedule No. 6; and

[Sub-para. (i) substituted by s. 95 (1) (*c*) of Act No. 35 of 2007.]

Wording of Sections

(ii) is registered, in addition to any other registration required under this Act, for value-added tax purposes under the provisions of the Value-Added Tax Act, 1991 (Act No. 89 of 1991), and for diesel refund purposes on compliance with the requirements determined by the Commissioner for the purposes of this Act and the Value-Added Tax Act;

(*c*) the Commissioner may withdraw money from the National Revenue Fund for refunding the amount of such Road Accident Fund levy as if it were a fuel levy leviable and paid under this Act and refundable in terms of the said item of Schedule No. 6;

[Para. (*c*) substituted by s. 95 (1) (*d*) of Act No. 35 of 2007.]

Wording of Sections

(*d*) the Commissioner may-

(i) pay any such refund upon receipt of a duly completed return from any person who has purchased distillate fuel for use as contemplated in the said item of Schedule No. 6;

[Sub-para. (i) substituted by s. 95 (1) (*e*) of Act No. 35 of 2007.]

Wording of Sections

(ii) pay any such refund by means of the system in operation for refunding value-added tax; and

(iii) for the purposes of payment, set off any amount refundable to any person in terms of the provisions of this section and the said items against any amount of value-added tax payable by such person;

(*e*) any such payment or set-off by the Commissioner shall be deemed to be a provisional refund for the purpose of this section and the said item of Schedule No. 6 subject to the production of proof by the user referred to in subsection (1C) (*b*) at such time and in such form as the Commissioner may determine that the distillate fuel has been-

(i) purchased as claimed on the application for a diesel refund; and

(ii) used in accordance with the provisions of this section and the said item of Schedule No. 6;

[Para. (*e*) substituted by s. 95 (1) (*f*) of Act No. 35 of 2007.]

Wording of Sections

(*f*) the provisions of the Value-Added Tax Act, 1991 (Act No. 89 of 1991), shall *mutatis mutandis* apply in respect of the payment of interest on any amount of fuel levy or Road Accident Fund levy which is being recovered as it is in excess of the amount due or is not duly refundable.

[Sub-s. (1A) inserted by s. 8 (1) (*d*) of Act No. 69 of 1988, amended by s. 53 (*c*), (*d*) and (*e*) of Act No. 45 of 1955 and substituted by s. 50 (1) (*c*) of Act No. 19 of 2001.]

Wording of Sections

(1B) (*a*) The Commissioner shall, at the end of each calendar month, furnish an audited statement, as may be agreed upon between the Commissioner and the Chief Executive Officer of the Road Accident Fund referred to in section 12 of the Road Accident Fund Act, 1996 (Act No. 56 of 1996), to the said Chief Executive Officer, reflecting the quantity of diesel in litres and the amount of the Road Accident Fund levy refunded thereon during such month.

(*b*) The Chief Executive Officer of the Road Accident Fund shall repay to the Commissioner the amount of the Road Accident Fund levy refunded by the Commissioner not later than the last working day of each calendar month immediately succeeding the calendar month covered by the statement furnished by the Commissioner.

(*c*) Any amount so repaid by the Road Accident Fund shall be paid into the National Revenue Fund as if it were a recovery of fuel levy refunded under this section.

(*d*) For the purposes of this Act, any refund of Road Accident Fund levy by the Commissioner to any applicant shall be deemed to be a refund of duty and any amount paid which was not duly payable or in excess of the amount due to the applicant shall be recoverable as provided in section 76A and shall, when recovered, be repaid to the Road Accident Fund by the Commissioner each calendar month.

(*e*) The Commissioner may enter into a written agreement with the Chief Executive Officer of the Road Accident Fund to regulate any incidental matter which it may be necessary or expedient to regulate in order to achieve or promote the objects of this subsection.

[Sub-s. (1B) added by s. 50 (1) (*c*) of Act No. 19 of 2001.]

(1C) (*a*) Notwithstanding the provision of subsection (1A), the Commissioner may investigate any application for a refund of such levies on distillate fuel to establish whether the fuel has been-

(i) duly entered or is deemed to have been duly entered in terms of this Act;

(ii) purchased in the quantities stated in such return;

(iii) delivered to the premises of the user and is being stored and used or has been used in accordance with the purpose declared on the application for registration and the said item of Schedule No. 6.

[Sub-para. (iii) substituted by s. 95 (1) (*g*) of Act No. 35 of 2007.]

Wording of Sections

(*b*) For the purposes of this section and the said item of Schedule No. 6-

(i) **"user"** shall mean, according to the context and subject to any note in the said Schedule No. 6, the person registered for a diesel refund as contemplated in subsection (1A);

[Sub-para. (i) substituted by s. 130 (1) (*c*) of Act No. 60 of 2001 and by s. 95 (1) (*i*) of Act No. 35 of 2007.]

Wording of Sections

(ii) **"distillate fuel"** includes diesel and **"diesel"** includes distillate fuel.

[Para. (*b*) amended by s. 95 (1) (*h*) of Act No. 35 of 2007.]

Wording of Sections

(*c*) (i) The refunds specified in the said item of Schedule No. 6 shall apply to fuel purchased on or after the date the amendment contemplated in section 75 (15) comes into operation.

[Sub-para. (i) substituted by s. 95 (1) (*j*) of Act No. 35 of 2007.]

Wording of Sections

(ii) Any such fuel purchased shall be deemed to have been used in the order of the dates of such purchases.

(iii) The extent of the refund referred to in subparagraph (i) shall be the rate of such refund specified in such item of Schedule No. 6 in operation on the date of issue of the invoice concerned, referred to in subsection (4A) (*c*).

[Sub-para. (iii) substituted by s. 95 (1) (*j*) of Act No. 35 of 2007.]

Wording of Sections

(iv) If the extent of such refund is amended and for any reason any liability to repay any refund of such levies in respect of any quantity of fuel which the user may incur in respect of the use of such fuel cannot be assessed or the amount of the levies refundable to such user in terms of any item of Schedule No. 6 cannot be calculated on any quantity of such fuel purchased by such user before such amendment, the quantity of such fuel in respect of any refund which the user is liable to repay, or the quantity used in accordance with any such item for the calculation of the amount refundable to such user, shall be determined by the Commissioner according to the information at his disposal.

[Sub-para. (iv) substituted by s. 95 (1) (*i*) of Act No. 35 of 2007.]

Wording of Sections

(*d*) (i) Any user who has been granted such a provisional refund shall, in relation to the purchase and use by him of the fuel concerned, furnish the Commissioner at such times as may be prescribed in the notes to item 670.04, with a declaration in such form and supported by such documents as may be prescribed in such notes.

[Sub-para. (i) substituted by s. 95 (1) (*k*) of Act No. 35 of 2007 deemed to have come into operation on 1 April, 2006]

Wording of Sections

(ii) Any user who fails to comply with the provisions of subparagraph (i) shall be deemed to have used such fuel for a purpose or use other than the purpose or use stated in the said item of Schedule No. 6 and the amount of such refund shall be deemed to be a refund not duly payable to such user and shall be recoverable in terms of section 76A.

[Sub-para. (ii) substituted by s. 95 (1) (*l*) of Act No. 35 of 2007.]

Wording of Sections

(*e*) (i) If the amount of the provisional refund paid to the user concerned was not duly refundable or exceeds the amount refundable in terms of the said item of Schedule No. 6, any such amount or the excess shall be paid by that user upon demand by the Commissioner.

[Sub-para. (i) substituted by s. 95 (1) (*m*) of Act No. 35 of 2007.]

Wording of Sections

(ii) If that user fails to pay the amount demanded in terms of subparagraph (i), such amount shall be recoverable in terms of section 76A.

[Sub-s. (1C) added by s. 50 (1) (*c*) of Act No. 19 of 2001.]

(1D) The provisions of subsections (1A) (*c*), (1B) (*b*), (1B) (*c*) and (1B) (*e*), shall only apply in respect of refunds paid by the Commissioner until the day before the levying of the Road Accident Fund levy in terms of this Act comes into operation.

[Sub-s. (1D) inserted by s. 92 (1) (*e*) of Act No. 31 of 2005.]

(2) A rebate of duty in respect of any goods described in Schedule No. 3 shall be allowed-

(*a*) only in respect of goods entered for use in the production or manufacture of goods in the industry and for the purpose specified in the item of the said Schedule in which those goods are specified;

(*b*) only in respect of goods entered for use-

(i) in a factory which is registered under the Machinery and Occupational Safety Act, 1983 (Act No. 6 of 1983).

[Sub-para. (i) substituted by s. 29 (1) (*c*) of Act No. 59 of 1990.]

Wording of Sections

(ii) in a mine or works as defined in section 1 of the Mines and Works Act, 1956 (Act No. 27 of 1956); or

(iii) elsewhere in any other activity which the Commissioner may approve for the purposes of this subparagraph;

[Para. (*b*) substituted by s. 19 (*a*) of Act No. 86 of 1982 and by s. 9 (1) (*a*) of Act No. 52 of 1986. Sub-para. (iii) substituted by s. 53 (*f*) of Act No. 45 of 1995.]

Wording of Sections

(*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.

[Para. (*c*) substituted by s. 19 (*b*) of Act No. 86 of 1982, by s. 9 (1) (*b*) of Act No. 52 of 1986 and by s. 146 (*a*) of Act No. 45 of 2003.]

Wording of Sections

(3) . . . . . .

[Sub-s. (3) deleted by s. 19 (*c*) of Act No. 86 of 1982.]

Wording of Sections

(4) Notwithstanding the provisions of section 56, 56A or 57, a rebate of any anti-dumping duty, countervailing duty or safeguard duty specified in Schedule No. 2 in respect of any goods entered under the provisions of any item specified in Schedule No. 3 or 4 may be granted if it is expressly stated in such item of Schedule No. 3 or 4 that the extent of the rebate includes such anti-dumping duty, countervailing duty or safeguard duty.

[Sub-s. (4) substituted by s. 27 (*b*) of Act No. 112 of 1977 and by s. 13 (*c*) of Act No. 61 of 1992.]

Wording of Sections

(4A) (*a*) Any person who registers for a diesel refund as contemplated in subsection (1) shall be deemed to have registered in addition for the purposes of section 59A.

[Para. (*a*) substituted by s. 130 (1) (*d*) of Act No. 60 of 2001.]

Wording of Sections

(*b*) (i) Any return for refund of such levies shall be in such form and shall declare such particulars and shall be for such quantities and for such periods as may be determined by the Commissioner.

(ii) Any return for refund of such levies shall be submitted within two years from the date of purchase of such fuel.

[Para. (*b*) substituted by s. 130 (1) (*d*) of Act No. 60 of 2001.]

Wording of Sections

(*c*) Any seller of such fuel shall furnish such user with an original invoice reflecting the particulars, and shall keep a copy of such invoice for such time, as may be prescribed in the notes to item 670.04.

[Para. (*c*) substituted by s. 70 (1) (*b*) of Act No. 20 of 2006 deemed to have come into operation on 1 April, 2006.]

Wording of Sections

(*d*) Any user shall complete and keep such books, accounts and documents and furnish to the Commissioner at such times such particulars of the purchase, use or storage of such fuel or any other particulars as may be prescribed in the notes to item 670.04.

[Para. (*d*) substituted by s. 70 (1) (*c*) of Act No. 20 of 2006 deemed to have come into operation on 1 April, 2006.]

Wording of Sections

(*e*) (i) Notwithstanding anything to the contrary in this Act contained, any user of distillate fuel who has been granted such refund and who fails to-

(*aa*) keep any such invoice;

(*bb*) complete and keep such books, accounts and documents; or

(*cc*) forthwith furnish any officer at such officer's request with such invoice and the books, accounts and documents required to be completed and kept,

shall, in addition to any other liability incurred in terms of this Act in respect of the fuel to which such failure relates, be liable, as the Commissioner may determine, for payment of an amount not exceeding the levies refunded on such fuel, unless it is shown by the user within 30 days of the date of any demand for payment of such amount in terms of this section that the fuel has been used in accordance with the provisions of the said item of Schedule No. 6.

[Sub-para. (i) amended by s. 95 (1) (*n*) of Act No. 35 of 2007.]

Wording of Sections

(ii) Any amount for which any person is liable in terms of this section shall be payable upon demand by the Commissioner.

(*f*) The Commissioner may, subject to review by the High Court-

(i) refuse to register any applicant for registration as contemplated in subsection (1A) (*b*) (ii) or (4A) (*a*) if such applicant-

(*aa*) has made a false or misleading statement with respect to any material fact or omits to state any material fact which was required to be stated in the application for registration;

(*bb*) has contravened or failed to comply with the provisions of this Act or the Value-Added Tax Act 1991 (Act No. 89 of 1991);

(*cc*) has been convicted of an offence under this Act, or the said Value-Added Tax Act; or

(*dd*) has been convicted of an offence involving dishonesty;

(ii) cancel, or suspend for such period as the Commissioner may determine such registration, if such person-

(*aa*) could have been refused registration as contemplated in subparagraph (i);

(*bb*) fails to complete, keep or furnish such accounts, books or documents or keep such invoice, as may be prescribed in the notes to item 670.04; or

[Item (*bb*) substituted by s. 70 (1) (*d*) of Act No. 20 of 2006 deemed to have come into operation on 1 April, 2006.]

Wording of Sections

(*cc*) fraudulently claims or receives any payment in respect of any refund provided for in this subsection and the said item of Schedule No. 6.

[Item (*cc*) substituted by s. 95 (1) (*o*) of Act No. 35 of 2007.]

Wording of Sections

(*g*) For the purposes of the administration of the refunds of levies on distillate fuel as provided in this section and item 670.04 of Schedule No. 6 the Commissioner may, subject to the provisions of section 3 (2), delegate by rule any of the Commissioner's powers, duties or functions under this Act to any officer, including any officer employed in administering the provisions of the Value-Added Tax Act, 1991 (Act No. 89 of 1991).

[Para. (*g*) substituted by s. 70 (1) (*e*) of Act No. 20 of 2006 deemed to have come into operation on 1 April, 2006.]

Wording of Sections

(*h*) (i) Any person to whom a refund of levies has been granted in accordance with the provisions of this section and of item 670.04 of Schedule No. 6 who falsely applied for such refund or who uses or disposes of such fuel contrary to such provisions, shall be guilty of an offence and liable on conviction to a fine not exceeding R100 000 or double the amount of any levies refunded, whichever is the greater, or to imprisonment for a period not exceeding 10 years, or to both such fine and imprisonment and the fuel in respect of which the offence has been committed shall be liable to forfeiture under this Act.

[Sub-para. (i) substituted by s. 70 (1) (*f*) of Act No. 20 of 2006 deemed to have come into operation on 1 April, 2006.]

Wording of Sections

(ii) For the purposes of paragraph (i), where any person falsely applies for such refund without having purchased such fuel, any forfeiture amount shall be calculated on the basis of the usual retail price thereof on the date the false application was submitted or on the date of assessment of such amount, whichever is the greater.

[Para. (*h*) substituted by s. 130 (1) (*e*) of Act No. 60 of 2001.]

Wording of Sections

(*i*) The Commissioner may by rule prescribe any form or procedure or condition reasonably required for the effective administration of such refunds.

[Sub-s. (4A) inserted by s. 10 (*a*) of Act No. 110 of 1979, substituted by s. 6 (*a*) of Act No. 89 of 1984, amended by s. 11 (1) (*a*) of Act No. 101 of 1985, substituted by s. 23 (*d*) of Act No. 84 of 1987, amended by s. 53 (*g*) of Act No. 45 of 1955 and substituted by s. 50 (1) (*d*) of Act No. 19 of 2001.]

Wording of Sections

(5) (*a*) (i) In addition to any liability for duty incurred by any person under any other provision of this Act, the person who enters any goods for use by him under rebate of duty or any person on whose behalf any goods are so entered, shall, subject to the provisions of subsections (6) and (18) of this section and section *forty-five*, be liable for the duty on all goods so entered which have not been used or which have been disposed of otherwise than in accordance with the provisions of this section and of the item under which they were so entered, as if such rebate of duty did not apply to such goods and such person shall pay such duty on demand by the Commissioner: Provided that the Commissioner may, if such goods were used in accordance with any other item relating to rebate of duty, accept duty on such goods as if they were entered under such other item: Provided further that the Commissioner may permit any duty paid on entry of such goods under rebate to be deducted from any duty for which any person becomes liable in terms of this paragraph.

[Sub-para. (i) amended by s. 53 (*h*) of Act No. 45 of 1995.]

Wording of Sections

(ii) The Controller may at any time take stock of goods entered for home consumption and stored on any premises registered by virtue of subsection (10), and duty shall, subject to the provisions of subparagraph (i), be paid forthwith on demand upon any deficiency detected.

[Sub-para. (ii) added by s. 10 (*b*) of Act No. 110 of 1979.]

(iii) If the stock is found to be greater than the quantity which should be on such premises, the excess shall be debited to stock.

[Para. (a) substituted by s. 13 (a) of Act No. 95 of 1965 and amended by s. 9 (a) of Act No. 71 of 1975. Sub-para. (iii) added by s. 10 (b) of Act No. 110 of 1979.]

Wording of Sections

(b) Any person to whom any distillate fuel or residual fuel oil has been supplied from stocks which have been entered under rebate of duty for a purpose stated in the item under which such distillate fuel or residual fuel oil was so entered, and who applies such distillate fuel or residual fuel oil or any portion thereof for any other purpose, shall be guilty of an offence and shall, notwithstanding the provisions of paragraph (a), be liable for the duty to the extent of the rebate allowed on entry for home consumption of such distillate fuel or residual fuel oil on the full quantity of the distillate fuel or residual fuel oil so supplied to him or on such portion thereof as the Commissioner may determine: Provided that if the duty in question has after such entry under rebate been increased, the extent of such rebate shall be deemed to be-

(a) the difference between the duty actually paid on entry for home consumption and such increased duty; or

(b) such increased duty if no duty was paid on entry for home consumption.

[Para. (b) amended by s. 27 (c) of Act No. 112 of 1977, by s. 6 (b) of Act No. 89 of 1984, by s. 9 (1) (c) of Act No. 52 of 1986 and by s. 53 (i) of Act No. 45 of 1995.]

Wording of Sections

(6) (a) The Commissioner may, on such conditions as he may impose, permit any person who has entered any goods under rebate of duty under this section to use or dispose of any such goods otherwise than in accordance with the provisions of this section and of the item under which such goods were so entered, or to use or dispose of any such goods in accordance with the provisions of any other item to which this section relates, and such person shall thereupon be liable for duty on such goods as if such rebate of duty did not apply or as if they were entered under such other item to which this section relates, as the case may be, and such person shall pay such duty on demand by the Commissioner: Provided that, in respect of any such goods which are specified in any item of Schedule No. 3, 4 or 6 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.

[Para. (a) substituted by s. 24 (b) of Act No. 105 of 1969 and amended by s. 29 (1) (d) of Act No. 59 of 1990.]

Wording of Sections

(b) Any duty paid on any such goods on first entry thereof under rebate of duty shall be deemed to have been paid in respect of any duty payable in accordance with the provisions of paragraph (a) in respect of such goods.

(7) No drawback or refund shall be paid in respect of any goods specified in any item of Schedule No. 5 or 6 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: Provided that the Commissioner 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.

[Sub-s. (7) substituted by s. 24 (c) of Act No. 105 of 1969 and amended by s. 8 (a) of Act No. 93 of 1978 and by s. 29 (1) (e) of Act No. 59 of 1990.]

Wording of Sections

(7A) Any person to whom a refund of levies has been granted on any distillate fuel in terms of the provisions of item 670.04 of Schedule No. 6, as the case may be, and who has disposed of such fuel or has applied such fuel or any portion thereof for any purpose or use otherwise than in accordance with the provisions of such items and the use declared in the relevant application for registration shall pay on demand to the Commissioner the full amount of any refund granted to him in respect of such fuel or such portion thereof, failing which such amount or such portion shall be recoverable as if it were a duty payable under this Act.

[Sub-s. (7A) inserted by s. 23 (e) of Act No. 84 of 1987 and substituted by s. 7 of Act No. 98 of 1993, by s. 50 (1) (e) of Act No. 19 of 2001 and by s. 70 (1) (g) of Act No. 20 of 2006 deemed to have come into operation on 1 April, 2006.]

Wording of Sections

(8) To the extent that any goods, classifiable under any tariff heading or subheading or any tariff item or subitem of Schedule No. 1 that is expressly quoted in any item of Schedule No. 3, 4, 5 or 6, are specified in any item of Schedule No. 3, 4, 5 or 6, such item shall be deemed to include only such goods classifiable under such tariff heading or subheading or tariff item or subitem.

[Sub-s. (8) substituted by s. 24 (d) of Act No. 105 of 1969, by s. 29 (1) (f) of Act No. 59 of 1990 and by s. 130 (1) (f) of Act No. 60 of 2001.]

Wording of Sections

(9) 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 shall be valid unless the number of the tariff heading and subheading under which such goods are classified in Schedule No. 1 and the number of the item of Schedule No. 3 or 4 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: Provided that the Commissioner may exempt entries in respect of any class or kind of goods from any or all of the requirements of this subsection.

[Sub-s. (9) substituted by s. 13 (*b*) of Act No. 95 of 1965 and by s. 24 (*e*) of Act No. 105 of 1969 and amended by s. 29 (1) (*g*) of Act No. 59 of 1990.]

Wording of Sections

(10) (*a*) No goods may be entered or acquired under rebate of duty 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 rule or in the notes to Schedule No. 3, 4, or 6 in respect of any goods specified in any item of such Schedule: Provided that the Commissioner may, subject to such conditions as he may in each case impose, exempt with or without retrospective effect, any such person from the provisions of this subsection.

[Para. (*a*) amended by s. 29 (1) (*h*) of Act No. 59 of 1990 and by s. 53 (*i*) of Act No. 45 of 1995.]

Wording of Sections

(*b*) Application for such exemption for the purpose of applying for a refund of duty shall be made to the Commissioner within six months from any date specified in section 40 (3) (*b*) (i), (ii) or (iii), as the circumstances may require.

[Para. (*b*) added by s. 23 (*g*) of Act No. 84 of 1987.]

(*c*) For the purposes of the application of section 40 (3) to any such exemption-

(i) any bill of entry passed in relation to goods in respect of which exemption is granted under paragraph (*a*) of this subsection, shall be deemed to have been passed in error by reason of duty having been paid on goods intended for purposes or use under rebate of duty under section 75;

(ii) the goods concerned shall be deemed to have qualified at the time duty was paid on such goods in all respects for rebate; and

(iii) the duty paid on the goods concerned, shall be deemed to have been paid on the date on which the exemption referred to in subparagraph (i) was granted.

[Sub-s. (10) substituted by s. 13 (*c*) of Act No. 95 of 1965 and by s. 24 (*f*) of Act No. 105 of 1969 and amended by s. 23 (*f*) of Act No. 84 of 1987. Para. (*c*) added by s. 23 (*g*) of Act No. 84 of 1987.]

Wording of Sections

(11) Notwithstanding anything to the contrary in this Act contained, the Commissioner may, in respect of Schedule No. 5 or 6, for the purpose of calculating the amount of duty refundable on any imported or excisable 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 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 or fuel levy goods or the quantity of such imported or excisable 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 goods or such goods marketed in the Republic.

[Sub-s. (11) substituted by s. 13 (*d*) of Act No. 95 of 1965, by s. 24 (*g*) of Act No. 105 of 1969, by s. 23 (*h*) of Act No. 84 of 1987 and by s. 29 (1) (*i*) of Act No. 59 of 1990.]

Wording of Sections

(11A) (*a*) Where any applicant for a refund of duty in terms of any item of Schedule No. 6, which relates to circumstances other than those referred to in subsection (11), if required to prove payment of duty on the goods in respect of which the refund is claimed in terms of any Note to such item, is unable to prove such payment by production of an entry or deemed entry for home consumption as provided in this Act, the Commissioner may, notwithstanding anything to the contrary contained in this Act, allow such refund-

(i) on the basis of any evidence produced by such applicant; and

(ii) by taking into account any other evidence contained in accounts or invoices or other documents relating to the removal of the goods concerned from any customs and excise manufacturing or storage warehouse, any other records required to be kept in terms of the Act or any other facts that may be available or requested by the Commissioner,

if, in the relevant circumstances of each case, the Commissioner considers that such evidence is reasonably sufficient to allow such refund: Provided that where it is so specified in the relevant item of Schedule No. 6, the duty refundable shall be calculated at the lowest rate operative during any period not exceeding 12 months prior to the date the goods were placed under the procedure specified in such item.

(*b*) Any such refund provision in Schedule No. 6 may include-

(i) goods found to be off-specification or which have become contaminated or have undergone post-manufacturing deterioration and are returned to a customs and excise manufacturing warehouse for reprocessing or destruction; and

(ii) any fuel levy goods removed to another country in the common customs area or for export or to a customs and excise storage warehouse.

(*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.

[Sub-s. (11A) inserted by s. 109 (1) of Act No. 74 of 2002. Para. (*c*) added by s. 146 (*b*) of Act No. 45 of 2003.]

(12) No goods manufactured from excisable goods under rebate of duty specified in any item of Schedule No. 6 shall be used in the place of such excisable goods in the manufacture of any other goods if a rebate of duty to a lesser extent has been specified in any item of the said Schedule in respect of such excisable goods when used in the manufacture of such other goods.

(13) . . . . . .

[Sub-s. (13) substituted by s. 53 (*k*) of Act No. 45 of 1995 and deleted by s. 92 (1) (*f*) of Act No. 31 of 2005 with effect from the date of promulgation of that Act, 1 February, 2006.]

Wording of Sections

(14) No refund or drawback of duty shall be paid by the Commissioner under the provisions of this section unless an application therefor, duly completed and supported by the necessary documents and other evidence to prove that such refund or drawback is due under this section is received by the Controller-

(*a*) in respect of any refund referred to in subsection (1A) within the period contemplated in subsection (4A) (*b*) (ii); or

[Para. (*a*) substituted by s. 99 (*a*) of Act No. 60 of 2008.]

Wording of Sections

(*b*) in any other case, within any of the relevant periods specified in section 76B:

[Para. (*b*) substituted by s. 99 (*a*) of Act No. 60 of 2008.]

Wording of Sections

Provided that any refund or drawback shall be limited as contemplated in section 76B.

[Sub-s. (14) amended by s. 10 (*a*) of Act No. 57 of 1966, by s. 19 (*d*) of Act No. 86 of 1982, by s. 23 (*i*) of Act No. 84 of 1987, by s. 53 (*l*) of Act No. 45 of 1995, by s. 50 (1) (*f*) of Act No. 19 of 2001 and by s. 130 (1) (*g*) of Act No. 60 of 2001 and substituted by s. 27 (*a*) of Act No. 34 of 2004.]

Wording of Sections

(14A) . . . . . .

[Sub-s. (14A) inserted by s. 6 (*c*) of Act No. 89 of 1984, substituted by s. 23 (*j*) of Act No. 84 of 1987, amended by s. 13 (*d*) of Act No. 61 of 1992 and deleted by s. 53 (*m*) of Act No. 45 of 1995.]

Wording of Sections

(14B) (*a*) Any Minister, other than the Minister of Finance, any Director-General mentioned in the second column of Schedule 1 to the Public Service Act, 1994 (Proclamation No. 103 of 1994), and designated by such Minister, or any official of any institution involved, or the Commissioner, may, in respect of goods which may, in terms of any item of Schedule No. 3, 4, 5 or 6, be entered under rebate of duty or be subject to a drawback or a refund of duty, issue, subject to such conditions as such Minister, Director-General or official or the Commissioner may specify, with or without retrospective effect, a permit or certificate authorizing entry of those goods under rebate of duty, or authorizing a drawback or a refund of duty in accordance with the provisions of the item concerned, provided where the permit or certificate concerned is issued with retrospective effect, the provisions of such item and such conditions have been complied with.

[Para. (*a*) substituted by s. 53 (*n*) of Act No. 45 of 1995.]

Wording of Sections

(*b*) For the purposes of section 40 (3)-

(i) any bill of entry passed in relation to goods in respect of which a permit or certificate is issued under paragraph (*a*), shall be deemed to have been passed in error by reason of duty having been paid on goods intended for purposes or use under rebate of duty under this section;

(ii) the goods in respect of which such a permit or certificate is issued, shall be deemed to have qualified at the time duty was paid on such goods, in all respects for rebate; and

(iii) the duty paid on the goods concerned, shall be deemed to have been paid on the date on which the

permit or certificate referred to in paragraph (*a*) was issued.

[Para. (*b*) substituted by s. 53 (*n*) of Act No. 45 of 1995.]

Wording of Sections

(*c*) Application for such permit or certificate shall be made to the Minister, Director-General or official of the institution referred to in paragraph (*a*) of this subsection or the Commissioner within six months from any date specified in section 40 (3) (*b*) (i), (ii) or (iii), as the circumstances may require.

(*d*) Notwithstanding paragraphs (*a*), (*b*) and (*c*), any such refund or drawback shall be limited as contemplated in section 76B.

[Sub-s. (14B) inserted by s. 23 (*k*) of Act No. 84 of 1987. Para. (*d*) added by s. 27 (*b*) of Act No. 34 of 2004.]

(15) (*a*) The Minister may from time to time by notice in the *Gazette*-

(i) amend Schedule 3, 4, 5 or 6-

(*aa*) in order to give effect to any request by the Minister of Trade and Industry; or

(*bb*) whenever he deems it expedient in the public interest to do so; or

(ii) amend Schedule No. 5 or 6 to provide for a refund of fuel levy and the Road Accident Fund levy as contemplated in subsections (1A) and (4A).

(iii) amend Schedule No. 4 or 5 in order to give effect to any agreement contemplated in section 49.

[Para. (*a*) substituted by s. 24 (*h*) of Act No. 105 of 1969, by s. 29 (1) (*j*) of Act No. 59 of 1990, by s. 13 (*e*) of Act No. 61 of 1992 and by s. 50 (1) (*q*) of Act No. 19 of 2001. Sub-para. (iii) added by s. 99 (*b*) of Act No. 60 of 2008.]

Wording of Sections

(*a*A) The Minister may, whenever he deems it expedient in the public interest to do so-

(i) by like notice amend any such Schedule with retrospective effect from such date as he may specify in that notice; or

(ii) by like notice declare any amendment made under paragraph (*a*) to apply with retrospective effect from such date as he may specify in that notice.

[Para. (*a*A) inserted by s. 10 (*c*) of Act No. 110 of 1979 and substituted by s. 23 (*l*) of Act No. 84 of 1987.]

Wording of Sections

(*b*) An amendment made under paragraph (*a*) which repeals any existing provision in Schedule No. 5 or which excludes any goods from any existing provision of that Schedule, shall not apply in respect of goods which were imported prior to the date of the relevant notice in the *Gazette*, and an amendment made under the said paragraph which embodies any additional provision in that Schedule or applies any existing provision of that Schedule in respect of additional goods, shall not, except in so far as the Commissioner so directs and subject to such conditions as he may determine, apply in respect of goods which were imported prior to the date of the relevant notice in the *Gazette.*

[Para. (*b*) added by s. 10 (*b*) of Act No. 57 of 1966 and substituted by s. 23 (*m*) of Act No. 84 of 1987, by s. 50 (1) (*q*) of Act No. 19 of 2001 and by s. 70 (1) (*h*) of Act No. 20 of 2006 deemed to have come into operation on 1 April, 2006.]

Wording of Sections

(16) The provisions of section 48 (6) shall *mutatis mutandis* apply in respect of any amendment made under the provisions of subsection (15).

[Sub-s. (16) substituted by s. 23 (*n*) of Act No. 84 of 1987 and by s. 10 of Act No. 19 of 1994.]

Wording of Sections

(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 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.

[Sub-s. (17) substituted by s. 8 (*a*) of Act No. 85 of 1968, by s. 24 (*i*) of Act No. 105 of 1969 and by s. 29 (1) (*k*) of Act No. 59 of 1990.]

Wording of Sections

(18) No rebate or refund of duty in respect of any loss or deficiency of any nature of any goods shall be allowed, except as provided for in any item of Schedule No. 4, 5 or 6 and the Notes thereto, but the Commissioner may allow the deduction from the dutiable quantity of the undermentioned goods of a quantity equal to the following percentage stated in each case-

(*a*) in the case of unpacked spirits (ethyl alcohol), imported or manufactured in the Republic, received in and entered for use and used in such a customs and excise manufacturing warehouse for such purposes, and in accordance with such procedures as the Commissioner may prescribe by rule, 1,5 per cent of the quantity so entered;

[Para. (*a*) substituted by s. 11 (1) (*b*) of Act No. 101 of 1985, by s. 130 (1) (*h*) of Act No. 60 of 2001 (as amended by s. 75 (1) of Act No. 30 of 2002) and by s. 92 (1) (*h*) of Act No. 31 of 2005 with effect from the date of promulgation of that Act, 1 February, 2006.]

Wording of Sections

(*b*) in the case of unpacked spirits, imported or manufactured in the Republic-

(i) removed between such customs and excise warehouses and received in any such customs and excise warehouse and entered for such purposes and in accordance with such procedures as the Commissioner may prescribe by rule, 0,25 per cent of the quantity so removed; and

(ii) received for such purposes in such customs and excise storage warehouse and entered for such purposes and in accordance with such procedures as the Commissioner may prescribe by rule, 0,25 per cent of the quantity so entered;

[Para. (*b*) substituted by s. 130 (1) (*h*) of Act No. 60 of 2001 (as amended by s. 75 (1) of Act No. 30 of 2002) and by s. 92 (1) (*i*) of Act No. 31 of 2005 with effect from the date of promulgation of that Act, 1 February, 2006.]

Wording of Sections

(*b*A) . . . . . .

[Para. (*b*A) inserted by s. 11 (1) (*c*) of Act No. 101 of 1985, substituted by s. 53 (*o*) of Act No. 45 of 1995 and by s. 130 (1) (*h*) of Act No. 60 of 2001 and deleted by s. 92 (1) (*i*) of Act No. 31 of 2005 with effect from the date of promulgation of that Act, 1 February, 2006.]

Wording of Sections

(*c*) . . . . . .

[Para. (*c*) substituted by s. 92 (1) (*k*) of Act No. 31 of 2005 and deleted by s. 70 (*i*) of Act No. 20 of 2006 deemed to have come into operation on 1 April 2006.]

Wording of Sections

(*c*A) . . . . . .

[Para. (*c*A) inserted by s. 8 (*b*) of Act No. 93 of 1978 and deleted by s. 92 (1) (*l*) of Act No. 31 of 2005 with effect from the date of promulgation of that Act, 1 February, 2006.]

Wording of Sections

(*d*) (i) in the case of imported crude petroleum naphtha for use in the refining of petroleum products or imported petrol, 0,25 per cent of the quantity landed and entered for storage in a customs and excise warehouse;

(ii) in the case of imported petroleum naphtha entered for use as fuel in the manufacture of ammonia, 0,25 per cent of the quantity landed and entered for storage in a customs and excise warehouse;

(iii) in the case of imported distillate fuel, 0,15 per cent of the quantity landed and entered for storage in a customs and excise warehouse;

[Para. (*d*) substituted by s. 8 of Act No. 103 of 1972, by s. 11 (1) (*d*) of Act No. 101 of 1985, by s. 23 (*o*) of Act No. 84 of 1987 and by s. 130 (*i*) of Act No. 60 of 2001.]

Wording of Sections

(*d*A) . . . . . .

[Para. (*d*A) inserted by s. 9 (*b*) of Act No. 71 of 1975, substituted by s. 53 (*p*) of Act No. 45 of 1995 and deleted by s. 130 (*i*) of Act No. 60 of 2001.]

Wording of Sections

(*e*) (i) in the case of petrol manufactured in the Republic, 0,25 per cent of any quantity entered for removal and removed from a customs and excise manufacturing warehouse;

(ii) in the case of distillate fuel, unmarked illuminating kerosene or unmarked specified aliphatic hydrocarbon solvents manufactured in the Republic, 0,15 percent of any quantity entered for removal and removed from a customs and excise manufacturing warehouse.

[Para. (*e*) substituted by s. 11 (1) (*e*) of Act No. 101 of 1985, by s. 53 (*p*) of Act No. 45 of 1995 and by s. 130 (*i*) of Act No. 60 of 2001. Sub-para. (ii) substituted by s. 70 (*i*) of Act No. 20 of 2006 deemed to have come into operation on 1 April 2006.]

Wording of Sections

(*f*) . . . . . .

[Sub-s. (18) substituted by s. 13 (*e*) of Act No. 95 of 1965 and amended by s. 24 (*j*) of Act No. 105 of 1969, by s. 2 of Act No. 68 of 1973, by s. 13 (1) (*b*) of Act No. 68 of 1989, by s. 29 (1) (*l*) of Act No. 59 of 1990, by s. 130 (1) of Act No. 60 of 2001 (as amended by s. 75 (1) of Act No. 30 of 2002) and by s. 92 (1) (*q*) of Act No. 31 of 2005 with effect from the date of promulgation of that Act, 1 February, 2006. Para. (*f*) added by s. 23 (*p*) of Act No. 84 of 1987 and deleted by s. 130 (*i*) of Act No. 60 of 2001.]

Wording of Sections

(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 for export for the purpose of claiming a drawback or refund of duty under any item in Schedule No. 5 or 6 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.

[Sub-s. (19) added by s. 13 (*f*) of Act No. 95 of 1965 and substituted by s. 24 (*k*) of Act No. 105 of 1969 and by s. 29 (1) (*m*) of Act No. 59 of 1990.]

Wording of Sections

(20) If any goods to which this section relates are used or disposed of, or dealt with or in, contrary to the provisions of this Act, the whole consignment entered or transferred for use in terms of the provisions of this section, of which such goods form part or formed part, or any goods manufactured therefrom, shall be liable to forfeiture.

[Sub-s. (20) added by s. 8 (*b*) of Act No. 85 of 1968.]

(21) Except with the permission of the Commissioner, which shall only be granted in circumstances which he on good cause shown considers to be reasonable 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 for manufacturing purposes or such other purpose as may be specified in the notes to such item shall be used for the purpose specified in such item at the time of such entry, or such other purpose, within two years from the date of such entry.

[Sub-s. (21) added by s. 8 (*b*) of Act No. 85 of 1968, substituted by s. 24 (*l*) of Act No. 105 of 1969, by s. 29 (1) (*n*) of Act No. 59 of 1990, by s. 53 (*q*) of Act No. 45 of 1995 and by s. 92 (1) (*m*) of Act No. 31 of 2005 with effect from the date of promulgation of that Act, 1 February, 2006.]

Wording of Sections

(22) (*a*) Where any item provides for a rebate of duty in respect of imported goods destroyed and any waste or scrap remaining after destruction of such goods enter home consumption, the extent of rebate shall be reduced by the duty payable on such waste or scrap.

(*b*) Such waste or scrap shall be deemed to have been imported at the time it is entered for home consumption and shall be liable to duty in that state.

[Sub-s. (22) added by s. 99 (*c*) of Act No. 60 of 2008.]

75A. Circumstances in which imported goods free of duty are admissible under a rebate item of Schedule No. 4.-Notwithstanding section 75, imported goods free of duty that are-

(*a*) exempt from value-added tax in terms of any item in paragraph 8 to Schedule 1 to the Value-Added Tax Act (Act No. 89 of 1991); and

(*b*) identified by the item number and description identical to any item in Schedule No. 4 to this Act,

may be entered under the item in paragraph 8 of Schedule 1 to the Value-Added Tax Act, 1991, but the goods shall, in addition to any relevant provision of the Value-Added Tax Act, 1991, be subject to compliance with the provisions of section 75 of this Act and the corresponding item of Schedule No. 4 as if the goods were entered thereunder.

[S. 75A inserted by s. 29 of Act No. 18 of 2009.]

76. General refunds in respect of imported goods, excisable goods.-(1) No refund of any duty or other charge in respect of imported goods, excisable 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.

[Sub-s. (1) substituted by s. 54 (*a*) of Act No. 45 of 1995.]

Wording of Sections

(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-

(*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;

(*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);

(*g*) the duty having been reduced or withdrawn as provided for in section 48 (2) or (2A), 56 (2), 56A (2) or 57 (2); or

[Para. (*g*) substituted by s. 5 of Act No. 105 of 1992.]

Wording of Sections

(*h*) duty having been paid, notwithstanding the provisions of section 49 (9), on any goods at the general rate of duty specified in respect thereof in any heading or subheading in Part 1 of Schedule No. 1 and proof is produced that the goods concerned qualify for a preferential rate of duty specified for such heading or subheading in the said Part 1 of the said Schedule No. 1.

[Para. (*h*) added by s. 62 (1) (*c*) of Act No. 30 of 2000.]

(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.

(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 in the form as may be prescribed by rule and supported by the necessary documents and other evidence to prove that such refund or payment is due under this section-

(*a*) within a period of two years from the date on which the charge to which the application relates was paid; or

(*b*) in any other case within the relevant period specified in section 76B.

[Sub-s. (4) amended by s. 54 (*b*) of Act No. 45 of 1995 and substituted by s. 28 of Act No. 34 of 2004.]

Wording of Sections

(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 in any other manner, less than five rand or, in the case of excisable goods manufactured in the Republic, less than two rand, unless the Commissioner is satisfied that exceptional circumstances exist which warrant such refund.

[S. 76 amended by s. 9 of Act No. 85 of 1968, substituted by s. 5 of Act No. 98 of 1970, amended by s. 10 of Act No. 71 of 1975, by s. 11 of Act No. 110 of 1979, by s. 20 of Act No. 86 of 1982, by s. 5 of Act No. 89 of 1983, by s. 24 (1) of Act No. 84 of 1987 and by s. 14 of Act No. 68 of 1989 and substituted by s. 30 of Act No. 59 of 1990.]

Wording of Sections

76A. Recovery of certain amounts not duly payable.-(1) If the Commissioner, purporting to act under the provisions of section 75 or 76, pays to any person by way of a refund or drawback any amount which was not duly payable to that person under those provisions or which was in excess of the amount due to that person by way of a refund or drawback under those provisions, that amount or the excess, as the case may be, shall be repaid by the person concerned to the Commissioner upon demand, failing which it shall be recoverable in terms of this Act as if it were the duty or charge concerned or part of such duty or charge, as the case may be.

(2) The provisions of subsection (1) shall apply *mutatis mutandis* to any amount set off in terms of section 77 (*a*).

[S. 76A inserted by s. 25 of Act No. 84 of 1987. Sub-s. (2) added by s. 9 (1) of Act No. 69 of 1988 and substituted by s. 71 of Act No. 20 of 2006.]

Wording of Sections

76B. Limitation on the period for which refund and drawback claims will be considered and the period within which applications therefor must be received by the Controller.-(1) Notwithstanding any other provision of this Act, but subject to any provision for a set-off of duty in any Schedule in respect of goods to which section 19A relates or any refund as contemplated in section 75 (4A), where any person becomes entitled to any refund or drawback of duty-

(*a*) in the case of any determination, new determination or amendment of any such determination in terms of section 47 (9), 65 or 69, such refund shall be limited to-

(i) a refund in respect of goods entered for home consumption during a period of two years immediately preceding the date of such determination, new determination or amendment, whichever date occurs last: Provided that where any such determination, new determination or amendment has been appealed against, such two year period shall be calculated from such last date, notwithstanding the fact that a court may amend any determination of the Commissioner, or the Commissioner may, as a result of the finding of such court, amend such determination; and

(ii) any application for such refund which is received by the Controller within a period of 12 months from the date of-

(*aa*) such determination, new determination or amendment of a determination; or

(*bb*) any amendment by court or by the Commissioner as contemplated in the proviso to subparagraph (i); or

[Sub-para. (ii) substituted by s. 100 (*a*) of Act No. 60 of 2008.]

Wording of Sections

(*b*) in the case of any internal appeal to the Commissioner or a finding of court which is not in respect of a determination contemplated in section 47 (9), 65 or 69, any refund or drawback shall be limited to-

(i) goods entered for home consumption during a period of two years prior to the date of-

(*aa*) any final decision by the Commissioner; or

(*bb*) any decision of the Commissioner to the extent that it is amended by or as a result of a finding of court; and

(ii) any application for such refund or drawback which is received by the Controller within a period of 12 months from the date of such decision or amended decision; or

(*c*) in the case where any Schedule to the Act is amended with retrospective effect, any such refund or drawback shall be limited to an application therefor received by the Controller within a period of 12 months from the date on which such amendment is published by notice in the *Gazette*; or

(*d*) in the case of a permit or certificate issued with retrospective effect as contemplated in section 75 (14B), any such refund or drawback shall, notwithstanding the effective date of such permit or certificate, be limited to-

(i) goods entered for home consumption during a period of two years prior to the date of issue of such permit or certificate; and

(ii) any application received by the Controller within a period of 12 months from the date of issue of such permit or certificate; or

(*e*) other than a refund or drawback referred to in paragraphs (*a*), (*b*), (*c*) and (*d*), shall be limited to an application received by the Controller within a period of two years from the date of entry for home consumption of the goods to which the application relates.

(2) For the purpose of subsection (1)-

(*a*) any application received must comply in all respects with the requirements of section 76 (4); and

(*b*) **"finding of court"** means a final judgment by the High Court or a judgement by the Supreme Court of Appeal or the Constitutional Court.

(3) Notwithstanding anything to the contrary in this section or any other provision of this Act, the Commissioner shall not authorise-

(*a*) a refund of any amount paid under this Act where that amount was paid in accordance with the practice generally prevailing at the time of entry for home consumption of the goods in respect of which such payment was made; or

(*b*) a drawback of duty that was not claimed or allowed in accordance with the practice generally prevailing at the time the goods in respect of which the drawback could have been claimed or allowed were entered for export.

[S. 76B inserted by s. 67 (1) of Act No. 30 of 1998, substituted by s. 29 of Act No. 34 of 2004 and amended by s. 20 of Act No. 32 of 2005. Sub-s. (3) added by s. 100 (*b*) of Act No. 60 of 2008.]

Wording of Sections

76C. Set-off of refund against amounts owing.-Where any refund of duty is in terms of this Act due to any person who has failed to pay any amount of tax, additional tax, duty, levy, charge, interest or penalty levied or imposed under any other law administered by the Commissioner within the period prescribed for payment of the amount, the Commissioner may set off against the amount which the person has failed to pay, any amount which has become refundable to the person in terms of this Act.

[S. 76C inserted by s. 67 (1) of Act No. 30 of 1998.]

77. Set-off of certain amounts.-(*a*) A licensee of a customs and excise warehouse who, in terms of the rules, is permitted to pay any duty monthly or quarterly, and who-

(i) paid any duty for which he was not liable; or

(ii) granted any provisional refund in terms of section 75 (1A); or

(iii) becomes entitled to a refund in terms of item 534.00 of Schedule No. 5 or any item of Schedule No. 6,

may, subject to the approval of the Commissioner, at any time within a period of two years from the date on which 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 that particular duty for which such licensee subsequently becomes liable, 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 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 duty against which any 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 and a full account of the circumstances in respect of such set-off and by such documentary evidence as the Commissioner may in each case require.

[Para. (*a*) amended by s. 55 of Act No. 45 of 1995.]

Wording of Sections

(*b*) If such set-off is not approved by the Commissioner in terms of paragraph (*a*), it shall be redebited to the account of such licensee.

[S. 77 substituted by s. 1 of Act No. 96 of 1967 and by s. 26 of Act No. 105 of 1969, amended by s. 3 of Act No. 68 of 1973, by s. 21 (1) of Act No. 86 of 1982, by s. 26 (1) of Act No. 84 of 1987 and by s. 10 (1) of Act No. 69 of 1988 and substituted by s. 31 of Act No. 59 of 1990.]

Wording of Sections

CHAPTER XA
INTERNAL ADMINISTRATIVE APPEAL; ALTERNATIVE DISPUTE RESOLUTION; DISPUTE SETTLEMENT

PART A
INTERNAL ADMINISTRATIVE APPEAL

(Date of commencement: 4 June, 2007.)

77A. Definitions.-(1) For the purposes of this Chapter-

"Commissioner" includes, depending on the context, the delegated officer who made the decision in dispute against which an appeal is lodged;

"day" means any day other than a Saturday, Sunday or a public holiday: Provided that the days between 16 December of a year and 15 January of the following year, both inclusive, shall not be taken into account in determining days or the period allowed for complying with any provision in this Part or the rules;

"decision" includes-

(*a*) any determination or other act of an administrative nature for the purposes of this Act;

(*b*) any amendment or withdrawal or withdrawal and making of a decision; and

(*c*) any refusal to take a decision;

"dispute" means a disagreement on the interpretation of either the relevant facts involved or the law applicable thereto, or both the facts and the law;

"officer" includes, depending on the context, an officer who is delegated by the Commissioner and acts on behalf of the Commissioner as contemplated in section 3 (2);

"SARS" means the South African Revenue Service;

"tax" or **"taxation"** includes any duty leviable under this Act.

(2) Any decision made by the Commissioner or an officer under the provisions of this Act, including any amendment or withdrawal thereof, shall be deemed to be effective from the date any notice or communication in respect of such decision is issued in writing or the date specified in such notice or communication.

[S. 77A inserted by s. 147 (1) of Act No. 45 of 2003. Sub-s. (2), formerly para. (*b*), renumbered by s. 33 (1) of Act No. 16 of 2004.]

Wording of Sections

(Date of commencement of s. 77A: 4 June, 2007.)

77B. Persons who may appeal.-(1) Any person who may institute judicial proceedings in respect of any decision by an officer may, before or as an alternative to instituting such proceedings, lodge an appeal-

(*a*) to the Commissioner against a decision of an officer; or

(*b*) to the appeal committee contemplated in this Part in respect of those matters and decisions of officers that the appeal committee is authorised by rule to consider and decide upon or make recommendations to the Commissioner.

(2) If dissatisfied with a final decision as contemplated in (*a*) or (*b*) and the Commissioner is of the opinion that the matter is appropriate, such a person may make use of the alternative dispute procedure contemplated in section 77I.

[S. 77B inserted by s. 147 (1) of Act No. 45 of 2003.]

(Date of commencement of s. 77B: 4 June, 2007.)

77C. Submission of appeal.-(1) Any person who submits an appeal provided for in this Part must submit such appeal in accordance with the requirements prescribed by rule.

[Sub-s. (1) substituted by s. 21 of Act No. 32 of 2005 and by s. 15 (*a*) of Act No. 36 of 2007.]

Wording of Sections

(2) The appeal may be brought by the person concerned or a duly authorized representative.

(3) . . . . . .

[S. 77C inserted by s. 147 (1) of Act No. 45 of 2003. Sub-s. (3) deleted by s. 15 (*b*) of Act No. 36 of 2007.]

Wording of Sections

(Date of commencement of s. 77C: 4 June, 2007.)

77D. Request for reasons and time within which a request or an appeal must be considered.-(1) (*a*) Any person contemplated in section 77B may request reasons for a decision.

(*b*) The Commissioner may prescribe by rule-

(i) the procedures to be complied with when reasons are requested and the time within which such request must be delivered to the Commissioner;

(ii) the period within which a request for reasons or an appeal, must be considered.

(*c*) The Commissioner must notify in writing the person who-

(i) requested reasons, of those reasons; or

(ii) lodged an appeal, of the final decision,

within the periods prescribed in such rule.

[Sub-s. (1) substituted by s. 22 (1) (*b*) of Act No. 32 of 2005.]

Wording of Sections

(2) (*a*) . . . . . .

[S. 77D inserted by s. 147 (1) of Act No. 45 of 2003 and amended by s. 22 (1) (*a*) of Act No. 32 of 2005. Sub-s. (2) deleted by s. 22 (1) (*c*) of Act No. 32 of 2005.]

Wording of Sections

(Date of commencement of s. 77D: 4 June, 2007.)

77E. Appointment and function of appeal committee.-(1) The Commissioner may appoint a committee of officers or a committee of officers and other persons to consider and decide appeals or make recommendations in relation to such appeals to the Commissioner.

(2) An appeal committee may-

(*a*) consider and decide; or

(*b*) make recommendations to the Commissioner on matters prescribed by rule.

(3) Any decision signed by the chairperson of the appeal committee shall be regarded as a decision of the committee and to have been made by an officer.

(4) The chairperson of the appeal committee must maintain a record of the proceedings prescribed by rule.

[S. 77E inserted by s. 147 (1) of Act No. 45 of 2003.]

(Date of commencement of s. 77E: 4 June, 2007.)

77F. Decision of Commissioner and Committee.-(1) The Commissioner may-

(*a*) refer the matter back to the committee for further consideration;

(*b*) reject or accept and vary the recommendation of the committee;

(*c*) confirm or amend the decision or withdraw it and make a new decision.

(2) . . . . . .

[S. 77F inserted by s. 147 (1) of Act No. 45 of 2003. Sub-s. (2) deleted by s. 23 of Act No. 32 of 2005.]

Wording of Sections

(Date of commencement of s. 77F: 4 June, 2007.)

77G. Obligation to pay amount demanded.-Notwithstanding anything to the contrary contained in this Act, the obligation to pay to the Commissioner and right of the Commissioner to receive and recover any amount demanded in terms of any provision of this Act, shall not, unless the Commissioner so directs, be suspended pending finalisation of any procedure contemplated in this Chapter or pending a decision by court.

[S. 77G inserted by s. 147 (1) of Act No. 45 of 2003 and substituted by s. 16 of Act No. 36 of 2007.]

Wording of Sections

(Date of commencement of s. 77G: 4 June, 2007.)

77H. Rules.-The Commissioner may make rules-

(*a*) to prescribe at which office any appeal committee shall be constituted, and the composition of such committee;

(*b*) to prescribe which decisions or categories of decisions of officers may be appealed against to the appeal committee;

(*c*) to prescribe appeal procedures, conduct of meetings of committees and such forms as may be required for the purpose of this Part;

(*d*) in respect of all matters which are required or permitted in terms of this Part to be prescribed by rule;

(*e*) in respect of any matter relating to the appointment of persons other than officers to an appeal committee which may include requirements relating to qualifications, conduct, resignation, removal from office and remuneration;

(*f*) to delegate, subject to subsection 3 (2), any of the powers that may be exercised or assign any of the duties that shall be performed by the Commissioner in accordance with the provisions of this Part or any other relevant provision of this Act;

(*g*) in respect of any other matter which the Commissioner may consider reasonably necessary and useful for the purposes of administering the provisions of this Part.

[S. 77H inserted by s. 147 (1) of Act No. 45 of 2003.]

(Date of commencement of s. 77H: 4 June, 2007.)

77HA. Implementation of Part A in respect of decisions.-This Part applies in respect of any decision made on or after the date on which this Part comes into operation.

[S. 77HA inserted by s. 24 of Act No. 32 of 2005.]

PART B

(Date of commencement: 4 June, 2007.)

77I. Alternative Dispute Resolution.-(1) The Minister may, after consultation with the Minister of Justice, promulgate rules to provide for-

(*a*) alternative dispute resolution procedures in terms of which the Commissioner and the person aggrieved by a decision may resolve a dispute; and

(*b*) categories of decisions which are or are not suitable for alternative dispute resolution.

(2) The rules so published shall be part of this Act.

[S. 77I inserted by s. 147 (1) of Act No. 45 of 2003.]

(Date of commencement of s. 77I: 4 June, 2007.)

PART C
SETTLEMENT OF DISPUTE

77J. Definitions.-For the purposes of this Part **"settle"** means to resolve a dispute by compromising any disputed liability, otherwise than by way of either the Commissioner or the person concerned accepting the other party's interpretation of the facts or the law applicable to those facts, or of both the facts and the law, and "**settlement"** shall be construed accordingly.

[S. 77J inserted by s. 147 (1) of Act No. 45 of 2003.]

77K. Purpose of this Part.-(1) The basic principle in law is that it is the duty of the Commissioner to assess and collect taxes, duties, levies, charges and other amounts according to the laws enacted by Parliament and not to forgo any such taxes, duties, levies, charges or other amounts properly chargeable and payable.

(2) Circumstances may, however, require that the strictness and rigidity of this basic principle be tempered where it would be to the best advantage of the state.

(3) The purpose of this Part is to prescribe the circumstances whereunder it would be inappropriate and whereunder it would be appropriate that the basic rule be tempered and for a decision to be taken to settle a dispute.

[S. 77K inserted by s. 147 (1) of Act No. 45 of 2003.]

77L. Circumstances where inappropriate to settle.-It will be inappropriate and not to the best advantage of the state to settle a dispute, where, in the opinion of the Commissioner-

(*a*) the action on the part of the person concerned which relates to the dispute, constitutes intentional tax evasion or fraud and no circumstances contemplated in section 77M exist;

(*b*) the settlement would be contrary to the law or a clearly established practice of the Commissioner on the matter, and no exceptional circumstances exist to justify a departure from the law or practice;

(*c*) it is in the public interest to have judicial clarification of the issue and the case is appropriate for this purpose;

(*d*) the pursuit of the matter through the courts will significantly promote compliance of the tax laws and the case is suitable for this purpose; or

(*e*) the person concerned has not complied with the provisions of any Act administered by the Commissioner and the Commissioner is of the opinion that the non-compliance is of a serious nature.

[S. 77L inserted by s. 147 (1) of Act No. 45 of 2003.]

77M. Circumstances where appropriate to settle.-The Commissioner may, where it will be to the best advantage of the state, settle a dispute, in whole or in part, on a basis that is fair and equitable to both the person concerned and SARS, having regard to *inter alia*-

(*a*) whether that settlement would be in the interest of good management of the tax system, overall fairness and the best use of the Commissioner's resources;

(*b*) the cost of litigation in comparison to the possible benefits with reference to-

(i) the prospects of success in a court;

(ii) the prospects of collection of the amounts due; and

(iii) the costs associated with collection;

(*c*) whether there are any-

(i) complex factual or quantum issues in contention; or

(ii) evidentiary difficulties,

which are sufficient to make the case problematic in outcome or unsuitable for resolution through the alternative dispute resolution procedures or the courts;

(*d*) a situation where a participant or a group of participants in a tax avoidance arrangement has accepted the Commissioner's position in the dispute, in which case the settlement may be negotiated in an appropriate manner required to unwind existing structures and arrangements; or

(*e*) whether the settlement of the dispute will promote compliance of the tax laws by the person concerned or a group of taxpayers or a section of the public in a cost-effective way.

[S. 77M inserted by s. 147 (1) of Act No. 45 of 2003.]

77N. Power to settle and conduct of officials.-(1) A dispute may be settled, as contemplated in this Part, by the Commissioner personally or any official delegated by the Commissioner for that purpose.

(2) The Commissioner or the relevant delegated official must ensure that he or she does not have, or did not at any stage have, a personal, family, social, business, professional, employment or financial relationship with the person concerned.

[S. 77N inserted by s. 147 (1) of Act No. 45 of 2003.]

77O. Procedure for settlement.-(1) The person concerned should at all times disclose all relevant facts in discussions during the process of settling a dispute.

(2) Any settlement will be conditional upon full disclosure of material facts known to the person concerned at the time of settlement.

(3) All disputes settled in whole or in part, as contemplated in this Part, must be evidenced by a written agreement between the parties in the format as may be prescribed by the Commissioner and must include details on-

(*a*) how each particular issue was settled;

(*b*) relevant undertakings by the parties;

(*c*) treatment of that issue in future years;

(*d*) withdrawal of appeals; and

(*e*) arrangements for payment.

(4) The written agreement will represent the final agreed position between the parties and will be in full and

final settlement of all the specified aspects of the dispute in question between the parties.

(5) The Commissioner must, where the dispute is not ultimately settled, explain the further rights regarding the institution of judicial proceedings to the person concerned.

(6) Subject to section 77P, the Commissioner and delegated official must adhere to the secrecy provisions with regard to the information relating to the person concerned and may not disclose the terms of any agreement to third parties unless authorised by law or by the person concerned.

(7) The Commissioner must adhere to the terms of the agreement, unless it emerges that material facts were not disclosed to it or there was fraud or misrepresentation of the facts.

(8) The Commissioner has the right to recover any outstanding amounts in full where the person concerned fails to adhere to any agreed payment arrangement.

[S. 77O inserted by s. 147 (1) of Act No. 45 of 2003.]

77P. Register of settlements and reporting.-(1) The Commissioner must-

(*a*) maintain a register of all disputes settled in the circumstances contained in this Part; and

(*b*) fully document the process in terms of which each dispute was settled, which document must be signed on behalf of the Commissioner and the person concerned.

(2) The Commissioner must on an annual basis provide to the Auditor-General and to the Minister of Finance a summary of all disputes which were settled in whole or in part during the period of 12 months covered by that summary, which must-

(*a*) be in such format which, subject to section 4 (3E), does not disclose the identity of the person concerned, and be submitted at such time as may be agreed between the Commissioner and the Auditor-General or Minister of Finance, as the case may be; and

[Para. (*a*) substituted by s. 34 (1) of Act No. 16 of 2004.]

Wording of Sections

(*b*) contain details of the number of disputes settled or part settled, the amount of revenue forgone and estimated amount of savings in costs of litigation, which must be reflected in respect of main classes of persons or sections of the public.

[S. 77P inserted by s. 147 (1) of Act No. 45 of 2003.]

CHAPTER XB

POWERS, DUTIES AND PROCEDURES IN CONNECTION WITH COUNTERFEIT GOODS

(Editorial Note: Chapter XB to be inserted by s. 17 (1) of Act No. 36 of 2007 with effect from a date to be fixed by the President by proclamation in the *Gazette* - date not fixed.)

77Q. . . . . . .

(Editorial Note: S. 77Q to be inserted by s. 17 (1) of Act No. 36 of 2007 with effect from a date to be fixed by the President by proclamation in the *Gazette* - date not fixed.)

77R. . . . . . .

(Editorial Note: S. 77R to be inserted by s. 17 (1) of Act No. 36 of 2007 with effect from a date to be fixed by the President by proclamation in the *Gazette* - date not fixed.)

77S. . . . . . .

(Editorial Note: S. 77S to be inserted by s. 17 (1) of Act No. 36 of 2007 with effect from a date to be fixed by the President by proclamation in the *Gazette* - date not fixed.)

77T. . . . . . .

(Editorial Note: S. 77T to be inserted by s. 17 (1) of Act No. 36 of 2007 with effect from a date to be fixed by the President by proclamation in the *Gazette* - date not fixed.)

77U. . . . . . .

(Editorial Note: S. 77U to be inserted by s. 17 (1) of Act No. 36 of 2007 with effect from a date to be fixed by the President by proclamation in the *Gazette* - date not fixed.)

77V. . . . . . .

(Editorial Note: S. 77V to be inserted by s. 17 (1) of Act No. 36 of 2007 with effect from a date to be fixed by the President by proclamation in the *Gazette* - date not fixed.)

77W. . . . . . .

(Editorial Note: S. 77W to be inserted by s. 17 (1) of Act No. 36 of 2007 with effect from a date to be fixed by the President by proclamation in the *Gazette* - date not fixed.)

77X. . . . . . .

(Editorial Note: S. 77X to be inserted by s. 17 (1) of Act No. 36 of 2007 with effect from a date to be fixed by the President by proclamation in the *Gazette* - date not fixed.)

77Y. . . . . . .

(Editorial Note: S. 77Y to be inserted by s. 17 (1) of Act No. 36 of 2007 with effect from a date to be fixed by the President by proclamation in the *Gazette* - date not fixed.)

CHAPTER XI
PENAL PROVISIONS

78. Offences not expressly mentioned.-(1) Any person who contravenes any provision of this Act or who fails to comply with any such provision with which it is his duty to comply, shall, even where such contravention or failure is not elsewhere declared an offence, be guilty of an offence.

(2) Any person guilty of an offence under this Act shall, where no punishment is expressly provided for such offence, be liable on conviction to a fine not exceeding R8 000 or treble the value of the goods in respect of which such offence was committed, whichever is the greater, or to imprisonment for a period not exceeding two years, or to both such fine and such imprisonment.

[Sub-s. (2) amended by s. 10 (*a*) of Act No. 52 of 1986 and by s. 6 (*a*) of Act No. 105 of 1992.]

Wording of Sections

(3) A person who is convicted of an offence referred to in subsection (2) within a period of three years after he was convicted of any offence referred to in that subsection shall be liable to a fine not exceeding R16 000 or treble the value of the goods in respect of which such offence was committed, whichever is the greater, or to imprisonment for a period not exceeding four years, or to both such fine and such imprisonment.

[Sub-s. (3) amended by s. 10 (*b*) of Act No. 52 of 1986 and by s. 6 (*b*) of Act No. 105 of 1992.]

Wording of Sections

79. Less serious offences and their punishment.-(1) Any person who-

(*a*) supplies the means or materials for, or assists in establishing, repairing, maintaining or working any still being made or made, imported, used, set up or in the possession or custody of any person without lawful authority;

(*b*) is found without lawful excuse in any place where distillation is illegally carried on;

(*c*) . . . . . .

[Para. (*c*) deleted by s. 56 of Act No. 45 of 1995.]

Wording of Sections

(*d*) . . . . . .

[Para. (*d*) deleted by s. 2 of Act No. 64 of 1974.]

Wording of Sections

(*e*) falsely holds himself out to be an officer;

(*f*) resists or hinders an officer in the exercise of his powers or the performance of his functions under this Act; or

(*g*) rescues any persons apprehended for any offence under this Act, or prevents the apprehension of any person who has committed any such offence,

shall be guilty of an offence and liable on conviction to a fine not exceeding R8 000 or to imprisonment for a period not exceeding two years, or to both such fine and such imprisonment.

[Sub-s. (1) amended by s. 11 (*a*) of Act No. 52 of 1986 and by s. 7 (*a*) of Act No. 105 of 1992.]

Wording of Sections

(2) A person who is convicted of an offence referred to in subsection (1) within a period of three years after he was convicted of any offence referred to in that subsection shall be liable to a fine not exceeding R16 000 or to imprisonment for a period not exceeding four years, or to both such fine and such imprisonment.

[Sub-s. (2) amended by s. 11 (*b*) of Act No. 52 of 1986 and by s. 7 (*b*) of Act No. 105 of 1992.]

Wording of Sections

80. Serious offences and their punishment.-(1) Any person who-

(*a*) has upon his premises or in his custody or under his control, or purchases, sells or otherwise disposes of any illicit goods knowing the same to be illicit goods;

(*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 or fuel levy goods or excisable goods or fuel levy goods upon which duty has not been paid;

[Para. (*b*) substituted by s. 27 of Act No. 105 of 1969, by s. 27 (*a*) of Act No. 84 of 1987 and by s. 32 of Act No. 59 of 1990.]

Wording of Sections

(*c*) removes or assists in or permits the removal of goods in contravention of any provision of this Act;

(*d*) deodorizes, clarifies or, prior to sale, reduces the strength of methylated spirits to a strength below a strength of 91,4 per cent absolute alcohol by volume, or prepares or sells or offers for sale or consumption, as a beverage, any preparation containing methylated spirits or spirits recovered from methylated spirits;

(*e*) removes or breaks or interferes with any lock, meter, gauge, rod, seal, mark or fastening placed on or fitted to any warehouse, vessel, package, container or other article, place or plant, by an officer under any provision of this Act;

(*f*) damages, destroys or disposes of any goods to prevent the securing or seizure thereof under the provisions of this Act by any officer or other person authorized to secure or seize the same, or takes back any goods which are being detained or have been seized;

(*g*) . . . . . .

[Para. (*g*) deleted by s. 28 (*a*) of Act No. 112 of 1977.]

Wording of Sections

(*h*) without lawful excuse (the proof of which shall lie upon him), brings into the Republic, produces or has in his possession any blank or incomplete invoice or any billhead or other similar document capable of being completed and used as an invoice for goods from outside the Republic;

[Para. (*h*) substituted by s. 12 (*a*) of Act No. 52 of 1986 and by s. 68 (*a*) of Act No. 30 of 1998.]

Wording of Sections

(*i*) makes improper use of a licence, permit or other document issued in respect of goods to which this Act relates;

(*j*) claims or receives any rebate, drawback, refund or payment or sets off any amount in terms of the

provisions of section 77 (*a*) to which he knows he is not entitled under this Act;

[Para. (*j*) substituted by s. 22 of Act No. 86 of 1982 and by s. 8 (*a*) of Act No. 98 of 1993.]

Wording of Sections

(*k*) not being authorized to do so, gives or promises to give, directly or indirectly, any reward to an officer or any person employed by the Government, in respect of the performance or non-performance by any such officer or person of his duty or employment under this Act or agrees with or proposes to any such officer or person to do or permit anything in contravention or evasion of this Act;

(*l*) being an officer or a person employed by the Government, demands or receives, except from or through the Government, any reward in respect of the performance or non-performance of his duty or employment under this Act or by any wilful act, neglect or default does or permits or agrees to do or permit anything in contravention or evasion of this Act;

(*m*) attempts to commit or assists in committing any offence mentioned in this section;

(*n*) from any goods made from or containing excisable goods or fuel levy goods extracts or recovers such excisable goods or fuel levy goods in contravention of the provisions of this Act;

[Para. (*n*) substituted by s. 27 (*b*) of Act No. 84 of 1987.]

Wording of Sections

(*o*) contravenes the provisions of section 4 (12A) (*b*), 18 (13), 18A (9), 20 (4)*bis*, 21 (3) (*d*), 35A (2), (3) and (4), 37 (9), 37A (1) (*c*), 37A (4) (*a*), 48 (1A) (*b*), 54 (2), (3) and (4), 60 (1), 63 (1), 75 (7A), 75 (19), 88 (1) (*b*A), 99A, 113 (2), 113 (8) (*c*), 114 (2A) or 114 (2B);

[Para. (*o*) substituted by s. 10 of Act No. 85 of 1968, by s. 28 (*b*) of Act No. 112 of 1977, by s. 27 (*c*) of Act No. 84 of 1987, by s. 8 (*b*) of Act No. 98 of 1993, by s. 68 (*b*) of Act No. 30 of 1998, by s. 63 (*a*) of Act No. 53 of 1999, by s. 29 (1) (*b*) of Act No. 21 of 2006 and by s. 18 of Act No. 36 of 2007.]

Wording of Sections

(*p*) fails to comply with any condition determined under section 107 (2) (*a*);

[Para. (*p*) added by s. 7 (*b*) of Act No. 89 of 1984.]

(*q*) contravenes or fails to comply with any provision of any agreement contemplated in section 49 or 51;

[Para. (*q*) added by s. 63 (*b*) of Act No. 53 of 1999 and substituted by s. 62 of Act No. 59 of 2000 (English only).]

Wording of Sections

(*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,

[Para. (*r*) added by s. 148 of Act No. 45 of 2003.]

(*s*) . . . . . .

[Para. (*s*) to be added by s. 37 (1) of Act No. 61 of 2008 with effect from a date to be fixed by the President by proclamation in the *Gazette* - date not fixed.)

(*t*) . . . . . .

(Editorial Note: Para. (*t*) to be inserted by s. 29 (1) (*a*) of Act No. 21 of 2006 with effect from a date to be fixed by the President by proclamation in the *Gazette* - date not fixed.)

shall be guilty of an offence and liable on conviction to a fine not exceeding R20 000 or treble the value of the goods in respect of which such offence was committed, whichever is the greater, or to imprisonment for a period not exceeding five years, or to both such fine and such imprisonment.

[Sub-s. (1) amended by s. 12 (*b*) of Act No. 52 of 1986 and by s. 8 of Act No. 105 of 1992.]

Wording of Sections

(2) When any person is charged with a contravention of paragraph (*a*) of subsection (1) he shall, until the contrary is proved, be presumed to have known that the goods in question were illicit goods.

(3) When any person is charged with a contravention of paragraph (*j*) of subsection (1) he shall, until the contrary is proved, be presumed to have known that he was not entitled to the rebate, drawback, refund or payment concerned.

[Sub-s. (3) added by s. 27 (*d*) of Act No. 84 of 1987.]

81. Non-declaration in respect of certain goods.-Any person who contravenes or fails to comply with the provisions of section 15, shall be guilty of an offence and liable on conviction to a fine not exceeding R8 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.

[S. 81 substituted by s. 9 of Act No. 93 of 1978, amended by s. 13 of Act No. 52 of 1986, substituted by s. 33 of Act No. 59 of 1990 and amended by s. 9 of Act No. 105 of 1992.]

Wording of Sections

82. Prohibition with regard to stamps.-(1) Any person who without lawful excuse (the onus of proof of which shall be upon him) uses, or has under his control or in his possession, any stamp or makes available to another person any stamp-

(*a*) which is used under the authority of the Commissioner;

[Para. (*a*) substituted by s. 34 (1) of Act No. 34 of 1997.]

Wording of Sections

(*b*) the imprint of which is identical to or resembles the imprint of a stamp referred to in paragraph (*a*) or of any stamp used by a governmental authority in a foreign country under any law of such country relating to customs or excise or to the import or export of goods,

shall be guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding five years or to both such fine and such imprisonment.

(2) Any person who without lawful excuse (the onus of proof of which shall be upon him) manufactures or has in his possession or under his control any stamp the imprint of which depicts the name of a company, firm or other business entity in a foreign country, or any signs or letters which could be reasonably understood to be a reference to such company, firm or business entity, shall be guilty of an offence and liable on conviction to a fine or imprisonment for a period not exceeding five years, or to both such fine and such imprisonment.

[S. 82 repealed by s. 8 of Act No. 89 of 1984 and inserted by s. 9 of Act No. 98 of 1993.]

Wording of Sections

83. Irregular dealing with or in goods.-Any person who-

(*a*) deals or assists in dealing with any goods contrary to the provisions of this Act; or

(*b*) knowingly has in his possession any goods liable to forfeiture under this Act; or

(*c*) makes or attempts to make any arrangement with a supplier, manufacturer, exporter or seller of goods imported or to be imported into or manufactured or to be manufactured in the Republic or with any agent of any such supplier, manufacturer, exporter or seller, regarding any matter to which this Act relates, with the object of defeating or evading the provisions of this Act,

shall be guilty of an offence and liable on conviction to a fine not exceeding R20 000 or treble the value of the goods in respect of which such offence was committed, whichever is the greater, or to imprisonment for a period not exceeding five years, or to both such fine and such imprisonment, and the goods in respect of which such offence was committed shall be liable to forfeiture.

[S. 83 amended by s. 14 of Act No. 52 of 1986 and by s. 10 of Act No. 105 of 1992.]

Wording of Sections

84. False documents and declarations.-(1) Any person who makes a false statement in connection with any matter dealt with in this Act, or who makes use for the purposes of this Act of a declaration or document containing any such statement shall, unless he proves that he was ignorant of the falsity of such statement and that such ignorance was not due to negligence on his part, be guilty of an offence and liable on conviction to a fine not exceeding R40 000 or treble the value of the goods to which such statement, declaration or document relates, whichever is the greater, or to imprisonment for a period not exceeding ten years, or to both such fine and such imprisonment, and the goods in respect of which such false statement was made or such false declaration or document was used shall be liable to forfeiture.

[Sub-s. (1) amended by s. 15 of Act No. 52 of 1986 and by s. 11 of Act No. 105 of 1992.]

Wording of Sections

(2) For the purposes of subsection (1), any invoice or other document relating to any denomination, description, class, grade or quantity of goods shall be deemed to contain a false statement if the price charged by the exporter or any value, price, commission, discount, cost, charge, expense, royalty, freight, duty, tax, drawback, refund, rebate, remission or other information whatever declared therein which has a bearing on value for the purposes of payment of any duty or on classification in terms of any Schedule to this Act or on anti-dumping duty, countervailing duty or safeguard duty or on extent of rebate, refund or drawback of duty-

(*a*) is not, except in so far as may be otherwise specified, exclusively related to goods of the denomination, description, class, grade or quantity declared in such invoice or document;

(*b*) is influenced, adjusted or amended as a result of any separate transaction, arrangement, agreement or other consideration of any nature whatever particulars of which are not specified in such invoice or document;

(*c*) represents any average or adjustment or amendment, particulars of which are not disclosed in such invoice or document, of such values, prices, commissions, discounts, costs, charges, expenses, royalties, freight, duties, taxes, drawbacks, refunds, rebates, remissions or other information in respect of goods of the same or of different denominations, descriptions, classes, grades or quantities supplied by the same supplier.

[Sub-s. (2) added by s. 11 of Act No. 57 of 1966, amended by s. 28 of Act No. 105 of 1969 and by s. 29 of Act No. 112 of 1977 and substituted by s. 14 of Act No. 61 of 1992.]

Wording of Sections

85. Beer of higher alcoholic strength than registered.-Any manufacturer of beer of whom or which any container of beer not marked for export as contemplated in section 36 (9) is found to contain beer of an alcoholic strength by volume higher than the strength registered in terms of section 36 (2), after deduction of any tolerance provided in the rules relating to that section, shall be guilty of an offence and liable on conviction to a fine not exceeding R8 000 or treble the value of the goods in respect of which such offence was committed, 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 respect of which such offence was committed shall be liable to forfeiture.

[S. 85 substituted by s. 4 of Act No. 68 of 1973, amended by s. 16 of Act No. 52 of 1986 and by s. 12 of Act No. 105 of 1992 and substituted by s. 57 of Act No. 45 of 1995, by s. 7 of Act No. 44 of 1996 and by s. 64 of Act No. 53 of 1999.]

Wording of Sections

86. Certain specified offences.-Any person who-

(*a*) fails to advise the Controller of the receipt of any amended prescribed invoice or any credit note or debit note or of any change in the circumstances or particulars of whatever nature as declared in any prescribed invoice or in any other document or of any refund of money or deferred or secret discount, commission or other credit or debit which relates to any goods and which would increase the duty on such goods or exclude them from any rebate or refund or other privilege under this Act;

(*b*) fails to declare in or omits from any prescribed invoice any particulars (including value and origin) in respect of the goods to which such invoice relates and which would increase the duty on such goods or exclude them from any rebate or refund or other privilege under this Act;

(*c*) applies any money or credit received by or due to him as a commission in such a manner as to avoid or evade any duty or obligation or to obtain any rebate or other privilege in respect of any goods under this Act;

(*d*) issues two or more different prescribed invoices or certificates in respect of the same goods or fails to issue an amended prescribed invoice or certificate where any particulars declared in any prescribed invoice or certificate in respect of any goods have changed in any manner whatever;

(*e*) makes or attempts to make or assists in making or attempting to make any arrangement of whatever nature with any person inside or outside the Republic in connection with any goods imported or to be imported into the Republic with the object of or having the effect of defeating or evading the provisions of any agreement entered into between the Republic and any exporting territory which provides for the restriction of or control over the exportation to the Republic of any goods in any manner or any restriction of or control over the exportation of any goods to the Republic imposed by any exporting territory in any manner by arrangement with or at the instance or suggestion of or with the approval of the Republic;

(*f*) produces to the Controller, for the purposes of section 39 (1) (*d*), any sample which is not a sample of the goods of which it purports to be a sample or who so produces any copy of any invoice or other document or of any blueprint, illustration, drawing, plan or illustrated and descriptive literature which does not relate to the goods to which it purports to relate or which is incorrect or incomplete or misleading in any respect;

(*g*) allocates the same identification number, code, description, character or other mark referred to in section 41 (2) to goods of different classes or kinds or allocates more than one such identification number, code, description, character or other mark to goods of the same class or kind or who quotes or reproduces any such identification number, code, description, character or other mark in any

invoice or document relating to goods to which such number, code, description, character or other mark has not been allocated; or

(*h*) contravenes or fails to comply with the provisions of section 101 or of any rule made in terms of section 73 or 101,

[Para. (*h*) substituted by s. 58 of Act No. 45 of 1995.]

Wording of Sections

shall be guilty of an offence and liable on conviction to a fine not exceeding R40 000 or treble the value of the goods in respect of which such offence was committed, whichever is the greater, or to imprisonment for a period not exceeding ten years, or to both such fine and such imprisonment, and the goods in respect of which such offence was committed shall be liable to forfeiture.

[S. 86 substituted by s. 11 of Act No. 85 of 1968 and amended by s. 17 of Act No. 52 of 1986 and by s. 13 of Act No. 105 of 1992.]

Wording of Sections

86A. Publication of names of offenders.-(1) Notwithstanding the provisions of section 4, the Commissioner may from time to time publish for general information such particulars as specified in subsection (2), relating to any offence committed by any person, where such person has been convicted of such offence in terms of-

(*a*) sections 78 to 86, inclusive, or the rules;

(*b*) the common law, where the criminal conduct corresponds materially with an offence referred to in paragraph (*a*),

after any appeal or review proceedings in relation thereto have been completed or not been instituted within the period allowed therefor.

[Sub-s. (1) amended by s. 65 (*a*) of Act No. 53 of 1999.]

Wording of Sections

(2) Every such publication may specify-

(*a*) the name and address of the offender;

(*b*) such particulars of the offence as the Commissioner may think fit;

(*c*) the amount or estimated amount of duty involved;

(*d*) the particulars of the fine or sentence imposed.

[S. 86A inserted by s. 69 (1) of Act No. 30 of 1998. Sub-s. (2) amended by s. 65 (*b*) of Act No. 53 of 1999.]

Wording of Sections

87. Goods irregularly dealt with liable to forfeiture.-(1) Any goods imported, exported, manufactured, warehoused, removed or otherwise dealt with contrary to the provisions of this Act or in respect of which any offence under this Act has been committed (including the containers of any such goods) or any plant used contrary to the provisions of this Act in the manufacture of any goods shall be liable to forfeiture wheresoever and in possession of whomsoever found: Provided that forfeiture shall not affect liability to any other penalty or punishment which has been incurred under this Act or any other law, or liability for any unpaid duty or charge in respect of such goods.

[Sub-s. (1) amended by s. 66 (*a*) of Act No. 53 of 1999.]

Wording of Sections

(2) Any-

(*a*) ship, vehicle, container or other transport equipment used in the removal or carriage of any goods liable to forfeiture under this Act or constructed, adapted, altered or fitted in any manner for the purpose of concealing goods;

(*b*) goods conveyed, mixed, packed or found with any goods liable to forfeiture under this Act on or in any such ship, vehicle, container or other transport equipment; and

(*c*) ship, vehicle, machine, machinery, plant, equipment or apparatus classifiable under any heading or subheading of Chapters 84 to 87 and 89 of Part 1 of Schedule No. 1 in which goods liable to forfeiture under this Act are used as fuel or in any other manner,

shall be liable to forfeiture wheresoever and in possession of whomsoever found.

[Sub-s. (2) substituted by s. 66 (*b*) of Act No. 53 of 1999.]

Wording of Sections

88. Seizure.-(1) (*a*) An officer, magistrate or member of the police force may detain any ship, vehicle, plant, material or goods at any place for the purpose of establishing whether that ship, vehicle, plant, material or goods are liable to forfeiture under this Act.

(*b*) Such ship, vehicle, plant, material or goods may be so detained where they are found or shall be removed to and stored at a place of security determined by such officer, magistrate or member of the police force, at the cost, risk and expense of the owner, importer, exporter, manufacturer or the person in whose possession or on whose premises they are found, as the case may be.

(*b*A) No person shall remove any ship, vehicle, plant, material or goods from any place where it was so detained or from a place of security determined by an officer, magistrate or member of the police force.

[Para. (*b*A) inserted by s. 10 of Act No. 98 of 1993.]

(*c*) If such ship, vehicle, plant, material or goods are liable to forfeiture under this Act the Commissioner may seize that ship, vehicle, plant, material or goods.

[Para. (*c*) substituted by s. 59 of Act No. 45 of 1995.]

Wording of Sections

(*d*) The Commissioner may seize any other ship, vehicle, plant, material or goods liable to forfeiture under this Act.

[Sub-s. (1) substituted by s. 15 of Act No. 68 of 1989. Para. (*d*) substituted by s. 59 of Act No. 45 of 1995.]

Wording of Sections

(2) (*a*) (i) If any goods liable to forfeiture under this Act cannot readily be found, the Commissioner may, notwithstanding anything to the contrary in this Act contained, demand from any person who imported, exported, manufactured, warehoused, removed or otherwise dealt with such goods contrary to the provisions of this Act or committed any offence under this Act rendering such goods liable to forfeiture, payment of an amount equal to the value for duty purposes or the export value of such goods plus any unpaid duty thereon, as the case may be.

(ii) For the purposes of subparagraph (i) the value for duty purposes shall be calculated in terms of the provisions of this Act relating to such value whether or not the goods in question are subject to *ad valorem* duty or to a duty calculated according to a unit of quantity, volume or other measurement, as the case may be.

[Para. (*a*) substituted by s. 30 of Act No. 112 of 1977 and by s. 28 of Act No. 84 of 1987.]

Wording of Sections

(*b*) If the amount demanded is not paid within a period of fourteen days after the demand for payment was made it may be recovered in terms of the provisions of this Act as if it were a forfeiture incurred under this Act.

(*c*) The provisions of this Act shall, in so far as they can be applied, apply *mutatis mutandis* in respect of any amount paid to the Commissioner or recovered in terms of this subsection, as if such amount were the goods in question and as if such amount had been seized under subsection (1).

[Sub-s. (2) added by s. 12 of Act No. 85 of 1968.]

89. Notice of claim by owner in respect of seized goods.-(1) Whenever any proceedings are instituted to claim any ship, vehicle, container or other transport equipment, plant, material or goods (in this section, section 43 and section 90 referred to as "goods"), which have been seized under this Act, such claim must be instituted by the person from whom they were seized or the owner or the owner's authorised agent (in this section referred to as "the litigant").

(2) Any litigant must give notice to the Commissioner in writing before serving any process for instituting any proceedings as contemplated in section 96 (1) (*a*)-

(*a*) within 90 days after the date of seizure;

(*b*) in the case of an internal administrative appeal, where such appeal is unsuccessful, within 90 days from the date contemplated in section 77F.

[Sub-s. (2) substituted by s. 149 (1) (*a*) and (*c*) of Act No. 45 of 2003.]

Wording of Sections

(3) Any proceedings must be instituted within 90 days of such notice.

(4) Whenever goods are seized and in consequence of the seizure-

(*a*) delivery thereof under section 93 is refused or the terms of delivery thereunder are not accepted;

(*b*) no internal administrative appeal contemplated in Part A of Chapter XA is lodged or is lodged and is not successful;

(*c*) any dispute is not resolved as contemplated in Part B of Chapter XA or not settled as contemplated in Part C of that Chapter;

(*d*) no proceedings are instituted as contemplated in this section or have been instituted and have been dismissed in a final judgment of the High Court or a judgment by the Supreme Court of Appeal,

the goods concerned shall, subject to the provisions of section 90, be deemed to be condemned and forfeited.

[Sub-s. (4) substituted by s. 149 (1) (*b*) and (*d*) of Act No. 45 of 2003.]

Wording of Sections

(5) The provisions of section 96 (1) (*c*) shall apply *mutatis mutandis* to any period contemplated in subsections (2) and (3).

[S. 89 amended by s. 13 of Act No. 85 of 1968 and substituted by s. 131 of Act No. 60 of 2001.]

Wording of Sections

90. Disposal of seized goods.-(*a*) Whatever is seized as being liable to forfeiture under this Act, shall forthwith be delivered to the Controller at the customs and excise office nearest to the place where it was seized or it may be secured by the Controller by sealing, marking, locking, fastening or otherwise securing or impounding it on the premises where it is found or by removing it to a place of security determined by the Controller.

(*b*) Where any seized goods are of a perishable or dangerous nature, the Commissioner may, whenever it is not reasonably possible to obtain storage or according to the circumstances not possible to obtain storage at a reasonable cost for the preservation or safe keeping of such goods, cause such goods before being condemned and forfeited as contemplated in section 89 (4) to be sold by any appropriate procedure or destroyed, whichever is, and at the time is, reasonably practicable in the circumstances.

[Para. (*b*) substituted by s. 132 (*a*) of Act No. 60 of 2001.]

Wording of Sections

(*c*) Notwithstanding the provisions of section 89, the provisions of section 43 (5), (6), (7) and (8) shall *mutatis mutandis* apply in respect of goods which are imported, exported, manufactured or used, or otherwise dealt with in contravention of this Act and any other law: Provided that such goods shall be deemed to be condemned and forfeited in accordance with the relevant provisions of section 43 (5) or (6) and the provisions of section 89 (4).

[Para. (*c*) inserted by s. 132 (*b*) of Act No. 60 of 2001.]

(*d*) Any person claiming the goods which were imported, exported or manufactured in contravention of any other law shall, for the purposes of sections 43, 89 and 96, join the authority administering such law in any proceedings.

[Para. (*d*) inserted by s. 132 (*b*) of Act No. 60 of 2001.]

(*e*) The provisions of section 43 (7) shall *mutatis mutandis* apply in respect of goods which are condemned and forfeited as contemplated in section 89 (4).

[Para. (*e*) inserted by s. 132 (*b*) of Act No. 60 of 2001.]

(*f*) The provisions of section 89 (4) shall not affect the operation of section 93 in respect of the goods concerned which are condemned and forfeited as contemplated in that section.

[Para. (*f*) inserted by s. 132 (*b*) of Act No. 60 of 2001.]

91. Administrative penalties.-(1) (*a*) If any person-

(i) has contravened any provision of this Act or failed to comply with any such provision with which it was his duty to comply; and

[Sub-para. (i) substituted by s. 12 (*a*) of Act No. 105 of 1976 and by s. 60 (*a*) of Act No. 45 of 1995.]

Wording of Sections

(ii) agrees to abide by the Commissioner's decision; and

(iii) deposits with the Commissioner such sum as the Commissioner may require of him but not exceeding the maximum fine which may be imposed upon a conviction for the contravention or failure in question or makes such arrangements or complies with such conditions with regard to securing the payment of such sum as the Commissioner may require,

the Commissioner may, after such enquiry as he deems necessary, determine the matter summarily and may, without legal proceedings, order forfeiture by way of penalty of the whole or any part of the amount so deposited or secured.

(*b*) Anything done for the purposes of paragraph (*a*) by an agent generally or specially authorized thereto by any person, shall be deemed to have been duly done by that person in terms of that paragraph.

[Sub-s. (1) substituted by s. 14 of Act No. 85 of 1968.]

Wording of Sections

(2) . . . . . .

[Sub-s. (2) substituted by s. 12 (*b*) of Act No. 105 of 1976, amended by s. 29 of Act No. 84 of 1987, substituted by s. 60 (*b*) of Act No. 45 of 1995 and deleted by s. 133 of Act No. 60 of 2001.]

Wording of Sections

(3) Subject to the provisions of subsection (4) of section *sixty-two*, the imposition of a penalty under subsection (1) shall not be regarded as a conviction in respect of a criminal offence, but no prosecution for the relevant offence shall thereafter be competent.

(4) Nothing in this section shall in any way affect liability to forfeiture of goods or payment of duty or other charges thereon.

[S. 91 amended by s. 25 of Act No. 32 of 2005.]

Wording of Sections

92. Payment and disposal of fines and penalties.-(1) Any penalty recovered under this Act shall be paid to the Controller in the area where such penalty is recovered, and shall be paid by him into the National Revenue Fund, and the proceeds of sale of anything forfeited, or seized and condemned under this Act shall also be paid into the said fund.

[Sub-s. (1) amended by s. 11 (*a*) of Act No. 98 of 1993, by s. 61 (1) (*a*) of Act No. 45 of 1995 and substituted by s. 70 (1) of Act No. 30 of 1998 and by s. 96 of Act No. 35 of 2007.]

Wording of Sections

(2) . . . . . .

[Sub-s. (2) added by s. 11 (*b*) of Act No. 98 of 1993 and deleted by s. 61 (1) (*b*) of Act No. 45 of 1995.]

Wording of Sections

(3) . . . . . .

[Sub-s. (3) added by s. 11 (*b*) of Act No. 98 of 1993 and deleted by s. 61 (1) (*b*) of Act No. 45 of 1995]

Wording of Sections

93. Remission or mitigation of penalties and forfeiture.-(1) The Commissioner may, on good cause shown by the owner thereof, direct that any ship, vehicle container or other transport equipment, plant, material or other goods detained or seized or forfeited under this Act be delivered to such owner, subject to-

(*a*) payment of any duty that may be payable in respect thereof;

(*b*) payment of any charges that may have been incurred in connection with the detention or seizure or forfeiture thereof; and

(*c*) such conditions as the Commissioner may determine, 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.

(2) The Commissioner may, on good cause shown mitigate or remit any penalty incurred under this Act on such conditions as the Commissioner may determine.

(3) (*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 other 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 ship, vehicle, container or other transport equipment, plant, material or other 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.

[S. 93 substituted by s. 14 of Act No. 95 of 1965 and by s. 15 of Act No. 85 of 1968, amended by s. 31 of Act No. 112 of 1977 and substituted by s. 67 of Act No. 53 of 1999 and by s. 150 of Act No. 45 of 2003.]

Wording of Sections

93A. . . . . . .

[S. 93A inserted by s. 134 (1) of Act No. 60 of 2001, amended by s. 51 of Act No. 30 of 2002 and repealed by s. 151 of Act No. 45 of 2003.]

Wording of Sections

94. Recovery of penalties by process of law.-(*a*) Without derogation from any powers conferred upon the Commissioner any penalty or forfeiture incurred under this Act may be recovered either by civil action or upon criminal prosecution in any court of competent jurisdiction, and in the case of a criminal prosecution the court passing sentence may also make an order regarding any unpaid duty or charge and impose civil penalties or enforce forfeiture.

[Para. (*a*) substituted by s. 97 of Act No. 35 of 2007.]

Wording of Sections

(*b*) Any civil proceedings under this section may be instituted in the name of the Commissioner.

95. Jurisdiction of courts.-(1) A court shall have jurisdiction to try any person for an offence under this Act whenever the thing in respect of which such offence was committed was found within or was conveyed from, to or through the area of jurisdiction of that court.

(1A) Any person who at any place deemed under section 6 (1A) or 50A to be a place of entry for the Republic or in any territory with the government of which an agreement has been concluded under section 51, performs any act which constitutes an offence under this Act, shall be guilty of such offence, which shall, for purposes in relation to jurisdiction of a court to try the offence, be deemed to have been committed at any place where the accused happens to be.

[Sub-s. (1A) inserted by s. 18 (*a*) of Act No. 52 of 1986 and substituted by s. 19 of Act No. 36 of 2007.]

Wording of Sections

(2) (*a*) Notwithstanding anything to the contrary in any other law contained, a magistrate's court shall have jurisdiction to impose any punishment prescribed by or make any order of court provided for in this Act.

(*b*) . . . . . .

[Sub-s. (2) added by s. 16 of Act No. 85 of 1968. Para. (*b*) deleted by s. 18 (*b*) of Act No. 52 of 1986.]

Wording of Sections

(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.

[Sub-s. (3) added by s. 10 of Act No. 93 of 1978.]

96. Notice of action and period for bringing action.-(1) (*a*) (i) No process by which any legal proceedings are instituted against the State, the Minister, the Commissioner or an officer for anything done in pursuance of this Act may be served before the expiry of a period of one month after delivery of a notice in writing setting forth clearly and explicitly the cause of action, the name and place of abode of the person who is to institute such proceedings (in this section referred to as the "litigant") and the name and address of his or her attorney or agent, if any.

(ii) Such notice shall be in such form and shall be delivered in such manner and at such places as may be prescribed by rule.

(iii) No such notice shall be valid unless it complies with the requirements prescribed in this section and such rules.

[Para. (*a*) substituted by s. 26 (1) (*a*) of Act No. 32 of 2005 with effect from the date of promulgation of that Act, 1 February, 2006.]

Wording of Sections

(*b*) Subject to the provisions of section 89, the period of extinctive prescription in respect of legal proceedings against the State, the Minister, the Commissioner or an officer on a cause of action arising out of the provisions of this Act shall be one year and shall begin to run on the date when the right of action first arose: Provided that where any proceedings are instituted concerning any decision defined in section 77A (1), such date shall begin to run on the date-

(i) of a final decision as contemplated in the rules for Part A of Chapter XA;

(ii) when the Commissioner advises the person who made use of the alternative dispute resolution procedures contemplated in the rules for Part B of Chapter XA that agreement has not been achieved at the conclusion or termination of such procedures; or

(iii) on the date a dispute is not settled and the Commissioner advises the person concerned as contemplated in section 77O (5) of Part C of Chapter XA.

[Para. (*b*) substituted by s. 30 (1) (*a*) of Act No. 34 of 2004 and by s. 26 (1) (*b*) of Act No. 32 of 2005.]

Wording of Sections

(*c*) (i) The State, the Minister, the Commissioner or an officer may on good cause shown reduce the period specified in paragraph (*a*) or extend the period specified in paragraph (*b*) by agreement with the litigant.

(ii) If the State, the Minister, the Commissioner or an officer refuses to reduce or to extend any period as contemplated in subparagraph (i), a High Court having jurisdiction may, upon application of the litigant, reduce or extend any such period where the interest of justice so requires.

(2) This section does not apply to the recovery of a debt contemplated in any law providing for the recovery from an organ of state of a debt described in such law.

(3) Notwithstanding the provisions of the Admiralty Jurisdiction Regulations Act, 1983 (Act No. 105 of 1983), when any person applies to the High Court for an order for the sale of any arrested property, such person shall deliver a notice of such an application at the place prescribed in the rules.

[S. 96 substituted by s. 136 of Act No. 60 of 2001. Sub-s. (3) inserted by s. 30 of Act No. 21 of 2006.]

Wording of Sections

CHAPTER XII
GENERAL

96A. Approval of container operators.-The Commissioner may, with the concurrence of the Director-General: Transport, subject to such conditions as the Commissioner may generally or in respect of a particular case determine, approve, for operating containers in the Republic, any person providing international transportation of containerized goods.

[S. 96A inserted by s. 6 of Act No. 98 of 1970, substituted by s. 9 of Act No. 103 of 1972, repealed by s. 23 of Act No. 86 of 1982 and inserted by s. 9 of Act No. 89 of 1984.]

Wording of Sections

(Editorial Note: S. 96A to be deleted by s. 31 (1) of Act No. 21 of 2006 with effect from a date to be fixed by the President by proclamation in the *Gazette* - date not fixed.)

Wording of Sections

97. Master, container operator or pilot may appoint agent.-Notwithstanding anything to the contrary in this Act contained, the master of a ship, a container operator or the pilot of an aircraft, instead of himself performing any act, including the answering of questions required by or under any provision of this Act to be performed by him, may at his own risk, appoint an agent to perform any such act, and any such act performed by such agent shall in all respects and for all purposes be deemed to be the act of the master, container operator or pilot, as the case may be: Provided that the personal attendance of the master or pilot may be demanded by the Controller.

[S. 97 substituted by s. 32 of Act No. 112 of 1977.]

Wording of Sections

(Editorial Note: S. 97 to be substituted by s. 32 (1) of Act No. 21 of 2006 with effect from a date to be fixed by the President by proclamation in the *Gazette* - date not fixed.)

Wording of Sections

98. Liability of principal for acts of agent.-Every importer, exporter, master, container operator, pilot, manufacturer, licensee, remover of goods in bond or other principal shall, for the purposes of this Act, be responsible for any act done by an agent acting on his behalf, whether within or outside the Republic.

[S. 98 substituted by s. 33 of Act No. 112 of 1977.]

Wording of Sections

99. Liability of agent for obligations imposed on principal.-(1) An agent appointed by any master, container operator or pilot or other carrier, and any person who represents himself or herself to any officer as the agent of any master, container operator or pilot or other carrier, and is accepted as such by that officer, shall be liable for the fulfilment, in respect of the matter in question, of all obligations, including the payment of duty and charges, imposed on such master, container operator or pilot or other carrier by this Act and to any penalties or amounts demanded under section 88 (2) (*a*) which may be incurred in respect of that matter.

[Sub-s. (1) substituted by s. 34 (*a*) of Act No. 112 of 1977, by s. 71 (*a*) of Act No. 30 of 1998 and by s. 138 of Act No. 60 of 2001.]

Wording of Sections

(2) (*a*) An agent appointed by any importer, exporter, manufacturer, licensee, remover of goods in bond or other principal and any person who represents himself to any officer as the agent of any importer, exporter, manufacturer, licensee, remover of goods in bond or other principal, and is accepted as such by that officer, shall be liable for the fulfilment, in respect of the matter in question, of all obligations, including the payment of duty and charges, imposed on such importer, exporter, manufacturer, licensee, remover of goods in bond or other principal by this Act and to any penalties or amounts demanded under section 88 (2) (*a*) which may be incurred in respect of that matter: Provided that, except if such principal has not been disclosed or the name of another agent or his own name is stated on the bill of entry as contemplated in section 64B (6) or the principal is a person outside the Republic, such agent or person shall cease to be so liable if he proves that-

(i) he was not a party to the non-fulfilment by any such importer, exporter, manufacturer, licensee, remover of goods in bond or other principal, of any such obligation;

(ii) when he became aware of such non-fulfilment, he notified the Controller thereof as soon as practicable; and

(iii) all reasonable steps were taken by him to prevent such non-fulfilment.

[Para. (*a*) amended by s. 24 of Act No. 86 of 1982, by s. 62 (*a*) of Act No. 45 of 1995, by s. 71 (*b*) of Act No. 30 of 1998 and by s. 68 (*a*) of Act No. 53 of 1999.]

Wording of Sections

(*b*) No importer, exporter, manufacturer, licensee, remover of goods in bond or other principal shall by virtue of the provisions of paragraph (*a*) be relieved from liability for the fulfilment of any obligation imposed on him by this Act and to any penalty or amounts demanded under section 88 (2) (*a*) which may be incurred in respect thereof.

[Para. (*b*) substituted by s. 71 (*c*) of Act No. 30 of 1998.]

Wording of Sections

(*c*) For the purposes of the proviso to paragraph (*a*) a principal outside the Republic shall be deemed to include the consignee in a country outside the Republic shown on a bill of entry for removal in bond of imported goods.

[Sub-s. (2) substituted by s. 12 (*a*) of Act No. 110 of 1979. Para. (*c*) added by s. 68 (*b*) of Act No. 53 of 1999.]

Wording of Sections

(3) Every shipping and forwarding agent and every agent acting for the master of a ship or the pilot of an aircraft and any other class of agent which the Commissioner may by rule specify shall, before transacting any business with the Commissioner, and any class of carrier of goods to which this Act relates which the Commissioner may by rule specify shall, before conveying any such goods, give such security as the Commissioner may from time to time require for the due observance of the provisions of this Act: Provided that the Commissioner may call for special or additional security in respect of any particular transaction or conveyance of goods from any agent or carrier.

[Sub-s. (3) substituted by s. 15 of Act No. 95 of 1965, amended by s. 34 (*b*) of Act No. 112 of 1977 and by s. 62 (*b*) of Act No. 45 of 1995 and substituted by s. 31 of Act No. 34 of 2004.]

Wording of Sections

(4) (*a*) An agent (including a representative or associate of the principal) representing or acting for or on behalf of any exporter, manufacturer, supplier, shipper or other principal outside the Republic who exports goods to the Republic, shall be liable, in respect of any goods ordered through him or obtained by an importer by means of his services, for the fulfilment of all obligations imposed upon such exporter, manufacturer, supplier, shipper or other principal by this Act, and to any penalties or amounts demanded under section 88 (2) (*a*) which may be incurred by such exporter, manufacturer, supplier, shipper or other principal under this Act: Provided that any such agent shall cease to be so liable if he proves that-

(i) he was not a party to the non-fulfilment, by any such exporter, manufacturer, supplier, shipper or other principal, of any such obligation; and

(ii) when he became aware of such non-fulfilment, he forthwith notified the Controller thereof; and

(iii) all reasonable steps were taken by him to prevent such non-fulfilment.

[Para. (*a*) amended by s. 7 of Act No. 98 of 1970, by s. 62 (*c*) of Act No. 45 of 1995 and by s. 71 (*d*) of Act No. 30 of 1998.]

Wording of Sections

(*b*) Every agent of a class referred to in paragraph (*a*) and specified in the rules for the purposes of this paragraph shall register himself with the Commissioner and furnish such security as the Commissioner may from time to time require for the due observance of the provisions of this Act: Provided that the Commissioner may accept such security from any association of such agents approved by him which undertakes to give security on behalf of its members.

[Para. (*b*) amended by s. 62 (*d*) of Act No. 45 of 1995.]

Wording of Sections

(*c*) No agent referred to in paragraph (*b*) shall transact any business on behalf of any such exporter, manufacturer, supplier, shipper or other principal after a date specified by the Minister by notice in the *Gazette* unless he has complied with the provisions of paragraph (*b*).

(*d*) The registration and operations of any agent referred to in paragraph (*b*) shall be subject to such conditions as the Commissioner may impose by rule and the Commissioner may cancel the registration of any agent 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.

[Sub-s. (4) added by s. 17 of Act No. 85 of 1968.]

(5) Any liability in terms of subsection (1), (2) or (4) (*a*) shall cease after the expiration of a period of two years from the date on which it was incurred in terms of any such subsection.

[Sub-s. (5) added by s. 12 (*b*) of Act No. 110 of 1979.]

99A. Consultant and agent not being clearing agent required to register.-(1) No person, except-

(*a*) a licensed clearing agent referred to in section 64B; or

(*b*) a person specified by rule,

shall, from a date specified by the Commissioner by notice in the *Gazette*, represent any principal referred to in section 99 (2) as a consultant or agent for the purpose of transacting any business on behalf of such principal in relation to customs and excise matters unless such a person is registered with the Commissioner.

(2) An application for such registration shall be made on the form prescribed by the Commissioner by rule and the applicant shall comply with all the requirements specified therein and any additional requirements that may be prescribed in any other rule and as may be determined by the Commissioner in each case.

[S. 99A inserted by s. 69 of Act No. 53 of 1999.]

100. Agent may be called upon to produce written authority.-If any person makes an application to an officer to transact any business on behalf of another person or if any person represents himself to an officer as the agent of another person, such officer may require the person so applying or representing himself to produce a written authority in the form approved by the Commissioner, from the person on whose behalf such application is made or on whose behalf the person so representing himself is alleged to be acting, and in default of the production of such authority, the officer may refuse to transact such business.

101. Business accounts, documents, etc., to be available for inspection.-(1) (*a*) Any person carrying on any business in the Republic shall keep within the Republic in one of the official languages such books, accounts and documents relating to his transactions as may be prescribed by rule and such books, accounts and documents shall be kept in such form and manner and shall be retained for such period as may be so prescribed.

[Para. (*a*) substituted by s. 63 (*a*) of Act No. 45 of 1995.]

Wording of Sections

(*b*) Different provisions may be so prescribed in respect of different classes or kinds of books, accounts and documents and different classes of persons.

(1A) The Commissioner may, subject to such conditions as he may determine, allow any person referred to in subsection (1) to retain in lieu of any book, account or document required to be retained in terms of that subsection, a reproduction of any such book, account or document obtained by means of microfilming or any other process.

[Sub-s. (1A) inserted by s. 12 (*a*) of Act No. 98 of 1980.]

(2) Any person referred to in subsection (1) shall upon demand by the Controller or the Commissioner

produce to him such books, accounts or documents referred to in subsection (1) as he may require and such person shall render such returns or submit such particulars in connection with his transactions to the Commissioner as he may from time to time require.

(2A) The Commissioner may, subject to such conditions as he may determine, allow any such person to produce in lieu of any such book, account or document required to be produced in terms of subsection (2), a copy thereof obtained by means of a reproduction referred to in subsection (1A), and such copy shall, subject to compliance with such conditions, for all purposes have all the effects of the original book, account or document concerned.

[Sub-s. (2A) inserted by s. 12 (*b*) of Act No. 98 of 1980.]

(2B) Any person referred to in subsection (1) shall keep and produce on demand any electronic representations of information in any form.

[Sub-s. (2B) inserted by s. 70 of Act No. 53 of 1999 and substituted by s. 152 of Act No. 45 of 2003.]

Wording of Sections

(3) The Commissioner may by rule prescribe-

(*a*) the books, accounts, documents, transactions or operations in respect of which a chartered accountant's certificate shall be produced to the Controller by such class of persons referred to in subsection (1) as he may so prescribe; and

(*b*) the nature and form of such certificate and the intervals at which such a certificate shall be produced.

[S. 101 substituted by s. 18 of Act No. 85 of 1968. Sub-s. (3) amended by s. 63 (*b*) of Act No. 45 of 1995.]

Wording of Sections

101A. Electronic communication for the purposes of customs and excise procedures-(1) In this section and the rules thereto, unless the context otherwise indicates, the following words and phrases, and their grammatical variations where applicable, shall have the following meanings:

"access", means gaining entry into, instructing or communicating with the logical, arithmetical or memory function resources of a computer, computer system or computer network;

"addressee", means a person who is intended by the originator to receive the electronic message, but does not include an intermediary;

"affixing a digital signature", means adoption of a methodology or procedure by a person for the purposes of authenticating an electronic record by means of a digital signature;

"computer", means any electronic, magnetic, optical or other high speed data processing device or system which performs logical, arithmetic and memory functions by manipulation of electronic, magnetic or optical impulses and includes all input, output, processing, storage, computer software or communication facilities which are connected or related to the computer in a computer system or a computer network;

"computer network", means the interconnection of one or more computers through-

(i) the use of satellite, microwave, terrestrial line or other communication media; and

(ii) terminals or a complex consisting of two or more interconnected computers whether or not the interconnection is continuously maintained;

"computer system", means a device or collection of devices, including input and output devices and capable of being used with external files which contain computer programmes, electronic instructions, input and output data that performs logic, arithmetic, data storage and retrieval, communication control and other functions;

"data", means a representation of information, knowledge, facts, concepts or instructions which are being or have been prepared in a formalised manner and is intended to be processed, is being or has been processed in a computer system or network and may be in any form (including computer printouts, magnetic optical storage media, punched cards and punched tapes) or stored internally in the memory of the computer;

"digital signature", means an electronic signature allocated to a registered user for authentication of electronic records in conformity with the requirements prescribed in this section, the rules and the user agreement;

"electronic form", with reference to information, means any information generated, sent, received or stored in media, magnetic, optical, computer memory, or similar device;

"electronic record", means data recorded or generated, image or sound stored, received or sent in an electronic form or microfilm or computer generated microfiche;

"function" in relation to a computer, includes logic, control arithmetical process, deletion, storage and retrieval and communications or telecommunication from or within a computer;

"information", includes data, text, images, sound, voice, code, computer programmes, software and databases or microfilm or computer generated microfiche;

"intermediary", with respect to any particular electronic message, means any person who on behalf of another person receives, stores or transmits that message or provides any service with respect to that message;

"originator", means a person who sends, generates, stores or transmits any electronic message to be sent, generated, stored or transmitted to any other person, but does not include an intermediary;

"registered user" means a person registered in terms of the provisions of subsection (3);

"user agreement", means the agreement entered into between the registered user and the Commissioner.

(2) (*a*) The Commissioner may, notwithstanding anything to the contrary in this Act contained, establish and maintain a computer system for the purposes of the electronic processing of any document and procedure to which this Act relates and matters incidental thereto, which may include-

(i) the receipt and processing of reports and other documents relating to the arrival and departure of ships, aircraft, vehicles and railway trains and their passengers and cargo and the control of such passengers or cargo;

(ii) the accounting for the receipt, clearance and release of goods, the storage of goods in customs and excise warehouses or other places and the removal or carriage of goods for any purpose under this Act; and

(iii) the production or manufacture of any goods and the accounting therefor in compliance with any procedure prescribed under this Act.

(*b*) No person shall communicate with the Commissioner, a Controller or any officer for any purpose to which this section relates by computer unless such person is a registered user who has entered into a user agreement and complies with any other requirements prescribed under this Act.

(*c*) Any such user may access the computer system of the Commissioner for purposes of electronically communicating with the Commissioner, a Controller or an officer to the extent specified in the user agreement provided the computer system of the Commissioner can accept the communication.

(*d*) The Commissioner may require by rule any person or class of persons, participating in any activity regulated by this Act, unless exempted in such rule, to communicate electronically and register as a user in accordance with the provisions of this section.

[Para. (*d*) added by s. 33 (1) of Act No. 21 of 2006 with effect from 1 October, 2008.]

(3) (*a*) Application for registration as a user shall be in the form and shall be accompanied by a practice statement and the completed user agreement prescribed by rule.

(*b*) The applicant shall comply with-

(i) all the requirements specified in such form and in subsection (5);

(ii) any additional requirements that may be prescribed in the rules and as may be determined by the Commissioner;

(iii) the requirements specified in the user agreement.

(4) The Commissioner may set out in such agreement-

(*a*) any terms and conditions for regulating computer communication with and by a registered user, including conditions that-

(i) the user will use computer equipment and facilities of a class or kind specified in the agreement;

(ii) the user, when assigned a digital signature by the Commissioner, will ensure the security of the signature in the manner agreed to in the agreement;

(iii) where electronic data is received by the Commissioner from the registered user authenticated by electronic signature-

(*aa*) without the authority of the user to whom such signature was allocated; and

(*bb*) before notification to the Commissioner by the user of a breach of security,

such data shall be taken by the Commissioner to have been communicated by the registered user of such digital signature, as the case may be;

(*b*) whether the applicant has complied with the provisions of subsection (5);

(*c*) any other requirement, including reasonable access to the computer system of the registered user by the Commissioner for such verification and audit purposes as may be required in terms of any provision of this Act;

(*d*) the method and period for which electronic records shall be kept.

(5) (*a*) Any applicant for registration shall produce proof in support of the application that-

(i) adequate measures have been introduced to exercise reasonable care to-

(*aa*) retain control of the digital signature allocated by the Commissioner and for the prevention of its disclosure to any person not authorised to affix such signature;

(*bb*) ensure that information remains complete and unaltered apart from the addition of any change which may occur in the normal course of communication storage and display;

(ii) the standard of reliability is in accordance with the standard required in the user agreement and the provisions of this section and the rules.

(*b*) If the digital signature has been compromised in any manner the applicant shall inform the Commissioner without delay in the manner prescribed by rule.

(6) (*a*) The Commissioner may, after due consideration of the application and the practice statement and after making such enquiries as he may deem necessary, approve the application subject to any reasonable conditions as he may impose in each case.

(*b*) The Commissioner may, subject to review by the High Court-

(i) refuse any application for registration if-

(*aa*) the applicant-

(A) does not comply in respect of such application with the requirements contemplated in subsection (3);

(B) has made a false or misleading statement with respect to any material fact or omits to state any material fact which was required to be stated in the application for registration;

(*bb*) the applicant or any employee of such applicant-

(A) has contravened or failed to comply with the provisions of this Act;

(B) has been convicted of an offence under this Act;

(C) has been convicted of an offence involving dishonesty; or

(D) has failed to comply with any condition or obligation imposed by the Commissioner in respect of such registration:

Provided that subparagraphs (A) to (C) shall not apply in respect of an employee if the applicant proves that he was not a party to or could not prevent any such act or omission by such employee; or

(ii) cancel or suspend for a specified period any registration-

(*aa*) if the registered user-

(A) is sequestrated or liquidated;

(B) no longer carries on the business for which the registration was issued;

(C) is no longer qualified according to the qualifications prescribed in the rules; or

(D) fails to meet in respect of the computer system used all the compliance requirements and the operational standards required in terms of the user agreement and prescribed by the Commissioner as contemplated in this section;

(*bb*) if the registered user or the employee of such user has-

(A) contravened or failed to comply with the provisions of this Act;

(B) been convicted of an offence under this Act;

(C) been convicted of an offence involving dishonesty; or

(D) failed to comply with any condition or obligation imposed by this Act or by the Commissioner in respect of such registration:

Provided that subparagraphs (A) to (C) shall not apply in respect of an employee except an employee to whom a digital signature was allocated, if the holder proves that he was not a party to or could not prevent any such act or omission by such employee: Provided further that before a registration is cancelled or suspended, the Commissioner shall-

(*a*) give 21 days notice to the registered user of the proposed cancellation or suspension;

(*b*) provide reasonable information concerning any allegation and grounds for the proposed cancellation or suspension;

(*c*) provide a reasonable opportunity to respond and make representations as to why the registration should not be cancelled or suspended.

(7) (*a*) When the Commissioner so registers a person or cancels or suspends such registration, the registration, cancellation or suspension shall have effect from the day on which the notice was signed.

(*b*) The Commissioner may prescribe a registration fee or fee for the issuance of a digital signature by rule.

(*c*) The Commissioner shall, on registering a user, allocate to the user-

(i) if the user is a natural person, a digital signature or sufficient digital signatures for the user and each employee of the user nominated in the agreement; or

(ii) if the user is not a natural person, sufficient digital signatures for each employee of the user nominated in the agreement.

(*d*) Where the registered user is a clearing agent, licensed under this Act no employee of such agent who is not licensed as a clearing agent shall be allocated a digital signature.

(8) (*a*) For the purposes of section 101 (2B), where any provision of this Act prescribes or requires that documents, records, information or the like shall be retained for a specific period, that requirement shall be deemed to have been satisfied if such documents, records, information or the like are so retained in electronic form, if-

(i) the information contained therein remains accessible so as to be subsequently usable;

(ii) the electronic record is retained in the format in which it was originally generated, sent or received or in a format which can be demonstrated to represent accurately the information originally generated, sent or received;

(iii) the details which will facilitate the identity of the origin, destination, date and time of dispatch or receipt of such electronic record are available in the electronic record.

(*b*) An electronic communication or the record of such communication shall be attributed to the originator-

(i) if it was sent by the originator;

(ii) if it was sent by a person who had the authority to act on behalf of the originator in respect of that communication or record; or

(iii) if it was sent by a computer system programmed by or on behalf of the originator to operate automatically.

(9) (*a*) Where the Commissioner and a registered user have not agreed that an acknowledgment of receipt of electronic communication be given in any particular form or by any particular method, an acknowledgement may be given by-

(i) any communication by the Commissioner, electronic or otherwise; or

(ii) conduct by the Commissioner or any officer sufficient to indicate to the registered user that the electronic communication has been received.

(*b*) Where the Commissioner and the registered user have agreed that an electronic communication shall be binding only on the receipt of an acknowledgement of such electronic communication, then, unless such acknowledgement has been so received within such time as agreed upon, such electronic communication shall be deemed not to have been sent.

(*c*) (i) The dispatch of an electronic communication occurs when it enters a computer resource outside the control of the originator.

(ii) The time of receipt of an electronic communication shall be when the electronic communication enters the designated computer-

(*aa*) where the electronic communication is by a registered user, at any office of a Controller set out in item 202.00 of the Schedule to the rules, or of the Commissioner, to whichever it was addressed, and such office shall be the place of receipt; or

(*bb*) if the electronic communication is by the Commissioner or any Controller or officer to a registered

user, at the place of receipt that is stipulated in the "user agreement" referred to in subsection (4).

(10) (*a*) Whenever any registered user is authorised to submit and sign electronically any manifest, bill of entry, return, prescribed form, document, schedule, application, declaration, statement, report, notice or the like, which is required to be submitted and signed in terms of the provisions of this Act, such signature electronically affixed to such electronic communication and communicated to the Commissioner, a Controller or any officer, shall, for the purposes of this Act, have the force and effect as if it was affixed thereto in manuscript and acceptance thereof, shall not be denied if it is in conformity with the electronic signature agreed to by and between the Commissioner and the registered user.

(*b*) The signature and authentication of any electronic communication referred to in paragraph (*a*) shall be effected as prescribed by rule.

(*c*) For the purposes of the definition of "digital signature", a digital signature is an electronic signature created by computer, intended by the registered user using it and by the Commissioner accepting it to have the same force and effect as the use of a manual signature and which is-

(i) unique to the registered user;

(ii) capable of verification;

(iii) linked or attached to electronically transmitted data in such a manner so as to authenticate the attachment of the signature to particular data and the integrity of the data transmitted so that if the data is changed the electronic signature is invalidated;

(iv) under the sole control of the registered user; and

(v) conforms in all respects to the requirements prescribed by the Commissioner by rule and contained in the user agreement.

[Para. (*c*) inserted by s. 51 (1) of Act No. 19 of 2001 (as amended by s. 65 (1) of Act No. 30 of 2002).]

Wording of Sections

(*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 communication referred to in paragraph (*a*), by using the Internet.

[Sub-para. (i) substituted by s. 32 of Act No. 34 of 2004.]

Wording of Sections

(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 communication.

[Sub-para. (ii) substituted by s. 32 of Act No. 34 of 2004.]

Wording of Sections

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

[Para. (*d*) added by s. 153 of Act No. 45 of 2003.]

(11) Where in any proceedings or prosecution under this Act or in any dispute in which the State, the Minister, the Commissioner or any officer is a party, the question arises whether an electronic signature affixed to any electronic communication to the Commissioner was used in such communication with or without the consent and authority of the registered user, it shall, in the absence of proof to the contrary, for purposes of this Act be assumed that such signature was, subject to the provisions of subsection (4), so used with the consent and authority of the registered user.

(12) (*a*) Notwithstanding anything to the contrary in this Act or in any other law contained, whenever in any proceedings or prosecution under this Act or in any dispute in which the State, the Minister, the Commissioner or any officer is a party, it is necessary to prove the authenticity, the veracity, the origin, the contents, an electronic signature or any other aspect of any electronic communication transmitted to and received by the Commissioner under this section, the provisions and conditions of the user agreement referred to in subsection (4) shall establish the basis upon which any court of competent jurisdiction shall determine such issues.

(*b*) Notwithstanding anything to the contrary contained in any other law, nothing in the application of the rules of evidence shall be applied so as to deny the admissibility of any electronic communication under this section for purposes of this Act in evidence-

(i) on the sole grounds that it is an electronic data message; or

(ii) if it is the best evidence that the person adducing it could reasonably be expected to obtain, on the grounds that it is not in original form.

(*c*) (i) Information in the form of a data message shall be given due evidential weight.

(ii) In assessing the evidential weight of a data message a court shall have regard to-

(*aa*) the reliability of the manner in which the data message was generated, stored and communicated;

(*bb*) the reliability of the manner in which the integrity of the information was maintained;

(*cc*) the manner in which its originator was identified;

(*dd*) whether these functions were in compliance with the user agreement; and

(*ee*) the requirements of this section, and any other relevant factor.

(13) Whenever, because a computer system is inoperative, a registered user or the Commissioner cannot transmit or receive an electronic transmission required for purposes of this Act, the registered user and the Commissioner shall communicate with each other by paper document as prescribed by rule.

(14) The Commissioner may at any time require from any registered user who transmitted any electronic communication under this section for purposes of this Act the production of any original document required to be produced under any of the provisions of the Act.

(15) (*a*) Any person, other than the registered user of an electronic signature, using such signature in any electronic communication to the Commissioner for any purpose under this Act without the consent and authority of such registered user, shall be guilty of an offence and liable on conviction for every time such signature was so used to a fine not exceeding R100 000 or treble the value of the goods in respect of which the offence was committed, whichever is the greater, or to imprisonment for a period not exceeding 10 years or to both such fine and such imprisonment, and the goods in respect of which such offence was committed shall be liable to forfeiture under this Act.

(*b*) Any person who-

(i) makes a false electronic record or a part of an electronic record or who makes a false entry in any electronic record or who makes a false statement in such electronic record; or

(ii) dishonestly or fraudulently-

(*aa*) makes, signs or executes an electronic record;

(*bb*) makes or transmits any electronic record or part of any electronic record;

(*cc*) affixes any digital signature on any electronic record; or

(iii) without lawful authority dishonestly and fraudulently alters any electronic record in any material part thereof after it had been made, executed or affixed with digital signature; or

(iv) dishonestly or fraudulently causes any other person to sign, execute or alter an electronic record or to affix a digital signature on any electronic record,

shall be guilty of an offence and liable on conviction for every such offence to a fine not exceeding R100 000 or treble the value of the goods in respect of which the offence was committed, whichever is the greater, or to imprisonment for a period not exceeding 10 years or to both such fine and such imprisonment, and the goods in respect of which such offence was committed shall be liable to forfeiture under this Act.

(16) The Commissioner may make rules-

(*a*) to delegate, subject to section 3 (2), any power which may be exercised or assign any of the duties which shall be performed in terms of this Act to any officer or any other person;

(*b*) regarding all matters which are required or permitted in terms of this section to be prescribed by rule; and

(*c*) in respect of any other matter which the Commissioner may reasonably consider to be necessary and useful to achieve the efficient and effective administration of the provisions of this section.

[S. 101A inserted by s. 51 (1) of Act No. 19 of 2001.

101B. Special provisions relating to the processing and protection of personal information.-(1) In this section and the rules made thereunder, unless the context otherwise indicates, the following words and phrases, and their grammatical variations where applicable, shall have the following meanings:

"Advance Passenger Information", **"airline"** and **"operator"** shall have the meaning assigned thereto in section 7A;

"person" means a natural person and juristic person, unless the context otherwise requires;

[Definition of "person" inserted by s. 17 (*a*) of Act No. 44 of 2014.]

"personal information" means information relating to an identified or identifiable natural person and where it is applicable an identified or identifiable juristic person as determined by the Commissioner.

[Definition of "personal information" substituted by s. 17 (*b*) of Act No. 44 of 2014.]

Wording of Sections

(2) This section-

(*a*) applies-

(i) to the Commissioner, an officer, or any person acting under a delegation from or under control or direction of the Commissioner; and

(ii) subject to section 4 (3), (3A), (3B), (3C), (3D) and (3E), to any personal information in possession of or under the control of the Commissioner;

[Para. (*a*) substituted by s. 17 (*c*) of Act No. 44 of 2014.]

Wording of Sections

(*b*) prohibits the unauthorised recording and further processing of personal information;

(*c*) regulates the manner in which personal information must be processed and protected by the Commissioner.

[Para. (*c*) substituted by s. 17 (*c*) of Act No. 44 of 2014.]

Wording of Sections

(3) (*a*) The Commissioner or an officer may, subject to subsection (6), obtain and use personal information, if-

(i) Advance Passenger Information, for the purpose specified in section 7A (2);

(ii) any other personal information obtained from any other source as contemplated in section 4 (3), for the administration of any other provision of this Act, including any international agreement contemplated in section 50; or

(iii) provided by a party to an international agreement, in accordance with the provisions of that agreement and section 50.

[Para. (*a*) substituted by s. 17 (*d*) of Act No. 44 of 2014.]

Wording of Sections

(*b*) A person acting under a delegation from or under the control or direction of the Commissioner may only process personal information with the knowledge and consent of the Commissioner and subject to the provisions of this section.

(4) A person to whom this section applies, shall not-

(*a*) record or deal with personal information other than in the manner prescribed in this section; or

(*b*) further process any personal information except as authorised by this section.

(5) (*a*) No records containing personal information which allows a person to be identified shall be retained for longer than necessary for achieving the purpose of personal information processing, unless-

(i) the person authorises such retention;

[Sub-para. (i) substituted by s. 17 (*f*) of Act No. 44 of 2014.]

Wording of Sections

(ii) the Commissioner, on good cause, for the purposes of this Act, requires the retention of the record for a longer period;

(iii) another law requires or authorises the retention of the record for a longer period;

(iv) the retention is for historical or statistical reasons, if the Commissioner has established appropriate safeguards against the use of such records for other purposes; or

(v) the personal information has been used to make a decision about a person and the record must be retained for such a period as may be reasonably required for the person to request access to the record.

[Para. (*a*) amended by s. 17 (*e*) of Act No. 44 of 2014. Sub-para. (v) substituted by s. 17 (*f*) of Act No. 44 of 2014.]

Wording of Sections

(*b*) Personal information that is not retained for any of the longer periods contemplated in paragraph (*a*) shall, as

soon as practicable after its retention is no longer authorised under that paragraph, be promptly-

(i) de-identified; or

(ii) deleted or destroyed, by the Commissioner.

(6) Personal information may not be further processed in a manner that is not compatible with the purpose for which that information is obtained and used as contemplated in subsection (3) (*a*) by the Commissioner, unless-

(*a*) the person authorises such further processing;

[Para. (*a*) substituted by s. 17 (*h*) of Act No. 44 of 2014.]

Wording of Sections

(*b*) non-compliance is necessary-

(i) for the prevention, detection, investigation, prosecution and punishment of an offence under this Act or any other law;

(ii) for the protection of the public revenue; or

(iii) to prevent an imminent and serious threat to public safety or the life or health of the person; or

[Sub-para. (iii) substituted by s. 17 (*i*) of Act No. 44 of 2014.]

Wording of Sections

(*c*) the use of the data is only for historical or statistical reasons and the Commissioner has established appropriate safeguards to ensure that any further processing is only carried out for such reasons.

[Sub-s. (6) amended by s. 17 (*g*) of Act No. 44 of 2014.]

Wording of Sections

(7) The Commissioner must-

(*a*) whether at the request of a person or on own initiative, ensure that all records relating to personal information are complete, not misleading, up to date and accurate;

[Para. (*a*) substituted by s. 17 (*j*) of Act No. 44 of 2014.]

Wording of Sections

(*b*) implement appropriate technical and other measures to-

(i) secure the integrity of personal information by safeguarding against the risk of loss of, or damage to, or destruction of personal information; and

(ii) prevent the unauthorised or unlawful access to, or processing of, personal information;

(*c*) take measures to identify all readily foreseeable internal and external threats to personal information in the possession of, or under the control of, the Commissioner; and

(*d*) (i) establish and maintain appropriate safeguards against the risks identified;

(ii) regularly verify that the safeguards are effectively implemented; and

(iii) ensure that the safeguards are continuously updated in response to new risks or deficiencies in previously implemented safeguards.

(8) (*a*) The Commissioner must-

(i) where an information security compromise or suspected compromise of personal information has taken place; and

(ii) if the identity of a person affected by the compromise can be established,

notify that person of such compromise or suspected compromise and provide him or her with such information as may be relevant to allow the person to protect himself or herself against the potential consequences of the compromise.

(*b*) The Commissioner may delay any notification contemplated in paragraph (*a*), where the Commissioner determines that such notification will impede or otherwise adversely affect any criminal investigation.

(9) (*a*) Any person is entitled to-

(i) obtain from the Commissioner free of charge confirmation of whether the Commissioner holds personal information about him or her;

(ii) request the Commissioner, after having produced adequate proof of identity, to provide the particulars of the personal information held, and information as to the identity of all persons who

have had access to his or her personal record-

(*aa*) within a reasonable time;

(*bb*) at a charge as may be prescribed by the Commissioner by rule;

(*cc*) in a reasonable manner;

(*dd*) in a form that is generally understandable.

[Para. (*a*) amended by s. 17 (*k*) of Act No. 44 of 2014.]

Wording of Sections

(*b*) Where a person makes a request contemplated in paragraph (*a*), the Commissioner must inform the person that he or she may request the correction of any such information.

[Para. (*b*) substituted by s. 17 (*l*) of Act No. 44 of 2014.]

Wording of Sections

(*c*) Where the Commissioner receives a request for the correction of personal information from a person, the Commissioner must-

(i) correct the information concerned;

(ii) in instances where the Commissioner decides on good cause not to correct the information, attach at the request of the person a statement to the information concerning the correction sought but not made in such a manner that it will always be read together with the information;

[Sub-para. (ii) substituted by s. 17 (*n*) of Act No. 44 of 2014.]

Wording of Sections

(iii) (*aa*) where the information was further processed as contemplated in subsection (6) (*b*), advise, if reasonable practicable, each person to whom the information was disclosed as a result of the further processing of the steps taken in terms of subparagraphs (i) and (ii); and

(*bb*) inform the person of the actions taken as a result of the request for correction.

[Para. (*c*) amended by s. 17 (*m*) of Act No. 44 of 2014. Item (*bb*) substituted by s. 17 (*o*) of Act No. 44 of 2014.]

Wording of Sections

(10) The Commissioner may not-

(*a*) process personal information concerning a person's religion or philosophy of life, race, political persuasion or health or sexual life, except where the person has given his or her explicit consent to the processing of the information;

[Para. (*a*) substituted by s. 17 (*p*) of Act No. 44 of 2014.]

Wording of Sections

(*b*) transfer any personal information about a person to a foreign government other than in the manner contemplated in section 50: Provided that the Commissioner is satisfied that the recipient of that information is subject to a law which effectively upholds principles for fair handling of personal information that are substantially similar to the information protection principles set out in this section.

[Para. (*b*) substituted by s. 17 (*p*) of Act No. 44 of 2014.]

Wording of Sections

(11) If any person of whom personal information is held in terms of this section is dissatisfied with any decision by the Commissioner or an officer in respect thereof that person may, before instituting any judicial proceedings, make use of any of the procedures contemplated in Chapter XA.

(12) Any person who-

(*a*) causes any personal information to be compromised as contemplated in subsection (8); or

(*b*) without authority gains access to personal information or interferes with the protection of personal information,

shall be guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding five years or to both such fine and imprisonment.

[S. 101B inserted by s. .38 of Act No. 61 of 2008.]

102. Sellers of goods to produce proof of payment of duty.-(1) Any person selling, offering for sale or dealing in imported or excisable goods or fuel levy goods or any person removing the same, or 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 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.

[Sub-s. (1) substituted by s. 29 of Act No. 105 of 1969, by s. 30 (*a*) of Act No. 84 of 1987 and by s. 34 of Act No. 59 of 1990.]

Wording of Sections

(2) In any prosecution or proceedings under this Act, any statement in any record, letter or any other document kept, retained, received or dispatched by or on behalf of any person to the effect that any goods of a particular price, value (including any commission, discount, cost, charge, expense, royalty, freight, tax, drawback, refund, rebate, remission or other information which relates to such goods and has a bearing on such price or value) or quantity, quality, nature, strength or other characteristic have been manufactured, imported, ordered, supplied, purchased, sold, dealt with or in or held in stock by him at any time, shall be admissible in evidence against him as an admission that he has at that time manufactured, imported, ordered, supplied, purchased, sold, dealt with or in or held in stock goods of that price, value, quantity, quality, nature, strength or other characteristic.

[Sub-s. (2) substituted by s. 19 of Act No. 85 of 1968, by s. 29 of Act No. 105 of 1969 and by s. 35 of Act No. 112 of 1977.]

Wording of Sections

(3) If in any such prosecution or proceedings the question arises whether any goods have been sold or used or disposed of or are or were in the possession of any person in such a manner as not to render them subject to duty, it shall be presumed that such goods have not been so sold or used or disposed of or are not or were not in the possession of such person in the said manner unless the contrary is proved.

[Sub-s. (3) substituted by s. 12 of Act No. 57 of 1966.]

(4) If in any prosecution under this Act or in any dispute in which the State, the Minister or the Commissioner or any officer is a party, the question arises whether the proper duty has been paid or whether any goods or plant have been lawfully used, imported, exported, manufactured, removed or otherwise dealt with or in, or whether any books, accounts, documents, forms or invoices required by rule to be completed and kept, exist or have been duly completed and kept or have been furnished to any officer, it shall be presumed that such duty has not been paid or that such goods or plant have not been lawfully used, imported, exported, manufactured, removed or otherwise dealt with or in, or that such books, accounts, documents, forms or invoices do not exist or have not been duly completed and kept or have not been so furnished, as the case may be, unless the contrary is proved.

[Sub-s. (4) substituted by s. 16 of Act No. 95 of 1965, by s. 12 of Act No. 57 of 1966, by s. 12 of Act No. 101 of 1985, by s. 30 (*b*) of Act No. 84 of 1987 and by s. 64 of Act No. 45 of 1995.]

Wording of Sections

(5) If in any prosecution under this Act or in any dispute in which the State, the Minister or the Commissioner or any officer is a party, it is alleged by or on behalf of the State or the Minister or the Commissioner or such officer that any goods or plant have been or have not been imported, exported, manufactured in the Republic, removed or otherwise dealt with or in, it shall be presumed that such goods or plant have been or (as the case may be) have not been imported, exported, manufactured in the Republic, removed or otherwise dealt with or in, unless the contrary is proved.

[Sub-s. (5) added by s. 12 of Act No. 57 of 1966.]

103. Liability of company, partnership, etc.-For the purposes of this Act any reference to a person shall be deemed to include a reference to a company, close corporation, co-operative society, firm, partnership, statutory body or club, and in the event of a contravention of or non-compliance with this Act or the incurring of any liability under this Act by any company, close corporation, co-operative society, firm, partnership, statutory body or club any person having the management of any premises or business in or in connection with which the contravention or non-compliance took place or the liability was incurred may be charged with the relevant offence and shall be liable to any penalties provided therefor and shall be liable in respect of any liability so incurred.

[S. 103 substituted by s. 16 of Act No. 68 of 1989.]

Wording of Sections

104. . . . . . .

[S. 104 repealed by s. 6 of Act No. 25 of 1969.]

Wording of Sections

105. Interest on outstanding amounts.-Notwithstanding anything to the contrary in any law contained-

(*a*) interest shall be payable from such date and for such period as the Commissioner may determine on any outstanding amount payable in terms of this Act, other than the outstanding amount of any penalty or forfeiture payable in terms of this Act;

(*b*) the interest so payable shall be paid at a rate the Minister of Finance determines in terms of section 80 (1) (*b*) of the Public Finance Management Act, 1999 (Act No. 1 of 1999): Provided that where the Minister fixes a new rate in terms of that Act, that new rate applies for purposes of this Act from the first day of the second month following the date on which that new rate came into operation;

[Para. (*b*) substituted by s. 6 (1) of Act No. 32 of 1999, amended by Government Notices No. 540 of 1999, No. 1066 of 1999 and No. 185 of 2000 and substituted by s. 63 of Act No. 30 of 2000, by s. 111 (1) of Act No. 74 of 2002 and by s. 35 of Act No. 16 of 2004.]

Wording of Sections

[General Note: Interest rate determined under Government Notice No. 1159 in *Government Gazette* 23817 of 13 September, 2002.]

(*c*) the Commissioner may on such conditions as he may consider necessary-

(i) remit any interest for which any person is liable by virtue of this section;

(ii) permit payment of any amount referred to in paragraph (*a*) by instalments of such amounts and at such times as he may determine;

[Para. (*c*) amended by s. 65 of Act No. 45 of 1995.]

Wording of Sections

(*d*) any such instalment paid shall be utilised by the Commissioner to discharge any penalty, interest, forfeiture, duty and expenses incurred by or charges due to the Commissioner, in that order;

[Para. (*d*) substituted by s. 93 of Act No. 31 of 2005 and by s. 72 of Act No. 20 of 2006.]

Wording of Sections

(*e*) any such interest shall be calculated monthly and a portion of a month shall be regarded as a full month; and

(*f*) any such interest recovered shall be paid into the National Revenue Fund.

[S. 105 substituted by s. 2 of Act No. 111 of 1991. Para. (*f*) substituted by s. 72 of Act No. 30 of 1998.]

Wording of Sections

106. Samples.-(1) An officer may on entry of any imported goods or goods for export or during the manufacture of any excisable goods, or at any time after such entry or manufacture, take, without payment, from any person in possession of such imported goods or goods for export or of any manufactured or partly manufactured excisable goods samples of such imported, manufactured or partly manufactured goods or of materials intended for the manufacture of excisable 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 may prescribe by rule, and those samples shall be dealt with and accounted for in such manner as the Commissioner may direct.

[Sub-s. (1) substituted by s. 30 of Act No. 105 of 1969, by s. 35 of Act No. 59 of 1990, by s. 66 of Act No. 45 of 1995 and by s. 39 of Act No. 61 of 2008.]

Wording of Sections

(2) For the purpose of determining the duty leviable in respect of any goods comprising a single consignment, or in any vessel, tank or other container of goods, the nature or characteristics of all the goods in that consignment, vessel, tank or other container shall be deemed to correspond to the nature or characteristics of any sample taken by the officer from such consignment, vessel, tank or other container.

107. Expenses of landing, examination, weighing, analysis, etc.-(1) (*a*) All handling of and dealing with goods for the purposes of this Act shall be performed by or at the expense and risk of-

(i) the importer, exporter, manufacturer, owner or other person, whoever is in control of the goods, except in the case of goods examined at a customs and excise warehouse, where such handling of and dealing with goods shall be performed at the expense and risk of the owner thereof or the licensee of such warehouse;

(ii) in the case of goods in transit through the Republic the person who enters the goods for such transit; or

(iii) in the case of goods for transhipment at any place in the Republic, the person who declares the goods on any cargo report for such transhipment.

[Para. (*a*) substituted by s. 34 (1) (*a*) of Act No. 21 of 2006 with effect from 15 January, 2008.]

Wording of Sections

(*b*) Any goods remaining in the custody or under the control of the Commissioner 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).

[Para. (*b*) added by s. 11 of Act No. 93 of 1978 and substituted by s. 33 of Act No. 34 of 2004.]

Wording of Sections

(2) (*a*) (i) 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 or her, allow goods to pass from his or her control until the provisions of this Act or any law relating to the importation, exportation, transhipment or transit carriage through the Republic of goods, have been complied with in respect of such goods.

(ii) The State or the Commissioner or any officer shall in no case be liable in respect of any claim arising out of the detention or examination of goods or for the costs of such detention or examination.

(iii) Such examination shall include any examination contemplated in section 4 (8A).

[Para. (*a*) substituted by s. 6 of Act No. 89 of 1983, by s. 67 of Act No. 45 of 1995 and by s. 34 (1) (*b*) of Act No. 21 of 2006 with effect from 15 January, 2008.]

Wording of Sections

(*b*) Whenever the Commissioner considers it necessary for the purposes of paragraph (*a*) of this subsection or section 106 (1) that any goods should be analysed he may direct that such goods be analysed by a person designated by him and that the analysis be done in accordance with a method determined by him.

[Para. (*b*) added by s. 20 (*a*) of Act No. 85 of 1968 and substituted by s. 31 of Act No. 105 of 1969.]

Wording of Sections

(3) The cost of analysis of any goods for the purposes of subsection (2) (*a*) shall be borne by the importer, exporter, manufacturer or owner of such goods except where the Commissioner considers the analysis necessary for the purposes of subsection (2) (*a*) and the result of the analysis confirms the correctness of the declaration or bill of entry made or presented by such importer, exporter, manufacturer or owner in respect of such goods: Provided that the cost of analysis shall in no case be borne by the State where it is carried out in connection with any application for refund of duty or substitution of any entry or where the result of analysis shows that the goods in question were incorrectly or insufficiently described on the relative prescribed invoice.

[Sub-s. (3) substituted by s. 20 (*b*) of Act No. 85 of 1968.]

Wording of Sections

(4) For the purposes of subsections (1) and (2) (*a*), unless the context indicates otherwise, "goods" includes any ship, vehicle or container contemplated in section 1 (2).

[Sub-s. (4) added by s. 11 of Act No. 10 of 2006.]

107A. Control in respect of manufacturers of certain goods or materials and persons who carry out processes in connection with such goods or materials.-(1) The manufacturer of any goods or materials used or capable of being used in the manufacture of any goods to which this Act applies and any person who carries out any preliminary, intermediate or supplementary process in connection with such goods or materials or any goods to which this Act applies, shall, in accordance with the directions of the Commissioner-

(*a*) register with the Commissioner any such formula, factory, machinery, instrument, appliance or apparatus used in connection with the manufacture of such goods or materials or the carrying out of any such process as the Commissioner may require;

(*b*) comply with such conditions relating to such manufacture or the carrying out of any such process as the Commissioner may impose in each case;

(*c*) keep such records as the Commissioner may require as to-

(i) the nature, characteristics, source, origin and quantities of the ingredients of such goods or materials and of such other particulars of the ingredients of such goods or materials as the Commissioner may specify;

(ii) the process carried out in respect of such goods or materials;

(iii) the persons on whose behalf such processes were carried out; and

(iv) the purchasers of such goods or materials;

(*d*) render such returns or furnish such certificates in respect of such goods or materials, as the Commissioner may require; and

(*e*) produce such documents in support of any records kept in terms of paragraph (*c*) or returns or certificates rendered or furnished in terms of paragraph (*d*), as the Commissioner may require.

(2) For the purposes of subsection (1) any preliminary, intermediate or supplementary process in connection with any goods or materials in that subsection mentioned, shall include any such process relating to the ordering, purchasing, selling or disposal of, and the entering into any contract for the manufacture of, any such goods or materials.

[S. 107A inserted by s. 13 of Act No. 57 of 1966. Sub-s. (2) added by s. 32 of Act No. 105 of 1969.]

108. . . . . . .

[S. 108 repealed by s. 36 of Act No. 59 of 1990.]

Wording of Sections

109. Destruction of goods and detention of ships or vehicles.-(1) If it is necessary to give effect to any law for the safe-guarding of public health or for the safety of the public or the State, the Commissioner may in concurrence with the authority administering such law at any time, and at the expense and risk of the importer, exporter, owner, master or pilot concerned, according as the Commissioner may determine-

(*a*) cause any goods under customs and excise control forthwith to be destroyed or otherwise disposed of; or

(*b*) delay the departure of any ship or vehicle from any place in the Republic for a period not exceeding forty-eight hours.

[Sub-s. (1) amended by s. 12 of Act No. 93 of 1978, by s. 68 of Act No. 45 of 1995 and by s. 139 of Act No. 60 of 2001.]

Wording of Sections

(2) No person shall be entitled to any compensation for loss arising out of any *bona fide* action of the Commissioner under subsection (1).

110. Instruments and tables.-(1) Except as elsewhere provided in this Act, the Commissioner may by rule prescribe the instruments, meters, gauges, and other appliances and the tables, formulae and other methods of calculation to be used in ascertaining the mass, quantity, strength, relative density, temperature, pressure or any other characteristic of any goods for the purposes of this Act.

(2) For calculating the full quantity of any goods which have been manufactured or used under the provisions of this Act, the Commissioner may by rule prescribe tables indicating the quantity of goods which shall be deemed to have been manufactured from any given quantity of any goods or the quantity of goods which shall be deemed to have been used in the manufacture of any given quantity of any goods manufactured therefrom.

[S. 110 amended by s. 10 of Act No. 103 of 1972 and substituted by s. 69 of Act No. 45 of 1995.]

Wording of Sections

111. Production of certificate of officer on registration of certain motor vehicles.-(1) Any motor vehicle registering authority in the Republic shall not register any imported motor vehicle unless a certificate issued by an officer is produced stating that the requirements of this Act in respect of such vehicle have been complied with.

(2) For the purposes of subsection (1) the expression **"imported motor vehicle"** includes any motor vehicle manufactured in the Republic which is re-imported into the Republic.

[S. 111 substituted by s. 11 of Act No. 71 of 1975 and by s. 19 of Act No. 52 of 1986. Sub-s. (2) substituted by s. 20 of Act No. 36 of 2007.]

Wording of Sections

112. Wreck.-(1) For the purposes of this section **"wreck"** includes any-

(*a*) flotsam, jetsam, lagan or derelict;

(*b*) portion of a ship or aircraft lost, abandoned, stranded or in distress;

(*c*) portion of the cargo, stores or equipment of any such ship or aircraft; and

(*d*) portion of the personal property on board such ship or aircraft when it was lost, abandoned, stranded or in distress.

[Sub-s. (1) substituted by s. 34 (*a*) of Act No. 34 of 2004.]

Wording of Sections

(2) Any person who has in his possession any wreck, shall without delay give notice thereof to the nearest Controller and shall (unless he is the owner of such wreck or the duly authorized agent of the owner) if required, forthwith deliver that wreck or permit it to be delivered to the said Controller, and unless it is necessary for the preservation or safe-keeping thereof, no person shall without the permission of the said Controller remove or alter in quantity or quality any such wreck.

(3) Wreck found in or brought into the Republic may, at any time after it has come under the control of the Controller, be disposed of by him in the manner set forth in section 43 (3), but shall otherwise be subject to the provisions of this Act.

[Sub-s. (3) substituted by s. 21 of Act No. 85 of 1968, by s. 70 (*a*) of Act No. 45 of 1995 and by s. 34 (*b*) of Act No. 34 of 2004.]

Wording of Sections

(4) . . . . . .

[Sub-s. (4) deleted by s. 70 (*b*) of Act No. 45 of 1995.]

Wording of Sections

113. Prohibition and restrictions.-(1) The importation of the following goods is hereby prohibited, namely-

(*a*) . . . . . .

[Para. (*a*) substituted by s. 11 (*a*) of Act No. 103 of 1972 and deleted by s. 25 of Act No. 86 of 1982.]

Wording of Sections

(*b*) cigarettes with a mass of more than 2 kilograms per 1 000 cigarettes;

[Para. (*b*) substituted by s. 11 (*a*) of Act No. 103 of 1972.]

Wording of Sections

(*c*) . . . . . .

[Para. (*c*) deleted by s. 25 of Act No. 86 of 1982.]

Wording of Sections

(*d*) . . . . . .

[Para. (*d*) amended by s. 11 (*b*) of Act No. 103 of 1972 and by s. 5 of Act No. 68 of 1973 and deleted by s. 25 of Act No. 86 of 1982.]

Wording of Sections

(*e*) . . . . . .

[Para. (*e*) deleted by s. 17 (*a*) of Act No. 68 of 1989.]

Wording of Sections

(*f*) . . . . . .

[Para. (*f*) substituted by s. 49 (*a*) of Act No. 42 of 1974 and deleted by s. 14 (*a*) of Act No. 105 of 1992.]

Wording of Sections

(*g*) . . . . . .

[Para. (*g*) deleted by s. 73 (*a*) of Act No. 30 of 1998.]

Wording of Sections

(*h*) prison-made and penitentiary-made goods;

(*i*) and (*j*) . . . . . .

[Paras. (*i*) and (*j*) deleted by s. 25 of Act No. 86 of 1982.]

Wording of Sections

(*k*) . . . . . .

[Sub-s. (1) amended by s. 14 (*b*) of Act No. 57 of 1966. Para. (*k*) inserted by s. 14 (*a*) of Act No. 57 of 1966 and deleted by s. 12 (*a*) of Act No. 98 of 1993.]

Wording of Sections

(2) Goods which purport to have been imported under a permit, certificate or other authority in terms of any provision of this Act or any other law shall be deemed to have been imported in contravention of such provision unless the permit, certificate or other authority in question is produced to the Controller.

[Sub-s. (2) substituted by s. 14 (*c*) of Act No. 57 of 1966 and by s. 73 (*b*) of Act No. 30 of 1998.]

Wording of Sections

(3) . . . . . .

[Sub-s. (3) substituted by s. 49 (*b*) of Act No. 42 of 1974 and deleted by s. 14 (*b*) of Act No. 105 of 1992.]

Wording of Sections

(4) The Minister may by notice in the *Gazette* suspend the operation of any provision of subsection (1), whenever such suspension would be in the public interest.

[Sub-s. (4) substituted by s. 71 (*a*) of Act No. 45 of 1995.]

Wording of Sections

(5) and (6) . . . . . .

[Sub-ss. (5) and (6) deleted by s. 7 of Act No. 89 of 1983.]

(7) The Commissioner may by rule prohibit or restrict the coastwise carriage or the transit carriage through the Republic of any goods referred to in subsection (1) or of any other goods in respect of which he considers any such prohibition or restriction necessary in the public interest.

[Sub-s. (7) substituted by s. 71 (*b*) of Act No. 45 of 1995.]

Wording of Sections

(8) (*a*) An officer may, for the purposes of any law other than this Act or at the request of a member of the police force or the authority administering such law, detain any goods while such goods are under customs control.

(*b*) Such goods may be so detained where they are found or shall be removed to and stored at a place of security determined by such officer.

(*c*) No person shall remove any goods from any place where they were so detained or from a place of security determined by an officer.

(*d*) Any goods so detained may be released by the Commissioner to the South African Police Service, the authority administering such law, the importer or the exporter.

[Sub-s. (8) amended by s. 31 of Act No. 84 of 1987 and by s. 17 (*b*) of Act No. 68 of 1989 and substituted by s. 12 (*b*) of Act No. 98 of 1993. Para. (*d*) substituted by s. 71 (*c*) of Act No. 45 of 1995.]

Wording of Sections

(9) No person shall manufacture cigarettes the mass of the tobacco of which exceeds 2 kilograms per 1 000 cigarettes.

[Sub-s. (9) substituted by s. 11 (*d*) of Act No. 103 of 1972.]

Wording of Sections

(10) . . . . . .

[Sub-s. (10) added by s. 14 (*d*) of Act No. 57 of 1966 and deleted by s. 12 (*c*) of Act No. 98 of 1993.]

Wording of Sections

113A. Powers and duties of officers in connection with counterfeit goods.-(1) An officer may-

(*a*) detain any goods to ascertain whether such goods are counterfeit goods as contemplated in the Counterfeit Goods Act, 1997 (Act No. 37 of 1997); or

(*b*) notwithstanding anything to the contrary contained in the said Act, while acting as an inspector as defined in that Act-

(i) seize and detain any goods when requested to do so in accordance with the provisions of section 15 of the said Act whether or not such goods are under customs control;

(ii) seize and detain any goods in accordance with the provisions of the said Act where such officer has reasonable cause to believe that such goods are *prima facie* counterfeit goods as defined in that Act while such goods are under customs control; or

(iii) seize and detain any goods while such goods are in transit through the Republic or transit goods found in the area of control of any Controller where such officer has reasonable cause to believe that such goods are *prima facie* counterfeit goods as defined in the said Act.

(2) An officer-

(*a*) may refuse to detain any goods as contemplated in subsection (1) (*b*) (i) in circumstances where the request to do so does not conform with the requirements of the said Act; and

(*b*) shall not seize or detain any counterfeit goods where the Commissioner is not indemnified against claims of any nature which may result from such seizure and detention.

(3) Subject to section 43 (6), no goods seized or detained by an officer acting as an inspector as contemplated in the Counterfeit Goods Act, 1997, may be stored in a State warehouse except where such goods are detained or seized for purposes of this Act.

(4) Notwithstanding anything to the contrary contained in any other law, no person shall be entitled to any compensation for any loss or damage to any goods to which this section relates or any loss or damage sustained resulting from any *bona fide* act of any officer in respect of such goods.

(5) The Commissioner may make rules-

(*a*) regarding the procedures to be followed by an officer when exercising any power or performing any duty in connection with the detention of any goods under the provisions of subsection (1) (*a*) or the seizure and detention of counterfeit goods;

(*b*) prescribing such forms as may be required to be completed for purposes of this section; and

(*c*) concerning any other matter which the Commissioner may consider reasonably necessary and useful for the purpose of administering the provisions of this section.

[S. 113A inserted by s. 52 of Act No. 30 of 2002.]

(Editorial Note: S. 113A to be repealed by s. 21 (1) of Act No. 36 of 2007 with effect from the date on which section 17 (1) of Act No. 36 of 2007 comes into operation - date not fixed.)

Wording of Sections

114. Duty constitutes a debt to the State.-(1) (*a*) (i) Any amount of any duty, interest, penalty or forfeiture incurred under this Act and which is payable in terms of this Act, shall, when it becomes due or is payable, be a debt due to the State by the person concerned and shall be recoverable by the Commissioner in the manner hereinafter provided.

[Sub-para. (i) substituted by s. 73 (*a*) of Act No. 20 of 2006.]

Wording of Sections

(ii) If any person fails to pay any amount of any duty, interest, fine, penalty or forfeiture incurred under this Act, when it becomes due or is payable by such person, the Commissioner may file with the clerk or registrar of any competent court a statement certified by him as correct and setting forth the amount thereof so due or payable by that person, and such statement shall thereupon have all the effects of, and any proceedings may be taken thereon as if it were a civil judgement lawfully given in that court in favour of the Commissioner for a liquid debt of the amount specified in the statement.

(iii) (*aa*) The Commissioner may by notice in writing addressed to the clerk or registrar, withdraw the statement referred to in subparagraph (ii), and such statement shall thereupon cease to have any effect: Provided that the Commissioner may institute proceedings afresh under the subsection in respect of any duty, interest, penalty or forfeiture referred to in the withdrawn statement.

[Item (*aa*) substituted by s. 73 (*b*) of Act No. 20 of 2006.]

Wording of Sections

(*bb*) Notwithstanding anything contained in the Magistrates' Courts Act, 1944 (Act No. 32 of 1944), a statement for any amount whatsoever may be filed in terms of subparagraph (ii) with the clerk of the magistrate's court having jurisdiction in respect of the person by whom such amount is payable in accordance with the provisions of this Act.

(*cc*) Pending the conclusion of any proceedings, whether internally or in any court, regarding a dispute as to the amount of any duty, interest, fine, penalty or forfeiture payable, the statement filed in terms of subparagraph (ii) shall, for purposes of recovery proceedings contemplated in subparagraph (ii), be deemed to be correct.

(iv) (*aa*) (A) Any imported or excisable goods, vehicles, machinery, plant or equipment, any goods in any customs and excise warehouse, any goods in a rebate store room, any goods in the custody or under the control of the Commissioner and any goods in respect of which an excise duty or fuel levy is prescribed, and any materials for the manufacture of such goods, of which such person is the owner, whether imported, exported or manufactured before or after the debt became so due and whether or not such goods are found in or on any premises in the possession or under the control of the person by whom the debt is due, may be detained in accordance with the provisions of subsection (2) and shall be subject to a lien until such debt is paid.

(B) Whenever a person alleges that he or she is not the owner of goods as contemplated in subitem (A), he or she must furnish proof thereof to the Commissioner within 14 days from the date of the detention of the goods.

(C) Where the person concerned proves that he or she is not the owner of the goods as contemplated in subitem (B), the Commissioner must without delay release such goods from the operation of the lien.

(D) Any person who, without reasonable cause, fails to comply with subitem (B), shall be guilty of an offence and liable on conviction to a fine not exceeding R20 000 or to imprisonment for a period not exceeding five years or to both such fine and such imprisonment.

(E) In the absence of evidence to the contrary which raises a reasonable doubt, proof by the Commissioner of the failure by the person concerned to comply with subitem (B) shall be sufficient evidence of the absence of reasonable cause.

(*bb*) Any imported or excisable goods, vehicles, machinery, plant or equipment, in the possession or under the control of such person or in or on any premises in the possession or under the control of such person and in respect of which such person has entered into any credit agreement as contemplated in the National Credit Act, 2005 and of which the right, title or interest of such person may be readily established and excussed, may be detained in accordance with the provisions of subsection (2) and shall, subject to subparagraph (vi) (*cc*), be subject to a lien until such debt is paid.

[Sub-para. (iv) substituted by s. 94 (*a*) of Act No. 31 of 2005. Sub-item (*bb*) amended by s. 172 (2) of Act No. 34 of 2005.]

Wording of Sections

(v) Whenever any of the goods mentioned in subparagraph (iv) (*bb*) are subject to a lien the person concerned shall without delay advise the Commissioner, or the officer detaining and subjecting such goods to a lien, of the existence of any such agreement setting forth at least the following-

(*aa*) The name and address of the credit provider as intended in the said National Credit Act, 2005;

[Sub-item (*aa*) amended by s. 172 (2) of Act No. 34 of 2005.]

(*bb*) The amount of the principal debt as intended in the National Credit Act, 2005 in respect of the applicable credit agreement;

[Sub-item (*bb*) amended by s. 172 (2) of Act No. 34 of 2005.]

(*cc*) The duration of the agreement;

(*dd*) The outstanding balance due; and

(*ee*) A copy of such agreement.

(vi) (*aa*) The Commissioner shall without delay advise the credit provider concerned of such detention and lien and shall enquire as to the right, title or interest of such person in such goods.

[Sub-item (*aa*) amended by s. 172 (2) of Act No. 34 of 2005.]

(*bb*) The credit provider concerned shall, where such right, title or interest is determinable, without delay advise the Commissioner of such right, title or interest of the person concerned in the goods, expressed as a liquid amount, and the lien shall thereafter serve as security for such liquid amount and such amount may be recovered as provided for in paragraph (ii).

[Sub-item (*bb*) amended by s. 172 (2) of Act No. 34 of 2005.]

(*cc*) In circumstances where such credit provider advises the Commissioner that the right, title or interest of the person concerned is economically insignificant or does not exist, the Commissioner shall without delay remove such goods from the operation of the lien.

[Sub-item (*cc*) amended by s. 172 (2) of Act No. 34 of 2005.]

(*dd*) Any person who, without reasonable cause fails to advise the Commissioner of the existence of any credit agreement contemplated in subparagraph (v) shall be guilty of an offence and liable on conviction to a fine not exceeding R20 000,00 or to imprisonment for a period not exceeding five years or to both such fine and such imprisonment.

(*ee*) In the absence of evidence to the contrary which raises a reasonable doubt, proof by the Commissioner of the failure to advise the Commissioner of the existence of such credit agreement shall be sufficient evidence of the absence of reasonable cause.

[Para. (*a*) substituted by s. 33 (*a*) of Act No. 105 of 1969, by s. 12 (*a*) of Act No. 71 of 1975, by s. 13 of Act No. 101 of 1985, by s. 32 (1) of Act No. 84 of 1987, by s. 37 (1) (*a*) of Act No. 59 of 1990, amended by s. 34 (1) of Act No. 34 of 1997 and substituted by s. 112 (*a*) of Act No. 74 of 2002.]

Wording of Sections

(*a*A) Any plant and stills for the manufacture of any goods in respect of which an excise 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): Provided that the Commissioner may allow any such plant or still to be used under such conditions as he may impose in each case.

[Para. (*a*A) inserted by s. 12 (*b*) of Act No. 71 of 1975, substituted by s. 32 (1) of Act No. 84 of 1987 and amended by s. 37 (1) (*b*) of Act No. 59 of 1990.]

Wording of Sections

(*a*B) 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.

[Para. (*a*B) inserted by s. 37 (1) (*c*) of Act No. 59 of 1990.]

(*a*C) Any dutiable goods of whatever nature, which are stored in any customs and excise warehouse licensed for any purpose under this Act shall be subject to a lien, as if the goods are detained in accordance with the provisions of subsection (2), as security for the duty on such goods from the time of receipt of such goods in such warehouse until such goods have been duly entered for any purpose under this Act and any liability for duty of the licensee of such warehouse in respect of such goods has ceased in terms of this Act.

[Para. (*a*C) added by s. 140 of Act No. 60 of 2001.]

(*b*) (i) The claims of the State shall have priority over the claims of all persons upon anything subject to a lien contemplated in paragraph (*a*), (*a*A), (*a*B) or (*a*C) and may be enforced in accordance with the provisions of this section if the debt is not paid upon demand after the person by whom the debt is due is in writing advised of such debt and of the date on which such debt becomes due and is payable.

(ii) The Commissioner and the credit provider concerned may, notwithstanding anything to the contrary in this Act or any other law contained, and subject to such conditions as may be agreed upon, agree to dispose of any goods contemplated in paragraph (*a*) (iv) (*bb*) in order to preserve and secure the interests of all parties in such goods and in the proceeds of the disposal of such goods pending the resolution of any dispute in respect of which an interest in such goods is secured by such lien.

[Sub-para. (ii) amended by s. 172 (2) of Act No. 34 of 2005 (English only).]

Wording of Sections

(iii) In the event of any goods subjected to a lien being attached pursuant to a warrant of execution, such goods shall, notwithstanding anything to the contrary contained in the said Magistrates' Court Act, 1944 (Act No. 32 of 1944) or its rules, where such goods are not detained in the State Warehouse, be removed by an officer to the State Warehouse and such goods may thereupon be disposed of in accordance with the provisions of this section.

(iv) Where, in addition to any amount of duty which is due or is payable by any person in terms of this Act, any penalty, forfeiture or interest is incurred under this Act and is payable by such person, any payment made by that person or any amount recovered pursuant to any sale of such goods as contemplated in this section shall be utilised by the Commissioner to discharge such payment or amount in the order of-

(*aa*) any penalty, interest, forfeiture, duty and expenses incurred by or charges due to the Commissioner; and

[Item (*aa*) substituted by s. 73 (*c*) of Act No. 20 of 2006.]

Wording of Sections

(*bb*) payment of the overplus, on application, if any, to the person by whom the debt was due.

[Para. (*b*) substituted by s. 12 (*c*) of Act No. 71 of 1975, amended by s. 71 (*a*) of Act No. 53 of 1999 and substituted by s. 112 (*b*) of Act No. 74 of 2002. Sub-para. (iv) substituted by s. 94 (*b*) of Act No. 31 of 2005 and amended by s. 98 of Act No. 35 of 2007.]

Wording of Sections

(*c*) Any refund of duty or a deposit or any other amount due to such person in respect of any matter whatsoever, may be set off against such debt.

(2) (*a*) The Commissioner or an officer may detain anything referred to in subsection (1) (*a*) by sealing, marking, locking, fastening or otherwise securing or impounding it on the premises where it is found or by removing it to a place of security determined by the Commissioner: Provided that the Commissioner may allow any such thing to be used under such conditions as he may impose in each case which conditions shall include that the person who is allowed to use such thing shall not enter into any agreement whereby-

(i) ownership or possession of such thing is transferred or relinquished in any manner whatsoever to any other person;

(ii) such thing is pledged or otherwise hypothecated in favour of any other person.

(*b*) (i) Any agreement entered into contrary to those conditions shall be null and void.

(ii) If such person so enters into any such agreement or otherwise deals with such thing contrary to any conditions imposed by the Commissioner, an officer may detain such thing wheresoever and in possession of whomsoever found and remove it to a place of security, whereafter the Commissioner may dispose thereof at any time as contemplated in subsection (1) (*b*) if the debt has not been paid.

(iii) The person by whom the debt is due shall be liable for all reasonable costs and expenses incurred by and charges due to the Commissioner in respect of such detention or removal of the thing concerned.

[Sub-s. (2) substituted by s. 33 (*b*) of Act No. 105 of 1969, by s. 12 (*d*) of Act No. 71 of 1975 and by s. 71 (*b*) of Act No. 53 of 1999.]

Wording of Sections

(2A) Except with the permission of the Commissioner, no person shall remove-

(*a*) any plant or stills, subject to a lien in terms of subsection (1) (*a*A), from the place indicated by an officer;

(*b*) anything detained under subsection (2) from the premises referred to in that subsection or from the place of security to which it may have been removed under that subsection.

[Sub-s. (2A) inserted by s. 36 of Act No. 112 of 1977 and amended by s. 71 (*c*) of Act No. 53 of 1999.]

Wording of Sections

(3) Any reference to goods in this section shall be deemed to include a reference to the containers of such goods.

[Editorial Note: The provisions of s. 114 have been declared constitutionally invalid to the extent as set out in the Constitutional Court Order published under Government Notice No. R.744 in *Government Gazette* 23453 of 31 May, 2002.]

114A. Power to appoint agent.-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, penalty or forfeiture payable by such other person under this Act, and

[Para. (*a*) substituted by s. 22 of Act No. 36 of 2007.]

Wording of Sections

(*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.

[S. 114A inserted by s. 154 of Act No. 45 of 2003.]

114B. Remedies of Commissioner against agent or trustee.-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 the Commissioner would have against the property of any person liable to pay any duty, interest, penalty or forfeiture payable under this Act and in as full and ample a manner.

[S. 114B inserted by s. 154 of Act No. 45 of 2003 and substituted by s. 23 of Act No. 36 of 2007.]

Wording of Sections

115. Entries, oaths, etc., made outside the Republic of full force and effect.-Any entry, writing, oath or declaration required to be made under this Act shall, if made outside the Republic to or before an officer of the Republic, be binding and of full force and effect in the Republic.

116. Manufacture of excisable goods solely for use by the manufacturer thereof.-(1) Notwithstanding anything to the contrary contained in this Act, the Commissioner may, in respect of any excisable goods manufactured by natural persons or institutions for their own use and not for sale or disposal in any manner-

(*a*) if he considers that such manufacturing results or is likely to result in loss of revenue or is likely to be detrimental to any industry in the Republic to such extent as to warrant any action described in this paragraph-

(i) by rule prohibit the sale to any such person of any plant, apparatus, appliance, instrument or material used or capable of use in or designed for the manufacture of such excisable goods or impose such conditions in respect of the advertising or sale of such plant, apparatus, appliance, instrument or material as he deems fit;

(ii) for the purpose of calculating the duty payable on such excisable goods manufactured by any such person, estimate the quantity thereof so manufactured or the strength or other characteristic of any such quantity in any manner he may deem fit; or

(iii) in respect of any quantity of such excisable goods in respect of which duty will become payable, accept duty (or any portion thereof), calculated according to any basis which he deems reasonable, from any person who sells or disposes of any material for use in the manufacture of such excisable goods to the manufacturer thereof;

[Sub-para. (iii) substituted by s. 72 (*a*) of Act No. 45 of 1995.]

Wording of Sections

(*b*) (i) if he considers that such manufacturing does not result or is not likely to result in loss of revenue or is not or is not likely to be detrimental to any industry in the Republic to the extent stated in paragraph (*a*); or

(ii) if in the manufacture of such excisable goods used parts or material on which any duty had been paid previously was used to such extent as he deems reasonable,

exempt such excisable goods from the whole or any portion of the duty thereon, subject to such conditions as he may in each case impose.

[Sub-s. (1) amended by s. 27 of Act No. 32 of 2005 and by s. 142 (*a*) of Act No. 22 of 2012.]

Wording of Sections

(2) . . . . . .

[Sub-s. (2) deleted by s. 72 (*b*) of Act No. 45 of 1995.]

Wording of Sections

(3) The manufacturer of any goods exempted from the whole or any portion of the duty in terms of this section, shall be liable for payment of the whole or such portion of the duty as the Commissioner may determine if they are sold or disposed of by such manufacturer.

(4) The Commissioner may, subject to such conditions as he may in each case impose, exempt any goods to which this section relates from any provision of Chapter IV, V or VIII of this Act.

[S. 116 substituted by s. 18 of Act No. 95 of 1965.]

(5) The Commissioner may make rules-

(*a*) specifying any requirement to qualify for an exemption contemplated in subsection (1);

(*b*) regarding any matter which is required or permitted in terms of this section to be prescribed by rules;

(*c*) in respect of any other matter which the Commissioner may reasonably consider to be necessary and useful to achieve the efficient and effective administration of the provisions of this section.

[Sub-s. (5) added by s. 142 (*b*) of Act No. 22 of 2012.]

116A. . . . . . .

[S. 116A inserted by s. 34 of Act No. 105 of 1969 and repealed by s. 33 of Act No. 84 of 1987.]

Wording of Sections

117. Statistics.-(1) Such statistics of the import and export trade of the Republic and of excisable goods manufactured in the Republic 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.

[Sub-s. (1) substituted by s. 34 (*a*) of Act No. 84 of 1987 and by s. 38 of Act No. 59 of 1990.]

Wording of Sections

(2) For the purposes of subsection (1) any person-

(*a*) entering any goods for import or export shall furnish, in addition to any particulars necessary for making due entry of such goods, such particulars of such goods as the Commissioner may from time to time require for the compilation of import and export statistics; or

(*b*) manufacturing any excisable goods or fuel levy goods shall furnish in such manner and at such times as the Commissioner may require the value for excise duty purposes in terms of section 69 or for fuel levy purposes of all excisable goods or fuel levy goods manufactured by him, whether or not such goods are subject to *ad valorem* duty or to a duty calculated according to a unit of quantity, volume or other measurement, as the case may be.

[Sub-s. (2) added by s. 20 of Act No. 52 of 1986. Para. (*b*) substituted by s. 34 (*b*) of Act No. 84 of 1987.]

Wording of Sections

(3) For the purposes of paragraph (*b*) of subsection (2) the value for fuel levy purposes shall be deemed to be the value for excise duty purposes in terms of section 69 in respect of such goods manufactured in the Republic.

[S. 117 substituted by s. 35 of Act No. 105 of 1969. Sub-s. (3) added by s. 34 (*c*) of Act No. 84 of 1987.]

Wording of Sections

118. Delegation of powers and assignment of duties.-The Minister may, subject to such conditions as he may in each case impose-

(*a*) delegate any of the powers which may be exercised or assign any of the duties which shall be performed by him in accordance with the provisions of sections 48, 49, 51, 52, 53, 56, 56A, 57, 60 (3), 75 (15), 99 (4), 105 and 113 (4) to the Deputy Minister of Finance;

(*b*) and for such period as he may specify in each case, delegate any of his powers under this Act (except any power relating to the amendment of any Schedule or the making of any regulation) to the Commissioner.

[S. 118 substituted by s. 72 of Act No. 53 of 1999.]

Wording of Sections

119. Substitution of Schedules.-Whenever any Schedule to this Act or any part or item thereof, is substituted and the new Schedule or part or item provides that the Minister or the Commissioner may impose or prescribe any condition or approve of any matter or thing in relation to any class of goods, any condition imposed or prescribed or approval given by the Minister or the Commissioner under the Schedule or part or item in relation to such class of goods before substitution shall be deemed to have been imposed, prescribed or given under the new Schedule or part or item.

119A. Special provisions for customs modernisation.-(1) Notwithstanding anything to the contrary contained in this Act, for the purposes of modernising customs or excise administration where-

(*a*) enabling provisions for the implementation of any part of a modernisation program are urgently required; and

(*b*) it is not possible to effect timeously the necessary amendment to any relevant section of this Act,

the Commissioner may by rule, in respect of any person or class of persons or any class or kind of goods, ship or vehicle or any activity regulated by this Act-

(i) adapt any existing power, duty or function contemplated in this Act for purposes of establishing alternative or revised administrative policies and procedures that will give effect to the modernisation program;

(ii) include in such rules any requirement, process or procedure relating to-

(*aa*) any electronic communication contemplated in sections 7, 7A, 8, 101A or 101B, or as may be reasonably necessary in respect of any other activity which is required to be regulated by this Act;

(*bb*) the processing of travellers;

(*cc*) the clearance of goods;

(*dd*) the import, export or handling of goods;

(*ee*) the licensing and the operation of licensed premises;

(*ff*) the control over the movement of any person, ship, vehicle or goods;

(*gg*) the manufacture of goods;

(*hh*) the administration of any international agreement; and

(*ii*) any other activity regulated by this Act.

[Sub-s. (1) amended by s. 4 of Act No. 25 of 2011.]

Wording of Sections

(2) Any rule contemplated in subsection (1)-

(*a*) must be consistent with the objectives of this Act;

(*b*) may exempt any person or class of persons or any class or kind of goods, ship or vehicle or any activity regulated by this Act from the application of such rule in the circumstances and for the period as may be specified in such rule.

(3) Any rule made or any amendment or withdrawal of or insertion in such rule under this section in any calendar year shall, unless Parliament otherwise provides, lapse on the last day of the next calendar year, but without detracting from the validity of such rule or any amendment, withdrawal or insertion before it has so lapsed.

[S. 119A inserted by s. 32 of Act No. 18 of 2009.]

(Editorial Note: Please refer to s. 18 of Act No. 44 of 2014-Any rule made under section 119A of this Act or any amendment or withdrawal of or insertion in such rule during the period 1 September 2013 up to and including 30 September 2014 shall not lapse by virtue of section 119A (3) of this Act.)

120. Regulations and rules.-(1) The Commissioner may make rules-

(*a*) prescribing the powers, duties and hours of attendance of officers;

(*b*) determining services for which charges shall be payable the rate and the method of payment of such charges and the conditions attaching to such services;

[Para. (*b*) substituted by s. 39 (*a*) of Act No. 59 of 1990.]

Wording of Sections

(*c*) as to the reporting inwards and outwards of ships and aircraft (including such reporting of ships or aircraft calling or landing at places not appointed as places of entry or customs and excise airports under this Act), the entry or departure of vehicles overland, the landing, loading, removal, detention, release, examination, conveyance and handling of cargo (including transit and coastwise and transhipment cargo), goods under customs control, customs controlled areas, the control of persons (including their baggage and goods) entering or leaving the Republic, the placing into or removal from any State warehouse of goods and the removal in bond of goods;

[Par. (*c*) substituted by s. 40 of Act No. 61 of 2008.]

Wording of Sections

(*d*) as to the control of the storage or manufacture of goods in customs and excise warehouses (including the suitability of any buildings, plant and method of manufacture for the purposes of this Act, the hours of conducting any or all operations, the securing or marking of such plant, the inspection of such warehouses and the removal of goods from such warehouses), the testing of the output of stills, the conditions on which stills may be made, possessed, imported, disposed of or used and the fresh fruit which may be used by an agricultural distiller in the Republic for the distillation of spirits;

[Para. (*d*) substituted by s. 11 of Act No. 19 of 1994 and by s. 74 of Act No. 30 of 1998.]

Wording of Sections

(*e*) as to the importation, exportation, transit or coastwise carriage of goods, the entry of goods, the payment of duties and other charges and fees, the costs which shall, for the purposes of section 46 be included in or excluded from the production cost of goods in general or of goods of any class or kind, and the movement of goods to and from any territory with the government of which an agreement has been concluded under section 49 or 51,

[Para. (*e*) substituted by s. 24 (*a*) of Act No. 36 of 2007.]

Wording of Sections

(*f*) prescribing the form of and the particulars to be inserted on invoices or certificates in respect of any

goods to which this Act applies and which are imported into or manufactured in the Republic;
[Para. (*f*) substituted by s. 36 (*a*) of Act No. 105 of 1969.]

Wording of Sections

(*g*) as to the collection of duty by means of stamps, the method of applying stamps or stamp impressions to containers, the cancellation of stamps, the use of franking or counting machines, inks, dies and other appliances and materials, the accounting for stamp labels and stamp duties and the disposal of stamp labels;

(*h*) as to the collection of excise duties and fuel levy, the time, manner and terms of payment and the calculation thereof;
[Para. (*h*) substituted by s. 36 (*b*) of Act No. 105 of 1969, by s. 35 of Act No. 84 of 1987 and by s. 39 (*b*) of Act 59 of 1990.]

Wording of Sections

(*i*) as to the collection of duties which become payable under subsection (2) of section fifty-eight;

(*j*) as to the circumstances under which licences may be granted and the manner of issuing and renewing licences;

(*k*) governing the entry of goods under any item of Schedule No. 3, 4, 5, or 6 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, store-rooms and methods of manufacture for the purposes of this Act to be complied with by such 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;
[Para. (*k*) substituted by s. 36 (*c*) of Act No. 105 of 1969 and by s. 39 (*c*) of Act No. 59 of 1990.]

Wording of Sections

(*l*) prescribing the returns and price lists to be rendered by importers or manufacturers or owners of any class or kind of goods;
[Para. (*l*) substituted by s. 36 (*c*) of Act No. 105 of 1969.]

Wording of Sections

(*m*) prescribing the form of any licence, bill of entry, certificate and any other document, register, stockbook or return which he considers necessary for the effective administration of this Act;

(*m*A) as to matters relating to security;
[Para. (*m*A) inserted by s. 73 (*b*) of Act No. 45 of 1995.]

(*m*B) as to matters relating to electronic payment of any amount required to be paid in terms of this Act;
[Para. (*m*B) inserted by s. 24 (*b*) of Act No. 36 of 2007.]

(*n*) as to all matters which by this Act are required or permitted to be prescribed by rule;
[Para. (*n*) substituted by s. 73 (*c*) of Act No. 45 of 1995.]

Wording of Sections

(*o*) as to such other matters as are necessary or useful to be prescribed for the purposes of this Act.
[Sub-s. (1) amended by s. 73 (*a*) of Act No. 45 of 1995.]

Wording of Sections

(2) . . . . . .
[Sub-s. (2) deleted by s. 73 (*d*) of Act No. 45 of 1995.]

Wording of Sections

(3) The rules made under this section may provide penalties for any contravention thereof or failure to comply therewith not exceeding the penalties mentioned in subsection (2) of section 78.
[Sub-s. (3) substituted by s. 73 (*e*) of Act No. 45 of 1995.]

Wording of Sections

121. Repeal of laws.-(1) Subject to the provisions of subsection (2), the laws specified in Schedule No. 9 are hereby repealed to the extent set out in the third column of that Schedule.
[Sub-s. (1) amended by s. 8 of Act No. 98 of 1970.]

Wording of Sections

(2) Anything done in terms of any provision of any law repealed by subsection (1) shall be deemed to have been done under the corresponding provision of this Act.

122. Short title and commencement.-This Act shall be called the Customs and Excise Act, 1964, and shall come into operation on a date to be fixed by the State President by proclamation in the *Gazette*.

GENERAL NOTE

Schedules 1 to 6 inclusive and Schedule 8 and 10 to this Act have been omitted from this publication, but are obtainable in the *Jacobsens Harmonized Customs Tariff* publication by LexisNexis as well as the Office of the Commissioner of Customs and Excise. Schedule 7 has been repealed by s. 47 of Act No. 59 of 1990.

Schedule No. 9

[Schedule No. 9, formerly Schedule No. 8, re-numbered by s. 37 (9) of Act No. 105 of 1969 and amended by s. 9 (14) of Act No. 98 of 1970.]

Wording of Sections

LAWS REPEALED

No. and Year	*Short Title*	*Extent of Repeal*
Act No. 55 of 1955	Customs Act, 1955.	The whole
Act No. 53 of 1956	Customs Amendment Act, 1956.	The whole
Act No. 62 of 1956	Excise Act, 1956.	The whole
Act No. 65 of 1957	Customs Amendment Act, 1957.	The whole
Act No. 67 of 1957	Excise Amendment Act, 1957.	The whole
Act No. 34 of 1958	Customs Further Amendment Act, 1958.	The whole
Act No. 35 of 1958	Excise Amendment Act, 1958.	The whole
Act No. 63 of 1959	Customs Amendment Act, 1959.	The whole
Act No. 65 of 1959	Customs Further Amendment Act, 1959.	The whole
Act No. 66 of 1959	Excise Amendment Act, 1959.	The whole
Act No. 55 of 1960	Excise Amendment Act, 1960.	The whole
Act No. 57 of 1960	Customs Amendment Act, 1960.	The whole
Act No. 50 of 1961	Excise Amendment Act, 1961.	The whole
Act No. 51 of 1961	Customs Amendment Act, 1961.	The whole
Act No. 84 of 1962	Excise Amendment Act, 1962.	The whole
Act No. 85 of 1962	Customs Amendment Act, 1962.	The whole
Act No. 84 of 1963	Customs and Excise Amendment Act, 1963.	The whole
Act No. 55 of 1964	Customs and Excise Amendment Act, 1964.	The whole