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| |  |  | | --- | --- | | **cid:image001.jpg@01D051DC.2BA3BB70**  **Customs News Bulletin** | | | |  |  |  |  |  |  |  |  |  | | --- | --- | --- | --- | --- | --- | --- | --- | --- | | |  |  |  |  |  |  |  |  | | --- | --- | --- | --- | --- | --- | --- | --- | | |  |  |  | | --- | --- | --- | | **cid:image002.jpg@01D051DC.2BA3BB70cid:image003.jpg@01D051DC.2BA3BB70cid:image004.jpg@01D051DC.2BA3BB70** |  | **cid:image005.jpg@01D051DC.2BA3BB70cid:image006.jpg@01D051DC.2BA3BB70**  **cid:image007.jpg@01D051DC.2BA3BB70cid:image008.jpg@01D051DC.2BA3BB70** | | **cid:image009.jpg@01D051DC.2BA3BB70** |  | |  | | --- | | 18 March 2015 | | | | | | | Latest Amendments and News |  | | |  |  |  |  | | --- | --- | --- | --- | | **HOW CUSTOMS WILL TREAT OFFENCES UNDER THE CUSTOMS CONTROL ACT AND CUSTOMS DUTY ACT**  Section 78 to 96 of the current Customs and Excise Act and sections 886 to 901 in Chapter 40 of the Customs Control Act No 30 of 2014 and sections 211 to 219 in Chapter 12 of the Customs Duty Act No 30 of 2014 deal with a number of offences and the penalties which may be imposed for contravening them. Most of these are regarded as serious offences.  Penalty guidelines have also been published under Annexure A which was attached to the fourth badge of the draft rules to the Customs Control Act (Chapters 32 to 41).  Annexure A contains the "penalty list" and has been incorporated in the document for ease of reference. Although it doesn't currently form part of the Rules, it will be published at a later stage as the list referred to in section 876(1)(a) of the Customs Control Act, 2014. [Download the draft rules and Annexure A from the SARS website by clicking here](http://www.sars.gov.za/AllDocs/LegalDoclib/Drafts/LAPD-LPrep-Draft-2014-90%20-%20Draft%20Customs%20Control%20Rules%20Fourth%20Batch%20Chapters%2032%20to%2041.pdf).  Let us look at compare some offences of the current Customs and Excise Act and see how it will change under the new legislation.  **Serious offences**  Section 80(1)(i) of the Customs and Excise Act No 91 of 1964 / Customs Control Act No 31 of 2014 section 887 (1)(f). Deals with the improper use of a Licence, permit or other document.  Section 80(1)(j) of the Customs and Excise Act No 91 of 1964 / Customs Control Act No 31 of 2014 section 887 (1) (b). Claiming or receiving any rebate, drawback, refund or other payment to which you know you are not entitled. These types of offences attract fines not exceeding R 20 000 or treble the value of the goods or imprisonment not exceeding five years or to both the fine and imprisonment in terms of the Customs and Excise Act No 91 of 1964.  This is a Category 1 offence in the Customs Control Act No 31 of 2014. The Customs Duty Act No 30 of 2014 also deals with Category 1 in Chapter 12.  A person convicted of a Category 1 offence in terms of section 890(1) the Customs Control Act is liable to imprisonment for a period not exceeding five (5) years or a fine not exceeding R 1000 000 or a higher amount prescribed in terms the Adjustment of Fines Act No 101 of 1991, or to both the fine and imprisonment.  If a person is convicted for a Category 1 offence again within 5 years of the date of the original conviction, the court must consider the imposition of a period of imprisonment not exceeding 5 years without the option of a fine in terms of  section 890(2).  **Other offences**  Section 83 (c) of the Customs and Excise Act No 91 of 1964/Customs Control Act No 31 of 2014 section 887(1)(n).  Making an arrangement with the supplier e.g. to alter an invoice etc.  The penalty is the same as for Section 80 of the Customs and Excise Act No 91 of 1964. The punishment will also be the same as for section 890 of the Customs Control Act No 30 of 2014 as this is a Category 1 offence too.  Section 84 (False documents and declarations) of the Customs and Excise Act No 91 of 1964/Customs Control Act No 31 of 2014 section 887(1)(b)This is regarded as an extremely serious offence and the penalty is a fine not exceeding R 40 000 or treble the value of the goods or ten years imprisonment or both such fine and imprisonment in terms of the Customs and Excise Act No 91 of 1964.  This is a Category 1 offence in the Customs Control Act No 31 of 2014. The Customs Duty Act No 30 of 2014 also deals with Category 1 in Chapter 12.  A person convicted of a Category 1 offence in terms of section 890(1) the Customs Control Act is liable to imprisonment for a period not exceeding five (5) years or a fine not exceeding R 1000 000 or a higher amount prescribed in terms the Adjustment of Fines Act No 101 of 1991, or to both the fine and imprisonment.  If a person is convicted for a Category 1 offence again within 5 years of the date of the original conviction, the court must consider the imposition of a period of imprisonment not exceeding 5 years without the option of a fine in terms of section 890 (2).  A person convicted of a Category 1 offence in terms of section 215 (1) the Customs Duty Act No 30 of 2014 is liable to imprisonment for a period not exceeding five (5) years or a fine not exceeding R 1000 000 or a higher amount prescribed in terms the Adjustment of Fines Act No 101 of 1991, or to both the fine and imprisonment.  If a person is convicted for a Category 1 offence again within 5 years of the date of the original conviction, the court must consider the imposition of a period of imprisonment not exceeding 5 years without the option of a fine in terms of section 215 (2).  A person convicted of a Category 1 offence in terms of section 215 (1) the Customs Duty Act No 30 of 2014 is liable to imprisonment for a period not exceeding five (5) years or a fine not exceeding R 1000 000 or a higher amount prescribed in terms the Adjustment of Fines Act No 101 of 1991, or to both the fine and imprisonment.  If a person is convicted for a Category 1 offence again within 5 years of the date of the original conviction, the court must consider the imposition of a period of imprisonment not exceeding 5 years without the option of a fine in terms of section 215 (2).  Category 2 Offences   The Customs Control Act No 31 of 2014 and the Customs Duty Act No 30 of 2014 also deals with Category 2 offences in section 888 and 213 respectively.  Category 2 offences in the Customs Control Act, section 888, relates to:   1. Failure to comply with a request or direction of Customs; 2. If a person pretends to be a customs officer; 3. If a person hinders or interferes with a customs officer in the execution of his official duties; 4. If a person performs and act without authorization that may only be performed by a customs official or another authority; or 5. If a person attempts to commit or assist in committing an act which is a Category 2 offence in terms of section 888 or any other section of the Customs Control Act.   A person convicted of a Category 2 offence in terms of section 892 the Customs Control Act is liable to imprisonment for a period not exceeding three (3) years or a fine not exceeding R 500 000 or a higher amount prescribed in terms the Adjustment of Fines Act No 101 of 1991, or to both the fine and imprisonment.  If you look at the above you will realise that punishment for contravention is more severe than in the past. The punishment have been aligned with other legislation –in this case the Adjustment of Fines Act No 101 of 1991. One thus cannot say that the punishment is too severe or unfair.  It is a feature of South Africa’s new Customs legislation that it is aligned to international instruments as well as other South African legislation. The Customs Control Act serves as a platform form many other South African acts dealing with imports and exports and the collection of taxes. Chapter 37 of the Customs Control Act was recently amended by aligning it with the Tax Administration Act. | | |  | |  | | |  | | Customs Tariff Applications and Outstanding Tariff Amendments | | |  | |  | | |  | | *The International Trade Administration Commission (*[*ITAC*](http://www.itac.org.za/)*) is responsible for tariff investigations, amendments, and trade remedies in South Africa and on behalf of SACU.*  ***Tariff investigations include:*** *Increases in the customs duty rates in Schedule No. 1 Part 1 of Jacobsens. These applications apply to all the SACU Countries, and, if amended, thus have the potential to affect the import duty rates in Botswana, Lesotho, Namibia, Swaziland and South Africa.*  *Reductions in the customs duty rates in Schedule No. 1 Part 1. These applications apply to all the SACU Countries, and, if amended, thus have the potential to affect the import duty rates in Botswana, Lesotho, Namibia, Swaziland and South Africa.*  *Rebates of duty on products, available in the Southern African Customs Union (SACU), for use in the manufacture of goods, as published in Schedule No. 3 Part 1, and in Schedule No. 4 of Jacobsens. Schedule No. 3 Part 1 and Schedule No. 4, are identical in all the SACU Countries.*  *Rebates of duty on inputs used in the manufacture of goods for export, as published in Schedule No. 3 Part 2 and in item 470.00. These provisions apply to all the SACU Countries.*  *Refunds of duties and drawbacks of duties as provided for in Schedule No. 5. These provisions are identical in the all the SACU Countries.*  ***Trade remedies include:*** *Anti-dumping duties (in Schedule No. 2 Part 1 of Jacobsens), countervailing duties to counteract subsidisation in foreign countries (in Schedule No. 2 Part 2), and safeguard duties (Schedule No. 2 Part 3), which are imposed as measures when a surge of imports is threatening to overwhelm a domestic producer, in accordance with domestic law and regulations and consistent with WTO rules.*  ***Dumping****is defined as a situation where imported goods are being sold at prices lower than in the country of origin, and also causing financial injury to domestic producers of such goods. In other words, there should be a demonstrated causal link between the dumping and the injury experienced.*  *To remedy such unfair pricing, ITAC may, at times, recommend the imposition of substantial duties on imports or duties that are equivalent to the dumping margin (or to the margin of injury, if this margin is lower).*  ***Countervailing investigations****are conducted to determine whether to impose countervailing duties to protect a domestic industry against the unfair trade practice of proven subsidised imports from foreign competitors that cause material injury to a domestic producer.*  ***Safeguard measures****, can be introduced to protect a domestic industry against unforeseen and overwhelming foreign competition and not necessarily against unfair trade, like the previous two instruments.* | *In the WTO system, a member may take a safeguard action, which is, restricting imports temporarily in the face of a sustained increase in imports that is causing serious injury to the domestic producer of like products. Safeguard measures are universally applied to all countries, unlike anti-dumping and countervailing duties that are aimed at a specific firm or country.*  *Schedule No. 2 is identical in all the SACU Countries.*  The International Trade Administration Commission (ITAC) has published the second amendment applications to the Southern African Customs Union Tariff for 2015.  The Southern African Customs Union comprises of South Africa and Botswana, Lesotho, Namibia and Swaziland.  The Notice (Government Notice R.150 of 2015) was published in *Government Gazette* 38478 on 20 February 2015.  *Comments are due by 20 March 2015.*  The application is in relation to amendments to Part 1 of Schedule No. 3.  The application is entitled AMENDMENT OF THE WORDING FOR QUALIFYING FABRICS UNDER REBATE ITEM 320.01 FOR THE MANUFACTURE OF UPHOLSTERED FURNITURE.  The amendment of the rebate description is proposed to read as follows:  320.01/5407.61/01.06 Woven fabrics surface treated to resemble suede containing 85 % or more by mass of non-textured micro-fibre polyester filament yarns, of a mass exceeding 150g/m2 and of a width not exceeding 150 cm, in such quantities, at such times and subject to such conditions as the International Trade Administration Commission may allow by specific permit, for use in the manufacture of upholstered furniture classifiable in tariff heading 94.01.320.01/5903.20.90/01.08 Other textile fabrics commonly known as imitation leather, laminated with polyurethane, in such quantities, at such times and subject to such conditions as the International Trade Administration Commission may allow by specific permit, for use in the manufacture of upholstered furniture classifiable in tariff heading 94.01  320.01/5907.00.90/01.08 Textile fabrics commonly known as imitation leather backed with bonded leather, in such quantities, at such times and subject to such conditions as the International Trade Administration Commission may allow by specific permit, for use in the manufacture of upholstered furniture classifiable in tariff heading 94.01.  [Enquiries: Ms. Khosi Mzinjana, Tel: (012) 394 3664. Fax: (012) 934 4664. E-mail: [kmzinjana@itac.org.za](mailto:kmzinjana@itac.org.za). Ms. Amina Varachia, Tel: (012) 394 3732. Fax: (012) 934 4732. E-mail: [avarachia@itac.org.za](mailto:avarachia@itac.org.za). | |  | |  |  | |  | | Customs Tariff Amendments | | |  | | *With the exception of certain parts of Schedule No. 1, such as Schedule No. 1 Part 2 (excise duties), Schedule No. 1 Part 3 (environmental levies) Schedule No. 1 Part 5 (fuel and road accident fund levies), the other parts of the tariff is amended by SARS based on recommendations made by ITAC resulting from the investigations relating to Customs Tariff Applications received by them. The ITAC then investigates and makes recommendations to the Minister of Trade and Industry, who requests the Minister of Finance to amend the Tariff in line with the ITAC’s recommendations. SARS is responsible for drafting the notices to amend the tariff, as well as for arranging for the publication of the notices in Government Gazettes.*  *During the annual budget speech by the Minister of Finance in February, it was determined that parts of the tariff that are not amended resulting from ITAC recommendations, must be amended through proposals that are tabled by the Minister of Finance.*  *Once a year big tariff amendments are published by SARS, which is in line with the commitments of South Africa and SACU under international trade agreements.*  *Under these amendments, which are either published in November or early in December, the import duties on goods are reduced under South Africa’s international trade commitments under existing trade agreements.* | There were a number of tariff amendments since last week.  The amendments were published in the following *Government Gazettes*:  The rates of duty on wheat and wheaten flour is increased from 15,7c/kg to 46,1c/kg and 23,5c/kg to 69,2c/kg respectively, in terms of the existing variable tariff formula as recommended in ITAC Minute M09/2014  The amendment was published in *Government Gazette* 38563 of 13 March 2015 under Notice R. 209.  The tariff amendment will be sent to subscribers under cover of Supplement 1044  [Download](http://new.jacobsens.co.za/News/CustomsWatch.aspx) the two latest Customs Watch to have access to the latest tariff amendments. | |  | | Customs Rule Amendments | | |  | | *The Customs and Excise Act is amended by the Minister of Finance. Certain provisions of the Act are supported by Customs and Excise Rules, which are prescribed by the Commission of SARS. These provisions are numbered in accordance with the sections of the Act. The rules are more user-friendly than the Act, and help to define provisions which would otherwise be unclear and difficult to interpret.*  *Forms are also prescribed by rule, and are published in the Schedule to the Rules.*  *Forms are also prescribed by rule, and are published in the Schedule to the Rules.* | The rules under sections 59A and 60 have been amended in that persons who may apply for registration or licensing must now include a public officer appointed in terms of section 246 of the Tax Administration Act, 2011. This is in line with SARS’ efforts to align Customs legislation with the Tax Administration Act.  The rule amendment (DAR/141) was published on 6 March 2015 in 38521 under Notice R. 178.  [Download](http://new.jacobsens.co.za/News/CustomsWatch.aspx) the latest Customs Watch to have access to the latest tariff and rule amendments. | |  | |  |  |  |  |   cid:image010.png@01D051DC.2BA3BB70 | | |
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Kind regards

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