

# CUSTOMS AND EXCISE

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## Customs and Excise Act 20 of 1998

**Summary:** This Act ([GG 1900](#)) repeals the *Customs and Excise Act 91 of 1964* ([RSA GG 866](#)), which replaced the *Customs Act 55 of 1955* and the *Excise Act 62 of 1956*. This Act was brought into force on 1 August 1998 by GN 186/1998 ([GG 1918](#)).

**Amendments:** The Act is substantially amended by Act 17/2016 ([GG 6203](#)), which was brought into force on 31 March 2017 by GN 74/2017 ([GG 6277](#)).

**Schedule 1** is amended by GN 208/1998 ([GG 1943](#)), GN 209/1998 ([GG 1943](#)), GN 71/1999 ([GG 2092](#)), GN 93/2000 ([GG 2305](#)), GN 187/2000 ([GG 2386](#)) (which also implements Article 6 of the Customs Union Agreement, 1969), GN 116/2001 ([GG 2548](#)) (which deals with the SADC Protocol on Trade and has only come into force in part), GN 13/2002 ([GG 2688](#)), GN 61/2004 ([GG 3181](#)) (as amended by GN 145/2004 ([GG 3237](#))), GN 115/2004 ([GG 3207](#)), GN 116/2004 ([GG 3207](#)), GN 146/2007 ([GG 3896](#)), GN 213/2013 ([GG 5264](#)), GN 246/2013 ([GG 5286](#)), GN 307/2013 ([GG 5344](#)), GN 198/2014 ([GG 5590](#)), GN 66/2015 ([GG 5724](#)), GN 100/2016 ([GG 6019](#)), GN 101/2016 ([GG 6019](#)), GN 219/2016 ([GG 6125](#)), GN 230/2016 ([GG 6132](#)), GN 300/2016 ([GG 6198](#)), GN 93/2017 ([GG 6289](#)), GN 302/2017 ([GG 6472](#)), GN 77/2018 ([GG 6574](#)), GN 156/2018 ([GG 6666](#)), GN 133/2019 ([GG 6917](#)) (with effect from the tabling of the relevant taxation proposal in the National Assembly), GN 225/2019 ([GG 6967](#)), GN 226/2019 ([GG 6967](#)) (with effect from the date that the notice is tabled in the National Assembly), GN 131/2020 ([GG 7239](#)), GN 132/2020 ([GG 7239](#)) (with effect from the tabling of the relevant taxation proposal in the National Assembly), GN 47/2021 ([GG 7483](#)) (with effect from 1 January 2021; repeals GN 300/2016), GN 79/2021 ([GG 7507](#)) (with effect “on the date of the tabling of the applicable taxation proposal in the National Assembly”) and GN 18/2022 ([GG 7743](#)) (with effect from 1 January 2022).

GN 116/2001 ([GG 2548](#)) states that the amendments set out in its Schedule come into operation on the date of publication of the notice, with the exception of the rates of duty specified in the SADC column of the notice. Those rates of duty will come into operation on a date determined by notice in the *Gazette*. No such notice has been located.

GN 213/2013 ([GG 5264](#)) temporarily withdraws a levy imposed by GN 61/2004 ([GG 3181](#)), and GN 198/2014 ([GG 5590](#)) re-instates it.

Schedule 1 was also amended by GN 14/2002 ([GG 2688](#)). However, this Government Notice was to be brought into force by notice in the *Gazette* and no such notice has been located.

Schedule 1 was also amended by GN 61/2007 ([GG 3817](#)), which relates to the implementation of the Customs Union Agreement 2002, but GN 61/2007 was withdrawn by GN 97/2008 ([GG 4038](#)).

GN 307/2013 ([GG 5344](#)) cites GN 147/2007 as a previous amendment, but this should be GN 146/2007.

**Schedule 2** is amended by GN 297/2019 ([GG 7022](#)), GN 298/2019 ([GG 7022](#)) and GN 134/2020 ([GG 7239](#)).

**Schedule 3** is amended by GN 18/2022 ([GG 7743](#)) (with effect from 1 January 2022).

**Schedule 4** is amended by GN 18/2022 ([GG 7743](#)) (with effect from 1 January 2022).

**Schedule 5** is amended by GN 93/2000 ([GG 2305](#)) and by GN 18/2022 ([GG 7743](#)) (with effect from 1 January 2022).

**Schedule 6** is amended by GN 133/2020 ([GG 7239](#)) and by GN 18/2022 ([GG 7743](#)) (with effect from 1 January 2022).

**Savings:** Section 131(2) of the Act states:

Anything done or purporting to have been done under a provision of any law specified in Schedule 9 and which could have been done under a corresponding provision of this Act, shall be deemed to have been done under such corresponding provision of this Act.

This would appear to apply to regulations and rules (both authorised under the current Act by section 120).

**Regulations:** Regulations made under the *Customs Act 55 of 1955* survived in terms of section 121(2) of the *Customs and Excise Act 91 of 1964*. Regulations under the *Customs and Excise Act 91 of 1964* remain in force in terms of section 131(2) of the present Act. However, pre-independence regulations have not been researched.

**General Regulations** were made in terms of section 120 of the *Customs and Excise Act 91 of 1964* are contained in RSA GN R.1770/1973 (RSA GG 4040). These regulations survive pursuant to section 131(2) of the current Act. The Government Notice which publishes these Regulations notes that they are made in substitution of the regulations published in RSA Government Notice R.555/1966. Note that there appears to have been no transfer of administration of the *Customs and Excise Act 91 of 1964* (which fell under the Minister of Finance, Department of Customs and Excise) from RSA to SWA. These regulations have multiple amendments which are still being compiled and reviewed.

Regulations concerning Export Processing Zones are contained in GN 87/1996 ([GG 1298](#)).

**Rules:** Rules made under the repealed law survive in terms of section 131(2) of this Act, but have not yet been fully researched.

In terms of this Act, rules concerning the visa arrangement between Namibia and the USA for exports of textiles and clothing from Namibia to the USA are contained in GN 225/2001 ([GG 2642](#)), which was subsequently replaced by GN 231/2001 ([GG 2653](#)). GN 37/2004 ([GG 3158](#)) amends GN 231/2001, and is deemed to come into effect on 1 August 2003.

**Application of law:** The Financial Intelligence Act 13 of 2012 ([GG 5096](#)) gives certain powers to customs and excise officers.

The administration of this Act is affected by the Namibia Revenue Agency Act 12 of 2017 ([GG 6486](#)), which was brought into force with effect from 6 April 2021 by GN 55/2021 ([GG 7496](#)).

**Notices:** Notification of taxation proposals for additional duties in respect of the importation of certain pasta products is contained in GN 70/2008 ([GG 4022](#)). Notification of taxation proposals for additional duties in respect of the importation of certain categories of milk is contained in GN 71/2008 ([GG 4022](#)). Notification of taxation proposals for additional duties in respect of a range of products is contained in GN 165/2008 ([GG 4075](#)).

Notification of taxation proposals for additional duties in respect of the importation of Portland cement is contained in GN 208 /2012 ([GG 2015](#)), but this notice appears to be invalid.

A previous notification of taxation proposals for additional duties in respect of the importation of Portland cement was issued by the Minister, but this notice was declared invalid by *Jack's Trading CC v Minister of Finance & Another* 2013 (2) NR 480 (HC) on the grounds that it was not properly issued in accordance with section 65 of the Act, because it was not promulgated before being tabled in the National Assembly.

In an interlocutory application by Jack's Trading CC to give effect to the Court order issued in this case while an appeal against that judgment by the Ministry of Finance was pending, an intervening party (Ohorongo Cement) sought rescission of the judgment. This application for rescission was considered in *Jack's Trading CC v Minister of Finance & Another (Ohorongo Cement (Pty) Ltd Intervening)* 2013 (2) NR 491 (HC), where the Court discussed additional factual information about the Notice submitted to the Court by the Minister of Finance.

According to the second case (2013 (2) NR 491 (HC)), the Minister signed a notice dated 27 July 2012 on the proposed cement duties and forwarded it to the Directorate Legal Drafting for promulgation in the *Government Gazette*. The legal drafters advised the Minister that the effective date in the notice should have been 18 April 2012, which was the date when the taxation proposal was tabled in the National Assembly. The Notice was amended by the Directorate Legal Drafting and promulgated in the *Government Gazette* on 15 August 2012, with a commencement date of 18 April 2012.

The second notice was dated 18 July 2012, which the Court found odd since the Minister stated in an affidavit that the advice on the need to amend the first notice came only after this notice was signed on 27 July 2012 and delivered to the legal drafters for promulgation.

The notice which was attacked in the case *Jack's Trading CC v Minister of Finance & Another* 2013 (2) NR 480 (HC) was the first one, which was signed by the Minister but never promulgated. However, even though judgment was reserved in this case on 15 August 2012 and delivered on 31 August 2012, the Court was never informed of the second notice, which was published in the *Gazette* on 15 August 2012. Nevertheless, the application for rescission was denied on the grounds that there was no error in the court's judgment on the basis of the facts placed before it at the time (*Jack's Trading CC v Minister of Finance & Another (Ohorongo Cement (Pty) Ltd Intervening)* 2013 (2) NR 491 (HC)).

It should be noted that the reasoning applied by the Court to the first notice would be equally applicable to the second notice which was actually promulgated, since it was also promulgated *after* being tabled in the National Assembly instead of *prior to* such tabling as section 65 of the Act requires; "the wording of s 65 construed as a whole requires that the promulgation of the notice is to precede the tabling of the proposal" (2013 (2) NR 480 (HC) at para 28).

It should also be noted that the second case (2013 (2) NR 491 (HC) at para 12) states that the second notice appeared in the *Government Gazette* of 15 August 2012 as Government Notice 298 of 2012. Government Notice 298 of 2012 in fact appeared on 14 December 2012 and was the promulgation of the Prevention and Combating of Terrorist Activities Act 12 of 2012. However, the relevant notice on Portland cement appears as Government Notice 208 of 2012 in *Government Gazette* 5015 dated 15 August 2012.

An environmental duty on certain goods and on carbon dioxide (CO<sup>2</sup>) emissions of specified vehicles is imposed by GN 100/2016 ([GG 6019](#)).

#### **Cases:**

*S v Lofty-Eaton & Others (1)* 1993 NR 370 (HC) (with reference to *Customs and Excise Act 91 of 1964*)

*S v Kramash* 1998 NR 186 (HC) (section 14(1))

*Konga Clearing Agencies CC v Minister of Finance* 2011 (2) NR 623 (absence of *locus standi* of clearing agent, with reference to sections 108-110)

*Jack's Trading CC v Minister of Finance & Another* 2013 (2) NR 480 (HC), *Jack's Trading CC v Minister of Finance & Another (Ohorongo Cement (Pty) Ltd Intervening)* 2013 (2) NR 491 (HC) (section 65)

*Woker Freight Services (Pty) Ltd v Commissioner for Customs and Excise & Others* 2015 (1) NR 206 (HC) (sections 18(2), 41(6) and 73)

*Woker Freight Services (Pty) Ltd v Commissioner for Customs and Excise & Others* 2016 (2) NR 450 (SC) (sections 1 ("importer" and "exporter"), 17, 18 and 110).

*S v Faria & Others* 2017 (4) NR 1086 (NLD) (forfeiture under section 91 is required upon conviction under section 14; no discretion on part of trial court in this regard).

#### **COMMENTARY**

R Kirk & M Stern, "The New Southern African Customs Union Agreement", Africa Region Working Paper Series No. 57, World Bank, June 2003, available [here](#)

"About SACU; History of SACU", 2007, available [here](#)

Oliver C Ruppel, "SACU 100: Reflections on the world's oldest customs union", *Namibia Law Journal*, Volume 2, Issue 2, 2010, available [here](#)

See also the yearbooks entitled *Monitoring Regional Integration in Southern Africa*, Windhoek: Trade Law Centre for Southern Africa / Konrad Adenauer Stiftung, annual editions from 2005 available [here](#).

## **INTERNATIONAL LAW**

**\*\*Agreement among the Governments of the Democratic Republic of Congo, the Republic of Namibia and the Republic of Zambia on the Establishment of the Walvis Bay-Ndola-Lubumbashi Development Corridor (WBNLDC), 2010**

**Agreement Establishing the World Trade Organization (WTO) (Marrakesh Agreement), 1994**

*Protocol Amending the Marrakesh Agreement Establishing the World Trade Organisation (Agreement on Trade Facilitation), 2014*

**Convention Establishing a Customs Co-operation Council, 1950**

**Free Trade Agreement between the European Free Trade Association (EFTA) and the Southern African Customs Union (SACU), 2006**

*Agricultural Agreement between the Southern African Customs Union (SACU) States and Iceland, 2006*

*Agricultural Agreement between the Southern African Customs Union (SACU) States and Norway, 2006*

*Agricultural Agreement between the Southern African Customs Union (SACU) States and Switzerland, 2006*

**International Convention on the Simplification and Harmonization of Customs Procedures (Revised Kyoto Convention), 1973, as amended 1999**

**International Convention on the Harmonized Commodity Description and Coding System, 1983**

See also **IMPORT AND EXPORT**.