



## ANALYSIS

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1985, No. 145

**An Act to amend the Customs Acts**

[7 December 1985]

BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows:

**1. Short Title and commencement**—(1) This Act may be cited as the Customs Acts Amendment Act 1985.

(2) Except as provided in subsection (3) of this section, this Act shall come into force on the day on which it receives the Governor-General's assent.

(3) Sections 3 and 6 of this Act shall come into force on the 1st day of July 1986.

PART I  
CUSTOMS

**2. This Part to be read with Customs Act 1966**—This Part of this Act shall be read together with and deemed part of the Customs Act 1966 (in this Part referred to as the principal Act).

**3. Interpretation**—(1) Section 2 (1) of the principal Act is hereby amended by repealing the definition of the expression “developing country” (as inserted by section 2 (1)) of the Customs Amendment Act 1971).

(2) Section 2 (1) of the principal Act is hereby further amended by inserting, after the definition of the expression “Intent to defraud the revenue of Customs”, the following definitions:

“‘Less developed country’ means any country for the time being declared by an Order in Council, under section 120 of this Act, to be a less developed country for the purposes of this Act:

“‘Least developed country’ means any country for the time being declared by Order in Council, under section 120 of this Act, to be one of the lesser of the least developed countries for the purposes of this Act:”.

(3) The Customs Amendment Act 1971 is hereby consequentially amended by repealing section 2 (1).

**4. Verification of entries**—(1) The principal Act is hereby amended by repealing section 20, and substituting the following section:

“20. (1) Where the Collector is not satisfied with the correctness of any entry, he may detain the goods for any period that is reasonably necessary to enable him to have the goods examined and, if necessary, to cause an investigation to be made, whether in New Zealand or elsewhere, into the importation of those goods.

“(2) Without limiting subsection (1) of this section, the Collector may, if he thinks fit, require from any person making entry of any goods proof by declaration or the production of documents (in addition to any declaration or documents otherwise required by this Act or by regulations thereunder) of the correctness of the entry, and may refuse to deliver the goods or to pass the entry pending such proof.

“(3) The Collector may refuse to deliver any goods which are the subject of an examination or investigation carried out pursuant to this section or to pass an entry for those goods until he is satisfied as to the correctness of the entry.”

(2) Section 34 (2) of the principal Act (as substituted by section 17 (1) of the Customs Amendment Act 1968) is hereby amended by inserting, after the words "Customs purposes", the words "or pursuant to section 20 of this Act".

**5. Importation of brandy, whisky, and rum**—(1) Section 49 (2) of the principal Act is hereby amended—

(a) By omitting the words "or rum"; and

(b) By omitting the words "than—

“(a) Three years in the case of whisky; and

“(b) Two years in the case of rum”,

and substituting the words "than 3 years".

(2) Section 49 (3) of the principal Act is hereby amended by omitting the words "brandy, whisky, or rum", and substituting the words "brandy or whisky".

(3) The Customs Acts Amendment Act 1970 is hereby consequentially amended by repealing section 4.

**6. Application of Tariff**—(1) Section 120 (1) of the principal Act (as substituted by section 5 (1) of the Customs Acts Amendment Act (No. 2) 1977) is hereby amended by repealing paragraph (e), and substituting the following paragraph:

“(e) In the case of goods—

“(i) Being the produce or manufacture of a less developed country; and

“(ii) Being goods included in a Tariff item in respect of which a rate of duty is specified after the abbreviation "LDC" in the column headed "Preferential Tariff",—

at the rate so specified, unless by virtue of any Order in Council under this section the said rate of duty does not apply to that country:”.

(2) Section 120 (1) of the principal Act (as so substituted) is hereby further amended by repealing paragraph (g) (as substituted by section 5 (1) of the Customs Acts Amendment Act (No. 2) 1980), and substituting the following paragraphs:

“(g) In the case of goods—

“(i) Being the produce or manufacture of one of the least developed countries; and

“(ii) Being goods included in a Tariff item in respect of which a rate of duty is specified after the abbreviation "LLDC" in the column headed "Preferential Tariff",—

at the rate so specified, unless by virtue of any Order in Council under this section the said rate of duty does not apply to that country:”

“(h) In the case of goods—

“(i) Being the produce or manufacture of any country; and

“(ii) Not being goods to which any of paragraphs (a), (b), (c), (d), (e), (f), and (g) of this subsection apply,—

at the rates specified in the Normal Tariff.”

(3) Section 120 of the principal Act (as so substituted) is hereby further amended by repealing subsection (3) (as amended by section 5 (2) and (3) of the Customs Acts Amendment Act (No. 2) 1980), and substituting the following subsection:

“(3) Notwithstanding anything in subsection (1) of this section, the Governor-General may, from time to time, by Order in Council—

“(a) Declare any country to be a less developed country for the purposes of this Act:

“(b) Declare that any country shall cease to be a less developed country for the purposes of this Act:

“(c) Declare any country to be one of the least developed countries for the purposes of this Act:

“(d) Declare that any country shall cease to be one of the least developed countries for the purposes of this Act.”

(4) Section 120 of the principal Act (as so substituted) is hereby further amended by repealing subsection (4) (as substituted by section 7 of the Customs Acts Amendment Act (No. 2) 1982), and substituting the following subsection:

“(4) Where, by any Order in Council made under subsection (3) of this section, any country is declared to be either a less developed country for the purposes of this Act or to be one of the least developed countries for the purposes of this Act, the Governor-General may by the same or any subsequent Order in Council—

“(a) Declare that, in relation to any specified Tariff items, any rates of duty or exemptions from duty otherwise applicable to any of the less developed countries or to any of the least developed countries shall not apply to that country:

“(b) Modify the Tariff rates of duty applicable to goods from that country, in whole or in part, but so that such modification shall not have the effect of imposing on any goods a higher duty than that set forth in respect of those goods in the Normal Tariff.”

(5) The following enactments are hereby consequentially repealed:

(a) Section 5 (2) and (3) of the Customs Acts Amendment Act (No. 2) 1980:

(b) Section 7 of the Customs Acts Amendment Act (No. 2) 1982.

**7. Goods imported for use in the assembly or manufacture of motor vehicles**—The principal Act is hereby amended by repealing section 121, and substituting the following section:

“121. (1) In respect of any subheading or item of Tariff headings 87.01, 87.02, and 87.04 of the Customs Tariff, where provision has been made for a determination relating to goods imported unassembled for use in the assembly, completion, or manufacture of motor vehicles (being vehicles falling within Tariff headings 87.01, 87.02 and 87.04 of the Customs Tariff), the Minister may from time to time, by notice in the *Gazette*, determine the goods that shall be entered under that subheading or item, and shall in like manner determine the conditions under which such goods may be imported into and used in New Zealand, and the purposes for which the goods so imported shall be used.

“(2) Any notice under this section may from time to time in like manner be varied or revoked.

“(3) Goods entered for the purpose of parts and accessories in relation to vehicles falling within Tariff headings 87.01, 87.02, and 87.04 of the Customs Tariff shall be entered in accordance with their appropriate item in Part I of the Customs Tariff and shall be subject to the duties specified in those items.”

**8. Orders in Council relating to Customs duties and Tariff**—Section 131 (2) (b) of the principal Act (as substituted by section 5 (1) of the Customs Amendment Act 1973) is hereby amended by adding the words “or a preceding session”.

**9. Modification of rates of duty on goods produced in manufacturing warehouse**—(1) Section 134 of the principal Act (as substituted by section 6 (1) of the Customs Acts Amendment Act (No. 2) 1980) is hereby amended—

(a) By repealing the proviso to paragraph (c) of subsection (1) (as amended by section 4 of the Customs Acts Amendment Act 1981):

(b) By omitting from subsection (4) the words “unmanufactured tobacco and tobacco refuse of heading 24.01 of the Standard Tariff”, and substituting the words “tobacco and tobacco refuse of headings 24.01 and 24.02 of the Standard Tariff”.

(2) The Second Schedule to the principal Act (as substituted by section 4 (1) of the Customs Acts Amendment Act (No. 2) 1977) is hereby consequentially amended by repealing so much of the Customs Tariff as relates to items 24.02.029 (as substituted by section 3 (1) of the Customs Acts Amendment Act 1984) and 24.02.039, and substituting the items, rates of duty, exemption from duty, and statistical key specified in the First Schedule to this Act.

(3) The following enactments are hereby consequentially repealed:

(a) Section 4 of the Customs Acts Amendment Act 1981:

(b) So much of the First Schedule to the Customs Acts Amendment Act (No. 2) 1977 as relates to item 24.02.039:

(c) So much of the First Schedule to the Customs Acts Amendment Act 1984 as relates to item 24.02.029.

(4) Every reference in any other enactment (including any Order in Council) in force at the commencement of this Act to any Tariff item referred to in subsection (2) of this section shall thereafter, unless the context otherwise requires, be read as a reference to the corresponding item of the Tariff substituted by that subsection.

**10. Foreign currency**—(1) The principal Act is hereby amended by repealing section 143 (as substituted by section 9 of the Customs Amendment Act 1981), and substituting the following section:

“143. (1) Where under any provision of this Act any amount which is required to be taken into account for the purpose of assessing duty or any other purpose is not an amount in New Zealand currency, the amount to be so taken into account shall be the equivalent in New Zealand currency of that amount ascertained in accordance with a fair rate of exchange to be determined by the Minister from time to time.

“(2) Notice of every such determination shall be published in the *Gazette* as soon as practicable.

“(3) Where any amount is required to be converted into New Zealand currency pursuant to subsection (1) of this section, the amount shall be converted,—

“(a) In the case of any goods in respect of which an entry has been made, as at the date of lodgment of the first entry (not being an entry for removal) of those goods:

“(b) In the case of all other goods, as at the date of assessment of Customs duty on those goods.”

(2) The Customs Amendment Act 1981 is hereby consequentially amended by repealing section 9.

**11. Provisions for determining country of origin—**Section 148 of the principal Act is hereby amended by repealing subsection (1), and substituting the following subsection:

“(1) Without limiting the power to make regulations conferred by section 306 of this Act, the Governor-General may from time to time, by Order in Council, make regulations prescribing—

“(a) The goods, of any type or class, that shall be deemed for the purposes of the Customs Acts to be the produce or manufacture of any particular country or group of countries:

“(b) The conditions to be fulfilled before any goods shall be deemed to be the produce or manufacture of any particular country or group of countries.”

**12. Importer to state country of origin on entry—**The principal Act is hereby amended by repealing section 149, and substituting the following section:

“(1) On making entry of any goods the importer or his agent shall specify in the prescribed form the country of which the goods are the produce or manufacture, and shall satisfy the Collector of the truth of such statement by declaration in that prescribed form, or otherwise as the Collector may require.

“(2) The requirement imposed on the importer or his agent by subsection (1) of this section shall be a condition—

“(a) Notwithstanding anything in the Trade and Industry Act 1956, of every licence, permit, or exemption granted pursuant to the Import Control Regulations 1973:

“(b) Of every tariff quota issued pursuant to this Act:

“(c) Of any document whatsoever in the nature of an exemption, licence, permission, or permit issued or granted pursuant to any other Act,—

and which relates to the importation of goods being the produce or manufacture of a specified country or groups of countries”.

**13. Unsubstantiated and false origin claims—**The principal Act is hereby amended by repealing section 151, and substituting the following section:

“151. (1) If the Collector is satisfied, whether as the result of an investigation carried out pursuant to section 20 of this Act, or otherwise, that the country of which any goods are the

produce or manufacture cannot be ascertained because no evidence can be found or the available evidence is inconclusive as to that country, the goods shall be deemed, for the purposes of this Act or any other Act or authority, to be the produce or manufacture of a country subject to the rates of duty set forth in the Normal Tariff.

“(2) If the Collector is satisfied—

“(a) As a result of an investigation carried out pursuant to section 20 of this Act; or

“(b) From other enquiry in the course of which reasonable opportunity is given to the importer or his agent to make written representations on the matter within 14 days of receiving notice in writing from the Collector that he is not satisfied that the country of which any goods are the produce or manufacture can be ascertained,—

that the country of which any goods are the produce or manufacture, being goods imported pursuant to any licence, permit, tariff quota, exemption or other document, referred to in section 149 (2) of this Act, cannot be ascertained because no evidence can be found or the available evidence is inconclusive as to that country the goods shall be deemed to have been imported in breach of a condition of that licence, permit, tariff quota, exemption or other document and the goods shall be forfeited.

“(3) If any statement, declaration, certificate, or claim as to the country of which any goods are the produce or manufacture is made or produced to the Collector pursuant to this section or to section 149 or section 150 of this Act, and that statement, declaration, certificate, or claim is false, the goods shall be forfeited.

“(4) Subsections (1), (2), and (3) of this section shall apply whether or not the goods have been delivered from the control of the Customs.”

**14. Requisition to produce documents**—(1) Section 218 of the principal Act is hereby amended by repealing subsection (2), and substituting the following subsection:

“(2) Any Collector may, by order under his hand and the seal of the Customs, require any person (including any officer employed in or in connection with any Government department or, notwithstanding any provision of the Banking Act 1982, any officer employed in or in connection with any bank) to produce for inspection by him or by any specified officer of Customs all or any documents which the Collector



considers necessary or relevant to an investigation under the Customs Acts or to an investigation in respect of an importation or exportation proscribed by section 6 (1) (a) of the Misuse of Drugs Act 1975, and to allow the Collector or other officer as aforesaid to make copies of or extracts from any such documents; and to appear before the Collector or other specified officer as aforesaid, and to answer all questions put to him concerning any goods which are the subject of any such investigation, or concerning such documents as aforesaid.”

(2) Section 218 of the principal Act is hereby further amended by repealing subsection (4), and substituting the following subsection:

“(4) Every person who fails or refuses to comply with any order made under this section, as and when required by the Collector, commits an offence and shall be liable to a fine not exceeding \$800:

“Provided that no person shall be convicted of an offence under this section if he proves that he did not, as and when he was required by the Collector to produce the documents or to answer the questions, have those documents or the information required to answer the questions, in his knowledge, possession, or control.”

**15. Privilege for confidential communication between legal practitioners and between legal practitioners and their clients**—The principal Act is hereby amended by inserting, after section 218 (as amended by section 14 of this Act), the following section:

“218A. (1) Subject to subsection (2) of this section any information or document shall, for the purposes of section 218 of this Act, be privileged from disclosure, if—

“(a) It is a confidential communication, whether oral or written, passing between—

“(i) A legal practitioner in his professional capacity and another legal practitioner in such capacity; or

“(ii) A legal practitioner in his professional capacity and his client,—

whether made directly or indirectly through an agent of either; and

“(b) It is made or brought into existence for the purpose of obtaining or giving legal advice or assistance; and

“(c) It is not made or brought into existence for the purpose of committing or furthering the commission of some illegal or wrongful act.

“(2) Where the information or document consists wholly of payments, income, expenditure, or financial transactions of a specified person (whether a legal practitioner, his client, or any other person), it shall not be privileged from disclosure if it is contained in, or comprises the whole or part of, any book, account, statement or other record prepared or kept by the legal practitioner in connection with a trust account of the legal practitioner within the meaning of section 2 of the Law Practitioners Act 1982.

“(3) Except as provided in subsection (1) of this section, no information or documents shall for the purposes of sections 218 of this Act be privileged from disclosure on the ground that it is a communication passing between one legal practitioner and another legal practitioner or between a legal practitioner and his client.

“(4) Where any person refuses to disclose any information or document on the ground that it is privileged under this section, the Collector or that person may apply to a District Court Judge for an order determining whether or not the claim of privilege is valid; and, for the purposes of determining any such application, the District Court Judge may request the information or document to be produced to him.

“(5) For the purposes of this section the term ‘legal practitioner’ means a barrister or solicitor of the High Court, and references to a legal practitioner include a firm in which he is a partner or is held out to be a partner.”

**16. Possession of partly completed certificates of origin**—The principal Act is hereby amended by inserting, after section 251, the following section:

“251A. Every person who has in his possession, without reasonable excuse and in circumstances that prima facie show an intention to deceive an officer of Customs, partly completed certificates of origin, commits an offence and shall be liable to a fine not exceeding \$800 and the certificates shall be forfeited.”

**17. Ninth Schedule**—Clause 1 of the Ninth Schedule to the principal Act (as added by section 5 (3) of the Customs Amendment Act 1981) is hereby amended by adding the following subclause:

“(5) For the purposes of this Schedule charges for interest under a financing arrangement entered into by the buyer and relating to the purchase of imported goods shall not be regarded as part of the Customs value in any case where—

- “(a) The charges are distinguished from the price actually paid or payable for the goods; and
- “(b) Such goods are actually sold at the price declared as the price actually paid or payable; and
- “(c) The buyer, if required, can demonstrate that—
  - “(i) The financing arrangement was made in writing;
  - “(ii) The claimed rate of interest does not exceed the level for such transactions prevailing in the country where, and at the time when, the finance was provided.”

## PART II

### SALES TAX

**18. This Part to be read with Sales Tax Act 1974**—This Part of this Act shall be read together with and deemed part of the Sales Tax Act 1974 (in this Part referred to as the principal Act).

**19. Exemptions from sales tax**—(1) The principal Act is hereby further amended by repealing section 15, and substituting the following section:

“15. (1) The Governor-General may from time to time, by Order in Council, exempt from sales tax—

- “(a) Any specified goods; or
- “(b) Goods of any specified class or classes; or
- “(c) All goods, except goods of a specified class or classes; or
- “(d) All goods whatsoever (without specification of any such goods or the class or classes to which they belong); or
- “(e) Goods of a description referred to in any of paragraphs (a) to (d) of this subsection that are sold to any specified person or to any specified class or classes of person or to all persons except any specified class or classes of person;—

and may in like manner amend or revoke any such exemption.

“(2) Any exemption from sales tax granted pursuant to this section—

- “(a) May be general; or
- “(b) May be limited to the exemption of any goods from any specified place or from any specified person or class of persons; or
- “(c) May, whether general or limited, be absolute or conditional.

“(3) Any such conditional exemption may allow the exemption from sales tax of goods—

“(a) On or subject to any conditions whatever prescribed in the Order in Council; or

“(b) To be granted by the Minister or by any other person prescribed in the Order in Council upon or subject to such terms or conditions (if any), not inconsistent with the provisions of the conditional exemption, as may be imposed by the Minister or other person granting the exemption.

“(4) Every Order in Council made under this section shall come into force on the day after the date of its notification in the *Gazette* or on such earlier or later date as may be specified therein in that behalf.

“(5) If any dispute arises as to whether any goods are exempt from sales tax or not, such dispute shall be determined by the Minister in such manner as the Minister thinks just, and any decision of the Minister shall be final.”

(2) All Sales Tax Exemption Orders, and any amendments thereto, made or purported to have been made before the commencement of this section under the Sales Tax Act 1932-33 or the Sales Tax Act 1974 are hereby validated and declared to have been lawfully made, and all exemptions from sales tax created or purported to have been created under such orders or amendments are hereby declared to have been lawfully created, and all powers of the Minister under any such orders or amendments delegated or purported to have been delegated by the Minister to any officer of Customs under section 11 of the Customs Act 1913 or section 9 of the Customs Act 1966 are hereby declared to have been lawfully delegated.

### PART III

#### BEER DUTY

**20. This Part to be read with Beer Duty Act 1977**—This Part of this Act shall be read together with and deemed part of the Beer Duty Act 1977 (in this Part referred to as the principal Act).

**21. Rates of duty on beer brewed in New Zealand**—Section 15 (2) of the principal Act is hereby amended by inserting, after paragraph (a), the following paragraph:

“(aa) Delivered to a warehouse licensed under the Customs Act 1966, for export from New Zealand; or”.

**22. Delivery of beer for export**—Section 16 of the principal Act (as substituted by section 24 of the Customs Acts Amendment Act (No. 2) 1982) is hereby amended by omitting the word “brewed”.

**23. Removal of beer for export**—Section 16A of the principal Act (as inserted by section 25 of the Customs Acts Amendment Act (No. 2) 1982) is hereby amended by omitting the word “brewed”.

**24. Rates of duty on beer**—(1) The principal Act is hereby amended by repealing the First Schedule (as substituted by section 9 (1) of the Customs Acts Amendment Act 1984), and substituting the new First Schedule set out in the Second Schedule to this Act.

(2) Section 2 of the principal Act is hereby amended by repealing the definition “Beer” (as amended by section 12 (2) of the Customs Acts Amendment Act 1981), and substituting the following:

“ ‘Beer’ means the product of the alcoholic fermentation by yeast of a liquid derived from a mash of drinking water and malt grains with hops or their extract which on analysis is found to contain more than 0.50 percent volume of alcohol:”.

(3) The Second Schedule to the Customs Act 1966 (as substituted by section 4 (1) of the Customs Acts Amendment Act (No. 2) 1977 and amended by section 10 of this Act) is hereby consequentially amended by repealing so much of Part I of the Customs Tariff as relates to item 22.03.003, and substituting the items, rates of duty, exemptions from duty, and statistical key specified in the Third Schedule to this Act.

(4) The following enactments are hereby consequentially repealed:

(a) Section 12 (2) of the Customs Acts Amendment Act 1981:

(b) Section 9 (1) of the Customs Acts Amendment Act 1984:

(c) So much of the First Schedule to the Customs Acts Amendment Act (No. 2) 1977 as relates to item 22.03.003.

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# SCHEDULES

## FIRST SCHEDULE

Section 9 (2)

### DUTIES IMPOSED AND EXEMPTIONS CREATED

#### PART I

#### THE STANDARD TARIFF

1985, No. 145

Customs Acts Amendment

1325

Number	Goods	Rates of Duty			Statistical Key		
		Normal Tariff	Preferential Tariff		Code	Unit	Description
<b>24.02</b>	<b>Manufactured tobacco; tobacco extracts and essences:</b>						
	– Other manufactured tobacco:						
	– – For further manufacture in a licensed manufacturing warehouse:						
24.02.031	– – – The CIF value of which exceeds \$600 per 100 kg <i>per 100 kg</i>	\$40 <i>plus 35</i>	Aul \$40 <i>plus 30</i> Can \$40 <i>plus 30</i> Pac Free		00C	kg	
24.02.038	– – – Other	60	Aul 55 Can 55 Pac Free		00H	kg	
24.02.049	– – Other <i>per kg</i>	\$18.64 <i>plus 35</i>	Aul \$18.64 <i>plus 30</i> Can \$18.64 <i>plus 30</i> Pac \$18.64		01H 11E 21B 31K	kg kg kg kg	Pipe Cigarette Pulverised waste tobacco in liquid Binders and wrappers of tobacco for use in the manufacture of cigars and cheroots
					49B	kg	Other
24.02.059	– Tobacco extracts and essences	Free	..		00E	kg	

Section 24 (1)

## SECOND SCHEDULE

## NEW FIRST SCHEDULE TO BEER DUTY ACT 1977

## "FIRST SCHEDULE

*Rates of Beer Duty*

Beer exceeding 0.50 percent volume of alcohol, but not exceeding 1.70 percent volume of alcohol .. .. .	12.00 cents per litre
Beer exceeding 1.70 percent volume of alcohol, but not exceeding 3.00 percent volume of alcohol	
In containers of not less than 2 litres capacity .. .. .	32.50 cents per litre
Other .. .. .	38.80 cents per litre
Beer exceeding 3.00 percent volume of alcohol, but not exceeding 4.35 percent volume of alcohol	
In containers of not less than 2 litres capacity .. .. .	50.10 cents per litre
Other .. .. .	59.70 cents per litre
Beer exceeding 4.35 percent volume of alcohol, but not exceeding 5.00 percent volume of alcohol .. .. .	94.00 cents per litre
Beer exceeding 5.00 percent volume of alcohol .. .. .	\$1.22 per litre."

THIRD SCHEDULE  
 CUSTOMS TARIFF  
 ITEMS, RATES OF DUTY, EXEMPTIONS FROM DUTY, AND STATISTICAL KEY SUBSTITUTED  
 PART I  
 THE STANDARD TARIFF

Number	Goods	Rates of Duty		Statistical Key		
		Normal Tariff	Preferential Tariff	Code	Unit	Description
<b>22.03</b>	<b>Beer made from malt:</b>					
22.03.012	- Not exceeding 0.50% alcohol vol.	27.5	Aul 2 1.1.1986 Free Can 17.5 DC 17.5 Pac Free	00H	1	
22.03.018	- Exceeding 0.50% or more but not exceeding 1.7% alcohol vol. . . . . <i>per ℓ</i>	42.10c	Aul 12c Pac 12c	00F	1	

This Act is administered in the Customs Department.