

Customs (Amendment) Bill

Bill No. /2011.

Read the first time on .

A BILL

i n t i t u l e d

An Act to amend the Customs Act (Chapter 70 of the 2004 Revised Edition).

Be it enacted by the President with the advice and consent of the Parliament of Singapore, as follows:

Short title and commencement

1. This Act may be cited as the Customs (Amendment) Act 2011 and shall come into operation on such date as the Minister may, by notification in the *Gazette*, appoint.

5 Amendment of section 3

2. Section 3(1) of the Customs Act is amended —

(a) by inserting, immediately after the definition of “complete month”, the following definition:

10 “ “compressed natural gas” or “CNG” means natural gas that has been compressed for use in motor vehicles;”;

(b) by deleting the words “licensed for the warehousing of dutiable goods under section 51(1) or 83(4)” in the definition of “licensed warehouse” and substituting the words “licensed or deemed to be licensed under section 51(1), 63(1), or 83(4) (if the licence granted under section 83(4) covers an activity for which a licence under section 51(1), 63(1) or 66(1) is required)”;

(c) by inserting, immediately after the definition of “master”, the following definition:

20 “ “motor fuel” means motor spirit or CNG;”;

(d) by deleting the words “, motor fuel” in the definition of “motor spirit”.

Amendment of section 31

25 3. Section 31(1) of the Customs Act is amended —

(a) by deleting paragraph (a) and substituting the following paragraph:

“(a) by sea —

30 (i) at such authorised piers and places in Singapore as may be prescribed in relation

to such goods as may be prescribed (either generally or specifically); or

- (ii) at such piers and places in Singapore that the Director-General determines to be authorised piers and places in relation to such goods as the Director-General may determine, under such circumstances as may be prescribed;” and

(b) by inserting, immediately after subsection (1), the following subsection:

“(1A) In prescribing an authorised pier or place in Singapore or the circumstances in which the Director-General may determine an authorised pier or place for the purposes of subsection (1)(a), the Minister may prescribe that the operator of the authorised pier or place comply with such requirements and restrictions as the Director-General may impose in connection with any operations carried out at the authorised pier or place.”.

Amendment of section 34

4. Section 34(2) of the Customs Act is amended —

- (a) by inserting, immediately before the word “petroleum” in paragraph (d), the words “motor fuel or”; and
- (b) by deleting the words “the fuel supply tank” in paragraph (d)(i)(A) and substituting the words “a fuel supply tank”.

Amendment of section 51

5. Section 51 of the Customs Act is amended by deleting subsections (6) and (7).

Amendment of section 63

6. Section 63 of the Customs Act is amended by deleting subsection (6).

Amendment of section 66

7. Section 66 of the Customs Act is amended by deleting subsection (3).

Amendment of section 82

5 8. Section 82 of the Customs Act is amended by deleting subsection (7).

Amendment of section 83

9. Section 83(9) of the Customs Act is amended by deleting the words “section 37(3)(c)” in paragraph (b) of the definition of “specified activity” and substituting the words “section 37(5)(b)”.
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Amendment of section 87

10. Section 87(1) of the Customs Act is amended by inserting, immediately after the words “or other records may”, the words “, after the goods to which such records relate have been removed from customs control,”.
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Amendment of section 89

11. Section 89 of the Customs Act is amended —

(a) by deleting the word “or” at the end of paragraph (iv) of subsection (1);

20 (b) by deleting the full-stop at the end of paragraph (v) of subsection (1) and substituting a semi-colon, and by inserting immediately thereafter the following paragraphs:

25 “(vi) a prosecution of such offence under such written law (other than this Act and the Goods and Services Tax Act) as may be prescribed;

30 (vii) enabling a public agency to enforce such provision of such written law (other than this Act and the Goods and Services Tax Act) as may be prescribed;

(viii) enabling a public agency to investigate such suspected offence under such written law (other than this Act and the Goods and Services Tax Act) as may be prescribed; or

5 (ix) enabling a public agency to take steps to ensure public health or safety, or the security of Singapore, provided the approval of the Minister has been given for the publication, communication or
10 disclosure for such purpose.”;

(c) by inserting, immediately after subsection (1), the following subsections:

“(1A) The approval of the Minister referred to in subsection (1)(ix) may be given in respect of —

15 (a) a specific public agency or a class of public agencies; and

(b) a specific request for particulars, information or documents, or requests for particulars, information or documents falling within such
20 class as the Minister may in his approval specify.

(1B) Nothing in subsection (1) shall prevent the Minister, and any public officer assisting the Minister and duly authorised by the Minister for the purposes of this subsection, from having access to such particulars, information or document referred to in subsection (1) as
25 may be necessary for the performance of his official duties in connection with this Act or the Goods and Services Tax Act.”; and

(d) by deleting subsection (4) and substituting the following
30 subsection:

“(4) In this section —

“Comptroller”, in relation to goods and services tax, has the same meaning as in the Goods and Services Tax Act (Cap. 117A);

5 “public agency” means a public officer, an Organ of State or a ministry or department of the Government, or a public authority established by or under any written law for a public purpose or a member, an officer or an employee, or any department, thereof.”

Amendment of section 90

12. Section 90 of the Customs Act is amended —

- 10 (a) by deleting the words “Notwithstanding section 87, every” in subsection (1) and substituting the word “Every”; and
- (b) by inserting, immediately after subsection (2), the following subsections:

15 “(2A) The duty under this section to retain documents and records may be discharged by the keeping, or preservation of the information contained therein, in accordance with section 87.

20 (2B) Subsection (2A) is without prejudice to any obligation relating to the retention of any document or record under such treaty, memorandum of understanding or other agreement between Singapore and the government of a country or territory outside Singapore, as may be prescribed.”

New sections 98A, 98B and 98C

25 **13.** The Customs Act is amended by inserting, immediately after section 98, the following sections:

“Power to appoint agent, etc., for recovery of duty

98A.—(1) The Director-General may by notice in writing, if he thinks it necessary, declare any person to be the agent of any other person.

30 (2) The person declared the agent under subsection (1) shall be the agent of such other person for the purposes of this Act and may be required to pay any duty due or which may become

5 due from any moneys, including pensions, salaries, wages or
any other remuneration, which, at the date of receipt of the
notice or at any time not later than 90 days thereafter may be
held by him for or due by him to the person whose agent he has
been declared to be, and in default of such payment, the duty
shall be recoverable from him in the manner provided by
section 10(3).

10 (3) For the purposes of this section, the Director-General may
require any person to give him information as to any moneys,
funds or other assets which may be held by the person for, or of
any moneys due by the person to, any other person.

15 (4) For the purposes of payment of any duty due from any
moneys referred to in subsection (2) in a joint account at any
bank or from the proceeds of sale of any immovable property
owned by 2 or more persons as joint owners, the following
provisions shall apply:

- 20 (a) the person declared by the Director-General under
subsection (1) to be the agent of any person who is an
owner of such moneys shall —
- (i) within 14 days after the receipt of the notice
under subsection (1), send a notice by registered
post addressed to every owner of such moneys at
the address last known to the agent informing the
owner of such declaration; and
- 25 (ii) retain such amount of the moneys as is presumed
under paragraph (b) to be owned by the person
from whom duty is due and, subject to
paragraph (c), within 42 days after the receipt of
the notice under subsection (1), or within such
30 further period as the Director-General in his
discretion may allow, pay over the duty due from
such amount to the Director-General;
- 35 (b) it shall be presumed, until the contrary is proved, that
the holders of a joint account at any bank shall have
equal share of the moneys in the account as at the date

of receipt of the notice under subsection (1) and that the joint owners of any immovable property shall share the proceeds of sale of the property equally;

- 5 (c) any owner of such moneys who objects to the share presumed under paragraph (b) shall give notice of the owner's objection in writing to the person declared to be the agent under subsection (1) within 28 days after the receipt of the notice of the agent under paragraph (a)(i), or within such further period as the Director-General in his discretion may allow, and furnish proof as to the owner's share of the moneys;
- 10 (d) where an objection under paragraph (c) has been received, the person declared to be the agent shall —
- 15 (i) retain the amount of such moneys referred to in paragraph (a)(ii) until such time as the Director-General by notice under paragraph (e) informs him of his decision on the objection; and
- (ii) inform the Director-General of the objection within 7 days after the receipt of the objection;
- 20 (e) the Director-General shall consider the objection and shall by notice in writing inform the person declared to be the agent of his decision and the agent shall, notwithstanding any appeal under paragraph (f), pay over any duty due from the share of moneys decided by the Director-General as the amount, not exceeding the amount presumed under paragraph (b) to be the share of the person by whom the duty is payable, held by the agent for or due by the agent to the person;
- 25 (f) any owner of such moneys aggrieved by the decision of the Director-General under paragraph (e) may, notwithstanding section 100, appeal against the decision to the High Court; and
- 30 (g) for the purpose of this subsection, "joint account" means any account in the names of 2 or more persons but excludes any partnership account, trust account
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and any account where a minor is one of the joint account holders.

(5) Where an agent makes any payment of moneys to the Director-General under this section —

- 5 (a) the agent shall be deemed to have been acting under the authority of the person by whom the duty is payable (referred to in this section as the person in default);
- 10 (b) the amount of the duty due from the person in default shall be reduced by the amount paid by the agent to the Director-General; and
- 15 (c) the amount of the reduction shall, to the extent of that amount, be deemed to have been paid to the person in default in accordance with any law, contract or scheme governing the payment of moneys held by the agent for or due from the agent to the person in default.

(6) Where —

- 20 (a) an amount of duty is due from any person under this Act otherwise than as an agent under this section;
- 25 (b) except for this subsection, an amount is or would, at any time during the period of 90 days after the date of the receipt of the notice in paragraph (c), be payable by the Government to the person in default by or under any written law, contract or scheme; and
- 30 (c) before payment of the amount referred to in paragraph (b) is made to the person in default, the Director-General serves notice on any public officer by whom the payment is to be made that the duty is due from the person in default,

then the public officer shall, notwithstanding any other written law, contract or scheme, be entitled to reduce the amount referred to in paragraph (b) by the amount of the whole or any

part of the duty referred to in paragraph (a), and if the public officer makes such a reduction —

- (i) the amount of the duty referred to in paragraph (a) shall be reduced by the amount of the reduction; and
 - 5 (ii) the amount of the reduction shall, to the extent of such amount, be deemed to have been paid to the person in default in accordance with any law, contract or scheme governing the payment of moneys referred to in paragraph (b) to the person in default.
- 10 (7) For the purposes of this section, “duty” includes any penalty or any other money which a person is liable to pay to the Director-General under this Act.

Indemnification of agent

15 **98B.** Every person liable under section 98A for the payment of duty on behalf of another person may retain out of any money coming to his hands on behalf of the other person so much thereof as shall be sufficient to pay the duty; and shall be indemnified against any person for all payments made by him in pursuance and by virtue of this Act.

Late payment charges and interest

- 20 **98C.**—(1) The Director-General may impose —
- (a) charges for the late payment of any customs duty, excise duty, tax, fee or other charge payable under this Act; and
 - 25 (b) interest payable on any outstanding amount of any customs duty, excise duty, tax, fee or charge or for any payment thereof by instalment.
- (2) Every amount collected before the date of commencement of this section as, or purportedly as —
- 30 (a) charges for the late payment of any customs duty, excise duty, tax, fee or other charge under this Act; or

(b) interest on any outstanding amount of any customs duty, excise duty, tax, fee or charge or for any payment thereof by instalment,

5 shall be deemed to be and always to have been validly collected, and no legal proceedings shall lie or be instituted or maintained in any court of law on account of or in respect of any such collection.”.

New section 125A

10 **14.** The Customs Act is amended by inserting, immediately after section 125, the following section:

“Customs ticket notice

15 **125A.**—(1) Where an officer of customs has reasonable grounds for believing that a person has committed an offence under this Act which is prescribed as an offence to which this section applies, he may, in lieu of applying to a court for a summons, immediately serve upon that person a prescribed notice requiring that person to attend at the court described, at the hour and on the date specified in the notice.

20 (2) A duplicate of the notice shall be prepared by the officer of customs and, if so required by a court, produced to the court.

(3) The notice may be served on the person alleged to have committed the offence in the manner provided by section 92(1).

25 (4) On an accused person appearing before a court pursuant to such a notice, the court shall take cognizance of the offence alleged and shall proceed as though he were produced before it in pursuance of section 153 of the Criminal Procedure Code 2010 (Act 15 of 2010).

30 (5) If a person, upon whom such a notice has been served, fails to appear before a court in person or by counsel in accordance therewith, the court may, if satisfied that the notice was duly served, issue a warrant for the arrest of the person unless, in the case of an offence which may be compounded,

that person has before that date been permitted to compound the offence.

(6) Upon a person arrested pursuant to a warrant issued under subsection (5) being produced before a court, it shall —

- 5 (a) proceed as though he were produced before it in pursuance of section 153 of the Criminal Procedure Code 2010; and
- (b) at the conclusion of the proceedings, call upon him to show cause why he should not be punished for failing to attend in compliance with the notice served upon him.
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(7) If cause is not shown under subsection (6)(b), the court may order a person arrested pursuant to a warrant issued under subsection (5) to pay such fine not exceeding \$2,000 as it thinks fit or may commit him to prison for a term not exceeding 2 months.

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(8) A senior officer of customs or an officer empowered with the power of senior officer of customs may, at any time before the date specified in the notice, cancel the notice.”.

20 **Amendment of section 128**

15. Section 128(1) of the Customs Act is amended —

- (a) by inserting, immediately after the word “makes” in paragraphs (a) and (b), the words “or causes to be made”;
- 25 (b) by inserting, immediately after the word “signs” in paragraphs (a) and (b), the words “or causes to be signed”; and
- (c) by deleting paragraph (c) and substituting the following paragraph:
- 30 “(c) makes or causes to be made a declaration required by this Act of the value of dutiable goods imported into or manufactured in Singapore for the purpose of assessment of customs duty or excise duty, which declaration is

untrue or incorrect in any particular or is incomplete by any material particular having been omitted therefrom.”.

Amendment of section 128I

5 **16.** Section 128I of the Customs Act is amended by renumbering the section as subsection (1) of that section, and by inserting immediately thereafter the following subsection:

10 “(2) Nothing in paragraph (a) of subsection (1) shall prevent any person from storing, keeping or having in his possession goods referred to in that paragraph if the Director-General has allowed the person to store, keep or have the goods in his possession under section 27(3).”.

Amendment of section 128L

17. Section 128L of the Customs Act is amended —

15 (a) by inserting, immediately after the words “the lesser amount” in subsection (2)(a), the words “, subject to a minimum of \$1,000 where the specified offence involves goods consisting wholly or partly of relevant tobacco products”;

20 (b) by inserting, immediately after the words “exceeding \$5,000” at the end of subsection (2), the words “, subject to a minimum of \$1,000 where the specified offence involves goods consisting wholly or partly of relevant tobacco products”;

25 (c) by inserting, immediately after the words “the offence” in subsection (4)(a)(i), the words “, subject to a minimum of \$1,000”; and

(d) by deleting subsection (5) and substituting the following subsections:

30 “(5) Subject to subsection (5A), where any person is convicted of a specified offence committed by him on or after the date of commencement of this subsection involving goods consisting wholly or partly of relevant

tobacco products and who has been convicted on a previous occasion of —

- (a) that or any other specified offence involving such goods; or
- 5 (b) any offence under the repealed section 130(1) in force immediately before 4th April 2008 involving such goods,

then he shall be liable to —

- (i) a fine of —
 - 10 (A) not less than 30 times the amount of the customs duty, excise duty or tax the payment of which would have been evaded by the commission of the first-mentioned specified offence, subject to a minimum of
 - 15 \$2,000; and
 - (B) not more than 40 times the amount of the customs duty, excise duty or tax the payment of which would have been so evaded or \$20,000, whichever is the greater
 - 20 amount; or

(ii) imprisonment for a term not exceeding 6 years, or to both.

(5A) Where any person is convicted of a specified offence committed by him on or after the date of commencement of this subsection involving goods consisting wholly or partly of relevant tobacco products exceeding 2 kilogrammes in weight and who has been convicted on a previous occasion of —

- 30 (a) that or any other specified offence involving goods consisting wholly or partly of relevant tobacco products exceeding 2 kilogrammes in weight; or

(b) any offence under the repealed section 130(1) in force immediately before 4th April 2008 involving goods consisting wholly or partly of relevant tobacco products exceeding 2 kilograms in weight,

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then he shall be punished with —

(i) a fine of —

(A) not less than 30 times the amount of the customs duty, excise duty or tax the payment of which would have been evaded by the commission of the first-mentioned specified offence, subject to a minimum of \$2,000; and

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(B) not more than 40 times the amount of the customs duty, excise duty or tax the payment of which would have been so evaded or \$20,000, whichever is the greater amount; and

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(ii) imprisonment for a term not exceeding 6 years.”.

20 **Amendment of section 136**

18. Section 136 of the Customs Act is amended —

(a) by deleting the words “motor spirit in its fuel supply tank” in subsection (1) and substituting the words “motor fuel in such of its fuel supply tanks”;

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(b) by deleting the words “motor spirit in its fuel supply tank” in subsection (2)(b) and substituting the words “motor fuel in any fuel supply tank of the motor vehicle”;

(c) by deleting the words “motor spirit in the fuel supply tank of that motor vehicle” in subsection (2)(b) and substituting the words “motor fuel in that fuel supply tank”; and

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(d) by deleting the words “motor spirit carried in the fuel supply tank” in subsection (2)(c) and substituting the words “motor fuel carried in a fuel supply tank”.

Amendment of section 143

19. Section 143(1) of the Customs Act is amended —

(a) by inserting, immediately after paragraph (h), the following paragraphs:

5 “(ha) for the registration of any person making a declaration under this Act;

 (hb) to provide for matters relating to the World Customs Organization SAFE Framework of Standards to Facilitate and Secure Global Trade
10 or any other similar framework by any international body;” and

(b) by inserting, immediately after paragraph (s), the following paragraphs:

15 (sa) to provide that no compensation may be given in the event of a suspension, withdrawal or surrender of a licence;

 (sb) to provide for the circumstances in which licence fees may be refunded;”.

Consequential amendments to Road Traffic Act

20 **20.** The Road Traffic Act (Cap. 276) is amended —

(a) by deleting the definition of “motor spirit” in section 2(1) and substituting the following definition:

 “ “motor fuel” has the same meaning as in the Customs Act (Cap. 70);” and

25 (b) deleting the words “motor spirit in the fuel tank” wherever they appear in sections 6(1)(f)(iii) and 6A(1), (3) and (4) and substituting in each case the words “motor fuel in any fuel tank”.

EXPLANATORY STATEMENT

This Bill seeks to amend the Customs Act (Cap. 70) (“the Act”).

Clause 1 relates to the short title and commencement.

Clause 2 amends section 3(1) to —

- (a) insert new definitions for “compressed natural gas” or “CNG”, and “motor fuel”;
- (b) make a consequential amendment to the definition of “motor spirit” by removing the reference to “motor fuel” therein; and
- (c) clarify that a licensed warehouse includes a place or places of manufacture licensed under section 63(1).

Clause 3 amends subsection (1)(a) of, and inserts a new subsection (1A) in, section 31.

The amendment to section 31(1)(a) clarifies that, in addition to prescribing authorised piers and places in Singapore, the Minister for Finance (“the Minister”) may also prescribe the circumstances in which the Director-General of Customs (“the Director-General”) may determine that any pier or place is to be an authorised pier or place for the purposes of section 31(1). Further, the Minister may prescribe, or the Director-General may determine, as the case may be, any pier or place to be an authorised pier or place in relation to certain prescribed goods only.

The new subsection (1A) empowers the Minister to prescribe that an operator of an authorised pier or place is to comply with the requirements and restrictions imposed by the Director-General in connection with operations carried out at the authorised pier or place.

Clause 4 amends section 34(2)(d) to add motor fuel to the reference to petroleum, and further amends section 34(2)(d)(i)(A) to recognise that different types of motor fuel and petroleum may be carried in different fuel supply tanks in a motor vehicle.

Clauses 5, 6, 7 and 8 amend sections 51, 63, 66 and 82, respectively, to remove provisions therein that refer to a licensee not being entitled to compensation upon the suspension, withdrawal or surrender of his licence, and for the refund of licence fees in such circumstances.

Clause 9 makes a consequential amendment to section 83(9) following changes made to section 37 of the Goods and Services Tax Act (Cap. 117) vide Goods and Services Tax (Amendment) Act 2010 (Act 20 of 2010).

Clause 10 amends section 87(1) to require that the original forms of documents and records in respect of goods must be retained until the goods have been removed from customs control.

Clause 11 amends subsection (1) of section 89 and inserts a new subsection (1A) to expand on the circumstances in which particulars, information and documents furnished under the Act may be provided to a public

agency. Clause 11 also inserts a new subsection (1B) to require public officers assisting the Minister in the performance of his official duties in connection with the Act or the Goods and Services Tax Act (Cap. 117A) to be expressly authorised by the Minister in order to have sight of any particulars, information or document furnished for purposes of the Act. Clause 11 further amends subsection (4) to insert a new definition for “public agency”.

Clause 12 amends subsection (1) of section 90 and inserts a new subsection (2A) to clarify that section 87 takes precedence over section 90 in allowing documents and records to be retained other than in their original form. However, notwithstanding subsection (1) and the new subsection (2A) read with section 87, the new subsection (2B) requires the original form of the documents and record to be retained for the purpose of complying with Singapore’s international obligations.

Clause 13 inserts new sections 98A, 98B and 98C.

The new sections 98A and 98B empower the Director-General to declare any person to be an agent of another person for the purpose of recovering any duty due from the latter.

The new section 98C provides for the imposition of late charges for the late payment of any duty, tax, fee or other charge payable under the Act, as well as interest on any outstanding amount of any duty, tax, fee or charge or for any payment thereof by way of instalments. The clause further validates earlier collections of such late charges and interest.

Clause 14 inserts a new section 125A to introduce a new customs ticket notice. The new section provides —

- (a) that where an officer of customs has reasonable grounds for believing that a person has committed any offence under the Act which is prescribed as an offence to which this section applies, he may, instead of applying to court for a summons, serve upon that person a prescribed notice, requiring that person to attend court;
- (b) for matters relating to the form of the prescribed notice and the manner it is to be served;
- (c) for the manner in which a person is dealt with when he appears in court in pursuance of such a notice; and
- (d) that the notice may be cancelled by a senior officer of customs at any time before that date specified in the notice.

Clause 15 amends section 128(1) so that the provision applies to both a principal and his agent.

Clause 16 renumbers section 128I as section 128I(1) and inserts a new subsection (2) to give due recognition to section 27(3) which would, contrary to

subsection (1), allow a person to store, keep or have in his possession dutiable or prohibited goods or uncustomed goods, if so allowed by the Director-General.

Clause 17 amends section 128L(2) and (4) to introduce a minimum amount for fines at \$1,000 for a first time offence involving goods comprising wholly or partly of relevant tobacco products. The clause deletes subsection (5) and inserts new subsections (5) and (5A) to deal with the penalties for repeat offences involving relevant tobacco products. Under the new subsection (5), the current level of penalty under the existing subsection (5) remains except that a minimum amount of \$2,000 for the fine is introduced. The new subsection (5) is subject to the new subsection (5A) which provides that, where the amount of the relevant tobacco product involved in both the repeat offence and the previous offence exceeds 2 kilogrammes in weight, the current level of penalty under the existing subsection (5) (with the minimum fine of \$2,000) is mandatory.

Clause 18 amends section 136, and clause 20 amends various provisions in the Road Traffic Act (Cap. 276), to take into account the new definition of “motor fuel” inserted in section 2 of the Act vide clause 2 and the fact that different types of motor fuel may be carried in different fuel tanks in a motor vehicle.

Clause 19 amends section 143(1) to empower the Minister to make regulations —

- (a) for the registration of persons making declarations under the Act;
- (b) for matters relating to the World Customs Organization SAFE Framework of Standards to Facilitate and Secure Global Trade and other similar frameworks; and
- (c) to provide that no compensation is payable in the event of the suspension, withdrawal or surrender of a licence issued under the Act, and for the refund of licence fees.

EXPENDITURE OF PUBLIC MONEY

This Bill will not involve the Government in any extra financial expenditure.