

AFRIKAANSE HANDELSINSTITUUT

THE APPLICATION TO CERTIFY A NEW CONSTITUTIONAL TEXT IN TERMS OF SECTION 71 OF THE CONSTITUTION OF THE REPUBLIC OF SOUTH AFRICA, 1993.

OBJECTION BY DIE AHI IN TERMS OF RULE 15 AND DIRECTION 4
OF THE DIRECTIONS ISSUED BY THE PRESIDENT OF THE
CONSTITUTIONAL COURT ON 13 MAY 1996.

THE OBJECTOR

1. The Objector is **DIE AHI ('n Vereniging ingelyf kragtens artikel 21)**, a company without share capital with registration number UC 05/15580/08.

The objector has many members who are manufacturers and traders, who will be affected by Section 229 of the Constitution.

PROVISION TO WHICH OBJECTION IS MADE

2. The provision of the Constitution to which objection is made, is section 229(1), in particular the power given to a municipality to impose excise taxes subject only to the requirement in section 229(2) that any recommendations of the Financial and Fiscal Commission be considered before imposing such taxes.

THE RELEVANT CONSTITUTIONAL PRINCIPLE

3. It is respectfully submitted that the provision in respect of which objection is made does not comply with Constitutional Principle XXV contained in Schedule 4 to the Interim Constitution of the Republic of South Africa, Act no 200 of 1993.

GROUND FOR THE OBJECTION

- 4.1 It is respectfully submitted that the power given to municipalities to impose excise taxes in terms of section 229 (1) of the Constitution does not comply with Constitutional Principle XXV in that it is not an appropriate fiscal power within the meaning of that term as used in Constitutional Principle XXV.
- 4.2 It is respectfully submitted that the word "appropriate" in Constitutional Principle XXV must be interpreted in the context of the body of Constitutional Principles as a whole. In particular the criteria to be applied in the allocation of powers to the national government and provincial governments should be considered, in particular those contained in Constitutional Principles XXI (3) and XXI (5).

4.2.1.1 Constitutional Principle XXI (3) requires that:

"Where there is a necessity for South Africa to speak with one voice, or to act as a single entity - in particular in relation to other states - powers should be allocated to the national government."

4.2.1.2 It is respectfully submitted that a departure as regards local government level from the criteria contained in Constitutional Principle XXI (3) - which is prescribed in respect of the relationship between the national government and provincial governments - would result in the power at local government level not being an "appropriate" fiscal power as required by Constitutional Principle XXV.

4.2.1.3 In this regard it is respectfully submitted that regard should be had to the fact that excise duties are also regulated in terms of the Customs Union Agreement concluded between the Republic of South Africa, the Republic of Botswana, the Kingdom of Lesotho and the Kingdom of Swaziland. The Agreement also extends to the Republic of Namibia. The Agreement binds the parties other than South Africa to implement similar duties in their respective countries as is applicable in South Africa. In terms of that Agreement all duties have to be paid into the Consolidated Revenue Fund of South Africa, from where disproportional portions flow to the other parties.

4.2.1.4 It is respectfully submitted that the requirements in terms of the Agreement that all excise duties be pooled in the Consolidated Revenue Fund and that the other parties implement similar duties, cannot be reconciled with the power of municipalities in terms of section 229 of the Constitution to impose excise duties.

4.2.2.1 Constitutional Principle XXI (5) requires that:

"The determination of national economic policies, and the power to promote interprovincial commerce and to protect the common market in respect of the mobility of goods, services, capital and labour, should be allocated to the national government."

4.2.2.2 It is respectfully submitted that a departure as regards to local government level from the criteria contained in Constitutional Principle XXI (5) - which is prescribed in respect of the relationship between the national government and provincial governments - would result in the power at local government level not being an "appropriate" fiscal power as required by Constitutional Principle XXV.

4.3 It is further respectfully submitted that as section 229 specifically provides that municipalities may not impose customs duties, the power to impose excise duties in terms of that section is not an appropriate fiscal power within the meaning of Constitutional Principle XXV.

4.3.1 Many goods manufactured in South Africa have to compete in the market place with imported goods. It is respectfully submitted that to allow

domestically produced goods to be taxed at the local government level in the absence of the power at that level to impose a similar burden on imported goods, will in many instances unreasonably distort the competitive position of domestic manufacturers.

- 4.4 It is further respectfully submitted that the power of municipalities to impose excise taxes in terms of section 229 of the Constitution is not an appropriate fiscal power within the meaning of Constitutional Principle XXV because in general excise taxes are most efficiently imposed, administered and collected by the national government.

WRITTEN AND ORAL ARGUMENT

5. The objector respectfully requests authorization by the honourable Court for an opportunity to file written argument and to address oral argument to the honourable Court.

OBJECTOR'S ADDRESS AND FAX NUMBER

6. Communication to the objector can be directed to:

Die AHI (Vereniging ingelyf kragtens artikel 21)
(For the attention of the Executive Director)

at the following address -
Lynnwood Galleries
First Floor 354
Rosemary Avenue
0081 LYNNWOOD

or the following fax number -
(012) 47-7720

SIGNED AT JOHANNESBURG ON 30 MAY 1996

T VAN WYK
for Die AHI ('n Vereniging ingelyf kragtens artikel 21)