THE CUSTOMS AND EXCISE (AMENDMENT) BILL, 2011

A Bill for

AN ACT of Parliament to amend the Customs and Excise Act to provide for the type of containers for packaging of alcoholic beverages and for connected purposes

ENACTED by the Parliament of Kenya, as follows—

1. This Act may be cited as the Customs and Excise (Amendment) Act, 2011. Short title.

2. The Customs and Excise Act is amended in section 91A by inserting the following new subsection immediately after subsection (1) —

“(1A) For the avoidance of doubt, the container referred to in subsection (1) shall either be a glass or PET (polyethylene terephthalate) bottle.”

Amendment of section 91A of Cap. 472.

3. The Alcoholic Drinks Control Act is amended by inserting the words “or PET (polyethylene terephthalate)” immediately after the word “glass” appearing in paragraph (b) of subsection (2).

Consequential amendment to section 31 of No. 4 of 2010.
MEMORANDUM OF OBJECTS AND REASONS

The principal object of this Bill is to amend the Customs and Excise Act (Cap. 472) in order to provide for the type of containers in which alcoholic beverages will be packaged for sale and distribution.

The principal Act, in section 91A(1), currently only limits the capacity of the container in which alcoholic beverages should be packaged, but does not specify what form these containers should take. However, the Alcoholic Drinks Control Act, 2010, in section 31, bars any selling of alcoholic drinks in sachets. The latter Act further requires that the alcoholic drink popularly known as chang’aa or any other distilled drink should only be packaged, sold or distributed in glass bottles.

The proposed amendment therefore seeks to harmonise the two statutes but goes further to provide that alcoholic beverages may, in addition to glass bottles, be packaged in PET (polyethylene terephthalate) bottles. This has necessitated a consequential amendment to section 31(2) of the Alcohol Drinks Control Act to similarly provide for packaging of alcoholic drinks in PET bottles to enable the two legislation be in full harmony with each other.

The practice and statistics posted by the World Health Organization indicate that worldwide, all beverages like alcohol, water, milk and sodas are packaged in glass or PET bottles for health and safety reasons. Further, revenue legislation, just like penal legislation, have to be clear, definite, specific and unambiguous as when because when it comes to interpretation in court, they are always interpreted strictly in favour of the taxpayer and all ambiguities are interpreted against the enforcing agency.

It is therefore imperative that the Customs and Excise Act should clearly and in no uncertain terms be specific and stipulate the nature and type of container to be used for purposes of packaging of alcoholic beverages.

The enactment of this Bill shall not occasion the additional expenditure of public funds.

Dated the 4th April, 2011.

JULIUS KONES,
Member of Parliament.
Section 91A of Cap. 472 which it is proposed to amend—

91A. (1) No person shall pack or sell an alcoholic beverage in a container the capacity of which is two hundred millitres or less.

(2) A person who contravenes the provisions of subsection (1) shall be guilty of an offence and liable to a fine not exceeding five hundred thousand shillings, or to imprisonment for a term not exceeding three years, or to both.

Section 31 of No. 4 of 2010 which it is proposed to amend—

31. (1) No person shall sell, manufacture, pack or distribute an alcoholic drink in sachets or such other form as may be prescribed.

(2) Notwithstanding the provisions of subsection (1)—

(a) no person shall manufacture, pack, distribute or sell an alcoholic drink in a container of less than 250 mililitre;

(b) the alcoholic drink previously known as chang’aa or any other distilled alcoholic drink shall only be manufactured, packed, sold or distributed in glass bottles of the kind specified in paragraph (a).

(3) A person who contravenes this section commits an offence and shall be liable to a fine not exceeding fifty thousand shillings, or to imprisonment for a term not exceeding six months, or to both.