

CUSTOMS AND EXCISE DUTY (AMENDMENT) ACT, 1983

No.26



of 1983

ARRANGEMENT OF SECTIONS

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An Act to amend the Customs and Excise Duty Act.

Date of Assent: 5.9.83

Date of Commencement: 9.9.83

ENACTED by the Parliament of Botswana.

1. (1) This Act may be cited as the Customs and Excise Duty (Amendment) Act, 1983.

Short title
and com-
mencement

(2) Sections 4, 11, 12, 13, 14, 15 and 16 shall be deemed to have come into operation on 1st July, 1983, whilst section 19 shall be deemed to have come into operation on 3rd July, 1978.

2. Section 19 of the Customs and Excise Duty Act (in this Act referred to as "the principal Act") is hereby amended —

Amendment
of section 19
of Cap. 50:01

(a) by substituting for paragraph (a) of subsection (2) thereof, the following new paragraph —

“(a) (i) Upon the entry and landing of imported goods for storage in or the transfer of dutiable locally-produced goods to a customs and excise warehouse or the transfer of dutiable manufactured goods from a customs and excise manufacturing warehouse to a customs and excise storage warehouse, the licensee of any such warehouse in which such goods are stored or to which such goods are so transferred shall take and record an accurate account of such goods, which shall include, subject to any deduction that may be allowed under section 79 (19), the debiting to stock of any excess found on receipt of such goods at such warehouse.

(ii) The licensee referred to in subparagraph (i) shall immediately upon the receipt of such goods report to the Director any such excess so found.”; and

(b) by deleting subsection (8) thereof.

Amendment
of section 41
of principal
Act

3. Section 41 of the principal Act is hereby amended by substituting for paragraph (a) of subsection (3) thereof the following new paragraph —

“(a) Subject to the provisions of sections 80 and 81 and on such conditions as the Director may impose and on payment of such fees as the Minister may prescribe by regulation —

(i) an importer or exporter or manufacturer of goods shall on discovering that a bill of entry presented by him does not in every respect comply with section 40, or is invalid in terms of subsection (1), forthwith adjust that bill of entry by means of a voucher of correction or in such other manner as the Director may prescribe; or

(ii) if a bill of entry has been passed in error by reason of duty having been paid on goods intended for storage or manufacture in a customs and excise warehouse under section 19 or for use under rebate of duty under section 79, the Director may allow the importer, exporter or manufacturer concerned to adjust that bill of entry by substitution of a fresh bill

of entry and cancellation of the original bill of entry, provided such goods, where a rebate of duty is being claimed, qualified at the time the duty was paid in all respects for that rebate:

Provided that acceptance of such voucher or fresh bill of entry shall not indemnify such importer or exporter or manufacturer against any fine or penalty provided for in this Act.”.

4. Section 42 of the principal act is hereby amended —

Amendment
of section 42
of principal
Act

(a) by substituting for paragraph (a) of subsection (4) thereof the following new paragraph —

“(a) All particulars necessary to make a valid entry and all particulars in respect of the transaction value or of any commission, discount, cost, charge, expense, royalty, freight, duty, tax, drawback, refund, rebate, remission or other information whatever which relates to and has a bearing on such value shall be declared by the exporter in any prescribed invoice in respect of any imported goods and such particulars shall, except where the Director otherwise determines, relate to the final amount of such transaction value or commission, discount, cost, charge, expense, royalty, freight, duty, tax, drawback, refund, rebate or remission and to the final particulars or information regarding such goods.”; and

(b) by substituting for paragraph (c) of subsection (4) thereof the following new paragraph —

“(c) If any particulars referred to in paragraph (a) of any imported goods are not declared in the prescribed invoice or certificate in respect thereof or if any change in the particulars declared in any prescribed invoice or certificate relating to any imported goods which occurs after the date of issue of any such invoice or certificate is not forthwith reported to the Director by the importer of such goods or if the Director has reason to believe that an offence referred to in section 90 (f) or (g) has been committed in respect of any imported goods the Director may determine a transaction value, origin, date of purchase, quantity, description or the characteristics of such goods according to the best information available to him, which shall, subject to a right of appeal to the Minister, be deemed to be the transaction value, origin, date of purchase, quantity, description or the characteristics of such goods.”.

Amendment
of section 44
of principal
Act

5. Section 44 of the principal Act is hereby amended by substituting for subsection (2) thereof the following new subsection —

“(2) (a) The Director may at any time after the expiry of such prescribed period call upon the importer to make due entry of the goods within a time specified and if such importer fails to do so the goods shall be liable to forfeiture.

(b) If such goods are seized under section 92 (1) and sold in terms of section 94 the proceeds thereof shall be disposed of as provided in subsection (3).”

Amendment
of section 46
of principal
Act

6. Section 46 of the principal Act is hereby amended by substituting for subsection (2) thereof the following new subsection —

“(2) For the purposes of this section, the time of entry for home consumption of —

(a) goods imported by post (and not entered at a customs and excise office before the Director) shall be deemed to be the time when such goods are assessed for duty; and

(b) goods imported otherwise shall be deemed to be the time when the bill of entry concerned is delivered to the Director in terms of section 40 (1) (a) and at a place indicated by the Director, irrespective of whether that bill of entry is returned by the Director in order to be adjusted as required by the Director, provided it is redelivered, so adjusted, to the Director within five days after the day on which it was so returned by the Director.”

Amendment
of section 49
of principal
Act

7. Section 49 of the principal Act is hereby amended by substituting for subsection (6) thereof the following new subsection —

“(6) Any duty payable in terms of section 54, any anti-dumping duty payable in terms of section 57 and any countervailing duty payable in terms of section 58 shall be paid for the benefit of the Fund in accordance with the provisions of the said sections.”

Amendment
of section 51
of principal
Act

8. Section 51 of the principal Act is hereby amended —

(a) by substituting for the words preceding the proviso to subsection (2) thereof the following new words —

“The Minister may from time to time by like notice amend or withdraw or, if so withdrawn, insert Part 2, Part 3 or Part 4 of Schedule No. 1, whenever he deems it expedient in the public interest to do so;” and

(b) by substituting for subsection (6) thereof the following new subsection —

“(6) Every amendment, withdrawal or insertion made by the Minister under this section shall be laid before the National Assembly. If the National Assembly shall not, during the next meeting of the Assembly which commences after such amendment, withdrawal or insertion has been laid, approve the same by resolution such amendment, withdrawal or insertion shall lapse on the last day of such meeting. Any such lapse shall be without prejudice to the validity of such amendment, withdrawal or insertion before it has so lapsed and, in particular but without prejudice to the generality of the foregoing, no duty collected by reason of such amendment, withdrawal or insertion before such lapse shall be refundable and any duty due by reason of such amendment, withdrawal or insertion but not collected shall continue to be due.”.

9. Section 62 of the principal Act is hereby amended by substituting for subsection (2) thereof the following new subsection —

Amendment
of section 62
of principal
Act

“(2) The Director may, subject to an appeal to the Minister, whose decision shall be final —

- (a) refuse any application for a new licence; or
- (b) refuse any application for a renewal of any licence or cancel or suspend for a specified period any licence if the applicant or the holder of such a licence, as the case may be —
 - (i) has contravened or failed to comply with the provisions of this Act;
 - (ii) has been convicted of an offence under this Act;
 - (iii) has incurred a penalty under section 95 (1); or
 - (iv) has been convicted of an offence involving dishonesty.”.

10. Section 64 of the principal Act is hereby amended by substituting for subsection (3) thereof the following new subsection —

Amendment
of section 64
of principal
Act

“(3) No licence granted to an agricultural distiller shall be transferable except in circumstances which the Director may deem exceptional or, in the event of the death of the licensee or the expropriation in terms of the Acquisition of Property Act, of a farm in respect of which the licence was granted, with the written permission of the Director and subject to such conditions as he may determine.”.

Cap. 32:10

11. Section 69 of the principal Act is hereby amended by substituting for that section the following new section —

Substitution
of section 69
of principal
Act

“Value for customs duty purposes 69. (1) Subject to the provisions of this Act, the

value for customs duty purposes of any imported goods shall, at the time of entry for home consumption, be the transaction value thereof, within the meaning of section 70.

(2) If such value of any imported goods of a single denomination is —

(a) in excess of one unit of account such value shall for the purpose of assessing the amount of duty payable, be calculated to the nearest unit of account, an amount of 0.50 unit of account being regarded as less than one half of one unit of account;

(b) less than one unit of account, such value shall be calculated as one unit of account.

(3) Unless the context otherwise indicates, any reference in this Act to customs value or to value for duty purposes, in relation to imported goods, shall be deemed to be a reference to value for customs duty purposes.

(4) (a) If in the opinion of the Director the transaction value of any imported goods cannot be ascertained in terms of section 70 or has been incorrectly ascertained by the importer, the Director may determine a value, which shall, subject to a right of appeal to the Minister, be deemed to be the value for customs duty purposes of the goods.

(b) The acceptance by any officer of a bill of entry or the release of any goods as entered shall not be deemed to be any such determination.

(c) Any determination so made shall be deemed to be correct for the purposes of this Act, and any amount due in terms of any such determination shall remain payable as long as such determination remains in force.

(5) The Director may whenever he deems it expedient and subject to a right of appeal to the Minister amend or withdraw any such determination and make a new determination with effect from —

(a) the date of first entry of the goods in question;

(b) the date of the determination made under subsection (4);

(c) the date of such new determination; or

(d) the date of such amendment.

(6) An appeal against any such determination shall be lodged with the Minister in the manner prescribed

by regulation within a period of 90 days from the date of the determination.

(7) Except where —

(a) a determination has been made under subsection (4) (a) or (5); or

(b) any false declaration is made for the purposes of subsection (4) or (5),

there shall be no liability for any underpayment of customs duty on any goods, where such underpayment is due to the acceptance of a bill of entry bearing an incorrect customs value, after a period of two years from the date of entry of such goods.

(8) (a) Notwithstanding the provisions of subsections (1) and (4), the value for customs duty purposes of any imported goods specified in section B of Part 2 of Schedule No. 1 (other than pearls, precious and semi-precious stones, precious metals, rolled precious metals or articles containing or manufactured of such pearls, precious and semi-precious stones, precious metals or rolled precious metals entered under Schedule No. 4) shall be the transaction value thereof plus 15 per cent of such value, plus any non-rebated customs duty payable in terms of Part 1 of Schedule No. 1 on such goods, but excluding the customs duty specified in the said section B of Part 2 of Schedule No. 1 on such goods.

(b) The provisions of subsection (3) or (4) of section 73 shall *mutatis mutandis* apply to the ascertainment or determination of the value for customs duty purposes of any such imported pearls, precious and semi-precious stones, precious metals, rolled precious metals or articles containing or manufactured of such pearls, precious and semi-precious stones, precious metals or rolled precious metals.

(9) For the purposes of sections 70 and 71, unless the context otherwise indicates —

(a) “buying commission”, in relation to imported goods, means any fee paid by an importer to his agent for representing him abroad in the purchase of and the payment for the goods;

(b) “goods of the same class or kind”, in relation to imported goods, means goods produced by a particular industry or industry sector in the country from which the imported goods were exported, and falling within the same group or range of goods as the imported goods;

- (c) "identical goods", in relation to imported goods, means goods produced in the same country and by the same or a different producer as the imported goods and which are the same in all respects, including physical characteristics, quality and reputation but excluding minor differences in appearance, as the imported goods, but does not include goods incorporating or reflecting engineering, development work, art work, design work, plans or sketches undertaken in Botswana;
- (d) "price actually paid or payable", in relation to imported goods, means the total payment made or to be made, either directly or indirectly, by the buyer to or for the benefit of the seller for the goods, but does not include dividends or other payments passing from the buyer to the seller which do not directly relate to the goods;
- (e) "similar goods", in relation to imported goods, means goods produced in the same country and by the same or a different producer as the imported goods and which although not alike in all respects to the imported goods have, with due regard to their quality and reputation and the existence of a trade mark, like characteristics and like component materials which enable them to be employed for the same purposes and to be commercially interchangeable, but does not include goods incorporating or reflecting engineering, development work, art work, design work, plans or sketches undertaken in Botswana."

Substitution
of section 70
of principal
Act

12. Section 70 of the principal Act is hereby amended by substituting for that section, the following new section —

"Transaction
value

70. (1) Subject to the provisions of this Act, the transaction value of any imported goods shall be the price actually paid or payable for the goods when sold for export to Botswana; adjusted in terms of section 71, provided —

- (a) there are no restrictions as to the disposal or use of the goods by the buyer other than restrictions which —
 - (i) are imposed or required by law;
 - (ii) limit the geographical area in which the goods may be resold; or
 - (iii) do not substantially affect the value of the goods;

- (b) the sale or such price of the goods is not subject to any term or condition for which a value cannot be determined;
 - (c) no part of the proceeds of any disposal, use or subsequent resale of the goods by the buyer will accrue directly or indirectly to the seller, unless an appropriate adjustment can be made in terms of section 71;
 - (d) subject to subsection (3), the seller and the buyer are not related within the meaning of subsection (2) (a).
- (2) (a) For the purposes of subsection (1) (d), two persons shall be deemed to be related only if —
- (i) they are officers or directors of one another's businesses;
 - (ii) they are legally recognized partners in business;
 - (iii) the one is employed by the other;
 - (iv) any person directly or indirectly owns, controls or holds five per cent or more of the equity share capital of both of them;
 - (v) one of them directly or indirectly controls the other;
 - (vi) both of them are directly or indirectly controlled by a third person;
 - (vii) together they directly or indirectly control a third person; or
 - (viii) they are members of the same family.
- (b) Persons who are associated in business with one another in that the one is the sole agent, sole distributor or sole concessionary, however described, of the other shall be deemed to be related only if they are so deemed in terms of paragraph (a).
- (c) Every importer of goods which are not exempted by regulation shall, when making entry of the goods, declare, in the manner prescribed by regulation, whether or not he is related to the supplier of the goods within the meaning of this section.
- (3) Notwithstanding the provisions of subsection (1) (d), the fact that a buyer and a seller are related within the the meaning of subsection (2) (a) shall not in itself be a ground for not accepting the transaction value, where —

- (a) in the opinion of the Director such relationship did not influence the price paid or payable; or
- (b) the importer proves to the satisfaction of the Director that the transaction value closely approximates to one of the following values, namely —
 - (i) the transaction value of identical or similar goods sold at comparable trade and quantity levels to unrelated buyers in Botswana at or about the same time as the goods to be valued;
 - (ii) the value, ascertained in terms of subsection (7), of identical or similar goods imported into Botswana at or about the same time as the goods to be valued;
 - (iii) the value, ascertained in terms of subsection (8), of identical or similar goods imported into Botswana at or about the same time as the goods to be valued.

(4) (a) If the transaction value of any imported goods cannot be ascertained in terms of subsection (1), it shall be the price actually paid or payable for identical goods in a sale for export to Botswana at the same commercial level and in substantially the same quantity and exported at or about the same time as the goods to be valued, adjusted, with reference to differences in any costs and charges referred to in section 71, on account of differences in distances and modes of transport to the port or place of export.

(b) Where no such sale is found, a sale of identical imported goods at either a different commercial or quantity level, or at a different commercial level and quantity level, adjusted to compensate for such differences, shall be used to ascertain the transaction value.

(c) If in the application of this subsection more than one transaction value is ascertained, the lowest such value shall be the transaction value of the goods to be valued.

(5) (a) If the transaction value of any imported goods cannot be ascertained in terms of subsection (4), it shall be the price actually paid or payable for similar goods in a sale for export to Botswana at the same commercial level and in substantially the same quantity and exported at or about the same time as the goods to be valued, adjusted, with reference to differences in any

costs and charges referred to in section 71, on account of differences in distances and modes of transport to the port or place of export.

(b) Where no such sale is found, the provisions of paragraphs (b) and (c) of subsection (4) shall *mutatis mutandis* apply.

(6) If the transaction value of any imported goods cannot be ascertained in terms of subsection (5), it shall be ascertained in terms of subsection (7) or, when it cannot be ascertained in terms of subsection (7), it shall be ascertained in terms of subsection (8):

Provided that at the request, in writing, of the importer concerned the order of application of subsections (7) and (8) shall be reversed.

(7) (a) If the imported goods or identical or similar imported goods are sold in Botswana in the same condition as that in which they were when imported, the transaction value of the imported goods in terms of this subsection shall be based on the unit price at which the imported goods or identical or similar imported goods are sold in Botswana in the greatest aggregate quantity, at or about the time of importation of the goods to be valued, by the importers thereof to persons not related to them, subject to deductions for —

- (i) commissions usually paid or agreed to be paid or additions usually made for profit and general expenses, including the direct and indirect costs of marketing the goods relative to sales in Botswana of imported goods of the same kind or class as the goods to be valued, irrespective of the country of exportation;
- (ii) the cost of transportation and the cost of loading, unloading, handling, insurance and associated costs incidental to the transportation of the goods from the port or place of export in the country of exportation to the importer's premises in Botswana; and
- (iii) any duties or taxes paid or payable in Botswana by reason of the importation of the goods or sale of the goods within Botswana.

(b) If neither the imported goods nor identical nor similar imported goods are sold at or about the time of importation of the goods to be valued, the transaction value of the imported goods in terms of this subsection shall, subject to the provisions of paragraph (a), be

based on the unit price at which the imported goods or identical or similar imported goods are sold in Botswana in the same condition as that in which they were when imported, at the earliest date after the importation of the goods to be valued, but not later than 90 days after such importation.

(c) If neither the imported goods nor identical nor similar imported goods are sold in Botswana in the same condition as that in which they were imported, then, if the importer so requests in writing, the transaction value of the imported goods in terms of this subsection shall be based on the unit price at which the imported goods, after further processing, are sold in the greatest aggregate quantity to persons in Botswana not related to the sellers of such goods, due allowance being made for the value added by such processing and the deductions referred to in paragraph (a).

(8) The transaction value of any imported goods in terms of this subsection shall be based on a computed value, computed by means of information supplied by the producer and consisting of the sum of —

- (a) the cost or value of materials and manufacture or other processing in producing the goods;
- (b) the cost of —
 - (i) packing, including that of the labour or materials concerned; and
 - (ii) containers which are dealt with as being for customs purposes one with the goods in question;
- (c) the value, apportioned to the imported goods as deemed appropriate by the Director, with due regard to any relevant request by the importer, of any of the following goods and services if supplied directly or indirectly by the importer free of charge or at reduced cost, for use in connection with the production and sale for export of the imported goods, in so far as such value has not been included in the price actually paid or payable, namely —
 - (i) materials, components, parts and similar articles forming part of the imported goods;
 - (ii) tools, dies, moulds and similar articles used in the production of the imported goods;
 - (iii) materials consumed in the production of the imported goods;

- (iv) engineering, development work, art work, design work, plans and sketches undertaken elsewhere than in Botswana and necessary for the production of the imported goods;
 - (d) the cost of transportation and the cost of loading, unloading, handling, transport and insurance and associated costs incidental to delivery of the imported goods at the port or place of export in the country of exportation, ready for export to Botswana;
 - (e) an amount for profit and general expenses equal to that generally applicable in sales of goods of the same class or kind as the imported goods, which are made by producers in the country of exportation.
- (9) Where the transaction value of any imported goods cannot be ascertained in terms of the provision of subsection (8), the Director may determine such value on the basis of a previous determination or, where there is no previous determination, by such application as he may deem reasonable of any manner of ascertaining the transaction value in terms of subsection (1), (4), (5), (7) or (8), but no such determination shall be based on —
- (a) the selling price in Botswana of goods produced in Botswana;
 - (b) a system which provides for the acceptance for customs purposes of the higher of two alternative values;
 - (c) the selling price of goods on the domestic market of the country of origin or of exportation of the imported goods;
 - (d) the cost of production, other than computed values which have been determined for identical or similar goods in accordance with subsection (8);
 - (e) the price of the goods for export to a country other than Botswana;
 - (f) a system of minimum customs values; or
 - (g) arbitrary or fictitious values.
- (10) For the purposes of subsection (7) (a) (ii) or (8) (d), goods which are exported to Botswana from any country but pass in transit through another country shall, subject to any conditions which may be prescribed by regulation, be deemed to have been exported direct from the first-mentioned country.

(11) For the purposes of subsection (7) (a) (ii) or (8) (d), the port or place of export referred to therein shall be the place where the goods in question are —

(a) packed in a container as defined in section 2 (2) in the country of export or, if not so packed in a container, placed on board ship or on any vehicle in the country of exportation ready for export to Botswana; or

(b) placed on the vehicle which conveys them across the border of the country from which they are exported to Botswana.”

Substitution
of section 71
of principal
Act

13. Section 71 of the principal Act is hereby amended by substituting for that section, the following new section —

“Adjust-
ments to
price
actually paid
or payable

71. (1) In ascertaining the transaction value of any imported goods in terms of section 70 (1), there shall be added to the price actually paid or payable for the goods —

(a) to the extent that they are incurred by the buyer but are not included in the price actually paid or payable —

(i) any commission other than a buying commission;

(ii) brokerage;

(iii) the cost of packing, including that of the labour and materials concerned;

(iv) the cost of containers which are dealt with as being for customs purposes one with the goods;

(b) the value, apportioned to the imported goods as deemed appropriate by the Director, of any of the following goods and services if supplied directly or indirectly by the importer free of charge or at reduced cost, for use in connection with the production and sale for export of the imported goods, to the extent that such value has not been included in the price actually paid or payable, namely —

(i) materials, components, parts and similar articles forming part of the goods;

(ii) tools, dies, moulds and similar articles used in the production of the goods;

(iii) materials consumed in the production of the goods;

(iv) engineering, development work, art work, design work, plans and sketches undertaken

elsewhere than in Botswana and necessary for the production of the goods;

- (c) royalties and licence fees in respect of the imported goods, including payments for patents, trade marks and copyright and for the right to distribute or resell the goods, due by the buyer, directly or indirectly, as a condition of sale of the goods for export to Botswana, to the extent that such royalties and fees are not included in the price actually paid or payable, but excluding charges for the right to reproduce the imported goods in Botswana;
- (d) the value of any part of the proceeds of any subsequent resale, disposal or use of the imported goods that accrues directly or indirectly to the seller; and
- (e) to the extent that it is not included in the price actually paid or payable for the goods, the cost of transportation and the cost of loading, unloading, handling, insurance and associated costs incidental to delivery of the goods at the port or place of export in the country of exportation ready for export to Botswana.

(2) In ascertaining the transaction value of any imported goods in terms of section 70(1), there shall be deducted from the price actually paid or payable for the goods, to the extent that they are included therein, amounts equal to —

- (a) the cost of transportation and the cost of loading, unloading, handling, insurance and associated costs incidental to the transportation of the goods from the port or place of export in the country of exportation to the place of importation in Botswana;
- (b) any of the following costs, charges or expenses if identified separately from the balance of the price actually paid or payable for the goods, namely —
 - (i) any expenditure incurred for the construction, erection, assembly or maintenance of, or technical assistance provided in respect of, the goods after they are imported;
 - (ii) the cost of transport and insurance of the goods within Botswana;
 - (iii) any duties or taxes paid or payable by reason of

the importation of the goods or sale of the goods in Botswana;

- (iv) any duty or tax applicable in the country of exportation from which the goods have been or will be relieved by way of refund, drawback, rebate or remission;
- (v) buying commission;
- (vi) interest charged in respect of the price payable for the goods;
- (vii) any charge for the right to reproduce the imported goods in Botswana.

(3) For the purposes of subsection (1) (e) or (2) (a), goods which are exported to Botswana from any country but pass in transit through another country shall, subject to such conditions as may be prescribed by regulation, be deemed to have been exported direct from the first-mentioned country.

(4) For the purposes of subsection (1) (e) or 2 (a), the port or place of export referred to therein shall be the place where the goods in question are —

- (a) packed in a container as defined in section 2 (2) in the country of export or, if not so packed in a container, placed on board ship or on any vehicle in the country of exportation ready for export to Botswana; or
- (b) placed on the vehicle which conveys them across the border of the country from which they are exported to Botswana.”

Amendment
of section 73
of principal
Act

14. Section 73 of the principal Act is hereby amended by substituting for subsection (1) thereof the following new subsection —

“(1) (a) The value for sales duty purposes of any imported goods, other than goods entered in terms of item 709.01 of Schedule No. 7, shall be the customs value thereof, plus 15 per cent of such value, plus any non-rebated customs duty payable in terms of Part 1 and Part 2 of Schedule No. 1 on such goods, but excluding the sales duty on such goods.

(b) The provisions of sections 69, 70, 71 and 74 shall *mutatis mutandis* apply to the calculation or determination of the value for sales duty purposes of any imported goods.”.

Amendment
of section 77
of principal
Act

15. Section 77 of the principal Act is hereby amended by substituting for subsection (1) thereof the following new subsection —

“(1) Subject to the provisions of subsection (2), the customs

value of any imported goods shall be declared by the importer on entry of such goods.”.

16. Section 78 of the principal Act is hereby amended by substituting for that section the following new section —

Substituting
of section 78
of principal
Act

“Inter-
pretation of
sections 69,
70 and 71”

78. (1) The interpretation of sections 69, 70 and 71 shall be subject to the agreement concluded at Geneva on 12th April, 1979 and known as the Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade, the Interpretative Notes thereto and the Advisory Opinions, Commentaries and Explanatory Notes issued under the said Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade.

(2) The Director shall obtain and keep in his office two copies of such Agreement, Interpretative Notes, Advisory Opinions, Commentaries and Explanatory Notes and shall effect thereto any amendment thereof which he is notified by the Secretariat of the General Agreement on Tariffs and Trade.

(3) The provisions of subsection (1) shall not derogate from the interpretation which would but for that subsection be given to section 69, 70 or 71.”.

17. Section 79 of the principal Act is hereby amended by substituting for paragraph (b) of subsection (15) thereof, the following new paragraph —

Amendment
of section 79
of principal
Act

“(b) in all other cases, within a period of six months from the date when such refund first becomes due:”.

18. Section 80 of the principal Act is hereby amended —

Amendment
of section 80
of principal
Act

(a) in subsection (2) thereof by substituting for —

(i) paragraph (d) therein, the following new paragraph —

“(d) the goods concerned having been damaged, destroyed or irrecoverably lost by circumstances beyond his control prior to the release thereof for home consumption;” and

(ii) paragraph (f) therein, the following new paragraph —

“(f) the substitution of any bill of entry in terms of section 41 (3).”; and

(b) by deleting subsection (6) thereof.

19. Section 81 of the principal Act is hereby amended by substituting for paragraph (a) of subsection (1) thereof, the following new paragraph —

Amendment
of section 81
of principal
Act

“(a) Any amount due to a licensee of a customs and excise warehouse who, in terms of the regulations, is permitted to

pay excise duty or sales duty monthly or quarterly, in respect of such duty paid by him for which he was not liable or which is refundable to him in terms of item 534.00 of Schedule No. 5 or any item of Schedule No. 6 or No. 7 may, at any time within a period of two years from the date on which such amount first becomes due, be set off against any amount for which such licensee subsequently becomes liable in respect of excise duty or sales duty, provided the accounts or bills of entry submitted by such licensee in respect of the payment of any amount against which any amount so due to him has been set off are accompanied by a full statement by such licensee, supported by a certificate by an officer, giving full particulars of the excise duty or sales duty so paid and a full account of the circumstances under which the payment thereof took place and by such documentary evidence as the Director may in each case require.”.

Amendment
of section 84
of principal
Act

20. Section 84 of the principal Act is hereby amended by substituting for paragraph (i) of subsection (1) thereof the following new paragraph —

“(i) claims or receives any rebate, drawback, refund or payment to which he knows he is not entitled under this Act;”.

Repeal of
section 101
of principal
Act

21. Section 101 of the principal Act is hereby repealed.

Amendment
of section 104
of principal
Act

22. Section 104 of the principal Act is hereby amended by adding at the end of paragraph (a) of subsection (2) thereof the following new proviso —

“Provided that such agent or person shall cease to be so liable if he proves to the satisfaction of the Director that —

- (i) he was not a party to the non-fulfilment by any such importer, exporter, manufacturer, licensee, remover of goods in bond or other principal, of any such obligation;
- (ii) when he became aware of such non-fulfilment, he notified the Director thereof as soon as practicable; and
- (iii) all reasonable steps were taken by him to prevent such non-fulfilment.”.

Amendment
of section 118
of principal
Act

23. Section 118 of the principal Act is hereby amended by deleting paragraphs (a), (c), (d), (i) and (j) of subsection (1) thereof.

PASSED by the National Assembly this 12th day of August, 1983.

B.K. TEMANE,
Clerk of the National Assembly.

Act 11 of 1982

(g) any citizen of Botswana who, immediately before the abolition of the University of Botswana and Swaziland by the University of Botswana Act, was a student studying at the said University of Botswana and Swaziland for the degree of LL.B. and thereafter continued his studies at the University of Swaziland where he obtains by examination the degree of LL.B.”

Amendment
of section 31
of principal
Act

3. Section 31 of the principal Act is hereby amended in subsection (4) thereof by substituting for the figures “13 (5)” which appear therein the figures “13 (6)”.

PASSED by the National Assembly this 25th day of November, 1983.

G.M. BASELE,
Acting Clerk of the National Assembly.