

# CUSTOMS AND EXCISE DUTY (AMENDMENT) ACT, 1989

No. 8



of 1989

## ARRANGEMENT OF SECTIONS

### SECTION

1. Short title
2. Amendment of section 2 of Cap. 50:01
3. Amendment of section 17 of the principal Act
4. Addition of section 17A to the principal Act
5. Amendment of section 19 of the principal Act
6. Amendment of section 38 of the principal Act
7. Amendment of section 40 of the principal Act
8. Amendment of section 41 of the principal Act
9. Addition of a new section 45A to the principal Act
10. Amendment of section 49 of the principal Act
11. Amendment of section 51 of the principal Act
12. Addition of a new section 51A to the principal Act
13. Amendment of section 54 of the principal Act
14. Amendment of section 63 of the principal Act
15. Amendment of section 79 of the principal Act
16. Amendment of section 80 of the principal Act
17. Addition of a new section 80A to the principal Act
18. Amendment of section 81 of the principal Act
19. Amendment of section 84 of the principal Act
20. Amendment of section 92 of the principal Act
21. Amendment of section 95 of the principal Act
22. Amendment of section 107 of the principal Act
23. Amendment of section 118 of the principal Act
24. Amendment of section 119 of the principal Act
25. Repeal of section 122 of the principal Act
26. Transitional provisions for rectification of errors

### **An Act to amend the Customs and Excise Act**

*Date of Assent:* 3rd May, 1989.

*Date of Commencement:* 12th May, 1989.

**ENACTED** by the Parliament of Botswana.

1. This Act may be cited as the Customs and Excise Duty Short title  
(Amendment) Act, 1989.

Amendment  
of  
section 2  
of  
Cap. 50:01

2. Section 2 of the Customs and Excise Duty Act (in this Act referred to as the "principal Act") is hereby amended by the substitution in the said section for the definition of "manufacture" of the following definitions —

"manufacture", when used as a noun, includes, in the discretion of the Director, any process —

- (a) in the manufacture or assembly of any excisable goods or sales duty goods;
- (b) whereby the dutiable quantity or value of any imported goods specified in section B or Part 2 of Schedule No. 1, excisable goods or sales duty goods is increased in any manner;
- (c) involved in the packing or measuring off of any imported goods specified in section B or Part 2 of Schedule 1, excisable goods or sales duty,

and when used as a verb has a corresponding meaning; and "manufacturer" has a corresponding meaning.

Amendment  
of  
section 17  
of the  
principal  
Act

3. Section 17 of the principal Act is hereby amended —

(1) by the substitution for paragraph (a) of subsection (1) of the following paragraph —

"(a) the importer or owner of any imported goods landed in Botswana, or manufacturer, owner, seller or purchaser of any excisable goods or sales duty goods manufactured in a customs and excise warehouse or the licensee of a customs and excise warehouse in which dutiable goods are manufactured or stored may remove such goods in bond to any place of entry or warehousing place under this Act or to any place outside Botswana:

Provided that such goods manufactured or stored in a customs and excise warehouse may only be so removed to any such warehousing place in the common customs area for warehousing," and

(2) by the substitution for paragraphs (a) and (b) of subsection 3 of the following paragraphs respectively —

"(a) in the case of goods removed to a place in the common customs area, that such goods have been duly entered at that place; or

(b) in the case of goods which were destined for a place beyond the borders of the common customs area, that such goods have been duly taken out of that area."

Addition  
of  
section 17A  
to the  
principal  
Act

4. The principal Act is hereby amended by the addition after section 17 thereof of the following new section —

"Exportation of goods from customs and excise warehouse 17A (1) Notwithstanding any liability for duty incurred thereby by any person in terms of any other provision of this Act, any person who exports any goods from a customs and excise warehouse to any

place outside the common customs area shall, subject to the provisions of subsection (2), be liable for the duty on all goods.

(2) Subject to the provisions of subsection (3) any liability for duty in terms of subsection (1) shall cease when it is proved to the satisfaction of the Director by the exporter that the said goods have been duly exported out of the common customs area.

(3) If the exporter fails to submit such proof as is referred to in subsection (2) within a period of thirty days from the date on which the goods concerned were entered for export, he shall upon demand by the Director forthwith pay duty due on the goods.

(4) No goods shall be exported in terms of this section until they have been entered for export.

(5) No such entry for export shall be tendered by or may be accepted from a person who has not furnished such security as the Director may require, and the Director may at any time require that the form, nature or amount of that security be altered in such manner as he may determine.

(6) The said exportation of goods shall be subject to the regulations and such conditions as the Director may impose in respect of the goods concerned or any class or kind of those or those goods exported in circumstances specified by him, and the Director may refuse to accept bills of entry for the said exportation of goods from an exporter who has persistently failed to comply with the said regulations or conditions or who has committed an offence referred to in section 84.

(7) The Director may refuse the said exportation of goods in respect of which a provision of this Act has not been complied with or which are liable to forfeiture.

(8) The Director may determine the roads and routes and the means of carriage of any goods so exported or any class or kind of those goods or any such goods carried in circumstances specified by him.

(9) No person shall, without the permission of the Director, divert any goods so exported to a destination other than the destination entered on entry for exportation.

(10) The Director may specify the documents to be produced by the exporter upon entry for exportation in respect of any goods so exported or any class or kind of those goods or any such goods exported in circumstances, or to a destination specified by him."

Amendment  
of  
section 19  
of the  
principal  
Act

- 5. Section 19 of the principal Act is hereby amended —**
- (a) by the substitution for paragraph (b) of subsection (4) of the following paragraph —  
“(b) rewarehousing in another customs and excise warehouse or removal in bond as provided in section 17,” and
  - (b) by the deletion of paragraph (c) of subsection (4).

Amendment  
of  
section 38  
of the  
principal  
Act

- 6. (1) Section 38 of the principal Act is hereby amended —**
- (a) by the substitution in subsection (2) for the words preceding paragraph (a) of the following words —  
“Notwithstanding the provisions of subsection (1), but subject to the provisions of subsection (4), the Director may, on such conditions as he may in each case impose, for the purpose of preserving any goods in a customs and excise storage warehouse or of reconditioning such goods which as a result of contamination or deterioration or for any other reason, have become unsaleable or not readily saleable or for the purpose of fulfilling special orders, permit such goods to be reconditioned or to be mixed or blended in such warehouse with other goods, and in that event duty shall be paid, in lieu of the duties prescribed in subsection (1) according to the first account taken of any such goods or the total quantity of such reconditioned, mixed or blended goods, whichever quantity is the greater, as follows, namely —”
  - (b) by the addition to subsection (3) of the following proviso:  
“Provided that no rebate for any loss or deficiency in respect of petrol and any distillate fuel so reconditioned, mixed or blended exceeding the rebate specified in section 79, 19(d) and (e), respectively, shall be allowed on such goods.”
  - (c) by the substitution for paragraph (a) of subsection (4) of the following paragraph —  
“(a) Notwithstanding anything to the contrary in this Part contained, the Director may, on such conditions as he may in each case impose, permit the mixing or blending in such circumstances and at such place as he may specify of any mineral oil products with one another or with other goods whether or not such products or goods are in a customs and excise storage warehouse or have been entered for home consumption and have passed out of customs control for any purpose, including that of rendering such goods saleable or more readily saleable or of fulfilling special orders;”
  - (d) by the deletion of subsection (5);
  - (e) by the substitution for subsection (8) of the following subsection —

“(8) There shall be paid on entry for home consumption in addition to any duty payable in terms of this section and subject to the provisions of sections 26 (3) and 79 sales duty or surcharge at the rate applicable in terms of Schedule No. 1 on any sales duty goods or surcharge goods used or incorporated in the manufacture, reconditioning, mixing or blending of any goods to which this section relates and on any such manufactured, reconditioned, mixed or blended goods which are liable to sales duty or surcharge in terms of the aforementioned Schedule.”

(2) Subsection (1) (e) of this section shall be deemed to have come into operation, in respect of the insertion of the words “surcharge” and “surcharge goods” in subsection (8) of section 38 of the principal Act, on 30th March, 1977.

7. (1) Section 40 of the principal Act is hereby amended by the addition to paragraph (b) of subsection (1) of the following proviso —

Amendment  
of  
section 40  
of the  
principal  
Act

“Provided that the Director may, on such conditions, including conditions relating to security, as may be determined by him, allow the deferment of payment of duties due in respect of such relevant bills of entry for such period as he may specify”.

(2) Subsection (1) as amended shall be deemed to have come into operation on 1st January, 1987.

8. Section 41 of the principal Act is hereby amended —

Amendment  
of  
section 41  
of the  
principal  
Act

(a) by the addition to paragraph (e) of subsection (1) of the following proviso —

“Provided that no bill of entry shall be invalid by reason of any deferment referred to in the proviso to section 40(1) (b);” and

(b) by the substitution in paragraph (b) of subsection (3) for the word “three” of the word “six”.

9. The principal Act is hereby amended by the insertion after section 45 thereof of the following new section —

Addition  
of a new  
section 45A  
to the  
principal  
Act

“45A. Subject to the provisions of sections 37 (2) (b) (i) and 104 (2) (b) whenever in terms of this Act liability for duty or any amount demanded under section 92 (2) (a) devolves on two or more persons, each person shall, unless he satisfies the Director that his relevant liability has ceased in terms of this Act, be jointly and severally liable for such duty or amount, any one paying, the other or others to be absolved pro tanto”.

“Joint and  
several  
liability  
for duty  
or certain  
amounts

10. (1) Section 49 of the principal Act is hereby amended —

Amendment  
of  
section 49  
of the  
principal  
Act

(a) by the substitution for subsection (5) of the following subsection —

“(5) Notwithstanding the provisions of section 48, any export duty which may become payable in terms of section 51 (3) shall be paid into the Fund, at the time of entry for export, on such goods as may be specified in Part 6 of Schedule No. 1 in terms of the provisions of the said section.”

(b) by the substitution in paragraph. (a) of subsection (8) for the words preceding the proviso of the following words —  
“The interpolation of Part 1 of Schedule No. 1 shall be subject to the Explanatory Notes to the Harmonized System and to the Customs Co-operation Council Nomenclature issued by the Customs Co-operation Council, Brussels, from time to time:”.

(2) Paragraph (b) of subsection (1) shall come into operation on January 1, 1988.

Amendment  
of  
section 51  
of the  
principal  
Act

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

(a) by the insertion after subsection (2) of the following subsection —

“(2A) (a) The Minister may from time to time by like notice, whenever he deems it expedient in the public interest to do so, authorize the Permanent Secretary, Ministry of Commerce and Industry or the Director to withdraw, with or without retrospective effect, and subject to such conditions as the said Permanent Secretary, Commerce and Industry or the Director may determine, any duty specified in Part 2, Part 3 or Part 4 of Schedule No. 1.

(b) Any application for such withdrawal, with retrospective effect, shall be submitted to the said Permanent Secretary or Director, as the case may be, not later than six months after the duty concerned was paid”; and

(b) by the substitution for subsection (4) of the following subsection —

“(4) The Minister may, whenever he deems expedient in the public interest to do so, by notice in the Gazette impose an export duty, on such basis as he may determine, in respect of any goods intended for export of any class or kind of such goods or any goods intended for export in circumstances specified in such notice and any export duty so imposed shall be set out in the form of a schedule which shall be deemed to be incorporated in Schedule No. 1. as Part 6 thereof and to constitute an amendment of Schedule No. 1.”

Addition of a  
new section  
51A of the  
principal Act

12. The principal Act is hereby amended by the addition after section 51 thereof of the following new section —

“Minister may amend Schedules under certain circumstances

“51A (1) Whenever the Minister is satisfied that any provision of any Schedule to this Act differs from any similar provision in force immediately prior to January 1, 1988 and that such difference is to the detriment of any importer or manufacturer and was not intended, he may, after consultation with the Minister of Commerce and Industry, at any time before the date which is referred to in section 51(6) and which falls in the year 1989, by means of an amendment effected by notice in the Gazette adjust the provision concerned to the extent he deems fit, with effect from January 1, 1988.

(2) The provision of section 51(6) and (7) shall *mutatis mutandis* apply in respect of any amendment made under the provisions of subsection (1) of this section”.

13. Section 54 of the principal Act is hereby amended by the substitution for subsection (2) of the following subsection —

“(2) Any additional duty imposed in terms of subsection (1) shall be set out in the form of a schedule which shall be deemed to be incorporated in Schedule No. 1 as Part 7 thereof and to constitute an amendment of Schedule No. 1”.

Amendment of section 54 of the principal Act

14. Section 63 of the principal Act is hereby amended by the substitution for subsection (4) of the following —

“(4) (a) Not more than one licence shall be issued in respect of any customs and excise warehouse:

Provided that the Director may, on such conditions as he may impose, issue a licence to the owner of any customs and excise storage warehouse in which dutiable goods are stored and to each person who obtains for distribution for his own account those goods from that warehouse.

(b) The owner of such warehouse who is so licensed shall be liable for the fulfilment of all obligations under this Act in respect of such goods in such warehouse:

Provided that each person to whom a licence is so issued shall be liable for any liability incurred under this Act in respect of goods taken by him from such warehouse.”

Amendment of section 63 of the principal Act

15. Section 79 of the principal Act is hereby amended —

(a) by the substitution for paragraph (c) of subsection (1) of the following paragraph —

“(c) a drawback or refund of the ordinary customs duty, anti-dumping duty, countervailing duty and surcharge actually paid on entry for home consumption

Amendment of section 79 of the principal Act

on any imported goods described in Schedule No. 5 shall, subject to the provisions of paragraph (f) (i), be paid to the person who paid such duties or any person indicated in the notes to the said Schedule, subject to compliance with the provisions of the item of the said Schedule in which those goods are specified;”;

(b) by the addition to subsection (1) of the following paragraph —

“(f) (i) a refund of the ordinary customs duty, anti-dumping duty, countervailing duty or surcharge on any distillate fuel shall be granted to the extent stated in item 533.01 of Schedule No. 5 in which such fuel is specified, subject to compliance with the provisions of the said item, or a refund of the excise duty leviable on such fuel shall be granted to the extent stated in item 609.05.10 of Schedule No. 6 in which such fuel is specified, subject to compliance with the provisions of the said item and any refund under this paragraph may be paid to any user who has purchased and used such distillate fuel in accordance with the provisions of the said items of Schedule No. 5 or 6 to any person indicated in the notes to the said Schedule No. 5 or 6:

Provided that no such refund shall be paid to any Government, department, administration or any body, institution, or authority mentioned in item 401.00 of Schedule No. 4 and item 601.00 of Schedule No. 6, including any University, college, school or other educational institution or any regional or local authority, except as provided for in the notes to the said Schedule 5 or 6;

(ii) notwithstanding the provisions of subparagraph (i), the Director may in his discretion investigate any such purchase or use to establish whether such fuel has been duly entered in terms of this Act or has been so used and may refuse to allow or pay any such refund if he is not satisfied that such fuel has been so entered or used;

(iii) any such distillate fuel purchased shall be deemed to have been used in the order of the dates of such purchases;

(iv) the extent of the refund referred to in subparagraph (i) shall be the rate of such refund of duty specified in such items of Schedule No. 5 or 6 at the last date of any period for which such refund in respect of such use is claimed;

(g) any refund referred to in paragraph (f) (i) may be granted and paid to any person entitled to that refund in terms of this Act;”;

(c) by the substitution for subsection (5) of the following subsection —

“(5) (a) No person shall be entitled to a refund of customs or excise duty on any distillate fuel in terms of the provisions of item 533.01 of Schedule No. 5 or item 609.05.01 of Schedule No. 6 unless he is registered as a user by the Director.

(b) (i) Any application for refund of such duty shall be in such form and shall declare such particulars and be supported by such documents and shall be for such quantities and for such periods as may be prescribed by regulation.

(ii) Any seller of such fuel shall furnish any such user with an invoice reflecting the particulars, and shall keep a copy of such invoice for such time as may be prescribed by regulation.

(c) Any registered user shall complete and keep such books, accounts and documents and furnish at such times such particulars of the vehicle, machinery or other equipment in which such fuel is used or any other particulars as may be prescribed by regulation.

(d) Notwithstanding anything to the contrary herein contained, any user of such fuel who has been granted such refund and who fails to forthwith furnish an officer at his request with the books, accounts and documents required by regulation to be completed and kept in respect of the use of any distillate fuel purchased by him shall be deemed to have used such fuel for a purpose or use other than a purpose or use stated in the items of Schedule No. 5 or 6 referred to in paragraph (a) and the use declared in the relevant application for refund and shall pay on demand to the Director the full amount of any refund granted to him in respect of such fuel or such portion thereof as the Director may in his discretion determine, during a period of two years prior to the date of such request by such officer, failing which such amount or such portion shall be recoverable in terms of this Act as if it were the duty concerned.

(e) The Director may refuse to register, as provided in paragraph (a), any person mentioned in that paragraph or cancel such registration, if such person fails to complete, keep or furnish such accounts, books or documents as may be prescribed by regulation or claims or receives any refund or payment to which he is not entitled in terms of the said items of Schedule No. 5 or 6.”;

(d) by the insertion of the following subsection after subsection (8) —

“(8A) Any person to whom a refund of customs or excise duty has been granted on any distillate fuel in terms of the provisions of item 533.01 of Schedule No. 5 or items 609.05.10 of Schedule No. 6, as the case may be, and who has disposed of such fuel or has applied such fuel or any portion thereof for any purpose or use otherwise than in accordance with the provisions of such items and the use declared in the relevant application for refund, shall pay on demand to the Director the full amount of any refund granted to him in respect of such fuel or portion thereof as the Director may in his discretion determine during such period of two years as the Director may determine, failing which such amount or such portion shall be recoverable in terms of this Act as if it were the duty concerned”.

(e) by the addition to subsection (11) of the following proviso —  
“Provided that the Director may, subject to such conditions as he may in each case impose, exempt, with or without retrospective effect, any such person from the provisions of this subsection”;

(f) by the addition to subsection (11) of the following paragraphs, the existing subsection becoming paragraph (a) thereof —

“(b) Application for such exemption for the purpose of applying for a refund of duty shall be made to the Director within six months from any date specified in section 41(3)(b)(i), (ii) or (iii), as the circumstances may require.

(c) For the purposes of the application of section 41(3) to any such exemption —

(i) any bill of entry passed in relation to goods in respect of which exemption is granted under paragraph (a) of this subsection, shall be deemed to have passed in error by reason of duty having been paid on goods intended for purposes or use under rebate of duty under section 79;

(ii) the goods concerned shall be deemed to have qualified at the time duty was paid on such goods in all respects for rebate; and

(iii) the duty paid on the goods concerned, shall be deemed to have been paid on the date on which the exemption referred to in subparagraph (1) was granted”;

(g) by the substitution for subsection (12) of the following subsection —

“(12) Notwithstanding anything to the contrary in this Act contained, the Director may, in respect of Schedule 5, 6 or 7, for the purpose of calculating the amount of duty refundable on any imported or excisable goods or sales duty goods used in the manufacture, reconditioning, mixing or blending of any goods exported or marketed in Botswana determine the quantity of such exported goods or such goods marketed in Botswana which shall be deemed to have been produced, reconditioned, mixed or blended from a given quantity of such imported or excisable or sales duty goods or the quantity of such imported or excisable or sales duty goods which shall be deemed to have been used in the production, reconditioning, mixing or blending of a given quantity of such goods marketed in Botswana.”;

(h) by the substitution for paragraph (b) of subsection (15) of the following paragraph —

“(b) (i) in respect of any refund referred to in subsection (1)(f) within a period of six months from the last date of any period of use of any distillate fuel to which the application for such refund relates:

Provided that no refund shall be paid if the quantity of distillate fuel to which the application for such refund relates is less than such quantity as may be prescribed by regulation; and

(ii) in all other cases, within a period of six months from the date on which such refund first becomes due.”;

(i) by the insertion of a new paragraph (15A) as follows —

“(15A) (a) The Minister or any officer in his Ministry designated by him may at any time after a permit by virtue of which goods may, in terms of any item of Schedule No. 3, 4, or 6, be entered under rebate of duty has been refused by him but not later than two years after duty was paid on those goods, issue a permit authorizing entry of those goods under rebate of duty in accordance with the provisions of the item concerned, if, with regard to any facts which became known after such a permit has been refused, he is satisfied that he would have issued such a permit if the facts were then known.

(b) For the purposes of the application of section 41(3) —

(i) any bill of entry passed in relation to goods in respect of which a permit is issued under paragraph (a) shall be deemed to have been

passed in error by reason of duty having been paid on goods intended for purposes of use under rebate of duty under this section;

(ii) the goods in respect of which such a permit is issued, shall be deemed to have qualified at the time duty was paid on such goods, in all respect for rebate; and

(iii) the duty paid on the goods concerned, shall be deemed to have been paid on the date on which the permit referred to in paragraph (a) was issued”;

(j) by the insertion after subsection (15A) of the following subsection —

“(15B) (a) Subject to the provisions of subsection 15A any Minister, other than the Minister of Finance and Development Planning, any Permanent Secretary designated by such Minister, or the Director, may, in respect of goods which may, in terms of any item of Schedule No. 3, 4, 5 or 6, be entered under rebate of duty or be subject to a drawback or a refund of duty or be subject to such conditions as such Minister, Permanent Secretary or the Director may specify, with or without retrospective effect, a permit or certificate authorizing entry of those goods under rebate of duty, or authorizing a drawback or a refund of duty in accordance with the provisions of the item concerned, provided the Director is satisfied in respect of the goods concerned, where the permit or certificate concerned is issued with retrospective effect, that the provisions of such item and such conditions have been complied with.

(b) The provisions of subsection (15B) (a) shall apply *mutatis mutandis* in respect of any permit or certificate referred to in paragraph (a) of this subsection.

(c) Application for such permit or certificate shall be made to the Minister or Permanent Secretary or the Director within six months from any date specified in section 41 (3) (b) (i), (ii) or (iii), as the circumstances may require.”;

(k) by the substitution for paragraph (b) of subsection (16) of the following paragraph —

“(b) The Minister may, whenever he deems it expedient in the public interest to do so —

(i) by like notice amend any such Schedule with retrospective effect from such date as he may specify in that notice; or

(ii) by like notice declare any amendment made

under paragraph (a) to apply with retrospective effect from such date as he may specify in that notice;”;

(l) by substitution for paragraph (c) of subsection (16) of the following paragraph —

“(c) an amendment made under paragraph (a) which repeals any existing provision in Schedule No. 5 or which excludes any goods from any existing provision of that Schedule, shall not apply in respect of goods, excluding distillate fuels referred to in item 533.01 of Schedule No. 5 which were imported prior to the date of the relevant notice in the Gazette, and an amendment made under the said paragraph which embodies any additional provision in that Schedule or applies any existing provision of that Schedule in respect of additional goods, shall not, except in so far as the Director so directs and subject to such condition as he may determine, apply in respect of goods which were imported prior to the date of the relevant notice in the Gazette;”;

(m) by the substitution for subsection (17) of the following subsection —

“(17) The provisions of subsection (6) of section 51 shall *mutatis mutandis* apply in respect of any amendment made under the provisions of subsection (16).”;

(n) by the addition to subsection (19) of the following paragraphs —

“(f) in the case of imported crude petroleum naphtha for use in the refining of petroleum products, or imported or excisable petrol, a percentage equal to the full net loss incurred but not exceeding 0,25 of any quantity entered for storage and stored in a customs and excise storage warehouse during such period as the Director may determine:

Provided that only the owner of a warehouse referred to in section 63 (4) shall be entitled to such deduction;”;

“(g) in the case of distillate fuels entered for storage and stored in a customs and excise storage warehouse, a percentage equal to the full net loss incurred but not exceeding 0,15 of any quantity so entered and stored in such warehouse during such period as the Director may determine:

Provided that only the owner of a warehouse referred to in section 63 (4) shall be entitled to such deduction”.

Amendment  
of section  
80 of the  
principal  
Act

**16. (1)** Section 80 of the principal Act is hereby amended —  
*(a)* by the substitution for subsection (1) of the following subsection —

“(1) No refund of any duty or other charge in respect of imported goods, excisable goods, sales duty goods or surcharge goods, other than a refund provided for under section 79 or 81, shall be paid or granted except in accordance with the provisions of this section and the regulations.”;

*(b)* by the deletion of the word “or” at the end of paragraph *(e)* of subsection (2); and

*(c)* by the addition to paragraph *(f)* of the said subsection (2) of the word “or”, and the addition to that subsection of the following paragraph —

“(g) the duty having been reduced or withdrawn as provided for in section 51 (2) or (2A).”

(2) Subsection (1) of section 80 of the principal Act shall be deemed to have come into operation in respect of the insertion of the words “surcharge goods” on 30th March, 1977.

Addition  
of a new  
section  
80A to the  
principal  
Act

**17.** The principal Act is hereby amended by the addition after section 80 thereof of the following new section —

“Recovery of certain amounts not duly payable **80A.** If the Director, purporting to act under the provisions of section 79 or 80, pays to any person by way of a refund or drawback any amount which was not duly payable to that person under those provisions or which was in excess of the amount due to that person by way of a refund or drawback under those provisions, that amount or the excess, as the case may be, shall be repaid by the person concerned to the Director upon demand, failing which it shall be recoverable in terms of this Act as if it were the duty or charge concerned or part of such duty or charge, as the case may be.”

Amendment  
of section  
81 of the  
principal  
Act

**18. (1)** Section 81 of the principal Act is hereby amended by the substitution for subsection (2) of the following subsection —

“(2) With the permission of the Director and subject to such conditions as he may impose, any amount of sales duty, or excise duty specified in Section B of Part 2 of Schedule No. 1 paid by the licensee of a special customs and excise warehouse licensed in terms of this Act in respect of sales duty goods or excisable goods specified in Section B of Part 2 of Schedule No. 1 sold by him to any person whose premises are not so licensed and who has exported such goods or supplied them to any other person entitled to acquire such goods under rebate of sales duty or excise duty specified in Section B of Part 2 of Schedule No. 1, may be set off against any amount for which such licensee subsequently becomes liable in

respect of sales duty or excise duty specified in Section B of Part 2 of Schedule No. 1, provided proof to the satisfaction of the Director of such export or supply under rebate of duty and the identity of the sales duty goods or excisable goods specified in Section B of Part 2 of Schedule No. 1 so exported or supplied is submitted by such licensee, together with such documentary proof as the Director may in each case require regarding the sale of such goods by such licensee.”

(2) The amendment to subsection (2) of this section shall be deemed to have come into operation on 31st July, 1978.

**19.** Section 84 of the principal Act is hereby amended —

(a) by the substitution for paragraph (n) of subsection (1) of the following paragraph —

“(n) contravenes the provisions of section 17 (13), 17A (9), 19 (5), 35 (4), 62 (1), 65 (1), 79 (7A), 79 (19) or 119 (3); or;” and

(b) by the addition of the following subsection —

“(3) When any person is charged with a contravention of paragraph (i) of subsection (1) he shall, until the contrary is proved, be presumed to have known that he was not entitled to the rebate, drawback, refund or payment concerned.”

**20.** Section 92 of the principal Act is hereby amended by the substitution for paragraph (a) of subsection (2) of the following paragraph —

“(a) (i) If any goods liable to forfeiture under this Act cannot readily be found, the Director may, notwithstanding anything to the contrary in this Act contained, demand from any person, who imported, exported, manufactured, warehoused, removed or otherwise dealt with such goods contrary to the provisions of this Act or committed any offence under the Act rendering such goods liable to forfeiture, payment of an amount equal to the value for duty purposes or the export value of such goods plus any unpaid duty thereon, as the case may be.

(ii) For the purposes of subparagraph (i) the value for duty purposes shall be calculated in terms of the provisions of this Act relating to such value whether or not the goods in question are subject to ad valorem duty or to a duty calculated according to a unit of quantity, volume or other measurement, as the case may be.”

**21.** Section 95 of the principal Act is hereby amended by the substitution in subsection (2) for “P500” of “P1,000”.

Amendment  
of section  
84 of the  
principal  
Act

Amendment  
of section  
92 of the  
principal  
Act

Amendment  
of section  
95 of the  
principal  
Act

Amendment  
of section  
107 of the  
principal  
Act

**22.** Section 107 of the principal Act is hereby amended by the substitution for subsection (4) of the following subsection —

“(4) If in any prosecution under this Act or in any dispute in which the State, the Minister or the Director or any officer is party, the question arises whether the proper duty has been paid or whether any goods or plant have been lawfully used, imported, exported, manufactured or removed or otherwise dealt with or whether any books, accounts, documents, forms or invoices required by regulation to be completed and kept have been duly completed and kept or have been furnished to any officer, it shall be presumed that such duty has not been paid or that such goods or plant have not been lawfully used, imported, exported, manufactured, removed or otherwise dealt with or that such books, accounts, documents, forms or invoices do not exist or have not been duly completed and kept or have not been so furnished, as the case may be, unless the contrary is proved.”

Amendment  
of section  
118 of the  
principal  
Act

**23.** Section 118 of the principal Act is hereby amended by the addition to subsection (8) of the following paragraphs, the existing subsection becoming paragraph (a) thereof —

“(b) Any goods so liable to forfeiture or which he has reasonable cause to believe are so liable to forfeiture, may be detained by any officer, magistrate or member of the police force.

(c) Any goods so detained may be released by the Director to the person concerned.”

Amendment  
of section 119  
of the  
principal Act

**24.** (1) Section 119(1) of the principal Act is hereby amended by the substitution for paragraph (a) thereof of the following —

“(a)(i) The correct amount of duty for which any person is liable in respect of any goods imported into or exported from Botswana shall from the date on which liability for such duty commences; and

(ii) any interest payable under this Act and any fine penalty or forfeiture incurred under this Act shall, from the time when it should have been paid, constitute a debt to the State by the person concerned, and any goods in a customs and excise warehouse or in the custody of the department (including goods in a rebate storeroom) and belonging to that person, and any goods afterwards imported or exported by the person by whom the debt is due, and any imported goods in the possession or under the control of such person or on any premises in the possession or under the control of such person and any goods in respect of which any excise or sales duty is prescribed (whether or not such duty has been paid) and

any materials for the manufacture of such goods in the possession or under the control of such person and any vehicles, machinery, plant or equipment in the possession or under the control of such person in which fuel in respect of which any duty is prescribed (whether or not such duty has been paid), is used, transported or stored, may be detained in accordance with the provisions of subsection (2) and shall be subject to a lien until such debt is paid”.

(2) Subsection (1) of this section shall be deemed to have come into operation in respect of the insertion, in paragraph (a) of section 119 (1) of the principal Act, of the words “for which any person is liable” and “shall from the date on which liability for such duty commences” and “in respect of which any duty is prescribed, (whether or not such duty has been paid)”, on 31st July, 1986.”

25. Section 122 of the principal Act is hereby repealed.

Repeal of  
section 122 of  
the principal  
Act

26. For the purpose of section 41(3) of the principal Act the following shall apply —

Transition-  
ary provision  
for  
rectification  
of errors

- (a) (i) bills of entry passed on 13th June, 1985 and 21st June, 1985 in relation to unassembled tractors shall, notwithstanding the provisions of item 460.17 (in relation to tariff heading 87.01) of Schedule No. 4 to this Act, be deemed to have been passed in error by reason of duty having been paid on goods intended for purposes or use under rebate of duty under section 79;
- (ii) those tractors shall be deemed to have qualified at the time duty was paid thereon in all respects for rebate; and
- (iii) the duty paid on the tractors concerned shall be deemed to have been paid on the date of commencement of this Act;
- (b) (i) bills of entry passed during the period 27th June, 1986 to 23rd October, 1986 in relation to pressure sensitive plates, sheets, film, foil and strip of polythlene terephthalates, with disposable backing, in respect of which any permit is issued in terms of the provisions of item 460.17 (in relation to tariff heading No. 39.01) of Schedule No. 4 to this Act, with retrospective effect, shall be deemed to have been passed in error by reason of duty having been paid on goods intended for purposes of use under rebate of duty under section 79;
- (ii) those plates, sheets, film, foil and strip shall be deemed to have qualified at the time duty was paid thereon in all respects for rebate; and

- (iii) the duty paid on the plates, sheets, film, foil and strip concerned shall be deemed to have been paid on the date of commencement of this Act; and
- (c) (i) bills of entry passed during the period 18th October, 1985 to 31st December, 1986 in relation to monitors in respect of which a permit has been issued in terms of the provisions of item 460.16 (in relation to tariff heading No. 85.15) of Schedule No. 4 to this Act, shall be deemed to have been passed in error by reason of duty having been paid on goods intended for purposes or use under rebate of duty under section 79;
- (ii) those monitors shall be deemed to have qualified at the time duty was paid thereon in all respects for rebate; and
- (iii) the duty paid on the monitors concerned shall be deemed to have been paid on the date of commencement of this Act."

PASSED by the National Assembly this 11th day of April, 1989.

**C.G. MOKOBI,**  
*Clerk of the National Assembly.*