

CUSTOMS AND EXCISE DUTY (AMENDMENT) ACT, 1990

No. 17



of 1990

ARRANGEMENT OF SECTIONS

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An Act to amend the Customs and Excise Duty Act

Date of Assent: 1st August, 1990.

Date of Commencement: 17th August, 1990.

ENACTED by the Parliament of Botswana

1. This Act may be cited as the Customs and Excise Duty (Amend- Short title
ment) Act, 1990.

Amendment of section 2 of Cap. 50:01

2. Section 2 of the Customs and Excise Duty Act, (hereinafter referred to as the principal Act), is hereby amended by substituting for subsection (3) thereof, the following subsection—

“(3) For the purposes of the Agreement concluded in 1969 between the Governments of the Republic of Botswana, the Kingdom of Lesotho, the Republic of South Africa and the Kingdom of Swaziland, specified in section 55 (3)—

(a) “customs duty” includes any duty leviable under Part 4 of Schedule No. 1 on goods imported into Botswana, and, except for purposes of articles 13 and 14 of the said Agreement, any duty leviable under Part 8 of the said Schedule on goods imported into Botswana; and

(b) “excise duty” includes, except for purposes of articles 13 and 14 of the said Agreement, any duty leviable under Part 8 of Schedule No. 1 on goods manufactured in the common customs area.”.

Substitution for section 15 of the principal Act

3. The following section is hereby substituted for section 15 of the principal Act—

“Opening of packages in absence of importer or exporter 15. The Director may in the absence of the importer or exporter of any package imported into or landed in or exported from, or suspected by the Director to have been imported into or landed in, or exported from, Botswana, open and examine such package at the importer’s or exporter’s risk and expense:

Provided that wherever possible the Director shall first make all reasonable efforts to ascertain the whereabouts of such importer or exporter and afford the said importer or exporter the opportunity of himself appearing before the Director and opening the package in question.”.

Amendment of sections 17, 18 and 19 of the principal Act

4. Sections 17 (8), 18 (5) and 19 (3) and (5) of the principal Act are amended by substituting for references to “section 81 (32)” wherever they appear reference to “section 81 (19)” in each case.

Amendment of section 42 of the principal Act

5. Section 42 of the principal Act is amended by substituting for subparagraph (a) of subsection (5) the following subparagraph—

“(a) from the date of entry for home consumption as provided in section 47 (3), of the goods to which the application relates; or”.

Amendment of section 48 of the principal Act

6. (1) Section 48 of the principal Act is amended by substituting for subsection (2) thereof the following subsection—

“(2) The Minister may from time to time, by regulations, increase the percentage prescribed in subsection (1), in regard to any class or kind of imported goods, or in regard to any class or kind of such goods from a particular territory, to which that subsection applies.”.

(2) The amendment effected by subsection (1) shall be deemed to have come into operation on 1st April, 1989.

Amendment of section 50 of the principal Act

7. Section 50 of the principal Act is amended by substituting for subsection (11) thereof the following subsection—

“(11) The Director may, in writing, determine the tariff headings, tariff subheadings or items of any Schedule under which any

imported goods or goods manufactured in Botswana shall be classified.”.

8. Section 52 (2) of the principal Act is amended by substituting for the reference to “section 53 (7)” therein reference to “section 53 (8)”. Amendment
of section 52
of the
principal Act

9. (1) Section 53 of the principal Act is amended —

(a) by substituting for paragraph (b) of subsection (1) the following paragraph — Amendment
of section 53
of the
principal Act

“(b) in order to give effect to any amendment to the Explanatory Notes to the Harmonized System and to the Customs Cooperation Council Nomenclature referred to in section 50 (8), (9) and (10) or to the Nomenclature set out in the annex to the Convention on Nomenclature for the Classification of Goods in Customs Tariffs signed in Brussels in 1950;”;

(b) by substituting for all subsections after subsection (2) the following subsections —

“(3) (a) (i) 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 that Permanent Secretary or the Director may determine, any duty specified in Parts 2, 3 or 4 of Schedule No. 1.

(ii) The Director may, at his discretion, at any time cancel, amend or suspend any withdrawal referred to in subparagraph (i).

(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 from the date of entry for home consumption as provided in section 47 (3).

(4) The Minister may, whenever he deems it expedient in the public interest to do so, by notice published in the Gazette, impose an export duty, on such basis as he may determine, in respect of any goods intended for export, or 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 5 thereof and to constitute an amendment of Schedule No. 1.

(5) (a) Whenever the Minister is satisfied that any amendment made under this section has an effect which was not foreseen or intended, he may, whether or not such amendment has ceased to have effect as such or has lapsed under subsection (8), by further notice in the Gazette, adjust such amendment, to the extent he deems fit, with effect from the date of such amendment or any later date, and any adjustment effected under this subsection shall be deemed to be an amendment under this section.

(b) The provisions of this subsection shall, in so far as they can be applied, apply *mutatis mutandis* in respect of any amendment made by Parliament which corresponds to an amendment made under this sec-

tion, before the lapsing in terms of subsection (8) of such last mentioned amendment.

(6) (a) Notwithstanding anything to the contrary in this Act contained, the Minister may, whenever he deems it expedient in the public interest to do so, by notice in the Gazette, insert Part 8 of Schedule No. 1, and if so inserted withdraw or amend that Part for the purpose of specifying that any duty leviable under any heading or item of Part 1, 2 or 4 of Schedule No. 1 shall not be leviable under that Part, but shall be leviable under the said Part 8 at the time of entry for home consumption for use by any person, government, department, administration or body as may be specified by him in such notice.

(b) For the purposes of this subsection, any amount leviable under any item of the said Part 8, shall be called an ordinary levy.

(c) Any such ordinary levy shall be paid for the benefit of the Fund as specified in section 50 (1) and shall, for the purposes of that section, be deemed to be a duty paid in accordance with the provisions of Schedule No.1.

(d) Notwithstanding the provisions of section 50 (1), any ordinary levy paid in respect of any goods intended for consumption in any territory, other than Botswana, which forms part of the common customs area shall be paid by the Director to the government of such territory at such times as he may determine.

(e) The provisions of subsection (8) shall *mutatis mutandis* apply to any notice published under this subsection.

(7) In addition to the powers conferred by subsections (1), (2), (4) and (5), the Minister may, by notice published in the Gazette, amend any Schedule to conform with any amendment made by any other country in the common customs area and in accordance with the obligations imposed under the Customs Union Agreement of 11th December, 1969, entered into between the Governments of Botswana, Lesotho, South Africa and Swaziland.

(8) (a) Every amendment, withdrawal or insertion made by the Minister under this section shall be laid before the National Assembly.

(b) If the National Assembly does 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.

(c) 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) Any amendment made under this section may be made retro-

Provided that no amendment may be made retrospective to a date earlier than that on which a notice of the intention to make the amendment has been signed by the Minister or the Permanent Secretary and has been deposited in the office of the Director.”

(2) The amendment effected by paragraph (a) of subsection (1) of this section shall be deemed to have come into operation on 1st January, 1988.

(3) The amendments effected by section 11 of Act No. 8 of 1989 are hereby revoked.

10. (a) The principal Act is amended by inserting immediately after section 53 the following new section 53A —

“Minister may amend Schedules under certain circumstances 53A. (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, 1988 and that such difference is to the detriment of any importer or manufacturer and was not so intended, he may, after consultation with the Ministry of Commerce and Industry, by means of an amendment effected by notice in the Gazette, adjust the provision concerned to the extent he deems fit, with effect from 1st January 1988.

Insertion of new section 53A into the principal Act

(2) The provisions of section 53 (8) shall *mutatis mutandis* apply in respect of any amendment made under the provisions of subsection (1) of this section.”

(b) The amendments effected by virtue of section 12 of Act No. 8 of 1989 are hereby revoked.

11. Section 56 (3) of the principal Act is amended by substituting for the reference to “section 53 (6), (7), (8), (9) and (10)” therein reference to “section 53 (7), (8) and (9)”.

Amendment of section 56 of the principal Act

12. Sections 59 (8) and 60 (3) of the principal Act are amended by substituting for references to “section 53 (4) to (9)” wherever they appear reference to “section 53 (5), (7) and (9)” in each case.

Amendment of sections 59 and 60 of the principal Act

13. Section 71 of the principal Act is hereby amended by substituting for subsection (12) thereof the following subsection —

Amendment of section 71 of the principal Act

“(12). The provisions of subsection (1) (a) and (b) or subsection (3) of section 72 shall *mutatis mutandis* apply to the ascertainment or determination of the value for the purposes of the duty specified in Section B of Part 2 of Schedule No. 1 in respect of any imported goods entered in terms of item 412.18 of Schedule No. 4.”

14. Section 72 of the principal Act is hereby amended —

Amendment of section 72 of the principal Act

(a) by substituting for paragraph (d) of subsection (15) the following paragraph —

“(d) the cost of transportation, loading, unloading, handling and insurance and associated costs incidental to delivery of the imported goods at the port or place of export in the country of exportation and placing those goods on board ship or on any vehicle at that port or place, ready for export to Botswana;” and

(b) by substituting for paragraph (a) of subsection (18) the following paragraph —

“(a) placed on board ship or on any vehicle in the country of exportation, ready for export to Botswana; or”.

Amendment
of section 73
of the
principal Act

15. Section 73 of the principal Act is amended—

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

“(e) to the extent that they are not included in the price actually paid or payable for the goods, the cost of transportation, loading, unloading, handling and insurance and associated costs incidental to delivery of the goods at the port or place of export in the country of exportation and placing those goods on board ship or on any vehicle, at that port or place, ready for export to Botswana;”; and

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

“(a) placed on board ship or on any vehicle in the country of exportation, ready for export to Botswana; or”.

Substitution
of section 74
of the
principal Act

16. (1) The following section is hereby substituted for section 74 of the principal Act —

**“Value for
excise duty
purposes**

74. (1) (a) For the purpose of assessing the excise duty on any goods manufactured in Botswana and specified in Section B of Part 2 of Schedule No. 1 (other than goods specified in items 122.10 to 122.40), the value thereof shall, subject to the provisions of this section, be taken to be the full and final market price (before deduction of any discounts other than cash discounts) at which, at the time of sale, such or similar goods are freely offered for sale, for consumption in Botswana, for purposes of trade in the principal markets of Botswana in the ordinary course of trade, in the usual wholesale quantities and in the condition and the usual packing ready for sale in the retail trade, to any independent merchant wholesaler in Botswana under fully competitive conditions, plus the cost of packing and packages and all other expenses incidental to placing the goods on rail for delivery to the purchaser, plus any non-rebated excise duty payable in terms of Section A of Part 2 of Schedule No. 1 on such goods, but excluding the non-rebated excise duty payable in terms of Section B of Part 2 of Schedule No. 1 on such goods:

Provided that the Director may, where such goods are not sold to such merchant wholesalers in Botswana or are so sold in quantities which he considers to be insignificant in relation to the total quantities of such goods sold in Botswana, regard any other class of purchaser of such goods as such a merchant wholesaler and may make such adjustment to the price charged by the manufacturer to such class of purchaser as he considers reasonable, having regard to the wholesale functions taken over by such manufacturer and such class of purchaser and to such other factors relating to such price as he may deem relevant.

(b) For the purposes of assessing the duty on any imported goods entered in terms of item 412.18 of Schedule No.4 on removal from a customs and excise warehouse and any goods manufactured in Botswana and specified in items 122.10 to 122.40 of Section B of Part 2 of Schedule No. 1, the value thereof shall be —

(i) in a sale between a manufacturer as seller and an independent wholesale dealer or independent bulk buyer or a buyer purchasing at a preferential price or other reseller as purchaser, the highest price (but excluding the excise duty payable in terms of Section B of Part 2 of Schedule No. 1) at which the manufacturer sells such goods at factory to an independent retail dealer, without any deduction except a cash discount not exceeding two and a half percent, if any, plus the cost of packing and packages and all other expenses the purchaser;

(ii) in a sale between a manufacturer and end consumer or between a wholesale dealer or retail dealer or other reseller as seller and an independent retail dealer or end consumer as purchaser, the highest price (but excluding the excise duty payable in terms of Section B of Part 2 of Schedule No. 1) at which such goods are sold by any such seller to an end consumer without any deduction except thirty-three and a third per cent, plus the cost of packing and packages and all other expenses incidental to placing the goods on rail for delivery to the purchaser.

(c) **(i)** For the purposes of this subsection the Director may specify the quantity which shall be deemed to be the usual wholesale quantity;

(ii) the packing which shall be deemed to be the usual packing ready for sale in the retail trade;

(iii) the cost of packing or packages or any other expenses incidental to placing the goods on rail.

(2) **(a)** For the purpose of assessing the excise duty on any goods specified in Section A Part 2 of Schedule No. 1, the value thereof shall be the price paid or payable for such goods when sold for home consumption in the ordinary course of trade, in the usual trade packing, where applicable, to any buyers not deemed to be related as specified in section 72 (2) (a), plus any non-rebated excise duty payable in terms of Section B of Part 2 of Schedule No. 1, but excluding the non-rebated excise duty payable in terms of Section A of Part 2 of Schedule No. 1.

(b) For the purpose of paragraph (a), “price paid or payable” means the total payment made or to be made, either directly or indirectly, by the buyer to or for the benefit of the seller of 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.

(3) If in the opinion of the Director goods are sold or otherwise disposed of under such conditions that the value thereof cannot be ascertained in terms of subsection (1) (a), (1) (b) or (2), as the case may be, the Director may determine a value, which shall, subject to the right of appeal to the court, 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.

(4) The Director may, whenever he deems it expedient, 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 (3);
- (c) the date of such new determination; or
- (d) the date of such amendment.

(5) (a) An appeal against such determination shall lie to the jurisdiction of the Court in the area in which the determination was made, or the goods in question were entered for home consumption.

(b) Such appeal shall be prosecuted within a period of 90 days from the date of the determination.”.

(2) Subsections (2) and (3) of section 74 of the principal Act, as substituted by subsection (1) of this section, shall be deemed to have come into operation on 1st June, 1989.

Substitution
for section 81
of the
principal Act

17. (1) The principal Act is amended by substituting for section 81 thereof the following section —

“Specific
rebates,
drawbacks
and refunds
of duty

81 (1). Subject to the provisions of this Act and to any conditions which the Director may impose —

- (a) any imported goods described in Schedule No. 3 shall be admitted under rebate of any fiscal and customs duties applicable in respect of such goods at the time of entry for home consumption thereof, to the extent and for the purpose of use stated in the item of Schedule No. 3 in which they are specified;
- (b) any imported goods described in Schedule No. 4 shall be admitted under rebate of any fiscal and customs duties applicable in respect of such goods at the time of entry for home consumption thereof, to the extent and for the purpose or use stated in the item of Schedule No. 4 in which such goods are specified;
- (c) a drawback or refund of the ordinary customs duty, anti-dumping duty, countervailing duty and surcharge actually paid on entry for home consumption on any imported goods described in Schedule No. 5 shall, subject to the provisions of paragraph (g) (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;

- (d) in respect of any excisable goods described in Schedule No. 6 a rebate of the excise duty specified in Part 2 of Schedule No. 1 in respect of such goods at the time of entry for home consumption thereof or a refund of the excise duty actually paid at the time of entry for home consumption shall be granted to the extent and in the circumstances stated in the item of Schedule No.6 in which such goods are specified, subject to compliance with the provisions of the said item and any refund under this paragraph may be paid to the person who paid the duty or any person indicated in the notes to the said Schedule No.6;
- (e) in respect of any sales duty goods described in Schedule No. 7, a rebate of the sales duty specified in Part 3 of Schedule No. 1 in respect of such goods at the time of entry for home consumption thereof or a refund of the sales duty paid at the time of entry for home consumption shall be granted to the extent and in the circumstances stated in the item of Schedule No. 7 in which such goods are specified, subject to compliance with the provisions of the said item, and any refund under this paragraph may be paid to the person who paid the duty or any person indicated in the notes to the said Schedule No. 7;
- (f) in respect of any imported goods described in Schedule No. 9, a rebate of the additional duty specified in Part 7 of Schedule No. 1 in respect of such goods at the time of entry for home consumption thereof shall be granted to the extent and in the circumstances stated in the item of Schedule No. 9 in which such goods are specified, subject to compliance with the provisions of the said item;
- (g) (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, in-

stitution, 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 No. 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;

(v) any refund referred to in subparagraph (i) may be granted and paid to any person entitled to that refund in terms of this Act.

(2) A rebate of duty in respect of any goods described in Schedule No.3 shall be allowed —

(a) only in respect of goods entered for use in the production or manufacture of goods in the industry and for the purpose specified in the item of the said Schedule in which those goods are specified;

(b) only in respect of goods entered for use in—

(i) a factory approved by the Minister; or

(ii) a mine or works situated in an area approved by the Minister; or

(iii) elsewhere in any other activity which the Minister may in his discretion approve for the purposes of this subparagraph;

(c) only in respect of goods entered for use in such industry in a factory, mine, works or activity which complies with such requirements in respect of quantity of material used or quantity of goods produced or manufactured as the Minister may impose.

(3) The Minister may exempt any goods described in Schedule No. 3 and entered for use in a particular industry, from the provisions of subsection (2) (b) and for the purposes of subparagraph (i) of the said subsection may limit the application of his approval to the manufacture of one or more specific articles or substances.

(4) Notwithstanding the provisions of section 59 or 60, a rebate of any anti-dumping duty or countervailing duty specified in Schedule No. 2 in respect of any goods entered under the provisions of any item specified in Schedule No. 3 or 4 may be granted if it is expressly stated in such item of Schedule No. 3 or 4 that the extent of the rebate includes such anti-dumping duty or countervailing duty.

(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.

(6) (a) (i) In addition to any liability for duty incurred by any person under any other provision of this Act, the person who

enters any goods for use by him under rebate of duty or any person on whose behalf any goods are so entered, shall, subject to the provisions of subsections (7) and (21) and section 47, be liable for the duty on all goods so entered which have not been used or which have been disposed of otherwise than in accordance with the provisions of this section and of the item under which they were so entered as if such rebate of duty did not apply to such goods and such person shall pay such duty on demand by the Director:

Provided that the Director may —

- (i) if such goods were used in accordance with any other item relating to rebate of duty, accept duty on such goods as if they were entered under such other item;
- (ii) in his discretion, permit any duty paid on entry of such goods under rebate to be deducted from any duty for which any person becomes liable in terms of this paragraph.

(ii) The Director may at any time take stock of goods entered for home consumption and stored on any premises registered by virtue of subsection (12) and duty shall, subject to the provisions of subparagraph (i), be paid forthwith on demand upon any deficiency detected.

(iii) If the stock is found to be greater than the quantity which should be on such premises the excess shall be debited to stock.

(b) Any person to whom any distillate fuel or residual fuel oil has been supplied from stocks which have been entered under rebate of duty at a price which has been reduced to the extent of such rebate for a purpose stated in the item under which such distillate fuel or residual fuel oil was so entered, and who applies such distillate fuel or residual fuel oil or any portion thereof for any other purpose, shall be guilty of an offence and shall, notwithstanding the provisions of paragraph (a), be liable for the duty to the extent of the rebate allowed on entry for home consumption of such distillate fuel or residual fuel oil on the full quantity of the distillate fuel or residual fuel oil so supplied to him or on such portion thereof as the Director may in his discretion determine:

Provided that, if the duty in question has after such entry under rebate been increased, the extent of such rebate shall be deemed to be —

- (i) the difference between the duty actually paid on entry for home consumption and such increased duty; or
- (ii) such increased duty if no duty was paid on entry for home consumption.

(7) (a) The Director may, on such conditions as he may impose, permit any person who has entered any goods under rebate of duty under this section to use or dispose of any such goods otherwise than in accordance with the provisions of this section and of the item under which such goods were so entered, to use or dispose of any such goods in accordance with the provisions of any other item to which this section relates, and such person shall thereupon be liable for duty on such goods as if such rebate of duty did not apply or as if they were entered under such other item to which this section relates, as the case may be, and such person shall pay such duty on demand by the Director:

Provided that, in respect of any such goods which are specified in any item of Schedule No. 3, 4, 6 or 7, the Director may, subject to the provisions of the notes applicable to the item in which such goods are specified and to any conditions which he may impose in each case, exempt any such goods from the whole or any portion of the duty payable thereon under this subsection on the ground of the period or the extent of use in accordance with the provisions of the item under which such goods were entered, or on any other ground which he considers reasonable.

(b) Any duty paid on any such goods on first entry thereof under rebate of duty shall be deemed to have been paid in respect of any duty payable in accordance with the provisions of paragraph *(a)* in respect of such goods.

(8) No drawback or refund shall be paid in respect of any goods specified in any item of Schedule No. 5, 6 or 7 if such goods have been used or disposed of otherwise than in accordance with the provisions of this section and the item in question or if such provisions have not been complied with in respect of such goods:

Provided that the Director may, in respect of any class or kind of goods specified in any item of Part I of Schedule No. 5 and used in the manufacture of any goods marketed in Botswana, pay any drawback to the extent stated in such item, where goods of comparable class, kind, quality and quantity and manufactured or produced in Botswana have been used in the manufacture of any goods exported.

(9) 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.

(10) Whenever the tariff heading or sub-heading or the tariff item or sub-item or the sales duty item or sub-item under which any goods are classified in Schedule No.1 is expressly quoted in any item of Schedules No. 3, 4, 5, 6 or 7 in which such goods are specified, the goods so specified in the said item of Schedules No. 3, 4, 5, 6 or 7 shall be deemed not to include goods which are not classified under the said tariff heading or sub-heading or tariff item or sub-item or sales duty item or sub-item.

(11) Any goods entered for use under rebate of duty under this section shall, for the purposes of this Act, be deemed to be entered for home consumption, but no entry in respect of any such goods described in Schedule No. 3, 4 or 7 shall be valid unless the number of the tariff heading and sub-heading or sales duty item and sub-item under which such goods are classified in Schedule No. 1 and the number of the item of Schedule No. 3, 4 or 7 in which the said goods are specified are both declared on such entry and the industry in which and the purpose for which such goods are to be used, as specified in the said item, are declared on such entry:

Provided that the Minister may exempt entries in respect of any class or kind of goods from any or all of the requirements of this subsection.

(12) (a) No goods may be entered or acquired under rebate of duty under this section or the regulations until the person so entering or acquiring them has furnished such security as the Director may require and has complied with such other conditions (including registration with the Director of his premises and plant) as may be prescribed by the Minister by regulation in respect of any goods specified in any item of Schedules No. 3, 4, 6 or 7:

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.

(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 42 (5) as the circumstances may require.

(c) For the purposes of the application of section 42 (3), (4) and (5) 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 this section.

- (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 (i) was granted.

(13) Notwithstanding anything to the contrary in this Act contained, the Director may, in respect of Schedules No. 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.

(14) No goods manufactured from excisable goods under rebate of duty specified in any item of Schedule No. 6 shall be used in the place of such excisable goods in the manufacture of any other goods if a rebate of duty to a lesser extent has been specified in any item of the said Schedule in respect of such excisable goods when used in the manufacture of such other goods.

(15) If the Director is of the opinion that any goods, not being a spirituous beverage, manufactured from spirits under rebate of excise duty in terms of any formula approved by him under any item of Schedule No. 6 are used as a beverage, he may forthwith revoke his approval of such formula.

(16) No refund or drawback of duty shall be paid by the Director under the provisions of this section unless an application therefor, duly completed and supported by the necessary documents, and other evidence to prove that such refund or drawback is due under this section is received by the department —

(a) in the case of goods exported —

- (i) where the goods were exported by post, within a period of six months from the date on which such goods were posted; or

(ii) where the goods were exported in any other manner, within a period of six months from the date of entry of such goods for export; and

(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:

Provided that the Director may, in such circumstances as he may consider exceptional, pay a refund or drawback after expiration of the relevant period.

(17) (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 a permit if the facts were then known.

(b) For the purposes of the application of section 42 (3), (4) and (5)—

(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.

(18) (a) Subject to the provisions of subsection (17) 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 retro-

spective 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 (17) (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 42 (5), as the circumstances may require.

(19) (a) The Minister may from time to time by notice published in the Gazette amend Schedule No. 3, 4, 5, 6, 7 or 9 whenever he deems it expedient in the public interest so to do.

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

(i) by like notice amend any 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.

(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 conditions as he may determine, apply in respect of goods which were imported prior to the date of the relevant notice in the Gazette.

(d) The provisions of subsections (7), (8) and (9) of section 53 shall *mutatis mutandis* apply in respect of any amendment made under the provisions of this subsection.

(20) The Director may refuse to accept an entry under rebate or an application for drawback or refund under any item of Schedule No. 3, 4, 5, 6, 7 or 9 from any person who has persistently contravened or failed to comply with the provisions of this Act or who has committed an offence referred to in section 86, 89, 90, 91, or 97 and he may cancel any registration

under the provisions of this Act of such person or suspend any such registration for such period as he may deem fit.

(21) Subject to the provisions of the proviso to section 19 (9) and items 412.07, 412.08, 412.09, 531.00, 532.00, 608.01, 608.02, 608.03, 608.04, 707.01, 707.02 and 707.03 of Schedule Nos. 4, 5, 6 and 7, no rebate or refund of duty in respect of any loss or deficiency of any nature of any goods shall be allowed, but the Director may allow the deduction from the dutiable quantity of the undermentioned goods of a quantity equal to the percentage stated below in each case, namely —

- (a) in the case of imported crude petroleum naphtha for use in the refining of petroleum products, or imported or excisable petrol, 0,25 per cent of any quantity entered for storage in any customs and excise storage warehouse;
- (b) in the case of wine spirits (ethyl-alcohol) manufactured in Botswana and entered for storage in a customs and excise storage warehouse, excluding spirits specified in paragraph (d), 1,5 per cent of the quantity so entered;
- (c) in the case of spirits (ethyl-alcohol), other than wine spirits manufactured in Botswana, 1,5 per cent of the quantity so manufactured and entered for use in making spirituous beverages;
- (d) in the case of unpacked excisable spirits intended for export and which are removed in bond from a customs and excise manufacturing warehouse for temporary storage in a customs and excise warehouse approved for that purpose, such percentage, but not exceeding 1,25 per cent, of the quantity so removed as may in the opinion of the Director represent a loss incurred whilst the spirits in question are so removed and stored for such period as the Director may determine;
- (e) in the case of wine manufactured in Botswana 0,5 per cent of the quantity so manufactured;
- (f) in the case of any fermented apple, pear or orange beverage manufactured in Botswana, 0,5 per cent of the quantity so manufactured on which duty is paid;
- (g) in the case of imported petroleum naphtha entered for use as fuel in the manufacture of ammonia, such percentage, not exceeding 0,25, of any quantity so entered as may, in the opinion of the Director, represent a loss by evaporation;
- (h) 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 65 (4) shall be entitled to such deduction; and

- (i) 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 65 (4) shall be entitled to such deduction.

(22) No person shall, without the permission of the Director, divert any goods entered under rebate of duty under any item of Schedule No. 3, 4, 6, 7 or 9 or for export for the purpose of claiming a drawback or refund of duty under any item in Schedule No. 5, 6 or 7 to a destination other than the destination declared on such entry or deliver such goods or cause such goods to be delivered in Botswana otherwise than in accordance with the provisions of this Act and, in the case of goods entered under rebate of duty, otherwise than to the person who entered the goods or on whose behalf the goods were entered.

(23) If any goods to which this section relates are used or disposed of, or dealt with or in, contrary to the provisions of this Act, the whole consignment entered or transferred for use in terms of the provisions of this section, of which such goods form part or formed part, or any goods manufactured therefrom, shall be liable to forfeiture.

(24) Except with the permission of the Director which shall only be granted in circumstances which he considers to be exceptional and subject to such conditions as he may impose in each case, any goods entered under any item of Schedule No. 3, 4, 6 or 7 for manufacturing purposes or such other purpose as may be specified in the regulations shall be used for the purpose specified in such item at the time of such entry, or such other purpose, within five years from the date of such entry."

(2) The provisions of subsection (21) of section 81 shall be deemed to have come into operation on 3rd July, 1978.

18. Section 82 of the principal Act is amended—

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

"(a) from the date of entry for home consumption as provided in section 47 (3), of the goods to which the application relates; or"; and

(2) by inserting after paragraph (a) of subsection (4) the following paragraph —

"(aa) from the date on which the charge to which the application relates was paid; or".

Amendment
of section 82
of the
principal Act

Amendment
of section 86
of the
principal Act

19. Section 86 (1) (n) of the principal Act is amended by substituting for the reference to "section 81 (33)" therein reference to "section 81 (20)".

Amendment
of section 94
of the
principal Act

20. Section 94 of the principal Act is amended by substituting for subsection (1) thereof the following subsection —

"(1) (a) An officer, magistrate or member of the police force may detain any vehicle, plant, material or goods at any place for the purpose of establishing whether that vehicle, plant, material or those goods are liable to forfeiture under this Act.

(b) Such vehicle, plant, material or goods may be so detained where they are found or shall be removed to and stored at a place of security determined by such officer, magistrate or member of the police force, at the cost, risk and expense of the owner, importer, exporter, manufacturer or the person in whose possession or on whose premises they are found, as the case may be.

(c) If such vehicle, plant, material or goods are liable to forfeiture under this Act the Director may in his discretion seize that vehicle, plant, material or goods.

(d) The Director may, at his discretion, seize any other vehicle, plant, material or goods liable to forfeiture under this Act."

Substitution
for section 110
of the
principal Act

21. The following section is hereby substituted for section 110 of the principal Act —

"Liability of
company,
partnership
etc.

110. For the purposes of this Act any reference to a person shall be deemed to include a reference to a company, close corporation, co-operative society, firm, partnership, statutory body or club, and in the event of a contravention of or non-compliance with this Act or the incurring of any liability under this Act by any company, close corporation, co-operative society, firm, partnership, statutory body or club any person having the management of any premises or business in or in connection with which the contravention or non-compliance took place or the liability was incurred may be charged with the relevant offence and shall be liable to any penalties provided therefor and shall be liable in respect of any liability so incurred."

Amendment
of section 120
of the
principal Act

22. Section 120 of the principal Act is hereby amended —

(a) by deleting paragraph (e) of subsection (1); and

(b) by substituting for subsection (8) thereof the following subsection —

"(8) (a) For the purposes of subsection (7), exportation or transit carriage to a place includes dispatch to that place either directly or indirectly and either permanently or for a temporary purpose, and any goods specified in a notice issued under subsection (7) which are brought to a place so specified shall be deemed to have been exported or carried to that place in contravention of such notice by the person who dispatched

such goods, and the person who dispatched any such goods shall be presumed to have exported or carried those goods to such place, unless he proves that he did not know and had no reason to believe that the said goods would be brought to that place, and that he could not have prevented it.

(b) Any officer, magistrate or member of the police force may detain any goods for the purpose of establishing whether those goods are liable to forfeiture under paragraph (a).

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

23. For the purposes of section 42 (3) of the principal Act —

(a) bills of entry passed on 20th June, 1986 in relation to cotton yarn in respect of which a permit has been issued in terms of the provisions of item 460:11 (in relation to tariff heading 55.09) of Schedule No. 4 to the principal 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 81;

(b) such cotton yarn shall be deemed to have qualified at the time duty was paid thereon in all respects for rebates; and

(c) the duty paid on the cotton yarn concerned shall be deemed to have been paid on the date of commencement of this Act.

Application
of section 42
of the
principal
Act

24. Subject to the provisions of section 62 (1) of the principal Act, the amendments to Schedule No. 1 of the Act effected by Statutory Instrument No. 75 of 1989 shall be deemed to have come into effect on 15th March, 1989.

Amendments
of Schedule
No. 1 of the
principal Act

25. (1) Every amendment of Schedule Nos. 1, 2, 3, 4, 5, 6 and 7 to the principal Act under amendments made of section 53 (1) and (2), or section 53 A (1), section 59 (1) and (2) or section 81(19) of the principal Act prior to 3rd February, 1989 shall not lapse by virtue of the provisions of section 53 (8), 59 (8) or 81 (19) (d) of the principal Act.

Continuation
of certain
amendments
of Schedules
Nos. 1, 2, 3,
4, 5, 6 and 7
to the
principal Act

(2) The amendment of Schedule No. 6 to the principal Act made under section 81(19) of the principal Act shall not lapse by virtue of the provisions of section 81 (19) (d) of the principal Act.

(3) Notwithstanding the provisions of section 53 (7), (8) and (9) every amendment of Schedules Nos. 1, 2, 3, 4, 5, 6 and 7 to the principal Act made under section 53A (1) of the principal Act prior to 5th February, 1988 shall be deemed not to have lapsed by virtue of the provisions of section 53A (2) of that Act.

PASSED by the National Assembly this 3rd day of July, 1990.

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