

CUSTOMS AND EXCISE DUTY (AMENDMENT) ACT, 2004

No. 31



of 2004

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An Act to amend the Customs and Excise Duty Act.

Date of Assent: 30th August, 2004

Date of Commencement: 3rd September, 2004

ENACTED by the Parliament of Botswana.

Short title

1. This Act may be cited as the Customs and Excise Duty (Amendment) Act, 2004.

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 Act") is amended -

(a) in subsection (1) thereof by inserting, in their correct alphabetical order, the following new definitions —

““fuel levy” means any duty leviable under Part 5 of Schedule 1 on any goods which have been manufactured in, or imported into Botswana;

“fuel levy goods” means any goods specified in Part 5 of Schedule 1 which have been manufactured in, or imported into Botswana;”;

and

(b) in subsection (2) thereof by —

(i) substituting for the word “and” which appears between the words “40” and “73” on the second line of the subsection, a comma; and

(ii) inserting immediately after the word “73”, the following words, “and 98(2)”.

3. Section 3 of the Act is amended by inserting, immediately after subsection (2) thereof, the following new subsection —

Amendment
of section 3 of
the Act

“(2A) The Director may, for the purposes of the administration of this Act, make such arrangements or enter into such agreements with any railway, airline, or postal authority, a container depot or container terminal operator or any person or authority he may consider necessary.”.

4. Section 6 of the Act is amended —

Amendment
of section 6 of
the Act

(a) in subsection (2) thereof by inserting, immediately after the word “goods” which appears therein, the words “or fuel levy goods”;

(b) by substituting for subsection (3) thereof, the following —

“(3) No officer shall disclose any information relating to any person, firm or business acquired in the performance of his duties, except —

(a) for the purposes of this Act;

(b) when required to do so as a witness in a court of law; or

(c) such information in relation to any person as may be required by the Government Statistician in connection with the collection of statistics in complying with the provisions of the Statistics Act or any regulations made thereunder.”; and

(c) by inserting immediately after subsection (3) thereof, the following new subsection —

“(3A) The Government Statistician or any person acting under his or her direction and control shall not disclose any information supplied under subsection (3)(c) to any person or permit any person to have access thereto, except in the exercise of his powers or the carrying out of his duties under any Act from which such power or duties are derived.”.

5. Section 11 of the Act is amended by substituting, for subsection (1) thereof, the following new subsection —

Amendment
of section
11 of the Act

“(1) All goods imported into Botswana by aircraft shall, if landed before due entry thereof, be placed in a transit shed, container terminal, container depot or state warehouse, or any other place approved by the Director.”.

6. Section 12 of the Act is amended —

Amendment
of section 12
of the Act

(a) by substituting, for subsections (1) and (2) thereof, the following new subsections —

“(1) Where any goods are imported by train, the railway authority shall furnish the Director with such documents as the Director may require in relation to such goods.

(2) The station master or any other person in control of railway premises shall not permit any such goods to be removed from such premises before due entry thereof unless the Director allows such goods to be so removed, subject to such conditions as he may in each case impose, before such entry.”; and

(b) in subsection (11) thereof, by substituting, for that subsection the following new subsection —

“(11) No person in charge of any vehicle (other than aircraft or a train), whether or not used in the exportation of goods overland shall remove any such vehicle or goods beyond the borders of Botswana unless due entry has been made of such vehicle and the goods carried thereon, or permission for removal has been granted by the Director.”

Amendment
of section 17
of the Act

7. Section 17 of the Act is amended by—

(a) inserting, immediately after subsection (1) thereof, the following new subsection —

“(1A) For the purposes of subsection (1)(a), imported goods landed in Botswana shall include goods in transit through Botswana which are destined for removal to a consignee in any country outside Botswana.”; and

(c) by deleting subsection (9) thereof.

Amendment
of section 18
of the Act

8. Section 18 of the Act is amended by deleting subsection (7) thereof.

Amendment
of section 19
of the Act

9. Section 19 of the Act is amended by inserting, immediately after subsection (9) thereof, the following new subsection —

“(10) Except in exceptional circumstances with the permission of the Director in writing and subject to such conditions as the Director may impose, no imported goods entered for storage or excisable goods manufactured in a customs and excise warehouse, excluding spirits or wine in the process of maturation or maceration, shall be retained in any customs and excise warehouse for a period exceeding five years from the time the imported goods were first entered for storage or from the time excisable goods were deemed to have been manufactured in terms of section 46(2).”

Amendment
of section 20
of the Act

10. Section 20 of the Act is amended in the proviso to subsection (9) thereto, by deleting the words “subject to the provisions of section 35(3)” which appear therein.

Amendment
of section
27 of the Act

11. Section 27 of the Act is amended —

(a) in subsection (7) thereof, by substituting, for that subsection the following new subsection —

“(7) The Director, may in writing, require every licensee of a customs and excise manufacturing warehouse to provide suitable office accommodation, board and lodging for any officer stationed at or visiting such warehouse for the purposes of investigating that warehouse in terms of the Act.”; and

(b) in subsection (13) thereof, by deleting the words “and to the satisfaction of the Director” appearing therein;

(c) in subsection (14) thereof, by deleting the words “to the satisfaction of the Director” appearing therein.

12. Section 33 of the Act is amended by substituting, for that section, the following new section —

Amendment
of section 33
of the Act

“33. Subject to the provisions of section 71, no person shall distill spirits in a still which does not comply with the requirements prescribed in the regulations as to use, capacity or construction:

Provided that the Minister may, by an order published in the Gazette, exempt any person or still from any provision of this section.”.

13. Section 35 of the Act is amended by deleting subsection (3) thereof.

Amendment
of section 35
of the Act

14. Section 37 of the Act is amended by substituting, for that section, the following new section —

Amendment of
section 37 of
the Act

“37. (1) For the purposes of this section, ‘beer’ means beer made from malt classified under specified and tariff item 104.10 of Part 2 of Schedule No. 1.

(2) Every manufacturer shall, in respect of beer manufactured by any manufacturer in Botswana, register with the Director, the brand names, whereunder such beer will be sold or disposed of for home consumption, together with the alcoholic strength by volume and the quantity which will be indicated on each container size of the beer so sold or disposed of under any such name, and no beer shall be sold or disposed of unless so registered.

(3) Where there have been any changes in the particulars of the beer so registered, the manufacturer shall register such changes in a form as the Director may from time to time prescribe, and subject to such conditions as the Director may prescribe.

(4) Where beer is subject to further fermentation after being packaged, the alcoholic strength by volume to be registered and indicated on the container shall be the strength which the beer is reasonably expected to have when consumed.

(5) No brew of beer shall be packaged for home consumption if the alcoholic strength by volume thereof exceeds the registered strength after deduction of any tolerance prescribed by regulations.

(6) If beer in bulk is removed in bond from a customs and excise manufacturing warehouse, the alcoholic strength by volume shall be tested before removal and recorded on all documents of removal and reflected in the records required to be kept in terms of the regulations.

(7) No beer shall be sold or disposed of by any manufacturer for home consumption except in a container which shall indicate the brand name, the alcoholic strength by volume and quantity of such beer, and any invoice or other documents relating to such sale or disposal of such beer shall indicate the registered brand name thereof.

(8) Any description on any container of beer bearing an indication of a brand name, alcoholic strength by volume and quantity registered with the Director shall be deemed to be a declaration for the purposes of assessment of duty in terms of this Act.

(9) The Director may, by notice published in the Gazette, exempt beer of any class or kind from the provisions of subsection (2) or (7).

(10) If the actual strength by volume, of any beer in any container not intended for export as contemplated in subsection (21), bearing an indication of a name and alcoholic strength by volume registered with the Director under this section is ascertained, after deduction of any tolerance prescribed by regulations, to be higher than the alcoholic strength by volume registered in relation to beer of such name, the manufacturer shall be liable for the duty on the full quantity of the brew or blend of brews of beer from which such container was filled according to the actual strength as ascertained in respect of the contents of such container.

(11) If the Director is unable to establish such quantity from the records provided by the manufacturer, he may determine a quantity which shall be deemed to be such full quantity.

(12) Any beer of any brew or blend of brews of beer referred to in subsection (10) not delivered from the stocks of such manufacturer shall be liable to forfeiture.

(13) Every manufacturer shall —

(a) test the alcoholic strength by volume of any beer or brew or blend of beer using a method approved by the Director in writing, and record the results of each test prescribed by regulations; and

(b) keep a record of the actual quantity of beer in each container size packaged for sale or disposal for home consumption.

(14) Where the average of the test results for any registered brand name over any two successive periods of three months show that the average alcoholic strength by volume, although within any tolerance prescribed by regulations, exceeds the registered strength after deduction of any average allowance prescribed by regulations, duty shall, if the Director so determines, be payable in respect of such excess strength on all beer accounted for during such periods.

(15) Payment of the duty referred to in subsection (14) shall be shown separately on, and included with, the first account presented to the Director after the end of such period.

(16) Where the average alcoholic strength by volume so exceeds the registered strength, the manufacturer shall change the registration within the time prescribed by regulations.

(17) Where the actual total quantity of beer of each container size sold or disposed of for home consumption during any period of three months exceeds the calculated total quantity, according to the registration for such container size, and after deduction of any average allowance as prescribed by regulations, duty shall be payable on the excess quantity.

(18) Such excess quantity shall be shown separately on, and payment of duty thereon included with, the first account presented to the Director after the end of such period.

(19) No manufacturer shall be entitled to any refund of duty if the alcoholic strength referred to in subsection (14) or the quantity referred to in subsection (17) is less than the registered strength or quantity, as the case may be.

(20) An officer may take samples of any beer at any time and send samples for analyses to any person designated by the Director in writing to analyse samples.

(21) Any beer intended for export shall only be exported in containers with a distinguishing mark as the Director may approve in writing.

(22) The Director may by regulations prescribe the following in relation to beer —

- (a) the manner in which alcoholic strength by volume and quantity are determined for the purposes of registration;
- (b) the tolerance allowable on registered alcoholic strength by volume;
- (c) the average allowance for the purposes of subsections (14) and (17);
- (d) records to be kept and reports to be furnished of the ingredients used, production, test results of the alcoholic strength by volume of brews, quantities manufactured and put in containers, losses and beer returned;
- (e) in relation to samples to be taken by an officer —
 - (i) procedure or method for the taking of samples,
 - (ii) the method of analysis of such sample,
 - (iii) the form for reporting on the analysis of such sample by a designated person, or
 - (iv) the results of such analysis and any other particulars as may be required on such form;
- (f) the time and circumstances within which any change of the alcoholic strength by volume or quantity is required to be registered; and
- (g) any other reasonable measure for controlling the manufacturing processes or the removal of beer for home consumption or export.”.

15. Section 38 of the Act is amended —

- (a) in subsection (1) thereof, by deleting the proviso thereto;
- (b) in subsection (3) thereof, by substituting for the word “individual” appearing therein, the word “person”; and
- (c) in subsection (4) thereof, by substituting for the provisions immediately preceding paragraph (a) of the said subsection, the following —

“(4) Excisable goods specified in section B of Part 2 of Schedule No.1 and manufactured in Botswana by any person for sale or disposal and in circumstances which in the opinion of the Director constitute a business venture, or any class or kind of such goods, may, subject to such conditions as the Director may impose, be exempted from the payment of excise duty specified in section B of Part 2 of Schedule No. 1 thereon if —”.

Amendment
of section 38
of the Act

Amendment
of section 39
of the Act

16. Section 39 of the Act is amended —

(a) by substituting for subsection (8) thereof, the following new subsection —

“(8) Any such mineral oil product used in such mixing or blending shall be deemed to consist entirely of imported goods unless it is proved that it consists entirely of excisable goods or it is proved that it contains such a small proportion of imported goods that the Director considers it negligible, in which event such mineral oil products shall be deemed to consist entirely of excisable goods.”.

Insertion of
section 39A in
the Act

17. The Act is amended by inserting, immediately after section 39, the following new section —

“Special provision in respect of marked goods, certain goods being free of duty
39A. (1) Notwithstanding anything to the contrary contained in this Act, where —

(a) any goods are classified under and specified in any heading or subheading of Chapter 27 of Part 1 of Schedule No.1;

(b) such goods are also classified under and specified in any item of Part 2 and Part 5 of Schedule No.1;

(c) such heading or subheading has been expressly quoted in any such item; and

(d) a free rate of duty is prescribed in respect of each such heading or subheading and such item, such goods shall, as may be prescribed by regulations, on importation into or manufacture in Botswana or on being marked, be accounted for in any customs warehouse licensed in terms of this Act.

(2) The Director may, for the purposes of this section, and subject to such conditions as he may impose approve in each case in order to ensure the proper control over the storage, marking and removal of goods contemplated in terms of this section, approve any such warehouse and any licensee or class of licensee of such warehouse.

(3) No person shall, without the approval of the Director in writing, deal in any goods in any manner contemplated in terms of this section.

(4) If any goods are described in any heading or subheading or item referred to in subsection (1) as marked, the unmarked goods concerned shall be marked by the approved licensee in the approved warehouse by the addition of such marker, in such proportion which is equal to or exceeds, and in accordance with such procedure and control measures, as may be prescribed by regulations.

(5) Any goods contemplated in subsection (1) shall be stored separately from any other goods and shall be subject to the provisions of this Act relating to dutiable goods stored in and removed from a customs and excise warehouse, as may be prescribed by regulations.

(6) Subject to the provisions of subsection (8), any reference to "marked goods" or "marker" in this Act shall be deemed to be a reference to unmarked goods referred to in subsection (7) which have been marked and the marker which is required to be added as contemplated in sub-section (4).

(7) Any reference to "unmarked goods" in this or any other section or in any heading or subheading of Chapter 27 of Part 1 or in any item of Part 2 or Part 5 of Schedule No.1 or in any note to such Chapter or Part or in any regulations made under this Act, shall be deemed to be a reference to goods which, except for the reference to marked, are of the same description as marked goods and are specified as unmarked goods of such description in any such heading, subheading or item.

(8) Whenever it is necessary for the purpose of establishing any contravention of any provision of this section, any goods shall be deemed to contain marked goods when such goods contain a proportion of the marker equal to or exceeding that as may be prescribed by regulations.

(9) Such addition of a marker shall be deemed not to constitute the mixing or blending for the purposes of —

(a) section 39; or

(b) the classification of any goods under any heading, subheading or item in Schedule No. 1, except as provided in this section.

(10) The application of the free rate of duty specified in any heading or subheading of Chapter 27 of Part 1 or in any item of Part 2 and Part 5 of Schedule No. 1 in respect of any goods described as marked goods, shall be subject to the provisions of this section.

(11) Any person who sells or disposes of in any manner, whether or not for any consideration, any marked goods at any time in excess of the quantity prescribed by any regulations, shall issue an invoice to the purchaser, or to any other person to whom the goods are so disposed of, containing such particulars as the Director may prescribe in writing.

(12) Any person who sells or disposes of marked goods shall keep a copy of such invoice and any person to whom such invoice is issued shall keep such invoice for such period as the Director may determine by notice published in the Gazette.

(13) Any person referred to in subsection (11) and any other person who is at any time in possession of or has under his or her control any marked goods in excess of the quantity prescribed by regulations, shall complete and keep such books, accounts and other documents in such form, reflecting such particulars and for such period as may be prescribed by regulations.

(14) The provisions of subsection (11) shall not apply to stock loan transactions between approved licensees of customs and excise warehouses.

(15) No person shall —

- (a) mix any marked goods in any proportion with —
 - (i) distillate fuel or petrol,
 - (ii) any lubricity agent for use as fuel in any engine, or
 - (iii) any lubricity agent or be in possession of such goods for mixing with any lubricity agent in any circumstances or for any purpose, otherwise than in accordance with this section or any regulations;
- (b) use any marked goods, whether or not mixed with any other goods in any proportion, as fuel in any engine;
- (c) sell or dispose of, or acquire in any manner, whether or not for any consideration, any marked goods mixed with any lubricity agent for use as fuel in any engine;
- (d) be in possession of or sell any marked goods mixed in any proportion with distillate fuel or petrol; or be in possession of any marked goods or marked goods mixed in any proportion with any lubricity agent for use as fuel in any engine;
- (e) remove or neutralise or attempt to remove or neutralise any marker in any marked goods;
- (f) add any substance to any marked goods which may prevent or impede the detection of the marker;
- (g) mix any unmarked goods with any marked goods; or
- (h) unless approved by and subject to such conditions as may be imposed by the Director, import any goods containing any marker.

(16) Any person who so mixes or uses or sells or disposes or acquires or possesses any marked goods or so adds any substance to any marked goods or so removes or neutralises or attempts to remove or to neutralise any marked or any person to whom any invoice referred to in subsection (11) has been issued in respect of the marked

goods concerned, shall, in addition to any other liability incurred in terms of this Act, be liable, as the Director may determine, for the payment of an amount not exceeding the duty that may be leviable on any distillate fuel, petrol, lubricity agent or unmarked goods in accordance with the provisions of Schedule No. 1, whichever yields the greatest amount of duty, in respect of all marked goods which —

- (a) are in possession or under the control of such person or on any premises in the possession or under the control of such person; and
- (b) were previously sold or disposed of or purchased or were in the possession or under the control of such person or on any premises in the possession or under the control of such person at any time, unless it is shown within 30 days from the date of any demand for payment of any amount in terms of this section that the goods concerned have not been dealt with contrary to the provisions of subsection (15).

(17) If different rates of duty on any distillate fuel, petrol, lubricity agent or unmarked goods, were in force during any period in respect of which the duties are calculated for the purposes of the payment referred to in subsection (16), the highest rate in force at the relevant time shall be applied for the purposes of calculating duty payable in terms of the said subsection (16).

(18) For the purposes of calculating the duty payable on any marked goods mixed with distillate fuel, petrol, unmarked goods or lubricity agent, in any tank, including the fuel tank of any engine, such duty shall be calculated on the total quantity of such mixed goods, in accordance with the provisions of subsection (16).

(19) Notwithstanding anything to the contrary contained in this Act, any person who fails to —

- (a) keep any invoice issued or a copy thereof;
- (b) issue any invoice;
- (c) complete and keep the books, accounts and documents; or
- (d) forthwith furnish any officer at such officer's request with such invoice or copy thereof and with the books, accounts and documents, required to be completed and kept,

shall, in addition to any other liability incurred in terms of this Act, in respect of the goods to which such failure relates, be liable, as the Director may determine, for the payment of an amount not exceeding the duty that may be leviable on any distillate fuel, petrol, lubricity agent or unmarked goods in accordance with the provisions of

Schedule No. 1, whichever yields the greatest amount of duty, unless it is shown, within 30 days of the date of any demand for payment of such amount in terms of this section, that the goods concerned have not been dealt with contrary to the provisions of this section.

(20) Any amount which any person is liable to in terms of this section shall be payable to the Director upon demand.

(21) Payment of any amount in respect of the marked goods referred to in subsection (16)(a) shall not absolve the person concerned from compliance with the provisions of subsection (15).

(22) For the purposes of this section, the Director may designate any officer to —

- (a) take samples of any goods in any tank or other container or in any fuel tank of any engine;
- (b) analyse such samples or send them for analysis to any person designated in terms of this subsection; or
- (c) stop and detain any vehicle or mobile apparatus with or without the assistance of any member of the Botswana Police or the Botswana Defence Force.

(23) The provisions of section 117 (2) shall apply to any sample taken under this section.

(24) The Director may by regulations prescribe —

- (a) the form for reporting on any vehicle or mobile apparatus stopped or premises visited, or any person concerned with such vehicle, mobile apparatus or premises, or on any procedure or method for the taking of analysis of any sample by an officer, or on the results of such analysis and any other particulars as may be required on such form;
- (b) the form for reporting on the analysis of such sample, the results of such analysis and any other particulars as may be required on such form; and
- (c) the method for sealing any tank or container.

(25) Any person who is in any way concerned with any marked goods or any vehicle or mobile apparatus or any premises where any tank or other container is situated, shall furnish an officer, on demand, with any particulars requested by the officer for the purposes of the report referred to in subsection (24).

(26) Whenever an officer has detained any vehicle, mobile apparatus, engine, tank or any container or goods in terms of this Act for the purposes of investigating any matter to which this section relates, he or she shall not, if any goods are tested for the presence of a marker, take

any action to enforce any other provision of this Act, unless the person is in possession of a report by any officer designated in terms of subsection (22), which contains particulars indicating that the goods concerned have been dealt with contrary to the provisions of this section.

(27) Any person who is in any way concerned with such goods as contemplated in subsection (16) shall be liable in respect thereof for any payment of an amount calculated on the same basis as provided in the said section.

(28) If an officer finds any goods to have been dealt with contrary to the provisions of this section such goods shall be liable to forfeiture in accordance with this Act.

(29) The owner or whoever has possession or control of any goods, vehicle, mobile apparatus, engine, tank or other container, shall be liable for any reasonable costs and expenses, including the costs of analysing any sample, incurred by, and charges due to, the Director in the handling of such goods, vehicle, mobile apparatus, engine, tank, or container for the purposes of this section.

(30) Notwithstanding anything to the contrary contained in this Act, whenever any marked goods have been mixed with or contaminated by unmarked goods or any other goods, by an act or omission which, by the exercise of reasonable care could not have been avoided, such mixing or contamination shall, in the event that the proportion of the marker present in such mixed or contaminated goods is less than the proportion prescribed by regulations in terms of subsection (4), but is equal to or exceeds the proportion prescribed by regulations in terms of subsection (8), shall forthwith be reported to the Director, unless such mixing or contamination occurs within a licensed customs and excise warehouse, and the licensee complies with the provisions of subsection (31)(a) and (b) and a report of each such event is prepared and kept available for inspection by an officer designated by the Director.

(31) The goods referred to in subsection (30) shall, subject to the approval of the Director in writing, and subject to such conditions as the Director may impose —

- (a) be mixed or blended with other goods by the licensee of a customs and excise warehouse until the proportion of the marker is less than the proportion prescribed by regulations in terms of subsection (8), in which case the total quantity of such mixed or blended goods shall be liable to the duty applicable to such goods in terms of Schedule No.1 on removal from such warehouse; or

(b) be delivered to any person who is registered as required by the regulations, for mixing or blending with other goods where such mixed or blended goods are not capable of use as fuel in any engine.

(32) If the Director, for any reason, finds that such mixed or contaminated marked goods cannot be dealt with as contemplated under subsection (31) within any reasonable period determined by the Director, such goods shall on the expiry of such period, be regarded as having been abandoned to the Director and may thereafter be disposed of in such manner as the Director considers as reasonable in the circumstances.

(33) The licensee of a customs and excise warehouse, the purchaser, or any other person to whom the marked goods were disposed of or, whoever had control thereof when such mixing or contamination occurred, shall be liable for any reasonable costs and expenses incurred by and charges due to the Director in respect of any handling of and dealing with such goods in accordance with the provisions of subsection (31) or (32).

(34) Any person who deals with such mixed or contaminated goods contrary to the provisions of subsection (31), shall, in addition to any other liability incurred in terms of this Act, be liable in respect of the total quantity of such goods for payment of an amount calculated on the same basis as provided in terms of subsection (16).

(35) Where any goods may be disposed of in terms of section 101, the Director may, notwithstanding the provisions of that section, but subject to such conditions as the Director may impose, which may include conditions requiring payment of any amount determined by the Director—

(a) dispose of such goods for mixing or blending with other goods as contemplated in subsection (31);

(b) dispose of such goods in any other manner which the Director considers reasonable in the circumstances;
or

(c) order the destruction of such goods.

(36) Any person from whom such goods were seized shall be liable for any reasonable costs and expenses incurred by and charges due to the Director, in respect of the handling of and dealing with such goods as contemplated in subsection (35).

(37) No person may acquire, sell or dispose of in any manner, whether or not for any consideration, or be in possession of or have under his or her control or use —

- (a) any goods, other than marked goods, for which provision is made free of duty in Schedule No.1 as contemplated in subsection (1); or
- (b) any marked goods mixed with any lubricity agent, except in accordance with the provisions of this section or any regulations made under this Act.

(38) Any marked goods mixed or intended to be mixed with any lubricity agent shall be subject to the provisions of this section and any regulations relating to marked goods.

(39) Where any person is required by any regulations made under subsection (40) to register with the Director, the Director may —

- (a) require before registration, that such person furnishes security in such form, nature or amount as the Director may determine;
- (b) at any time require that security be altered or renewed in such manner as the Director may determine;
- (c) determine the particulars to be furnished on application for registration and the requirements to be complied with before such application is considered;
- (d) register such person subject to such conditions as the Director may in each case impose; or
- (e) refuse to register any person or class of persons and cancel the registration of any person who has dealt with any goods contrary to the provisions of this section or regulations or any other provision of this Act, and refuse registration of such person.

(40) The Director may, for the purposes of this section, by regulations prescribe the following —

- (a) the persons who are required to register the goods and activities in respect of which they are required to register;
- (b) the quantities which shall be subject to any such regulations;
- (c) the conditions on which and the purposes for which any marked goods may be mixed with any lubricity agent;
- (d) the conditions on which and purposes for which any person may sell or dispose of in any manner, whether or not for any consideration, or be in possession of or use, any goods contemplated in this section;

- (e) form of invoice to be issued, the particulars to be contained therein, the persons who shall keep such invoice or copy thereof, the persons who are required to complete and keep books, accounts and other documents, the form in which they shall be kept, particulars to be reflected therein, and the period for which they shall be kept;
- (f) any restrictions in respect of the removal and export of any goods to which this section applies;
- (g) all matters required or permitted in terms of this Act to be prescribed by regulations; and
- (h) any other matter which the Director may consider necessary and useful to regulate the lawful and prevent the unlawful distribution and consumption of any goods to which this section applies.

(41) No goods referred to in subsection (35)(a) shall be used for any other purpose other than that for which they are removed from a customs and excise warehouse and in accordance with any conditions as may be imposed by the Director and those prescribed in the regulations, except with the prior permission of the Director and on payment of any duty leviable in terms of Schedule No.1 in respect of unmarked goods:

Provided that the Director may permit, the mixing or blending of goods with other goods in which case the provisions of subsections (30) to (34) shall apply.

(42) If any goods referred to in subsection (37) are dealt with contrary to the provisions of this section and any regulations made under this Act, any person who had possession or control of such goods at the time they were so dealt with, shall, in addition to any other liability incurred in terms of this Act, be liable in respect of such goods, for payment of an amount calculated on the same basis as provided in subsection (16).

(43) No person shall be entitled to any compensation for any loss or damage arising out of any bona fide action of an officer or any person assisting the officer in terms of this Act.

(44) The provisions of section 48 shall apply in respect of liability incurred by any person in terms of this section.

(45) For the purposes of this section —

“engine” referred to in subsections (15), (18), (22)(a) and 26 includes any engine of any machine, less machinery, plant, equipment, apparatus or vehicle classifiable under any heading or subheading of Chapters 84 to 87 and 89 of Part 1 of Schedule No. 1;

“invoice” means any document, whether in its original form or in a form approved by the Director, and which contains such particulars as the Director may by regulations prescribe;

“vehicle” includes any vehicle classifiable under any heading or subheading of Chapters 86 and 87 of Part 1 of Schedule No. 1.”

18. Section 45 of the Act is amended by substituting for subsection (1) hereof, the following new subsection —

Amendment
of section 45
of the Act

“(1) If entry of any imported goods has not been made under the provisions of section 40, the Director may, on the expiry of the period prescribed in subsection (1) of that section, require the pilot or any other person who has fiscal control of the goods, to remove them to a state warehouse or such other place as may be indicated by the Director or may direct the pilot to remove them.”

19. Section 46 of the Act is amended —

Amendment
of section 46
of the Act

(a) in the proviso to subsection (1) thereto by deleting the words “to the satisfaction of the Director” which appear therein;

(b) in subsection (3) thereof, by deleting the words “to the satisfaction of the Director” which appear at the end of the subsection;

(c) by inserting immediately after subsection (14) thereof, the following new subsections —

“(15) Notwithstanding anything to the contrary contained in this Act, but subject to the provisions of sections 52(18) and (19), 75(9) and (10) and section 78(6) and (7) and subsection (18) of this section, there shall be no liability for any underpayment of duty on any goods where such underpayment is due to the acceptance of a bill of entry bearing any incorrect information, after a period of two years from the date of entry of such goods:

Provided that such liability shall not cease —

(i) if a false declaration has been made for the purposes of this Act; or

(ii) irrespective of any such underpayment discovered during any inspection from a date two years prior to the date on which such inspection commenced.

(16) Where any period is prescribed in this Act for books, accounts, or other documents in whatever form to be kept available for production to or inspection by an officer, any such period shall, subject to the provisions of subsection (17), be calculated from a date prior to the date on which production is demanded or the inspection commences.

(17) Except where the Director otherwise determines, where any false declaration has been made for the purposes of this Act, there shall be no limitation on the period of liability for any underpayment of duty or the period for which any books, accounts or any other documents, in whatever form available, are required to be produced to or may be inspected by an officer.

(18) Any person who makes a false statement in relation to the origin of goods or who makes use of any declaration or document containing any such statement as a result of which such person obtains entry of imported goods at preferential rate of duty as specified in Part 1 of Schedule No. 1 in accordance with the provisions of any agreement contemplated in section 57 or 58, shall for a period of three years prior to the date on which such false statement was made or made use of, in addition to any other liability incurred in terms of this Act, be liable for the payment of duties at the general rate specified in Part 1 of Schedule No. 1 in respect of the goods as the time of entry:

Provided that the Director may on good cause shown reduce such period.”

Amendment of section 48 of the Act

20. Section 48 of the Act is amended by substituting for the words “109(2)(b)” and “97(2)(a)” which appear therein, the words “111(3)” and “99(2)(a)” respectively.

Amendment of section 49 of the Act

21. Section 49 of the Act is amended —

(a) in subsection (1) thereof, by substituting for the words between subsection (1) and paragraph (a) the following new words —

“(1) For the purposes of this Act, except where any agreement contemplated under section 57 or 58 otherwise provides, goods shall not be regarded as having been produced or manufactured in any particular territory unless -”;

(b) in subsection (4) thereof, by inserting, immediately after that subsection, the following new subsection —

“(4A) The Minister may, for the purposes of any tariff preferences allowed by any country in respect of goods exported from Botswana, other than tariff preferences provided in terms of agreements contemplated in section 57 or 58, prescribe by regulations certificates of origin, the authority to print such certificates and related forms, the documents to be produced upon entry for exportation, particulars to be stated on such entry, and any other requirements which may be necessary for the administration of such exports.”; and

(c) by substituting for subsection (5) thereof, the following new subsection —

“(5) Any person entering any imported goods for which a general rate of duty is prescribed in any column of Part 1 of Schedule No. 1 and which are liable to any provisional payments as contemplated in section 65 or to anti-dumping duty imposed under section 62 or countervailing duty imposed under section 63 or safeguard duty imposed under section 64, shall produce, upon request by an officer designated by the Director, at the time of presenting the bill of entry, a declaration of origin in respect of such goods in a form prescribed by the Director.”.

22. Section 52 of the Act is amended, by substituting for subsections (2) to (5), the following new sections —

Amendment of
section 52 of
the Act

“(2) Notwithstanding anything to the contrary contained in this Act, if any person is unable to calculate the correct amount of duty payable in terms of this Act due to the fact that the computer system used to provide any information required for the calculation of such duty is not Year 2000 compliant, the Director may estimate the amount of duty payable on such basis as he considers reasonable in the circumstances.

(2A) The provisions of subsection (2) shall not be construed as absolving any person from otherwise complying with the provisions of this Act.

(3) Any rate of duty other than the general rate specified in respect of any heading or subheading in any column of Part 1 of Schedule No. 1 shall apply to imported goods to which such heading or subheading relates if such goods qualify for the benefit of such rate in accordance with —

(a) any provision of origin contained in any part of the schedule to the General Notes of Schedule No. 1 and any other provisions referred to in section 55 (1A) applicable to such column, any provision relating to tariff quotas, any applicable provision in the said Part 1 and any Note to such Part of the Schedule; and

(b) any notice published in terms of section 57 to give effect to any provision of origin of any agreement contemplated in the said section or in connection with any tariff quotas or any other condition or procedure that may be applicable to any goods specified in the said column.

(3A) The expression “any provision of origin” shall include provisions relating to “originating products”, “originating status”, “rules of origin” or like expression, and “goods obtained, produced or manufactured” in any Part of the said schedule to the General Notes of Schedule No.1 and, unless the context otherwise requires, any provision of this Act in respect of the origin of goods.

(4) Any reference in any agreement contemplated in section 57 or 58 to the “most-favoured nation-rate of duty” or the “MFN Tariff” or the “MFN rate of duty” or like expressions shall, unless otherwise specified in Part 1 of Schedule No.1, for the purposes of this Act, be deemed to be a reference to the rates of duty specified in respect of any heading or subheading for general rates of duty in the said Part 1 of Schedule No. 1.

(5) Export duty which may become payable in terms of section 55 (4) 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.”.

Amendment
of section 53
of the Act

23. Section 53 of the Act is amended by deleting subsection (2) thereof.

Amendment of
section 55 of
the Act

24. Section 55 of the Act is amended —

(a) in subsection (1) thereof, by substituting for paragraph (a), the following new paragraph —

“(a) in order to give effect to any agreement concluded under section 57 or 58;”;

(b) by inserting, immediately after subsection (1) thereof, the following new subsections —

“(1A) The Minister may, for the purposes of subsection (1) (a) and section 57(1) or (2), by like notice amend the General Notes to Schedule No.1 to incorporate as part of such Notes, a schedule thereto entitled “Origin provisions of trade agreements”, containing the following in respect of any agreement contemplated in section 57 —

(a) in separate parts of such schedule, any such agreement or any protocol or other part or provision of such agreement, including any annex or appendix thereto, concerning the origin of goods;

(b) any instrument contemplated in section 57 (2);

(c) notes to any such agreement, protocol or other part or provision which may specify —

(i) the agreement, protocol or other part or provision or instrument which governs goods entered according to the provisions of a particular column of Part 1 of Schedule No.1,

(ii) definitions,

(iii) interpretation of words or phrases or substitutes for words or phrases,

(iv) any condition or procedure or provisions of this Act to be complied with to give effect to such provisions of origin, or

(v) powers, duties or functions of the Director or an officer; and

(d) any amendment, with or without retrospective effect, to such schedule or notes for any reason as may be specified in such amendment.

(1B) No goods imported or exported shall qualify for the benefit of preferential tariff treatment in terms of such agreement unless they comply with such provisions of origin or any other provision of such agreement or of this Act governing the acquisition or origin, tariff quotas or any other condition which is to be fulfilled for the purposes of giving effect to such agreement.”

25. Section 57 of the Act is amended, by substituting for that section, the following new section —

“Agreement
with other
governments

57. (1) Whenever Parliament has approved any agreement with the government of any country or group of countries —

- (a) which includes the granting of preferential tariff treatment of goods and provisions of origin governing such treatment;
- (b) concerning customs cooperation, including for the exchange of information and the rendering of mutual and technical assistance in respect of customs cooperation between Botswana and such other country or countries or group of countries;
- (c) regulating transit trade and transit facilities; or
- (d) which provides for any other matter which either expressly or by implication requires to be administered by customs legislation,

such agreement or any protocol or other part or provision thereof is enacted into law as part of this Act when published by notice in the Gazette in accordance with the provisions of subsections (1) and (1A) of section 55 or subsection (12) of this section.

(2) Any amendment of such agreement or any protocol or other part or provision thereof, any regulations for facilitating implementation, any agreed list of processing relating to originating status of goods, any other matter agreed upon between governments or by any committee of, or a body established by, the parties to such agreement or any decision or condition imposed by such committee or body, is likewise enacted into law as part of this Act when published in accordance with the provisions of subsections (1) and (1A) of section 55 or subsection (5) of this section by notice in the Gazette as an amendment of such agreement or protocol or part or provision, as the case may be, with effect from any date that may be specified in such notice.

(3) In this section and section 55 “instrument” includes, according to the context, any agreement or any amendment of such agreement or any protocol or other part or provision thereof or any document containing any regulations, list, decision or any matter agreed upon as contemplated in subsection (2).

(4) In this section and sections 52 and 55 “agreement” includes, unless the context requires, any treaty or convention.

(5) The Director shall obtain and keep two copies of such agreement, effect any amendments referred to in subsection (2) thereto, record the date the agreement or any such amendment entered into force and the date of any publication referred to in subsection (1).

(6) Whenever in any legal proceedings any question arises as to the contents of such agreement or as to the date on which such agreement or amendment entered into force or the date of such publication, a copy of such agreement or amendment thereto, and the record of such details, shall be accepted as sufficient proof of the contents thereof and the date of publication or the date on which such agreement or amendment entered into force.

(7) If the context so requires, the interpretation and application of any provision of any protocol or other part of such agreement referred to in this section or section 55(1A), shall be subject to other applicable provisions of such agreement.

(8) Notwithstanding anything to the contrary contained in this Act —

(a) the application of any provision of this Act relating to any importer, exporter, remover in bond, manufacturer, licensee or other principal or any agent or the importation or exportation of goods, the preferential tariff treatment of goods, goods obtained, produced or manufactured, goods in transit or removed in bond, due entry or security in respect of goods imported, exported, removed in bond or in transit, or any other provision or customs procedure or any power, duty or function in connection therewith, shall, for the purposes of giving effect to any agreement contemplated in this section or any protocol or other part or provision thereof, be subject to compliance with the provisions of such agreement or such protocol or other part or provision thereof, as the case may be; and

(b) any reference in this Act to any protocol or any part or provision of such agreement shall be deemed to include a reference to any instrument referred to in subsection (2) applicable thereto, and any provision of such agreement governing such protocol or any part or provision or instrument, as the case may be.

(9) If any reference is made in such agreement to any convention, treaty or other agreement which is to be observed in ascertaining the originating status of goods obtained, produced or manufactured and imported or exported in specified instances, the Director shall obtain and keep two copies of such convention, treaty or agreement, effect any amendment thereto and record the date the convention, treaty or agreement entered into force as advised by the Permanent Secretary, Ministry of Trade and Industry.

(10) The provisions of subsection (5) shall apply to the copies of such convention, treaty or other agreement.

(11) To the extent that any provision of such convention, treaty or other agreement requires to be so observed, it shall be deemed to be incorporated in the agreement concerned.

(12) Where any such agreement or protocol or other part or provision thereof does not relate to the origin of goods as envisaged in section 55 (1A), but otherwise by reference to customs or competent authorities or customs or domestic or national legislation or like expressions or in any other way expressly or by implication requires that it should be administered in terms of this Act, the Minister may by notice in the Gazette in Schedule No.10 to this Act under the title "Agreement or protocols or other parts or provisions thereof contemplated in this subsection" publish —

(a) in separate parts of such Schedule, any such agreement or any protocol or any part or provision of such agreement, including an annex or appendix thereto for the purposes of subsection (1), in so far as it is required to be observed in connection with—

- (i) mutual administrative and technical assistance in respect of cooperation in customs matters,
- (ii) simplification and harmonization of trade documentation and procedures,
- (iii) transit trade and transit facilities, and
- (iv) any other matter whatever which so requires to be administered in terms of this Act in order to give effect to such agreement;

(b) any instrument contemplated in, and for the purposes of subsection (2);

- (c) notes to such Schedule No.10 wherein may be specified—
 - (i) definitions,
 - (ii) interpretations of words and phrases or substitutes for words and phrases,
 - (iii) any condition or procedure or provision of this Act to be complied with in order to give effect to such agreement or protocol or part or provision of such agreement, and
 - (iv) powers, duties or functions of the Director or any officer in the Department; and
- (d) any amendment of Schedule No.10 and any note thereto with or without retrospective effect for any reason as may be specified in such amendment.

(13) The provisions of section 55 (8)(a) shall apply in respect of any amendment made under the provisions of subsection (12) (d).

(14) Notwithstanding the provisions of subsection (12), the Minister may include in any notice published under that subsection, the full text of any such agreement or protocol except any protocol or other part thereof, as the case may be, published under section 55 (1A), and if so included, the whole agreement or protocol, as the case may be, shall be enacted into law as part of this Act as contemplated in subsection (1).

(15) In administering the provisions of any agreement, including any protocol or other part, provision or regulations thereof, or any other instrument contemplated in this section, and the application of any procedure to give effect thereto, the Director may, notwithstanding anything to the contrary contained in this Act —

- (a) decide on or determine any matter or perform any duty or function or impose any condition in connection with the provisions so administered, including any decision on or determination or the performance of any duty or function or the imposition of any condition in respect of—
 - (i) any heading in Part 1 or any item of any other Part of Schedule No.1 applicable to any goods imported or exported, obtained, produced or manufactured or used in the production or manufacture of any goods, or the customs value of any such imported goods,
 - (ii) the first ascertainable price of goods where the customs value is not known or cannot be ascertained,
 - (iii) any provision which governs or specifies any procedure concerning —

- (aa) the origin or proof of origin of goods imported or exported,
 - (bb) the importation or exportation or production or manufacture of goods and the ex-factory price of goods,
 - (cc) tariff quotas,
 - (dd) rendering mutual and technical assistance in respect of customs cooperation,
 - (ee) transit carriage of goods, transit trade and transit facilities,
 - (ff) requirements in connection with agency where any person is represented in the importation or exportation of any goods involving proof of origin or in any matter relating to the transit carriage of goods, transit trade or transit facilities, or
 - (gg) the approval of exporters to issue invoice declarations or withdrawal or refusal of such approval;
 - (iv) any other power, duty or function or procedure provided in any such agreement or protocol or other part or provision thereof which requires either expressly or by implication customs administration action to give effect thereto,
 - (v) the convention, treaty or agreement referred to in subsection (9),
 - (vi) a binding origin determination and any procedure in connection therewith;
- (b) make regulations —
- (i) concerning any matter referred to in paragraph (a), including such convention, treaty or agreement,
 - (ii) where reference is made to customs or competent authorities, to domestic, national or customs law or any like reference or any other matter which requires either expressly or by implication application of customs legislation,
 - (iii) in connection with the entry of goods imported or exported and documents to be produced in support thereof,
 - (iv) to regulate the application, determination, entry of goods and other procedures in connection with binding origin determinations,
 - (v) prescribing forms or procedures or specifying any condition or provision of this Act to be complied with to give effect to such agreement, protocol or other part or provision thereof.
 - (vi) to delegate, subject to section 4 (2), any power, duty or function to any officer or other person, or

- (vii) regarding any other matter which may be necessary or useful for the purposes of administering such provisions; and
- (c) subject to such conditions as the Director may in each case impose, enter into any agreement with any person, with the concurrence of any exporter, producer or manufacturer, as the case may be, to perform any function or provide any service for the purposes of establishing and reporting on the origin of goods or issuance of any proof of origin to give effect to such agreement.

(16) Notwithstanding the provisions of section 52(11), 75(4) or 76(16), any determination of any heading or item or the customs value of goods imported shall, if such determination concerns goods used in the production or manufacture of any goods, or goods produced or manufactured therefrom, or any other goods, of which the origin is being determined, be made in terms of this section.

(17) For the purposes of any appeal against a decision or determination of the Director in administering any of the provisions referred to in this section —

- (a) any decision or determination shall, subject to appeal to court, be deemed to be correct for the purposes of this Act, and where any amount is payable in consequence thereof, such amount shall remain payable as long as such decision or determination remains in force:

Provided that if it involves disputes with foreign customs authorities, the processes for dispute settlement provided in the agreement shall be followed;

- (b) subject to the provisions of subsection (19), any decision or determination may be amended or withdrawn and a new decision or determination made from the date the decision or determination was given, but such a decision or determination shall be subject to the provisions of section 85A if any refund of duty is involved; and
- (c) an appeal against any such decision or determination shall be to a court having jurisdiction to hear appeals in the area wherein the decision or determination was made or the goods in question were entered for home consumption or exported.

(18) Such appeal shall, subject to section 107, be prosecuted within a period of one year from the date of the decision or determination.

(19) For the purposes of any binding origin determination, unless the context otherwise requires —

“applicant” means any person who has applied to the Director for a binding origin determination and has valid reason to do so;

“binding origin determination” means an origin determination binding on the Director when it is issued to the applicant after compliance with the provisions of this subsection and the regulations made under this Act;

“holder” means the person in whose name the binding origin determination is issued.

(20) The Director may, upon written request by an applicant, issue a binding origin determination in respect of goods —

- (a) imported from a country or group of countries with which agreements have been concluded as contemplated in this section providing for preferential rates of duty on such goods; and
- (b) for which certificates of origin have been issued by, or invoice declarations made by an exporter approved by, the customs authorities of the country or countries or group of countries concerned.

(21) The Director may annul a binding origin determination favourable to the holder if the Director after due enquiry finds that it was issued on the basis of incorrect or incomplete information.

(22) Such annulment which shall take effect from the date the determination was made and the holder shall be notified of the annulment.

(23) A binding origin determination shall be binding on the Director as against the holder only in respect of—

- (a) the determination of the origin of goods for the purposes of the agreement concerned; and
- (b) goods which are entered as required in terms of section 40(1) after the date on which such determination was supplied by the Director.

(24) A binding origin determination shall be valid for a period of three years from the date of issue, but shall cease to be valid where —

- (a) the binding determination no longer conforms to the provisions of the agreement or this Act on which it is based as a result of any amendment of such provisions;
- (b) subject to the right of appeal in terms of subsection (17), the Director withdraws it as provided in subsection (17)(b) of the said subsection;
- (c) it is no longer compatible with —
 - (i) any interpretation of the provisions of such agreement in respect of the goods in question in the originating country, or
 - (ii) any final judgment of the High Court or the Court of Appeal;

(d) provided the holder is informed in advance, it is revoked or amended in the following circumstances —

- (i) except in the case referred to in subsection (21), the Director shall revoke or amend any determination favourable to the holder if any one or more of the conditions imposed for its issue are not fulfilled, or
- (ii) the Director may revoke any determination favourable to the holder if such holder fails to fulfill any obligation imposed under such determination;
- (iii) the Director may revoke or amend any determination issued in error, or if it is unfavourable to the holder and for any reason the goods are subsequently proved to qualify for a favourable determination.

(25) The date on which a binding determination ceases to be valid shall be —

- (a) in the case of subsection (24) (a), the date any amendment to such agreement is enacted in this Act or in the case of any other provision of this Act, such provision is so amended; or
- (b) in the case of subsection (24)(c)(ii), the date of the judgment and in the case of subsection (24)(c)(i), the date of publication of such interpretation.

(26) Notwithstanding the provisions of subsections (24) and (25), if the Director so permits, the holder of a binding origin determination may still use such determination for a period of six months from the date specified therein, or until the expiration of three years, whichever is the earlier date provided —

- (a) such holder concluded binding contracts for the purchase or sale of the goods in question on the basis of such determination before any such date; and
- (b) such determination is used solely for determining import duties.

(27) Any holder who wishes to make use of the possibility of invoking such determination as provided in subsection (26), shall notify the Director, and provide the necessary supporting documents, to enable a check to be made whether the conditions specified in subsection (26) have been satisfied.

(28) Notwithstanding anything to the contrary contained in this Act —

- (a) where any importer who imports any goods which are claimed to have the originating status to qualify for any preferential rate of duty specified in Part 1 of Schedule No. 1 is for any reason unable to produce at the time of entry as contemplated in

section 41 any certificate of origin or invoice declaration or other document confirming the originating status of such goods as provided in any agreement contemplated in this section, such goods shall, irrespective of whether a binding origin determination has been issued in respect thereof —

- (i) be entered for storage in a licensed customs and excise storage warehouse, or
 - (ii) subject to the prior approval of the Director and on such conditions as the Director may impose, be entered for customs duty purpose as if such preferential rate applies, subject to the furnishing of a provisional payment or other security approved by the Director, for the amount of the general rate of duty specified in the said Part 1 payable thereon, pending production of such certificate of origin or invoice declaration or other document confirming the originating status of such goods;
- (b) if such certificate of origin or invoice declaration or other document confirming originating status is not furnished within the time specified by the Director, duty shall be payable by the holder at the general rates of duty in Part 1 of Schedule No. 1 in respect of the goods concerned.”.

26. The Act is amended by inserting, immediately after section 58 thereof, the following new section —

“Imposition of fuel levy by party to customs union agreement

58A. (1) Notwithstanding anything to the contrary contained in this Act, any fuel levy goods which are removed to the territory of a party to any customs union agreement concluded in terms of section 58 or brought into Botswana from any such territory, shall, if a fuel levy has not been imposed by such party, be deemed to be goods exported from and goods imported into Botswana, respectively, and the provisions of this Act relating to the exportation from and importation of goods into Botswana shall, subject to such arrangements as the Director may determine, apply to those goods until such time as such fuel levy is imposed by that party as provided in this Act.

(2) If any such customs union agreement imposes such fuel levy as provided in this Act, the Director may, notwithstanding the provisions of section 52(1), in respect of any fuel levy paid in Botswana on any petrol or distillate fuel entered or removed for consumption in the territory of any such party pay such fuel levy for any period it remains so imposed, if the Minister approves, to such party.

Insertion of section 58A in the Act

(3) For the purposes of subsection (2), the Director may pay the fuel levy concerned on the basis of any documents, relating to the movement of such petrol or distillate fuel, in possession of any person as may be determined by him.”

Amendment
of section 60
of the Act

27. Section 60 of the Act is amended by substituting for subsection (1) thereof, the following new subsection —

“(1) The Director may by notice published in the Gazette prescribe the sizes and types of containers in which cigarettes may be imported into Botswana.”

Amendment of
section 61 of
the Act

28. Section 61 of the Act is amended in paragraph (b) of subsection (2) thereof, by inserting the words “or safeguard” between the words “countervailing” and “duty” wherever they appear in the paragraph.

Amendment of
section 65 of
the Act

29. Section 65 of the Act is amended by substituting for that section, the following new section —

“65. (1) Whenever, before any anti-dumping, countervailing or safeguard duty is imposed under any of the provisions of this Act, the Minister is satisfied that the requirements of section 61 (2) are satisfied in respect of any class or kinds of imported goods specified in Schedule No. 2 he may, on the recommendation of the Permanent Secretary, Ministry of Trade and Industry, by notice published in the Gazette, impose a provisional charge in relation to anti-dumping, countervailing or safeguard duty on imported goods of that class or kind for such a period and for such amount as the Minister may specify in such request.

(2) The Director shall, in accordance with any recommendation by the Permanent Secretary, Ministry of Trade and Industry, by further notice published in the Gazette, extend the period during which the provisional payment referred to in subsection (1) is imposed, withdrawn or reduced with or without retrospective effect and to such extent as may be specified in the request.

(3) Such provisional charge shall be paid on goods subject thereto at the time of entry for home consumption thereof, as security for any anti-dumping, countervailing or safeguard duty which may be retrospectively imposed on such goods under section 62, 63 or 64 and may be set off against the amount of the retrospective anti-dumping, countervailing or safeguard duty payable.

(4) If no anti-dumping, countervailing or safeguard duty is imposed before the expiry of the period for which the provisional payment in relation to the goods concerned has been imposed, the amount of such payment shall be refunded.

(5) If the amount of any such provisional payment on the said goods —

(a) exceeds the amount of any anti-dumping, countervailing or safeguard duty retrospectively imposed on such goods under section 62, 63 or 64 the difference in the amount shall be refunded; or

(b) is less than the amount of the anti-dumping, countervailing or safeguard duty so imposed, the difference in the amount shall not be collected.”

30. Section 68 of the Act is amended by substituting for subsection (2) thereof, the following new subsection —

Amendment
of section 68
of the Act

“(2) The Director may, subject to review by the High Court —

- (a) refuse any application for a new licence or refuse any application for a renewal of a licence if the applicant has made a false or misleading statement with respect to any material fact or omits to state any material fact which was required to be stated in the application for a licence; or
- (b) refuse any application for a new licence or refuse any application for a renewal of any licence or cancel or suspend for a specified period any licence if the applicant or the holder of such a licence or any employee of such applicant or holder, as the case may be —
 - (i) has contravened or failed to comply with the provisions of this Act;
 - (ii) has been convicted of an offence under this Act;
 - (iii) has been convicted of an offence involving dishonesty, and
 - (iv) has failed to comply with any condition or obligation imposed by the Director in respect of such licence:

Provided that subparagraphs (i) to (iii) shall not apply in respect of an employee if the applicant or holder, as the case may be, proves that he was not a party to or could not prevent any such act or omission by such employee.”.

31. Section 74 of the Act is amended by substituting for that section, the following new section —

Amendment
of section
74 of the Act

“74. (1) No person shall, for the purposes of this Act, for reward make entry or deliver a bill of entry relating to any goods on behalf of any principal contemplated under section 111 (2) unless such person has been licensed as a clearing agent in terms of subsection (2).

(2) An application for such licence shall be made on the form prescribed by the Director and the applicant shall comply with all the requirements specified therein and with any additional requirements that may be prescribed in any other regulation and as may be determined by the Director.

(3) The Director may, subject to such conditions as he may prescribe and such obligations as he may in each case impose, license any person applying therefor as a clearing agent.

(4) Before any such person is so licensed as a clearing agent, he shall furnish such security as the Director may require.

(5) The Director may at any time require that the form, nature or amount of such security shall be altered or renewed in such manner as he may determine.

(6) A licensed clearing agent shall be liable in respect of any entry made or bill of entry delivered as contemplated in section 111 (2).

(7) A licensed clearing agent shall disclose the name and category of the principal referred to in section 111 (2) on such bill of entry and if such agent does not so disclose or makes or delivers a bill of entry where the name of another such agent or his own name is stated as the importer, exporter, remover in bond or other principal, as the case may be, he shall be liable for the fulfilment of the obligations imposed on such principal in terms of this Act.

(8) No security provided by a licensed clearing agent shall be utilised or accepted as security for the fulfilment of any obligations in terms of this Act of any other such agent.”.

Amendment
of section 75
of the Act

32. Section 75 of the Act is amended —

(a) in subsection (4), by substituting for that subsection, the following new subsection—

“(4) The Director may determine the transaction value of any imported goods, which is required to be ascertained or may be determined as provided in section 76, and such determined value shall, subject to a right of appeal to the court, be deemed to be the value for customs duty purposes of the goods.”; and

(b) in subsection (8), by substituting for that subsection, the following new subsection—

“(8) Such appeal shall, subject to section 107, be prosecuted within a period of one year from the date of the determination.”.

Amendment
of section 76
of the Act

33. Section 76 of the Act is amended in subsection (16) thereof —

(a) by inserting between the words “such value” and “on the basis” which appear therein, the words “under section 75(4)”; and

(b) by substituting for the words “(1), (6) to (10), (12) to (14) or (15)” which appear therein, the following words, “(1), (6), (9), (12) or (15)”.

Amendment
of section 78
of the Act

34. Section 78 of the Act is amended —

(a) in subsection (2)(a)(i), by inserting the words “on fuel levy payable” between the words “Schedule No. 1” and the words “on such goods” which appear on the last line of the said subsection;

(b) in subsection (5), by substituting for paragraph (b), the following new paragraph —

“(b) Such appeal shall, subject to section 107, be prosecuted within a period of one year from the date of the determination.”;

(c) by inserting, immediately after subsection (5), the following new subsections —

“(6) Save where —

- (a) a determination has been made under subsection (3) or (4); or
- (b) any false declaration is made for the purposes of subsection (3) or (4), there shall be no liability for any underpayment in duty on any goods, where such underpayment is due to the acceptance of a bill of entry bearing an incorrect value for excise duty purposes, after a period of two years from the date of entry of such goods.

(7) Notwithstanding the provisions of subsection (6), any determination made under subsection (3) following upon an inspection of the books, accounts and other documents of any manufacturer, wholesaler or purchaser or any seller or buyer contemplated in subsection (1) or (2) as the case may be, shall be deemed to have come into operation, in respect of the goods in question entered for the purposes of this Act two years prior to the date on which the inspection commenced.”.

35. Section 81 of the Act is amended by substituting for that section, the following new section —

“Conversion
of prices
expressed in
foreign
currency

81. (1) When the value of or the price paid or payable for any imported goods is expressed in a foreign currency, it shall, for the purpose of calculating the customs value thereof, be converted into the Botswana currency at the selling rate at the date of shipment of the goods as determined by the Director, in consultation with the Bank of Botswana, or if no such rate is determined for such date, the latest rate determined before that date shall be used.

(2) For the purposes of subsection (1), the date of shipment of —

- (a) non-containerised goods shall be the date of the bill of lading, air way bill, consignment note or such other document as the Director may require;
- (b) containerised goods shall be the date on which the container is taken on board ship as endorsed on the bill of lading or arrival notification or, if imported otherwise than by sea, the date of the airway bill, consignment note or such other document as the Director may require.

(3) The Director may, for the purposes of any agreement contemplated in section 57 or 58, by regulations —

- (a) publish arrangements in connection with amounts to be used in currencies in respect of goods imported or exported between Botswana and the country or countries or group of countries concerned; or
- (b) prescribe any measures applicable to the implementation of such arrangements.”.

Amendment
of section 81
of the Act

Amendment of section 83 of the Act

36. Section 83 of the Act is amended by inserting immediately before the provisions of subsection (2) thereof, subsection (1) —

“(1) The interpretation of sections 75, 76 and 77 shall be subject to the agreement concluded at Geneva on 12 April 1979, known as “the Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade”, the Interpretative Notes thereto, the Advisory Opinions, Commentaries and Explanatory Notes, Case Studies and Studies issued under the said Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade.”.

Amendment of section 84 of the Act

37. Section 84 of the Act is amended —

(a) in subsection (1) thereof —

- (i) by deleting the words “fiscal and” which appear in paragraphs (a) and (b) therein,
- (ii) by inserting the words “or fuel levy” immediately after the words, “customs duties” which appear in paragraph (b),
- (iii) by substituting for the words “and surcharge”, which appear in paragraph (c), the following words, “, surcharge and fuel levy”,
- (iv) by inserting the words “or fuel levy goods” immediately after the words “excisable goods” which appear in paragraph (d),
- (v) by inserting immediately after the words “Schedule No. 1” which appear in paragraph (d), the words “or the fuel levy specified in Part I of Schedule No. 1”,
- (vi) by inserting immediately after the words, “excise duty” which appear in paragraph (d), the words “or fuel levy” wherever they appear in the paragraph ;

(b) by deleting subsection (3) thereof; and

(c) by inserting the words “or fuel levy” immediately after words “excise duty” which appear in subsection (5)(a) thereof.”.

Amendment of section 85 of the Act

38. Section 85 of the Act is amended —

(a) in subsection (1) thereof, by substituting for that subsection the following new subsection —

“(1) No refund of any duty or other charge in respect of imported goods, excisable goods, surcharge goods or fuel levy goods, other than a refund provided for under section 84 or 87, shall be paid or granted except in accordance with the provisions of this section.”; and

(b) in subsection (4), by substituting for that subsection, the following new subsection —

“(4) No application for a refund or payment in terms of this section shall be considered by the Director unless it is received by an officer, duly completed and in the form as may be prescribed by regulations and supported by the necessary documents and other evidence to prove that such refund or payment is due under this section, within a period of two years.”.

39. The Act is amended by inserting, immediately after section 85, the following new sections —

“Limitation
on refund
claims

85A. (1) Where any person became entitled to any refund of any duty arising from any determination, new determination or amendment of any such determination in terms of section 52 (11), 75 or 78, any such refund shall, notwithstanding the provisions of section 43, 52 (11), 75, 78, 84, 85 or 87, be limited to refunds in respect of goods entered for home consumption during a period of two years immediately preceding the date of such determination, new determination or any amendment of such determination, whichever date occurs last.

(2) Where a person has appealed against any determination, new determination or amendment, the period referred to in subsection (1) shall, notwithstanding the fact that a court may amend any determination of the Director, or the Director, as a result of a finding of such court, amends such determination, be calculated from the last date contemplated in subsection (1).

Set off on
refund against
amount
tax, owing

85B. Where any refund of duty is in terms of this Act due to any person who has failed to pay any amount of tax, additional tax, duty, levy, charge, interest or penalty levied or imposed under any other law administered by the Director within the period prescribed for payment of the amount, the Director may set off against the amount which that person has failed to pay, any amount which has become refundable to the person in terms of this Act.”.

40. Section 89 of the Act is amended, in subsection (1), thereof, by deleting paragraph (c) therein.

Insertion of
sections 85A
and 85B in the
Act

Amendment
of section 89
of the Act

41. Section 90 of the Act is amended —

(a) by substituting for paragraph (b) of subsection (1) thereof, the following new paragraph —

“(b) not being a licensed manufacturer or dealer, without lawful authority has in his possession or custody or under his control any partly manufactured excisable goods or fuel levy goods or excisable goods or fuel levy goods upon which duty has not been paid.”;

(b) by substituting for paragraph (g) of subsection (1) thereof, the following new paragraph —

“(g) without lawful excuse (the proof of which shall lie upon him), brings into Botswana, produces or has in his possession any blank or incomplete invoice or any bill head or other similar document capable of being filled up and used as an invoice for goods from outside Botswana;”;

(c) in paragraph (n), by substituting for that paragraph the following new paragraph —

Amendment
of section 90
of the Act

“(n) contravenes the provisions of section 6 (14) and (15), 17 (9), 20 (8), 36 (4), 39, 39A (3) and (15)(a), 55 (1A) (b), 68 (1), 71(1), 84(9) and (22), 99 (1) (c), 111, 124 (2), and (10) (c) and 125(7).”.

Amendment
of section
96 of the
Act

42. Section 96 of the Act is amended by substituting for that section, the following new section —

“96. Any manufacturer of beer whose container of beer has not been marked for exports as contemplated in section 37 (21) is found to contain beer of an alcoholic strength by volume higher than the strength registered in terms of section 37 (2), after deduction of any tolerance as may be provided in the regulations relating to that section, shall be guilty of an offence and liable on conviction to a fine not exceeding P8, 000 or treble the value of the goods in respect of which such offence was committed, whichever is the greater, or to imprisonment for a period not exceeding two years, or to both, and the goods in respect of which such offence was committed shall be liable to forfeiture.”.

Insertion of
section 97A in
the Act

43. The Act is amended by inserting, immediately after section 97, the following new section —

“Publication
of particulars
of offenders

97A. (1) Notwithstanding the provisions of section 6, the Director may from time to time publish for general information such particulars as specified in subsection (2), relating to any offence committed by any person, where such person has been convicted of such offence in terms of sections 88 to 97.

(2) Every such publication referred to in subsection (1) may specify —

- (a) the name and address of the offender;
- (b) such particulars of the offence as the Director may think fit;
- (c) the amount or estimated amount of duty involved; and
- (d) the particulars of the fine or sentence imposed.”.

Amendment
section 98 of
the Act

44. Section 98 of the Act is amended —

(a) in subsection (1), by substituting for the proviso thereto the following proviso —

“Provided that forfeiture shall not affect liability to any other penalty or punishment which has been incurred under this Act or any other law, or liability for any unpaid duty or charge in respect of such goods.”;

(b) in subsection (2), by substituting for that subsection the following new subsection —

“(2) Any —

- (a) vehicle, container or other transport equipment used in the removal or carriage of any goods liable to forfeiture under this Act or constructed, adapted, altered or fitted in any manner for the purpose of concealing goods;

- (b) goods conveyed, mixed, packed or found with any goods liable to forfeiture under this Act on or in any such vehicle, container or other transport equipment; and
- (c) vehicle, machine, machinery, plant, equipment or apparatus classifiable under any heading or subheading of Chapters 84 to 87 and 89 of Part 1 of Schedule No.1 in which goods liable to forfeiture under this Act are used as fuel or in any other manner,

shall be liable to forfeiture wheresoever and in possession of whomsoever found.”; and

- (c) by deleting subsection (3) thereof.

45. Section 99 of the Act is amended in subsection (1) thereof, by deleting the words, “in his discretion” and “at his discretion” appearing in paragraphs (d) and (e) respectively.

Amendment
of section 99
of the Act

46. Section 102 of the Act is amended by deleting the words “in the opinion of the Director” which appear in paragraph (a) of subsection (1) thereof.

Amendment
of section 102
of the Act

47. Section 104 of the Act is amended by substituting for that section, the following new section —

Amendment
of section 104
of the Act

“104. The Director may, on good cause shown, direct that any vehicle, container or other transport equipment, plant, material or goods detained or seized or forfeited under this Act be delivered to the owner thereof, subject to payment of any duty which may be payable in respect thereof and any charges which may have been incurred in connection with the detention or seizure or forfeiture, and to such conditions (including conditions providing for the payment of an amount not exceeding the value for duty purposes of such vehicle, container or other transport equipment, plant, material or goods, plus any unpaid duty thereon) as he deems fit, or may mitigate or remit any penalty incurred under this Act, on such conditions as he deems fit.”

48. Section 111 of the Act is amended —

Amendment
of 111 of the
Act

(a) by substituting for subsections (1), (2) and (3) thereof, the following new subsections —

“(1) An agent appointed by any container operator or pilot, and any person who represents himself to any officer as the agent of the container operator or pilot and is accepted as such by that officer, shall be liable for the fulfilment, in respect of the matter in question, of all obligations including payment of duty and charges, imposed on such container operator or pilot by his act and to any penalties or amounts demanded under section 99 (2) (a) which may be incurred in respect of that matter.

(2) An agent appointed by any importer, exporter, manufacturer, licensee, remover of goods in bond or other principal and any person who represents himself to any officer as the agent of the importer, exporter, manufacturer, licensee remover of goods in bond or other principal, and is accepted as such by that officer, shall be liable for the fulfilment in respect of the matter in question, of all obligations, including the payment of duty and charges, imposed on such importer, exporter, manufacturer, licensee, remover of goods in bond or other principal by this Act and to any penalties or amounts demanded under section 99 (2) (a) which may be incurred in respect of that matter:

Provided that such agent or person shall cease to be so liable if he proves that —

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

(3) No importer, exporter, manufacturer, licensee, remover of goods in bond or other principal shall by virtue of the provisions of subsection (2) be relieved from liability for the fulfilment of any obligation imposed on him by this Act and to any penalty or amounts demanded under section 99 (2) (a) which may be incurred in respect thereof.”; and

- (b) in subsection (5), by substituting for the words “and to any penalties or forfeitures” the words “and to any penalties or amounts demanded under section 99 (2) (a).”.

49. The Act is amended by inserting, immediately after section 111, the following new section —

“Registration
with Director

111A. (1) No person, except —

- (a) a licensed clearing agent referred to in section 74; or
- (b) a person specified by any regulations, shall, represent any principal referred to in section 111 (2) or (3) as a consultant or agent for the purpose of transacting any business on behalf of such principal in relation to customs and excise matters unless such person is registered with the Director.

(2) An application for such registration shall be made on a form prescribed by the Director by regulations and the applicant shall comply with all the requirements specified therein and any additional requirements that may be prescribed in any other regulations and as may be determined by the Director in each case.”.

Insertion of
section 111A
in the Act

50. Section 116 of the Act is amended —

(a) by substituting for paragraph (b) thereof, the following new paragraph —

“(b) the interest so payable shall be paid at the rate of 13 per cent per annum, or such rate as the Minister may from time to time fix by notice published in the *Gazette*.”; and

(b) by deleting the words “in his discretion” which appear in paragraph (c) thereof.

51. Section 117 of the Act is amended by inserting between the words “any manufactured” and “excisable goods” which appear in subsection (1) thereof, the words, “or partly manufactured.”.

52. Section 118 of the Act is amended in subsection (3) thereof, by deleting the words, “he has satisfied himself that” which appear therein.

53. Section 120 of the Act is amended in subsection (1) thereof, by substituting for the words preceding paragraph (a) therein, the following —

“(1) If it is necessary for the safe guarding of public health or for the safety of the public or the State, the Director may at any time, and at the expense and risk of the importer, exporter, owner or pilot concerned, according as the Director may determine - ”.

54. Section 124 of the Act is amended by substituting for that section, the following new section —

“Prohibitions
and
restrictions

124. (1) The importation of the following goods is hereby prohibited, namely —

(a) cigarettes with a mass of more than 2 kilograms per 1000 cigarettes; and

(b) prison-made and penitentiary-made goods.

(2) Goods which purport to have been imported under a permit, certificate or other authority in terms of any provision of this Act or any other law shall be deemed to have been imported in contravention of such provision unless the permit, certificate or other authority in question is produced to the Director.

(3) The Minister may, by notice published in the *Gazette*, suspend the operation of any provision of subsection (1), if such suspension would be in the public interest.

(4) The Minister may by regulations prohibit or restrict the transit of carriage through Botswana of any goods referred to in subsection (1) or any other goods in respect of which he considers any such prohibition or restriction necessary for public interest.

(5) An officer may, for the purposes of any written law, at the request of a member of the police force or the authority administering such law, detain any goods while such goods are under customs control.

Amendment
of section 116
of the Act

Amendment of
section
117 of the Act

Amendment
of section 118
of the Act

Amendment
of
section 120 of
the Act

Amendment
of section 124
of the Act

(6) Such 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.

(7) No person shall remove any goods from any place where they are so detained or from a place of security referred to in subsection (6).

(8) Any goods so detained may be released by the Director to the Botswana Police Service.

(9) No person shall manufacture any cigarettes the mass of tobacco of which exceeds 2 kilograms per 1000 cigarettes.”.

55. Section 125 of the Act is amended —

(a) by adding at the end of subsection (4) thereof the following proviso —

“Provided that, notwithstanding anything to the contrary in any other law contained, the Director may, on good cause shown, direct at any time on such conditions as the Director may in each case impose, the thing subject to a lien referred to in this subsection, of which the person by whom the debt is due is not the owner, be delivered with the concurrence of such person, to the owner thereof on payment of the debt due to the State secured by the value of such thing at the time of such delivery and any reasonable costs and expenses incurred by and charges due to the Director in respect of any detention in terms of subsection (5).”;

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

“(6)(a) The Director may detain anything referred to in subsection (1)(a) by sealing, marking locking, fastening or otherwise securing or impounding it on the premises where it is found or by removing it to a place of security determined by the Director:

Provided that the Director may allow any such thing to be used under such conditions as he may impose in each case which conditions shall include prohibiting the user from entering into any agreement whereby —

(i) ownership or possession of such thing is transferred or relinquished in any manner whatsoever to any other person;

(ii) such thing is pledged or otherwise hypothecated in favour of any other person.

(b) (i) Any agreement entered into contrary to those conditions shall be null and void.

(ii) If such persons so enter into any such agreement or otherwise deal with such thing contrary to any conditions imposed by the Director, an officer may detain such thing wheresoever and in possession of whomsoever found and remove it to a place of security, where after the Director may dispose of it at any time as contemplated in subsection (3) if the debt has not been paid.

(iii) The person by whom the debt is due shall be liable for all reasonable costs expenses incurred by and charges due to the Director in respect of such detention or removal of the thing concerned.”;

(c) in subsection (7), by substituting for the words “No person shall remove-” appearing therein, the words “Except with the permission of the Director, no person shall remove-”.

56. Section 127 of the Act is amended by deleting the words “in his opinion” which appear in subsection (1) (a) (iii) thereof.

Amendment
of section 127
of the Act

57. The Act is amended by inserting, immediately after section 128, the following new section —

Insertion of
section
128A in the
Act

“Delegation
of powers and
assignment of
duties

128A. The Minister may, subject to such conditions as he may in each case impose —

(a) delegate any of the powers which may be exercised or assign any of the duties which shall be performed by him in accordance with the provisions of sections 55, 57, 58, 59, 62, 63, 64, 68(3), 84(19), 111(5), 116 and 124(6) to the Assistant Minister of Finance and Development Planning;

(b) and for such period as he or she may specify in each case, delegate any of his powers under this Act (except any power relating to the amendment of any Schedule) to the Director.”.

58. Section 130(1) of the Act is amended by —

Amendment
of
section 130 of
the Act

(a) substituting for paragraph (h) thereof, the following new paragraph —

“(h) as to the collection of excise duties and fuel levy, the time, manner and terms of payment and the calculation thereof;”;

(b) by inserting, immediately after paragraph (m) the following new paragraph —

“(mA) as to matters relating to security.”.

PASSED by the National Assembly this 11th day of August, 2004.

A. MATLHAKU,
Clerk of the National Assembly.