

**CHAPTER 50:01**  
**CUSTOMS AND EXCISE DUTY**  
ARRANGEMENT OF SECTIONS  
PART I  
*General*

SECTION

1. Short title
2. Interpretation

PART II

*Administration, General Duties and Powers of Director and  
Officers, and Application of Act*

3. Administration and duties of Director
4. Delegation of duties and powers of Director
5. Duties and powers of Permanent Secretary, Commerce and Industry
6. General duties and powers of officers

PART III

*Importation, Exportation and Transit of Goods*

7. Appointment of places of entry, authorized roads and routes, etc.
8. Report of arrival or departure of aircraft
9. Sealing of goods on board aircraft
10. When goods deemed to be imported
11. No landing or loading of goods without permission
12. Goods imported or exported overland
13. Goods imported or exported by post
14. Persons entering or leaving Botswana
15. Opening of packages in absence of importer or exporter
16. State warehouse
17. Removal of goods in bond
18. Exportation of goods from customs and excise warehouse

PART IV

*Customs and Excise Warehouses: Storage and Manufacture  
of Goods in Warehouses*

19. Customs and excise warehouses
20. Goods in customs and excise warehouses
21. Special customs and excise warehouses
22. Samples of goods in a customs and excise warehouse
23. Storage or manufacture of prohibited goods
24. Aircraft stores consumed in Botswana
25. Sorting, packing, etc. in customs and excise storage warehouses
26. Transfer of ownership or pledging or hypothecation of warehoused goods
27. Special provisions in respect of customs and excise manufacturing warehouses
28. Ascertaining quantity of spirits by measuring the mass or volume
29. Classification of spirits
30. Control of the use of spirits for certain purposes
31. Entry of spirits for use in manufacture
32. Ascertaining strength of spirits
33. Requirements in respect of stills
34. Special provisions regarding spirits manufactured by agricultural distillers
35. Special provisions regarding wine
36. Special provisions regarding cigarettes and cigarette tobacco
37. Specific provisions regarding beer

- 38. Special provisions in respect of the manufacture of excisable goods and the collection of excise duty
- 39. Duties applicable to goods manufactured in a customs and excise warehouse
- 39A. Special provision in respect of marked goods, certain goods being free of duty

#### PART V

##### *Clearance and Origin of Goods: Liability for and Payment of Duties*

- 40. Entry of goods and time of entry
- 41. Importer and exporter to produce documents and pay duties
- 42. Sale in transit
- 43. Validity of entries
- 44. Particulars on invoices
- 45. Disposal of goods on failure to make due entry
- 46. Liability for duty
- 47. Determination of duty applicable
- 48. Joint and several liability for duty or certain amounts
- 49. Origin of goods
- 50. Preferential tariff treatment
- 51. Establishment of Fund
- 52. Payment of duty and rate of duty applicable
- 53. Prohibition of certain acts in respect of certain goods not duly entered
- 54. General amendment of Schedules
- 55. Amendment of Schedule No. 1
- 56. Minister may amend Schedules under certain circumstances
- 57. Agreement with other governments
- 58. Agreements with African territories
- 58A. Imposition of fuel levy by party to customs union agreement
- 59. Discrimination by other countries
- 60. Special provisions regarding importation of cigarettes

#### PART VI

##### *Anti-dumping, Countervailing and Safeguard Duties*

- 61. General provisions regarding anti-dumping, countervailing and safeguard duties
- 62. Imposition of anti-dumping duties
- 63. Imposition of countervailing duties
- 64. Imposition of a safeguard duty
- 65. Provisional charges to anti-dumping duties

#### PART VII

##### *Amendment of Duties*

- 66. Time when new or increased duties become payable
- 67. Contract prices may be varied to extent of alteration in duty

#### PART VIII

##### *Licensing*

- 68. Licence fees according to Schedule No. 8
- 69. Customs and excise warehouse licences
- 70. Agricultural distillers
- 71. Stills to be licensed
- 72. Special warehouses for the manufacture of wine
- 73. Container depot licences
- 74. Clearing agent licences

#### PART IX

### *Value*

- 75. Value for customs duty purposes
- 76. Transaction value
- 77. Adjustments to price actually paid or payable
- 78. Value for excise duty purposes
- 79. Value of certain specified goods
- 80. Value of goods exported
- 81. Conversion of prices expressed in foreign currency
- 82. Value of goods not liable to *ad valorem* duty
- 83. Interpretation of sections 75, 76 and 77

### PART X

#### *Rebates, Refunds and Drawbacks of Duty*

- 84. Specific rebates, drawbacks and refunds of duty
- 85. General refunds in respect of imported goods or excisable goods
- 85A. Limitation on refund claims
- 85B. Set-off on refund against amount of tax owing
- 86. Recovery of certain amounts not duly payable
- 87. Set-off of certain amounts

### PART XI

#### *Penal Provisions*

- 88. Offences not expressly mentioned
- 89. Less serious offences and their punishment
- 90. Serious offences and their punishment
- 91. Non-declaration of goods
- 92. Prohibition with regard to stamps
- 93. Irregular export or carriage of munition
- 94. Irregular dealing with or in goods
- 95. False documents and declarations
- 96. Beer of higher density than indicated by label on container
- 97. Certain specified offences
- 97A. Publication of particulars of offenders
- 98. Goods irregularly dealt with liable to forfeiture
- 99. Seizure
- 100. Notice of claim by owner in respect of seized goods
- 101. Disposal of seized goods
- 102. Admission of guilt
- 103. Payment and disposal of fines and penalties
- 104. Remission or mitigation of penalties and forfeiture
- 105. Recovery of penalties by process of law
- 106. Jurisdiction of courts
- 107. Period for bringing action

### PART XII

#### *General*

- 108. Approval of container operators
- 109. Container operator or pilot may appoint agent
- 110. Liability of principal for acts of agent
- 111. Liability of agent for obligations imposed on principal
- 111A. Registration with Director
- 112. Agent may be called upon to produce written authority
- 113. Business accounts, documents, etc. to be available for inspection
- 114. Sellers of goods to produce proof of payment of duty
- 115. Liability of company, partnership, etc.

- 116. Interest on outstanding amounts
- 117. Samples
- 118. Expenses of landing, examination, weighing, analysis, etc.
- 119. Control in respect of manufacturers of certain goods, etc.
- 120. Destruction of goods and detention of vehicles
- 121. Instruments and tables
- 122. Registration of imported motor vehicles
- 123. Wreck
- 124. Prohibitions and restrictions
- 125. Duty constitutes a debt to the State
- 126. Entries, oaths, etc. made outside Botswana of full force and effect
- 127. Manufacture of excisable goods solely for use by the manufacturer thereof
- 128. Statistics
- 128A. Delegation of powers and assignment of duties
- 129. Substitution of Schedules
- 130. Regulations

Schedules No. 1 to No. 9 inclusive. <sup>i\*</sup>

Act 22, 1970,  
 Act 37, 1970,  
 Act 78, 1970,  
 Act 6, 1971,  
 Act 15, 1972,  
 Act 36, 1972,  
 Act 37, 1973,  
 Act 4, 1974,  
 Act 10, 1975,  
 Act 18, 1975,  
 S.I. 145, 1975,  
 Act 15, 1976,  
 S.I. 159, 1976,  
 Act 19, 1977,  
 Act 39, 1977,  
 Act 30, 1978,  
 Act 30, 1979,  
 Act 26, 1980,  
 Act 26, 1983,  
 Act 31, 1983,  
 Act 11, 1985,  
 Act 12, 1986,  
 Act 23, 1986,  
 Act 11, 1988,  
 S.I. 65, 1988,  
 Act 8, 1989,  
 Act 13, 1989,  
 Act 17, 1990,  
 Act 10, 1991,  
 Act 16, 1991,  
 Act 14, 1992,  
 Act 12, 1993,  
 Act 4, 1994,

**An Act to provide for the levying of customs and excise duties and a surcharge; the prohibition and control of the importation, export or manufacture of certain goods; and for matters incidental thereto.** [Date of Commencement: 17th June, 1970]

**PART I**  
**General (ss 1-2)**

**1. Short title**

This Act may be cited as the Customs and Excise Duty Act.

**2. Interpretation**

(1) In this Act, unless the context otherwise indicates, any reference to customs and excise or matters relating thereto shall be deemed to include a reference to fiscal, sales duty and surcharge or matters relating thereto; and-

**"additional duty"** means any duty leviable under Part 7 of Schedule No. 1 on goods imported into Botswana;

**"agricultural distiller"** means any owner or occupier of land who-

- (a) is licensed to keep a still on such land; and
- (b) is licensed to distill spirits on such land from grapes or other prescribed fresh fruit grown by him on such land;

**"common customs area"** means the combined areas of Botswana, Lesotho, Namibia, South Africa and Swaziland;

**"container depot"** means any container depot contemplated in section 7(1)(j);

**"container operator"** means any person providing international transportation of containerized goods, and approved by the Director, under section 108, for operating containers in Botswana;

**"container terminal"** means any container terminal contemplated in section 7(1)(j);

**"crew"** includes every person (except the pilot) employed in any capacity on board any aircraft;

**"customs duty"** means, subject to the provisions of subsection (3), any duty leviable under Schedule No. 1 (except Parts 4 and 5 thereof) or Schedule No. 2 on goods imported into Botswana;

**"department"** means the Department of Customs and Excise;

**"depot operator"** means the person having charge of any container depot;

**"Director"** means the Director of Customs and Excise and includes an officer acting under the control or direction of the Director;

**"disruptive competition"** means the export or the proposed export of goods to Botswana, other than dumping or subsidized export, in quantities and under circumstances which cause or may cause material injury to established industries in Botswana or which may retard the establishment of industries in Botswana;

**"dumping"** means the export or the proposed export of goods to Botswana-

- (a) at an export price lower than the price at which similar goods are being sold in the ordinary course of trade in the exporting country, for consumption there;
- (b) at an export price lower than the highest comparable price at which similar goods are being exported in the ordinary course of trade from the exporting country to any third country;
- (c) at an export price lower than the cost of production or the estimated cost of production of the goods concerned in the country of origin and any other costs and profit which the Minister deems reasonable;

- (d) at an export price lower than the comparable price at which similar goods are being exported to Botswana from any other country;
- "duty"** means any duty leviable under this Act;
- "entry for home consumption"** includes entry under any item in Schedule No. 3, 4 or 6;
- "excisable goods"** means any goods specified in Part 2 of Schedule No. 1 which have been manufactured in Botswana;
- "excise duty"** means any duty leviable under Part 2 of Schedule No. 1 on any goods manufactured in Botswana;
- "excise value"** means value as defined in section 78;
- "exporter"** includes any person who, at the time of exportation-
- (a) owns any goods exported;
  - (b) carries the risk of any goods exported;
  - (c) represents that or acts as if he is the exporter or owner of any goods exported;
  - (d) actually takes or attempts to take any goods from Botswana;
  - (e) is beneficially interested in any way whatever in any goods exported;
  - (f) acts on behalf of any person referred to in paragraph (a), (b), (c), (d) or (e), and, in relation to imported goods, includes the manufacturer, supplier or shipper of such goods or any person inside or outside Botswana representing or acting on behalf of such manufacturer, supplier or shipper;
- "fiscal duty"** means any duty leviable under Column III of Part I to Schedule No. 1 and under Column IV of Part 2 to Schedule No. 1 on goods imported into Botswana;
- "Fund"** means the Fund designated by the Minister under the provisions of section 51;
- "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;
- "goods"** includes all wares, articles, merchandise, animals, currency, matter or things;
- "home consumption"** means consumption or use in Botswana;
- "illicit goods"**, in relation to imported or excisable goods or surcharge goods, means any such goods in respect of which any contravention under this Act has been committed, and includes any preparation or other product made wholly or in part from spirits or other materials which were illicit goods;
- "importer"** includes any person who, at the time of importation-
- (a) owns any goods imported;
  - (b) carries the risk of any goods imported;
  - (c) represents that or acts as if he is the importer or owner of any goods imported;
  - (d) actually brings any goods into Botswana;
  - (e) is beneficially interested in any way whatever in any goods imported;
  - (f) acts on behalf of any person referred to in paragraph (a), (b), (c), (d) or (e);
- "land"** includes off-loading from any vehicle;
- "L.C.L. container"** means any container containing goods consigned from one or more exporters to more than one importer;
- "manufacture"**, when used as a noun, includes, in the discretion of the Director, any process-
- (a) in the manufacture or assembly of any excisable goods;
  - (b) in the conversion of any goods into excisable goods;
  - (c) whereby the dutiable quantity or value of any imported goods specified in Section B of Part 2 of Schedule No. 1, or excisable goods is increased in any manner;
  - (d) in the recovery of excisable goods from excisable goods or any other goods; or
  - (e) in the packing or measuring off of any imported goods specified in Section B of Part 2

of Schedule No. 1, excisable goods; and when used as a verb, has a corresponding meaning; and "manufacturer" has a corresponding meaning;

**"notice"** includes an instrument made by statutory instrument;

**"officer"** means a person employed on any duty relating to customs and excise by order or with the concurrence of the Director, whether such order has been given or such concurrence has been expressed before or after the performance of the said duty;

**"owner"** includes any person lawfully acting on behalf of the owner;

**"package"** means any container, wrapping or outer cover and its contents, or any bundle or single piece in the case of unpacked goods;

**"pilot"**, in relation to any aircraft, means any person having charge of such aircraft;

**"plant"** includes vessels, utensils, appliances and fittings;

**"South Africa"** means the area in respect of which the Government of the Republic of South Africa is a contracting party to the Geneva Agreement on Tariffs and Trade;

**"State warehouse"** means any premises provided by the State for the deposit of goods for the security thereof and of the duties due thereon, or pending compliance with the provisions of any law in respect of such goods;

**"still"** means any apparatus for, or capable of, distilling spirits and includes any part thereof;

**"still maker"** means a person who manufactures or imports stills for sale and includes a person who repairs stills for reward;

**"subsidized export"** means the export or the proposed export of goods to Botswana from any country where the authority of that country or any other country provides any form of financial aid or other assistance in respect of those goods, including assistance in respect of the production, manufacture, transport or export thereof;

**"surcharge"** means any duty leviable under Part 4 of Schedule No. 1 on any goods which have been imported into Botswana;

**"surcharge goods"** means any goods specified in Part 4 of Schedule No. 1 which have been imported into Botswana;

**"unit of account"** means a monetary sum equal to a unit of the currency in circulation in the remainder of the common customs area;

**"vehicle"** means any aircraft, train, motor car, van, truck, cart, barrow or other conveyance of any kind whatsoever, and includes the fitting, furnishings and equipment thereof, and also pack animals and their harness and tackle;

**"wine-grower"** means any person who cultivates vines and who produces wine from grapes grown on such vines;

**"worts"** means any liquid substance containing saccharine matter before fermentation has commenced.

(2) In this section, except in the definition of "package", and in sections 7, 8, 17, 40, 73 and 98(2), "container" means transport equipment-

- (a) having an internal volume of not less than one cubic metre; and
- (b) designed for the transport of goods by any means of carriage, without intermediate reloading.

(3) For the purposes of the Customs Union Agreement between the Governments of the Republic of Botswana, the Kingdom of Lesotho, Namibia, the Republic of South Africa and the Kingdom of Swaziland referred to in section 58(3), "customs duty" includes any duty leviable under Part 4 of Schedule No. 1 on goods imported into Botswana.

## **PART II**

### ***Administration, General Duties and Powers of Director and Officers, and Application of Act (ss 3-6)***

#### **3. Administration and duties of Director**

(1) There shall be a Director of Customs and Excise.

(2) The Director shall, subject to the control of the Minister for the time being responsible for finance, be charged with the administration of this Act, including the interpretation of the Schedules thereto.

(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.

(3) There shall be a Deputy Director of Customs and Excise who shall, under the control of the Director, perform such official duties as he is required to perform by the Director, and shall on any occasion when the Director is unable to perform any of his functions under subsection (2) act in his own name and while so acting shall perform the duties imposed and may exercise all the powers conferred upon the Director under this Act.

#### **4. Delegation of duties and powers of Director**

(1) Any duty imposed or power conferred on the Director may be performed or exercised by the Director personally or by an officer under a delegation from or under the control or direction of the Director.

(2) Any decision made and any notice or communication signed or issued by any such officer may be withdrawn or amended by the Director or by the officer concerned (with effect from the date of making such decision or signing or issuing such notice or communication or the date of withdrawal or amendment thereof) and shall, until it has been so withdrawn, be deemed, except for the purposes of this subsection, to have been made, signed or issued by the Director.

**5. Duties and powers of Permanent Secretary, Commerce and Industry** (1) Any duty imposed or power conferred by this Act on the Permanent Secretary, Ministry of Commerce and Industry may be performed or exercised by him personally or by an officer under a delegation from or under the control or direction of the said Permanent Secretary.

(2) Any decision made under subsection (1) by any such officer may be withdrawn or amended by the Permanent Secretary or by the officer (with effect from the date of making such decision or the date of withdrawal or amendment thereof) and shall until it has been so withdrawn, be deemed, except for the purposes of this subsection, to have been made by that Permanent Secretary.

#### **6. General duties and powers of officers**

(1) Subject to the Constitution and the laws governing the public service, officers employed in the department shall act under the control and direction of the Director.

(2) No officer shall be directly financially interested in the manufacture or sale or importation of or trade in imported or excisable goods or fuel levy goods.

(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.

(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.

(4)(a) Notwithstanding the provisions of subsection (3), the Director may from time to time by notice in the *Gazette*, publish a list of the names of persons in respect of whom a penalty of P10,000.00 or more has been imposed under section 102 for offences referred to in section 90, 93, 94, 95 or 97.

(b) Any list published in terms of paragraph (a) shall specify-



- (i) the name and address of any person whose name has been included in such list;
- (ii) such particulars of the offence referred to in subsection (a) as the Director may think fit; and
- (iii) the amount of the penalty imposed.

(5) An officer may, for the purposes of this Act-

- (a) without previous notice, at any time enter any premises whatsoever and make such examination and enquiry as he deems necessary;
- (b) while he is on the premises or at any other time require from any person the production then and there, or at a time and place fixed by the officer, of any book, document or thing which is required by this Act to be kept or exhibited or which relates to or which he has reasonable cause to suspect of relating to matters dealt with in this Act and which is or has been on the premises or in the possession or custody or under the control of any such person or his employee;
- (c) at any time and at any place require from any person who has or is believed to have the possession or custody or control of any book, document or thing relating to any matter dealt with in this Act, the production thereof then and there, or at a time and place fixed by the officer; and
- (d) examine and make extracts from and copies of any such book or document and may require from any person an explanation of any entry therein and may attach any such book, document or thing as in his opinion may afford evidence of an offence under this Act.

(6) An officer may take with him on to any premises an assistant or a member of the police force.

(7) Any person in connection with whose business any premises are occupied or used, and any person employed by him shall at any time furnish such facilities as may be required by the officer for entering the premises and for the exercise of his powers under this section.

(8) If an officer, after having declared his official capacity and his purpose and having demanded admission into any premises, is not immediately admitted, he and any person assisting him may at any time, but at night only in the presence of a member of the police force, break open any door or window or break through any wall on the premises for the purpose of entry and search.

(9) An officer or any person assisting him may at any time break up any ground or flooring on any premises for the purpose of search and if any room, place, safe, chest, box or package is locked and the keys thereof are not produced on demand, may open such room, place, safe, chest, box or package in any manner.

(10) An officer may require any person to appear before him at any time and place fixed by the officer and may then and there question that person, either alone or in the presence of any other person, as he thinks fit, with respect to any matter dealt with in this Act.

(11) An officer may question either alone or in the presence of any other person as he thinks fit, with respect to any matter dealt with in this Act, any person whom he finds on any premises entered in terms of this section or whom he has reasonable grounds for believing to be or to have been employed on any premises in respect of which any provision of this Act is applicable, or whom he has reasonable grounds for believing to be or to have been in possession, custody or control of anything, in respect of which any such provision is applicable.

(12)(a) An officer may stop and board any vehicle in Botswana and may search any such vehicle or any person found therein or thereon for goods upon which duty has not been paid, or in respect of which he has reasonable cause to believe that there has been a contravention of any provision of this Act, and may freely remain on such vehicle in pursuance of his duties.

(b) If any vehicle, or any place, safe, chest, box, package or container (as defined in section 1(2)) thereon is locked and the keys thereof are not produced on demand, the officer

may open such vehicle, place, safe, chest, box, package or container in any manner.

(c) An officer shall have free access to and the right to rummage every part of any such vehicle and to examine all goods on board, with power to fasten down hatchways and to mark any goods before off loading, and to lock up, seal, mark or otherwise secure any goods on board the vehicle, including any apparatus thereof, and he may also demand from the driver of any vehicle or the pilot of any aircraft concerned or the person in charge of any other vehicle the production of any document to which any provision of this Act relates.

(d) If any lock, seal or mark placed upon any goods on board a vehicle by an officer in terms of the provisions of this section is wilfully opened, broken, obliterated or altered, or if any goods which have been locked, sealed, marked or otherwise secured in terms of this section are removed or if the hatchways of any such vehicle are, after having been fastened down by an officer, opened without his consent, the pilot of any aircraft concerned or the person in charge of any other such vehicle, as the case may be, shall be guilty of an offence unless he proves that it was not possible for him to have prevented the act in question.

(13)(a) An officer may stop any person whom he has reason to suspect of having dutiable goods or goods in respect of which a contravention under this Act has been committed, secreted about him or in his possession and he may search such person.

(b) If such person fails to stop, the officer may take such action, including the use of force, as he may deem necessary to stop such person.

(14) Where, on the exportation of any goods from Botswana, any certificate, declaration or other proof has been furnished regarding the origin of such goods to comply with the provisions of any agreement contemplated in section 49, 57 or 58 or any other requirement or any practice, an officer may, for the purposes of verifying or investigating such certificate, declaration or other proof, require-

(a) the exporter; or

(b) any other person appearing to the officer to have been concerned in any way with-

(i) the production or manufacture or exportation of such goods;

(ii) any goods from which directly or indirectly such goods have been produced or manufactured; or

(iii) the furnishing of such certificate, declaration or other proof,

to furnish such information in such manner and within such time as the officer may determine, and to produce on demand for inspection and to allow the making of copies or extracts from such invoices, bills of landing, bills of entry, books of account or other documents in whatever form, as the officer may specify.

(15) No person may, without good cause shown, refuse to comply with any such requirement of an officer.

(16) A female shall only be searched by a female.

(17) An officer may lock up, seal, mark, fasten or otherwise secure any warehouse, store, room, cabin, place, vessel, appliance, utensil, fitting, vehicle or goods if he has reason to believe that any contravention under this Act has been or is likely to be committed in respect thereof or in connection therewith.

(18) No person shall be entitled to any compensation for any loss or damage arising out of any *bona fide* action of an officer under this section.

### **PART III**

#### ***Importation, Exportation and Transit of Goods (ss 7-18)***

#### **7. Appointment of places of entry, authorized roads and routes, etc.**

(1) The Minister may appoint by notice-

(a) places to be places of entry for Botswana, through which goods may be imported or exported or where goods may be landed for transit, where persons entering or leaving Botswana may disembark or embark or where goods may be entered for customs and excise purposes;

- (b) the roads or routes (including railways) over which persons may enter or leave Botswana or imported goods or goods intended for export or transit carriage may enter or leave Botswana or may be carried from any one point to any other point or the means of carriage of such goods;
- (c) places as warehousing places where customs and excise warehouses may be established;
- (d) places for such particular and limited purposes and for such periods as may be appointed;
- (e) places to be customs and excise airports at which aircraft entering Botswana shall first land, from which aircraft leaving Botswana shall finally depart, through which goods may be imported or exported or where goods may be landed for transit or where persons entering or leaving Botswana may disembark or embark;
- (f) places at appointed places of entry or at customs and excise airports for the landing or embarkation of persons and the landing, loading or examination of goods (including baggage);
- (g) sheds as transit sheds into which goods, before due entry thereof, may be removed from an aircraft or vehicle;
- (h) entrances and exits, general or special, to or from any customs and excise airport;
- (i) container terminals where containers may be landed for transit, delivery to a container depot or, after their contents have been duly entered, delivery to importers, or where containers may be shipped for export;
- (j) places where container depots may be established for the storage, detention, unpacking or examination of containers or the contents of containers, for the delivery to importers of the contents of containers after such contents have been duly entered or for the packing of containers for export;
- (k) the hours during which any place, road, route, shed, entrance or exit appointed or prescribed under any paragraph of this subsection may be used for the purposes specified in such paragraph.

(2) Any place outside Botswana may be deemed by the Minister to be a place of entry for Botswana through which goods may be imported or exported, where goods may be landed for transit or removal through contiguous territories or where goods may be entered for customs and excise purposes.

(3) If any places, roads, routes, means of carriage, sheds, entrances, exits or container terminals, as the case may be, have been appointed or prescribed by the Minister under any paragraph of subsection (1), only such places, roads, routes, means of carriage, sheds, entrances, exits or container terminals so appointed or prescribed may, subject to the provisions of subsections (4) and (8), be used or employed for the purposes for which they have been so appointed or prescribed under such paragraph, and if any hours have been prescribed under paragraph (k) of subsection (1) during which any place, road, route, shed, entrance or exit referred to in the said paragraph (k) may be used, such place, road, route, shed, entrance or exit shall be used only during such hours.

(4) The owner or occupier of a transit shed appointed in terms of this section shall, if required by the Director, provide accommodation to the satisfaction of the Director for any officer whom the Director considers it necessary to station at such shed.

(5) Notwithstanding anything contained in this section where the Minister has appointed places of entry for Botswana he may in writing permit any person to enter Botswana, subject to such conditions as he may impose, at a place other than a prescribed place.

## **8. Report of arrival or departure of aircraft**

(1) The pilot of any aircraft arriving in Botswana, whether with or without goods or passengers, shall within three hours after landing at any place appointed as a customs and excise airport in terms of section 7 or within such further time as the proper officer may allow-

- (a) make due report in writing of the arrival, with as many duplicates or extracts as the Director may require;
- (b) make and subscribe to a declaration as to the truth of the report before the Director and answer all such questions concerning the aircraft, the cargo and stores, and the crew, passengers and flight as may be put to him by the Director; and
- (c) produce, if required, the official log books for the flight, the stowage plans and any other documents in his possession relating to the cargo, stores, crew, passengers and flight.

(2)(a) The pilot of an aircraft arriving in Botswana shall, unless the Director has granted him special permission to land elsewhere, make his first landing at a place appointed as a customs and excise airport in terms of section 7:

Provided that the provisions of this subsection shall not apply if the pilot is forced by circumstances beyond his control to land at a place not so appointed and he reports to the Customs Officer nearest to the place where he was so forced to land or to the Customs Officer at the first place of entry or customs and excise airport appointed in terms of section 7 at which he next arrives.

(b) Such pilot who is forced by circumstances beyond his control to land at a place in Botswana not appointed as a place of entry in terms of section 7 shall take all precautions necessary to prevent any contravention of this Act in respect of any goods in such aircraft.

(3) The report referred to in subsection (1) shall contain such particulars as the Minister may prescribe and shall further include-

- (a) a list of all containers on board consigned to such place, which list shall specify-
  - (i) the container serial numbers and the name of every owner concerned;
  - (ii) the classes of such containers; and
  - (iii) the destination of each such container; and
- (b) a manifest in the prescribed form of all goods consigned to such place, and a separate manifest of such goods packed in each container.

(4) Subject to the provisions of section 9, any goods which have not been recorded in such manifest shall be declared to the Director and delivered to him.

(5) The pilot of any aircraft bound from any place within to any place outside Botswana shall appear before the proper officer and deliver to him a report outwards in the prescribed form together with a full account of the cargo laden on board that aircraft and shall make and subscribe to a declaration as to the truth of such report and account and answer all such questions as may be put to him by the proper officer.

(6) The provisions which shall apply in connection with the departure of any foreign-going aircraft from any place within to any other place within Botswana shall be as prescribed.

(7) The pilot of a foreign-going aircraft shall not cause or permit the aircraft to depart from any appointed place of entry or any place appointed as a customs and excise airport without first obtaining a certificate of clearance or transire for the intended flight from the Director, and the pilot shall not after departure call or land at any place in Botswana other than an appointed place of entry or a place appointed as a customs and excise airport, unless forced to do so by stress of weather, accident or other circumstances beyond his control.

(8) The provisions which shall apply where such pilot has been so forced to land at a place other than a place appointed as a customs and excise airport shall be as prescribed.

(9) If an aircraft in respect of which a clearance has been issued at any place in terms of this section does not depart from that place within 36 hours of the time when the clearance was issued, or within such further time as the Director may allow, such clearance shall lapse and the pilot shall obtain fresh clearance before causing or permitting the aircraft to depart.

(10) If any report required in terms of this section is found to be in any way incomplete or incorrect, the Director may, if he is satisfied that there was no fraudulent intention, permit the

pilot to amend his report.

(11) The pilot of an aircraft may, with the permission of the Director and subject to such conditions as he may impose, retain on board goods consigned to any airport for landing at any other airport or land at any airport goods not consigned thereto.

(12) The Minister may, subject to such conditions as he may impose, exempt any aircraft or any class or kind of aircraft from all or any of the provisions of this section.

#### **9. Sealing of goods on board aircraft**

(1) The Director may permit surplus stores to be entered for home consumption or for warehousing.

(2) For the purposes of this section "sealable goods" means-

- (a) tobacco, cigars, cigarettes and any other preparations of tobacco or substitutes therefor;
- (b) any spirits or alcoholic beverages;
- (c) opium, preparations of opium, in any form and opium outfits;
- (d) cocaine, preparations of cocaine and other habit-forming drugs;
- (e) saccharin, sweetening substances containing saccharin, and substitutes for saccharin;
- (f) articles brought or intended as gifts for or for sale to or exchange with any person;
- (g) all non-duty-paid imported goods and all excisable goods shipped at a place in Botswana as aircraft stores; and
- (h) any other goods which may from time to time be declared by the Minister by notice in the *Gazette* to be sealable goods.

(3) The Director may, in addition to sealable goods, seal up any goods which are unconsumed stores of any aircraft or which are in the possession of the pilot of such aircraft or of any member of the crew thereof or of any passenger on board thereof.

(4) While any aircraft remains at any place in Botswana, no person shall, except in accordance with regulations, break or disturb any seal placed by the Director on any goods in terms of this section.

(5) Except as provided in subsection (1), no stores of any nature may be landed without the permission of the Director and all goods acquired on an aircraft shall, if landed, be declared to the Director for purposes of payment of any duty due thereon.

(6) The Minister may, subject to such conditions as he may impose, exempt any aircraft or any class or kind of aircraft from all or any of the provisions of this section.

#### **10. When goods deemed to be imported**

(1) For the purposes of this Act, all goods consigned to or brought into Botswana shall be deemed to have been imported into Botswana-

- (a) in the case of goods consigned to a place in Botswana in an aircraft, at the time when such aircraft on the flight in question first came within the control area of the airport authority at that place, or at the time of the landing of such goods at the place of actual discharge thereof in Botswana if such aircraft did not on that flight call at the place to which the goods were consigned or if such goods were discharged before arrival of such aircraft at the place to which such goods were consigned;
- (b) in the case of goods not consigned to a place in Botswana but brought thereto by and landed therein from an aircraft, at the time when such goods were so landed;
- (c) subject to the provisions of subsection (2), in the case of goods brought to Botswana overland, at the time when such goods entered Botswana;
- (d) in the case of goods brought to Botswana by post, at the time of importation in terms of paragraph (a), (b) or (c) according to the means of carriage of such goods; and
- (e) in the case of goods brought to Botswana in any manner not specified in this section, at the time specified in the General Notes to Schedule No. 1 or, if no such time is specified in the said General Notes in respect of the goods in question, at the time such goods are considered by the Director to have entered Botswana.

(2) For the purposes of subsection (1), a place outside Botswana appointed in terms of this Act as deemed by the Minister under section 7(2) to be a place of entry for goods consigned to Botswana, shall be deemed to be a place in Botswana in respect of goods consigned to such place for removal to Botswana overland.

#### **11. No landing or loading of goods without permission**

(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.

(2) All goods landed from an aircraft before due entry of such goods and placed in a transit shed or other approved place in accordance with the provisions of subsection (1) shall be deemed to be still in the aircraft, and as long as such goods remain in such shed or place, the pilot shall remain responsible therefor in all respects and liable for the duty thereon as if the goods had not been removed from such aircraft.

(3) Subject to the provisions any regulations, no goods shall, without the permission of the Director, be loaded into an aircraft for exportation from Botswana.

(4) No goods shall, without the permission of the Director, be laden at any place in Botswana on an aircraft before all inward cargo for that place has been discharged.

(5) Subject to the provisions of subsection (2) and the provisions of any regulations and to any conditions which he may impose, the Director may permit the landing at any place without due entry of goods not consigned to that place from an aircraft which has sustained damage or is in distress.

#### **12. Goods imported or exported overland**

(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.

(3) The conductor, guard or other person in charge of a train shall on demand by any officer furnish him with all information at his disposal in respect of any goods on such train.

(4) Subject to the provisions of subsection (13), the person in charge of any vehicle (other than aircraft or a railway train) whether or not conveying any goods, which arrives by land at any place in Botswana shall come to the office of the officer nearest to the point at which he crossed the border or which is most conveniently situated in relation to that point before unloading any goods or in any manner disposing of such vehicle or goods, and make a full written report to such officer concerning the vehicle or goods, the journey and the destination of the goods, and shall make and subscribe to a declaration as to the truth of the report.

(5) Such person shall fully and truthfully answer all questions put to him and produce any waybills or other documents demanded of him by such officer.

(6) No person shall remove a vehicle referred to in subsections (4) and (5) from the office referred to in that subsection until due entry has been made of such vehicle and the goods carried thereon or until permission for removal has been granted by the officer.

(7) Every person arriving in Botswana overland, on foot or otherwise shall, whether or not he has any goods in his possession, come to the office of the officer nearest to the point at which he crossed the border or the office of the officer which is most conveniently situated in relation to that point, and there report to the officer the circumstances in which he entered Botswana.

(8) If such person has any goods in his possession, he shall furnish such officer with full particulars thereof, and shall fully and truthfully answer all questions put to him by the officer.

(9) Such person shall not in any manner dispose of any goods in his possession until they have been released by the officer.

(10) The provisions of subsections (7), (8) and (9) shall not apply to persons arriving in Botswana by train or by air and who pass through or disembark at a place where an officer is stationed.

(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.

(12) The Director may in his discretion grant a general permission to any such person.

(13) The Minister may, by notice and subject to such conditions as he may impose, exempt any person from the provisions of subsections (4) and (5).

### **13. Goods imported or exported by post**

(1) For the purposes of entry and collection of duty on goods imported into Botswana by post, any form or label completed by the sender in respect of the postal item in question and on which the particulars necessary for the assessment of duty are set forth, shall be deemed to be an entry made under the provisions of this Act, and the particulars on any such form or label shall, for the purposes of this Act, be taken as the declaration to be made by the importer under section 40:

Provided that the Minister may by regulations exclude from the provisions of this subsection any goods of a class or kind specified in such regulations or any such goods imported in circumstances so specified.

(2) Notwithstanding anything contained in subsection (1), any goods imported by post which the addressee desires to enter for warehousing, or for removal or export in bond, or under any heading or item of Schedule No. 1 which requires that a certificate be given or a condition be complied with, or under any item of Schedule No. 3, or under any item of Schedule No. 2, 4 or 5 specified by the Director, shall be entered at a customs and excise office before an officer.

(3) Notwithstanding anything contained in subsection (1), any goods imported by post by such class of addressee, or any goods imported by post and of such class or kind, as may be specified by the Director after consultation with the Director of Postal Services, shall be entered at a customs and excise office before an officer.

(4) In the case of goods exported by post, any form or label affixed to or completed in respect of a postal item and on which a description of the contents and their value are set forth, shall be defined to be a bill of entry for export as required by this Act.

(5) Notwithstanding anything contained in subsection (1) or in any other law but subject to the provisions of subsection (2), any person importing goods by post shall submit the invoice in respect of such goods to the postmaster concerned, and no person shall receive, remove, take, deliver or in any manner deal with or in such goods unless the correct duty has been paid to that postmaster.

(6) Any postmaster may at any time detain any imported postal item under his control and cause such postal item to be removed to the officer who may in his discretion examine such postal item, and if the goods therein are found not to agree in all respects with the particulars relating to the value, description or quality appearing on the form or label referred to in subsection (1) or the invoice concerned, such goods shall notwithstanding anything to the contrary contained in any other law be liable to forfeiture.

### **14. Persons entering or leaving Botswana**

(1) Any person entering or leaving Botswana shall, in such a manner as the Director may determine, unreservedly declare-

- (a) at the time of such entering, all goods (including goods of another person) upon his person or in his possession which he brought with him into Botswana which-
  - (i) were purchased or otherwise acquired abroad or on any vehicle or in any shop selling goods on which duty has not been paid;
  - (ii) were remodelled, processed or repaired abroad; or

- (iii) are prohibited, restricted or controlled under any law;
- (b) before leaving, all goods which he proposes taking with him beyond the border of Botswana, and shall furnish an officer with full particulars thereof, answer fully and truthfully all questions put to him by such officer and, if required by such officer to do so, produce and open such goods for inspection by the said officer, and shall pay the duty assessed by such officer, if any, to the proper officer.

(2) Any declaration made in terms of subsection (1) shall, for the purposes of this Act, be deemed to be an entry for home consumption or export, as the case may be.

(3) The Director shall have the power, in all cases where a person is detected or is concerned in or is suspected by him of an attempt to import, export, land, or remove goods illegally or to evade the payment of duties on any goods, forthwith to take the person concerned before a magistrate's court to be summarily or otherwise dealt with, or to secure such person in a police station or other suitable place, until he can be taken before such court.

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

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

#### **16. State warehouse**

(1) Whenever any goods are taken to and secured in any State warehouse, the Director may require rent to be paid for such period as the goods remain therein, at the rates prescribed.

(2) Any officer who has the custody of any goods in any State warehouse may refuse delivery thereof from such warehouse until he has been furnished with proof to his satisfaction that-

- (a) the person claiming the goods is lawfully entitled to such goods;
- (b) all relevant provisions of this Act or any law relating to the importation or exportation or transit of goods have been complied with;
- (c) freight and other charges (including landing charges) and rent due in respect of the goods have been paid.

(3) The State or any officer shall in no case be liable in respect of any loss or diminution of or damage to any goods in a State warehouse in respect of any loss or damage sustained by reason of wrong delivery of such goods.

(4) If a warrant or permission for the removal of any goods from a State warehouse has been granted by the Director, and the person to whom such warrant or permission has been granted does not immediately remove the said goods from the warehouse, they may, notwithstanding any other provisions of this Act, in the discretion of the Director, be dealt with as if they were goods in respect of which entry has not been made under the provisions of this Act.

#### **17. Removal of goods in bond**

(1) Notwithstanding anything to the contrary contained in this Act-

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

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

- (b) the pilot of an aircraft or person in charge of any vehicle from which any goods were landed at a place in Botswana to which such goods were not consigned may remove



such goods in bond to the place to which they were consigned provided evidence is produced to the Director before entry for removal of the identity of such goods and that the goods in question were consigned to the place to which they are proposed to be removed;

- (c) the owner of or any person beneficially interested in any goods which are in transit through Botswana from any other territory in Africa to any place outside Botswana may remove such goods in bond from the place where they entered Botswana to the place where they are destined to leave Botswana;
- (d) a container operator may remove any container in bond to the container depot or container terminal to which it was consigned, without furnishing the security provided for in subsection (6), and the manifest in terms of section 8(2)(b) of the goods packed in such container shall be deemed to be due entry for removal in bond of that container;
- (e) the pilot of an aircraft operating a scheduled service may remove in bond any goods landed from an aircraft at a place in the common customs area and for which an air cargo transfer manifest has been completed, to their place of entry for the common customs area, without furnishing the security provided for in subsection (6), and such air cargo transfer manifest shall be deemed to be due entry for removal in bond of such goods.

(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.

(2) In addition to any liability for duty incurred by any person under any other provision of this Act, the person who removes any goods in bond in terms of subsection (1) shall, subject to the provisions of subsection (3), be liable for the duty on all goods which he so removes.

(3) Subject to the provisions of subsection (4), any liability for duty in terms of subsection (2) shall cease when it is proved to the satisfaction of the Director by the person concerned-

- (a) in the case of goods removed to a place in the common customs area, that such goods have been duly entered at that place; or
- (b) in the case of goods which were destined for a place beyond the borders of the common customs area, that such goods have been duly taken out of that area.

(4) If the person concerned fails to submit any such proof as is referred to in subsection (3) within a period of 30 days from the date on which the goods in question were entered for removal in bond, he shall upon demand by the Director forthwith pay the duty due on such goods.

(5) No goods shall be removed in bond in terms of this section from the place where they were landed in Botswana or where they entered Botswana until they have been entered for removal in bond and such entry shall be deemed to be due entry in respect of such goods at that place for the purposes of this Act.

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

(7) The removal in bond of goods shall be subject to such regulations and such conditions as the Minister may prescribe in respect of such goods or any class or kind of such goods or goods removed in circumstances specified by him and the Director may refuse to accept bills of entry for the removal in bond of goods from a remover who has persistently failed to comply with such regulations or conditions or who has committed an offence referred to in section 90.

(8) Goods removed in bond shall not be delivered or removed from the control of the Director at the place of destination in Botswana except upon due entry according to the first

account taken of such goods on landing or on entry for removal in bond thereof or according to the contents of the packages containing such goods as reflected on the invoice issued by the supplier in respect of such goods, and payment of any duty due, including, subject to the provisions of section 84(19), any duty due on any deficiency.

(9) ... (10) The State or any officer shall in no case be liable for any loss of or damage of whatever nature to any goods removed in bond or for any loss or damage sustained by reason of wrong removal or delivery.

(11) Notwithstanding the provisions of this section, the Director may, subject to such conditions as he may impose, in respect of goods in transit through Botswana from any other territory in Africa to any destination outside Botswana or any class or kind of such goods or any such goods removed in bond in circumstances specified by him, allow such goods to be entered for removal in bond at a place other than the place where the goods entered Botswana.

(12) The Director may determine the roads and routes and the means of carriage of any goods removed in bond or any class or kind of such goods or any such goods carried in circumstances specified by him.

(13) No persons shall, without the permission of the Director, divert any goods removed in bond to a destination other than the destination declared on entry for removal in bond or deliver such goods or cause such goods to be delivered in Botswana except into the control of an officer at the place of destination.

(14) The Director may specify the particulars to be reflected on the entry for removal in bond and the documents to be produced by the remover upon entry for removal in bond in respect of any goods removed in bond, or any class or kind of such goods or any such goods removed in circumstances or to a destination specified by him.

**18. Exportation of goods from customs and excise warehouse** (1) Notwithstanding any liability for duty incurred thereby by any person in terms of any other provision of this Act, any person who exports any goods from a customs and excise warehouse to any place outside the common customs area shall, subject to the provisions of subsection (2), be liable for the duty on all goods.

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

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

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

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

(6) The said exportation of goods shall be subject to the regulations and such conditions as the Director may impose in respect of the goods concerned or any class or kind of those or those goods exported in circumstances specified by him, and the Director may refuse to accept bills of entry for the said exportation of goods from an exporter who has persistently failed to comply with the said regulations or conditions or who has committed an offence referred to in section 88.

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

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

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

#### **PART IV**

### ***Customs and Excise Warehouses: Storage and Manufacture of Goods in Warehouses (ss 19-39)***

#### **19. Customs and excise warehouses**

(1) The Director may license at any place appointed for that purpose under the provisions of this Act, warehouses (to be known as customs and excise warehouses) approved by him for the storage of such dutiable imported or such dutiable locally-produced goods or for the manufacture of such dutiable goods from such imported or such locally-produced materials or such imported and such locally-produced materials as he may approve in respect of each such warehouse.

(2) Such warehouses may be licensed either for the storage of dutiable goods (to be known as customs and excise storage warehouses) or for the manufacture of dutiable goods (to be known as customs and excise manufacturing warehouses), but the Director may license a storage and a manufacturing warehouse on the same premises provided they are separated in a manner approved by him.

(3) The Director may, in addition to any lock used by the licensee, cause any customs and excise warehouse to be locked with a State lock for such period as he deems fit, and no person shall remove or break such lock or enter such warehouse or remove any goods therefrom without the permission of the Director while it is so locked.

(4) The Director may at any time take stock of the goods in any customs and excise warehouse and duty shall, subject to the provisions of section 20(9), forthwith be paid upon any deficiency.

(5) If the stock is found to be greater than the quantity which should be in such warehouse, the excess shall, subject to the provisions of section 84(19), be debited to stock and the duty thereon paid on entry for home consumption.

(6) The State or any officer shall in no case be liable for any loss or damage of whatever nature to any goods in a customs and excise warehouse or for any loss or damage sustained by reason of wrong delivery of such goods.

(7) In addition to any liability for duty incurred by any person under any other provision of this Act, the licensee of a customs and excise warehouse shall, subject to the provisions of subsection (8), be liable for the duty on all goods stored or manufactured in such warehouse from the time of receipt into such warehouse of such goods or the time of manufacture in such warehouse of such goods, as the case may be.

(8) Subject to the provisions of subsection (9), any liability for duty in terms of subsection (7) shall cease when it is proved to the satisfaction of the Director by the licensee concerned that the goods in question have been duly entered in terms of section 20(7) and have been delivered or exported in terms of such entry.

(9) If the licensee concerned fails to submit any such proof as is referred to in subsection (8) in respect of any goods in the warehouse in question within the period specified in the regulations for which goods of that class or kind may be stored or kept in a customs and excise warehouse or if the licensee commits an offence under this Act in respect of any goods stored or kept in such warehouse he shall upon demand by the Director forthwith pay the duty due on such goods.

(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).

## **20. Goods in customs and excise warehouses**

(1) Any dutiable imported or dutiable locally-produced goods and any beverages produced from excisable spirits in pursuance of any permission granted under the provisions of section 31(2), being goods or beverages of a class or kind approved by the Director in respect of each warehouse, may be entered for storage in a customs and excise warehouse with deferment of payment of duty and no such goods or beverages shall be removed to or placed in a customs and excise warehouse until they have been so entered.

(2) Such entry shall be deemed to be due entry in respect of such goods at the place of importation or manufacture for the purposes of this Act.

(3) Upon the entry and landing of imported goods for storage in or the transfer of dutiable locally-produced goods to a customs and excise warehouse or the transfer of dutiable manufactured goods from a customs and excise manufacturing warehouse to a customs and excise storage warehouse, the licensee of any such warehouse in which such goods are stored or to which such goods are so transferred shall take and record an accurate account of such goods, which shall include, subject to any deduction that may be allowed under section 84(19), the debiting to stock of any excess found on receipt of such goods at such warehouses.

(4) The licensee referred to in subsection (3) shall immediately upon the receipt of such goods report to the Director any such excess so found.

(5) Subject to the provisions of section 84(19) and of subsection (9), no allowance for loss or diminution of any nature which occurs while such goods are being transported to or kept in any such warehouse or transported from one warehouse to another or removed in bond shall be allowed.

(6) Goods on which no duty is payable and of a class or kind approved by the Director in respect of each warehouse, may, subject to such conditions and to the keeping of such records as the Director may in each case determine, without entry, be taken into a customs and excise warehouse for the purpose of being used in the manufacture of or in conjunction with dutiable goods.

(7) No goods which have been stored or manufactured in a customs and excise warehouse shall be taken or delivered from such warehouse except in accordance with any regulations and upon due entry for one or other of the following purposes-

- (a) home consumption and payment of any duty due thereon;
- (b) rewarehousing in another customs and excise warehouse or removal in bond as provided in section 17;
- (c) export from a customs and excise warehouse (including supply as stores for foreign-going aircraft).

(8) No person shall, without the permission of the Director, divert any goods entered for removal from or delivery to a customs and excise warehouse, except goods entered for payment of duty due thereon, to a destination other than to a destination declared on entry of such goods or deliver or cause such goods to be delivered in Botswana except in accordance with the provisions of this Act.

(9) The duty on any deficiency in a customs and excise warehouse shall be paid forthwith on demand after detection of such deficiency:

Provided that in the case of goods manufactured in any customs and excise manufacturing warehouse or in the case of goods in the process of manufacture and removed from one customs and excise manufacturing warehouse to another such warehouse, the Director may, allow working, pumping, handling, processing and similar losses and losses due to natural causes, between the time when liability for duty first arises and the time of removal of such goods from the warehouse in which the goods are so manufactured or in which such process of manufacture is completed, to the extent specified in Schedule No. 4 or 6, if he is

satisfied that no part of such loss was wilfully or negligently caused.

(10) Goods packed for retail sale shall not be entered for storage in a storage warehouse unless they are packed in outer containers normally used in the wholesale trade in respect of such goods.

#### **21. Special customs and excise warehouses**

(1) The Minister may, subject to such conditions as he may in each case impose, license at any place in Botswana special customs and excise warehouses for such special purposes and for such period as he may specify, provided such security as he may require is furnished.

(2) Unless the Minister otherwise indicates when licensing a special customs and excise warehouse for the storage or manufacture of goods, the provisions of this Act in respect of customs and excise storage or manufacturing warehouses or the storage or manufacture of goods in such warehouses, shall apply to such special warehouse and to the storage or manufacture of goods therein, as the case may.

#### **22. Samples of goods in a customs and excise warehouse**

The Director may, subject to regulations if any, made by the Minister, permit samples of goods in a customs and excise warehouse to be taken by the owner of such goods and may permit payment of duty thereon to be deferred until the goods from which such samples have been taken are entered for delivery from that warehouse for any purpose.

#### **23. Storage or manufacture of prohibited goods**

The Director may allow the storage or manufacture in a customs and excise warehouse of goods the importation, manufacture or disposal of which is prohibited or restricted under any law, provided such goods are stored or manufactured in such warehouse for export or supply as stores for foreign-going aircraft only.

#### **24. Aircraft stores consumed in Botswana**

If any goods shipped as stores for any foreign-going aircraft from a customs and excise warehouse under the provisions of section 20(7) or any goods shipped as stores for such aircraft outside Botswana are consumed, sold or disposed of on such aircraft at any place in Botswana when the aircraft is not airborne, or on such aircraft on a flight between any places in Botswana or between a place in Botswana and any other place in the common customs area, the pilot of such aircraft shall be liable for the duty on such goods so consumed, sold or disposed of and shall upon demand by the Director forthwith pay the duty due on such goods.

#### **25. Sorting, packing, etc., in customs and excise storage warehouses**

Subject to the provisions of this Act, the Director may permit the licensee of a customs and excise storage warehouse or the owner of any goods in such warehouse to sort, separate, pack or repack any goods in such warehouse and to make such alterations therein or such arrangements as may be necessary for the preservation of those goods or for the sale, exportation or other lawful disposal thereof.

#### **26. Transfer of ownership or pledging or hypothecation of warehoused goods**

(1) Except with the prior permission of the Director-

- (a) the owner of any dutiable goods in a customs and excise warehouse may not enter into any agreement whereby-
  - (i) his ownership of such goods is transferred to any other person;
  - (ii) such goods are pledged or otherwise hypothecated in favour of any other person;
- (b) any person in whose favour such goods have been pledged or hypothecated may not enter into any agreement whereby any rights obtained by him by virtue of such pledging or hypothecation are ceded to any other person.

(2) Any agreement entered into contrary to the provisions of subsection (1) shall for the purposes of this Act be deemed to be null and void.

#### **27. Special provisions in respect of customs and excise manufacturing warehouses**

(1) Subject to the provisions of this Act, goods liable to excise duty may not be manufactured except in terms of this section and except in a customs and excise manufacturing

warehouse licensed under this Act:

Provided that spirits distilled by agricultural distillers shall be excluded from the requirement of manufacture in a customs and excise manufacturing warehouse and that excisable goods may, with the permission of the Director, be manufactured in a special customs and excise warehouse licensed under this Act.

(2) Subject to the provisions of this Act, the Minister may, on such conditions as he may impose, permit the manufacture under the provisions of this Part of any goods in any customs and excise manufacturing warehouse if any of the goods used in such manufacture are liable to duty or if the goods so manufactured are dutiable.

(3) Any dutiable goods brought into and intended for use in a customs and excise manufacturing warehouse in the manufacture of goods liable to excise duty shall be entered for home consumption and any duty due thereon shall be paid prior to such use.

(4) No manufacturing of goods shall take place in a customs and excise manufacturing warehouse until all premises and plant intended for use in connection with such manufacturing and the purpose for which they are to be used have been approved by and registered with the Director.

(5) Plans of the premises and plant to be used in connection with such manufacturing and of the location of the plant on such premises and particulars of any identifying numbers or marks on any plant shall be submitted to the Director before the commencement of manufacturing and no alteration to such premises or plant shall be made without the prior permission of the Director.

(6) All operations in customs and excise manufacturing warehouses shall be subject to the right of supervision by officers.

(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.

(8) A person so providing board and lodging for an officer shall be entitled to fair remuneration therefor.

(9) The Director may give instructions in writing to any licensee specifying in what part of the warehouse-

- (a) any process in the manufacture is to be carried on; and
- (b) any materials for use in manufacture and manufactured goods, respectively, are to be kept.

(10) No licensee shall, without the written permission of the Director, in a customs and excise manufacturing warehouse carry on any business except that for which the warehouse is licensed and the premises and plant are registered.

(11) No person shall, except with the written permission of the Director-

- (a) use any premises or plant required to be registered in terms of the provisions of this Part for any purpose other than that detailed in such registration;
- (b) effect any alteration to any structure on such premises or to any such plant;
- (c) bring into or have on such premises, any plant other than that detailed in such registration or remove any plant from such premises;
- (d) place below the surface of the ground any pipe or tube for conveying any material or product in a warehouse unless such pipe or tube is enclosed in casing capable of being easily opened so that the pipe or tube is exposed to view.

(12) The Director may, by notice published in the *Gazette*, appoint the days on which and the hours during which all or any of the operations in a customs and excise manufacturing warehouse (including the removal of goods) shall be carried out.

(13) No distilling operation shall be commenced until the whole or any part of the distilling system or plant, as the Director may require, has been provided, at the expense of the

licensee, with fittings, and requirements to permit of the insertion or affixing of customs and excise meters, gauges, rods, locks and seals according to the regulations, for the purpose of securing such system or plant, and until such system or plant has been duly secured by an officer.

(14) If any meter, rod, lock or fitting is tampered with or damaged, or if any pipe, cock, fastening or fitting connected with a still or vessel is pierced or damaged, the licensee shall forthwith repair or renew the article in question or an officer may effect the repair or renewal at the expense of the licensee.

(15) If any such tampering, damage or piercing has been directly or indirectly caused by the wilful act, or by the neglect or with the connivance of the licensee or his employee, such licensee, in addition to liability for the cost of the repair or renewal, shall be guilty of an offence.

(16) The burden of showing that any such tampering, damage or piercing was not caused as specified in subsection (15) shall rest upon the licensee.

(17) The Minister may, subject to such conditions as he may impose, exempt the manufacture of any class or kind of goods from any provision of this section.

## **28. Ascertaining quantity of spirits by measuring the mass or volume**

(1) The quantity of spirits in any container may be calculated by measuring the mass or volume.

(2) In ascertaining the quantity of spirits by measuring the mass, the tables prescribed in the regulations shall be used, and the quantity ascertained in accordance with the said tables shall be deemed to be the true quantity of such spirits for the purposes of this Act.

## **29. Classification of spirits**

No spirits distilled in Botswana shall, for the purposes of this Act, be classed as being spirits of the product of the vine until such spirits have been so certified by the Director and any spirits not so certified shall be deemed to be spirits other than of the product of the vine.

## **30. Control of the use of spirits for certain purposes**

(1) No person shall use spirits, distilled from the product of the vine, in the manufacture of alcoholic beverages unless such spirits have been certified by the Director to be suitable for such use:

Provided that if the Director declines to certify any spirits as suitable for such use as aforesaid the manufacturer may redistill such spirits or treat the same by any method approved by the Director and thereafter, in his discretion, the Director may certify the spirits as suitable for use in the manufacture of alcoholic beverages.

(2) The blending of brandy, and the production from spirits of any other beverage or any other non-excisable goods shall be subject to such supervision by an officer as the Minister may in each case consider necessary.

(3) The provisions of subsection (1) shall not apply to an agricultural distiller or a winegrower who manufactures alcoholic beverages under the provisions of this Act for his private use.

## **31. Entry of spirits for use in manufacture**

(1) Spirits which have not been entered for home consumption shall not be used in the production of beverages or other non-excisable goods.

(2) The Minister may, on such conditions as he may in each case impose, permit the use of spirits which have been entered for home consumption in the production of beverages on premises which have been licensed as a customs and excise storage warehouse and may, without prejudice to the provisions of section 116, permit payment of the duty on any such spirits used in the production of beverages on any such premises to be deferred until such beverages are delivered from any such warehouse.

(3) No person shall, without the permission of the Director, redistill spirits which have been entered for home consumption.

(4) Any such permission may be granted subject to such conditions as the Director may

in each case impose.

(5) Beverages or other non-excisable goods produced in contravention of the provisions of subsection (1) and any spirits redistilled in contravention of subsections (3) and (4), shall be liable to forfeiture.

### **32. Ascertaining strength of spirits**

The strength of any spirits or spirituous preparations shall, for duty purposes, be ascertained in the manner prescribed by the Minister.

**33. Requirements in respect of stills** 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.

### **34. Special provisions regarding spirits manufactured by agricultural distillers**

(1) The manufacture of spirits by an agricultural distiller shall be subject to such supervision by an officer as the Director may in each case consider necessary.

(2) An allowance may be made for natural waste and evaporation on all spirits of his own distillation stored by an agricultural distiller on his farm, to the extent specified in Schedule No. 6, if the Director is satisfied that no part of such loss was wilfully or negligently caused.

(3) No agricultural distiller shall use his still for distilling spirits from any material other than produce grown on the farm of which he is the owner or occupier and which is of a kind prescribed by regulations.

(4) Subject to the provisions of this Act and the Liquor Act, the provisions of section 20(7) shall *mutatis mutandis* apply in respect of spirits manufactured from grapes by any agricultural distiller specified by the Minister by notice and for the purpose of such application any reference in the said subsection to a customs and excise warehouse shall be deemed to be a reference to the farm on which such spirits are manufactured.

### **35. Special provisions regarding wine**

(1) The Director may, subject to such conditions as he may impose in each case, license the premises of any body or person who holds a licence under any law to deal in wine in wholesale quantities, as a special customs and excise warehouse for the purpose of manufacturing wine.

(2) Special warehouses licensed under subsection (1) shall, for the purposes of this Part be deemed to be customs and excise manufacturing warehouses.

### **(3) ... 36. Special provisions regarding cigarettes and cigarette tobacco**

(1) The Minister may by regulations prescribe the sizes and types of containers which may be used by a manufacturer for the packing of cigarettes and cigarette tobacco.

(2) No manufacturer may remove any cigarettes or allow any cigarettes to be removed from the customs and excise manufacturing warehouse in question unless they have been packed in the prescribed manner and a stamp impression determined by the Director has been made on their containers:

Provided that the Director may allow cigarettes so packed to be removed from such warehouse, in such circumstances as he may deem fit, without such stamp impression having been made on such containers.

(3) No cigarettes or cigarette tobacco shall be sold or disposed of or removed from the customs and excise manufacturing warehouse in question in a partly or completely manufactured condition except in accordance with the provisions of this Act.

(4) No person shall-

- (a) counterfeit or make any facsimile of any die or impression stamp determined under subsection (2);
- (b) be in possession of, use or offer for sale or for use-
  - (i) any die or impression stamp counterfeited in contravention of paragraph (a); or



- (ii) any facsimile of any die or impression stamp made in contravention of that paragraph.

**37. Specific provisions regarding beer** (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.

**38. Special provisions in respect of the manufacture of excisable goods and the collection of excise duty**

(1) Every manufacturer of excisable goods specified in Section B of Part 2 of Schedule No. 1 and every owner of excisable goods specified in Section B of Part 2 of Schedule No. 1 manufactured by him partly or wholly from materials owned by such owner, shall license his premises as a special customs and excise warehouse for purposes of excise duty specified in Section B of Part 2 of Schedule No. 1 in terms of the provisions of this Act, and no such manufacturer or owner shall manufacture or deal in or with excisable goods specified in Section B of Part 2 of Schedule No. 1 unless he has so licensed his premises.

(2) Notwithstanding anything to the contrary contained in this Act-

- (a) where the value added by any process in the manufacture of excisable goods specified

in Section B of Part 2 of Schedule No. 1 is, in the opinion of the Director low in relation to the manufacturer's selling price of such goods, or where any process in the manufacture of excisable goods specified in Section B of Part 2 of Schedule No. 1 presents in his opinion exceptional difficulties in the collection of excise duty as specified in Section B of Part 2 of Schedule No. 1 in respect of such goods, the provisions of subsection (1) shall apply, and due entry of such goods shall be effected, at such stage in the manufacture of the said goods as he may in his discretion determine, and the process which shall be decided to be included for the purposes of calculating the value for purposes of excise duty specified in Section B of Part 2 of Schedule No. 1 shall be as determined by him;

- (b) the Director may, subject to such conditions as he may impose in each case-
- (i) where the production and disposal of any excisable goods specified in Section B of Part 2 of Schedule No. 1 are performed by different persons, or under other circumstances rendering it expedient in his opinion to do so, issue one licence under the provisions of this Act in respect of the premises of two or more persons concerned, and thereupon each such persons shall be jointly and severally liable for excise duty specified in Section B of Part 2 of Schedule No. 1 on all the excisable goods specified in Section B of Part 2 of Schedule No. 1 concerned, any one paying, the other or others to be absolved *pro tanto*;
  - (ii) include in a special customs and excise warehouse licence issued under this Act in respect of the premises of any manufacture of excisable goods specified in Section B of Part 2 of Schedule No. 1 any warehouse, depot, agency, branch or other storage place approved by the Director and in which any such goods owned by such manufacturer are stored, and thereupon such goods so stored shall, for the purposes of this Act, be deemed to be in the licensed special customs and excise warehouse of such manufacturer, and the licensee concerned shall be liable as such in all respect for compliance with the requirements of this Act and for the excise duty specified in Section B of Part 2 of Schedule No. 1 on such goods so stored;
  - (iii) in such circumstances as he may deem expedient, license the premises of any dealer in excisable goods specified in Section B of Part 2 of Schedule No. 1 as a special customs and excise warehouse under the provisions of this Act, and thereupon such dealer shall comply with the requirements of this Act relating to the collecting of excise duty specified in Section B of Part 2 of Schedule No. 1 on such goods;
  - (iv) make such temporary or permanent adjustment to the value of any excisable goods specified in Section B of Part 2 of Schedule No. 1 as he may deem reasonable in circumstances which are in his opinion exceptional.

(3) Excisable goods specified in Section B of Part 2 of Schedule No. 1 manufactured in Botswana by any person for his own use and not for sale or disposal and in circumstances which in the opinion of the Director do not constitute a business venture, may, subject to such conditions as he may impose in each case, be exempt by the Director from the payment of excise duty specified in Section B of Part 2 of Schedule No. 1 thereon.

(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-

- (a) the average value for purposes of excise duty specified in Section B of Part 2 of Schedule No. 1 of such goods or such class or kind of such goods has, during such period or periods as the Minister may determine, not exceeded such amount as the

- Minister may determine; or
- (b) the value for purposes of excise duty specified in Section B of Part 2 of Schedule No. 1 of such goods or such class or kind of such goods is in the opinion of the Director not likely to exceed the amount referred to in paragraph (a) during one calendar year; or
  - (c) such circumstances as may be prescribed by regulations apply.

**39. Duties applicable to goods manufactured in a customs and excise warehouse**

(1) In respect of any goods manufactured in a customs and excise warehouse there shall be paid, subject to the provisions of section 84, on entry for home consumption thereof, duty at the undermentioned rates, namely-

- (a) if such manufactured goods are not liable to excise duty, the fiscal and customs rates of duty applicable in terms of Schedule Nos. 1 and 2 on any imported goods used in the manufacture of such manufactured goods and the excise rate of duty applicable in terms of Schedule No. 1 on any excisable goods used in the manufacture of such manufactured goods; and
- (b) if such manufactured goods are liable to excise duty, the excise rate of duty applicable in terms of Schedule No. 1 on such manufactured goods.

(2) Notwithstanding the provisions of subsection (1), but subject to the provisions of subsection (4), the Director may, on such conditions as he may in each case impose, for the purpose of preserving any goods in a customs and excise storage warehouse or of reconditioning such goods which as a result of contamination or deterioration or for any other reason, have become unsaleable or not readily saleable or for the purpose of fulfilling special orders, permit such goods to be reconditioned or to be mixed or blended in such warehouse with other goods, and in that event duty shall be paid, in lieu of the duties prescribed in subsection (1) according to the first account taken of any such goods or the total quantity of such reconditioned, mixed or blended goods, whichever quantity is the greater, as follows, namely-

- (a) if such reconditioned, mixed or blended goods are not liable to excise duty, at the fiscal and customs rates of duty applicable in terms of Schedules Nos. 1 and 2, on any imported goods contained in such reconditioned, mixed or blended goods, and at the excise rate of duty applicable in terms of Schedule No. 1, on any excisable goods contained in such reconditioned, mixed or blended goods; and
- (b) if such reconditioned, mixed or blended goods are liable to excise duty, at the excise rate of duty applicable in terms of Schedule No. 1, on the total quantity of such reconditioned, mixed or blended goods, and, in addition thereto, duty in an amount equal to the amount by which the customs duty at the rate applicable in terms of Schedules Nos. 1 and 2, on the imported goods contained in such reconditioned, mixed or blended goods, exceeds the excise duty at the rate applicable in terms of this paragraph on such proportion of such reconditioned, mixed or blended goods as is represented by such imported goods contained therein:

Provided that such reconditioned, mixed or blended goods shall, in either case, qualify for any rebate of duty specified in respect of such goods in any applicable item of Schedule Nos. 3, 4 or 6.

(3) Where the Director has permitted any goods to be reconditioned or to be mixed or blended in a customs and excise storage warehouse with other goods, such warehouse shall, without being licensed as a customs and excise manufacturing warehouse and without approval of the premises or plant thereon, be regarded for the purposes of this Act as a licensed customs and excise manufacturing warehouse.

(4) Notwithstanding anything to the contrary contained in this Part, the Director may, on such conditions as he may in each case impose, permit the mixing or blending of mineral oil products which have been entered for home consumption and have passed out of customs and excise control but have not been delivered from the stocks of the importer or the manufacturer,

for the purposes of rendering such goods saleable or more readily saleable or of fulfilling special orders.

(6) Any duty paid in respect of any goods so used for mixing or blending shall be deemed to have been paid in respect of any duty payable in accordance with the provisions of subsection (5) in respect of the mineral oil products obtained by such mixing or blending.

(7) Nothing contained in this section shall be construed as authorizing a refund of any amount by which any duty already paid or assessed in respect of any goods so used for mixing or blending exceeds the duty payable under subsection (6):

Provided that no rebate for any loss or deficiency in respect of petrol and any distillate fuel so reconditioned, mixed or blended exceeding the rebate specified in section 84(19)(d) and (e), respectively, shall be allowed on such goods.

(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.

(9) For the purposes of subsection (4), "importer" or "manufacturer" includes any person who, by virtue of an agreement with a person who imports or manufactures mineral oil products, undertakes the distribution or sale in Botswana, in wholesale quantities, of mineral oil products imported or manufactured by the importer or manufacturer.

(10) If the Director is satisfied that any goods to which this Act relates have become mixed by an act or omission which by the exercise of reasonable care could not have been avoided, he may apply the provisions of subsection (2), in so far as that subsection relates to the duty payable and any rebate of duty, as if such goods were mixed in a customs and excise storage warehouse with his permission.

(11) Notwithstanding anything to the contrary in this Part contained, the Director may, on such conditions as he may in each case impose, permit the mixing or blending in such circumstances and at such place as he may specify of any mineral oil products with one another or with other goods whether or not such products or goods are in a customs and excise storage warehouse or have been entered for home consumption and have passed out of customs control for any purpose, including that of rendering such goods saleable or more readily saleable or of fulfilling special orders;

(12) There shall be paid on entry for home consumption, in addition to any duty payable in terms of this section and subject to the provisions of sections 27(3) and 88, surcharge at the rate applicable in terms of Schedule No. 1 on any surcharge goods used or incorporated in the manufacture, reconditioning, mixing or blending of any goods to which this section relates and on any such manufactured, reconditioned, mixed or blended goods which are liable to surcharge in terms of the said Schedule.

### **39A. Special provision in respect of marked goods, certain goods being free of duty**

(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.

## **PART V**

### ***Clearance and Origin of Goods: Liability for and Payment of Duties (ss 40-60)***

#### **40. Entry of goods and time of entry**

(1) Every importer of goods shall within seven days of the date on which such goods are, in terms of section 10, deemed to have been imported or within such further time as the Director may allow, make due entry of those goods, in the form specified, and declare to the truth of such entry:

Provided that, subject to the permission of the Director-

- (i) containers temporarily imported;
- (ii) human remains;
- (iii) goods which, in the opinion of the Director, are of no commercial value; and
- (iv) goods imported under an international carnet,

need not be so entered.

(2) (a) Any importer may, at any place appoint under the provisions of this Act for the entry of goods, make such entry of goods which have been loaded or delivered to the carrier which conveys the goods by vehicle to Botswana for discharge at that place, notwithstanding the fact that such vehicle has not yet arrived at that place.

(b) If any goods referred to in paragraph (a) have not been so loaded at the time of entry as provided in section 47(3), the importer shall be guilty of an offence and those goods shall be deemed not to have been entered.

(3) Every importer shall, within seven days of the granting of a release order by an officer in respect of any goods entered in terms of subsection (1) or, where the goods in question arrive after the granting of the order, within seven days of the arrival of such goods, present such release order to the authority in possession of such goods for delivery thereof.

(4) Every exporter of any goods shall, before such goods are exported from Botswana, deliver, during the hours of any day prescribed by regulation, to an officer a bill of entry in the prescribed form, but the Director may-

- (a) if no export duty is payable on and no obligation or condition is to be fulfilled or complied with under any law in respect of such goods; or
- (b) in the case of goods to be exported overland by way of a vehicle (excluding an aircraft and a train) which are loaded for export at a place other than a place appointed under section 7 where goods may be entered for customs and excise purposes,

allow such a bill of entry to be delivered at such time as he deems reasonable.

(5) For the purposes of subsection (4), in relation to the delivery of a bill of entry, the goods referred to therein shall be deemed to have been exported from Botswana-

- (a) in the case of goods to be exported via a container terminal, at the time when such goods are delivered to the depot operator or the container operator, as the case may be;
- (b) in the case of goods to be exported in an aircraft, at the time when such goods are delivered to the pilot of the aircraft concerned or are brought within the control area of the airport authority concerned, as the case may be;
- (c) in the case of goods to be exported in a train, at the time when such goods are delivered to the appropriate Railway Authorities in Botswana;
- (d) in the case of goods to be exported overland in a vehicle (excluding an aircraft and a

train), subject to the provisions of subsection (4), at the time when such goods are loaded on the vehicle concerned.

(6) The Minister may by regulations permit any excisable goods and any class or kind of imported goods to be removed from a customs and excise warehouse on the issuing by the owner of such goods of a specified certificate or an invoice or other document specified or approved by the Minister, and the payment of duty on such goods at a time and in a manner specified by regulations, and such certificate, invoice or other document shall, for the purposes of section 20(7), and subject to the provisions of section 41(8), be deemed to be a due entry from the time of removal of those goods from the customs and excise warehouse.

(7) No such goods may be removed from a customs and excise warehouse or appropriated for use by the owner prior to or without the issuing of such certificate, invoice or other document.

(8) The Minister may, by notice published in the *Gazette*, exempt from the provisions of this section goods imported or exported by any means specified in such notice and goods imported from or exported to any country specified in such notice.

#### **41. Importer and exporter to produce documents and pay duties**

(1) The person entering any imported goods for any purpose in terms of the provisions of this Act shall deliver, during the hours of any day prescribed by regulation, to the proper officer a bill of entry in the prescribed form, setting forth the full particulars as indicated on the form and as required by the proper officer, and according to the purpose (to be specified on such bill of entry) for which the goods are being entered, and shall make and subscribe to a declaration, in the prescribed form, as to the correctness of the particulars and purpose shown on such bill of entry:

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

(2) At the same time the said person shall deliver such duplicates of the bill of entry as may be prescribed or as may be required by the proper officer and shall pay all duties due on the goods.

(3) The said person shall further produce the transport document or such other document in lieu thereof as may be approved by the Director, invoices as prescribed, shipper's statement of expenses incurred by him, copy of the confirmation of sale or other contract of purchase or sale, importer's written clearing instructions and such other documents relating to such goods as the proper officer may require in each case and answer all such questions relating to such goods as may be put to him by the proper officer, and furnish in such manner as the Director may determine such information regarding the tariff classification of such goods as the Director may require.

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

(5) The Director may, subject to such conditions as he may determine, allow the said person to produce in lieu of any document required to be produced in terms of subsection (3) a document purporting to be a copy of any such document and obtained by means of microfilming or any other process, and which shall, subject to compliance with such conditions, for all purposes have all the effects of the original document concerned.

(6) The said person shall also, in respect of a class or kind of goods as may be specified by the Minister by regulations or any goods to which circumstances so specified apply, produce to the proper officer for retention by him such a sample as may be so specified and a true copy of any invoice or other document relating to such goods or of any blueprint, illustration, drawing, plan or illustrated and descriptive literature so specified in respect of such goods and relating to such goods.

(7) If any goods intended for export are liable to any export duty under this Act, the amount thereof shall be stated in the bill of entry relating to such goods and shall be payable upon presentation of such entry to the Director.

(8) No such bill of entry shall be valid, nor shall any person export such goods, until the duty has been paid to the Director.

(9) Any person who removes goods from a customs and excise warehouse by means of the issuing of a certificate, invoice or other document referred to in section 40(6) shall present to the Director a validating bill of entry in the specified form at the time and in the manner specified by regulations in respect of any such certificate, invoice or other document, and shall pay at the prescribed time to the Director the duty due on the goods to which such certificate, invoice or other document relates.

(10) The said person shall present to the Director such validating bill or entry setting forth the full particulars indicated thereon, and the declaration shall be duly signed by the prescribed person and there shall be as many duplicates and such supporting documents as may be prescribed or as may be required by the Director.

(11) The Director may, by notice published in the *Gazette*, specify the manner in which bills of entry for goods of any such class or kind as may be specified or goods imported or exported in such manner or such circumstances as may be so specified shall be delivered.

#### **42. Sale in transit**

Notwithstanding anything to the contrary contained in this Act, the importer of any goods purchased from any Botswana consignee after shipment of those goods but before the date of entry thereof, shall produce to the proper officer the invoice relating to such purchase, and the price actually paid or payable for those goods by virtue of such purchase shall, for the purposes of section 75(1), be the transaction value of those goods.

#### **43. Validity of entries**

(1) No entry shall be valid unless-

- (a) in the case of imported or exported goods, the description and particulars of the goods and the marks and particulars of the packages declared in that entry correspond with the description and particulars of the goods and the marks and particulars of the packages as reported in terms of section 8 or 12 or in any certificate, permit or other document, by which the importation or exportation of those goods is authorized;
- (b) the goods have been properly described in the entry by the denomination and with the characters, tariff heading and item numbers and circumstances according to which they are charged with duty or are admitted under any provision of this Act or are permitted to be imported or exported;
- (c) the true value of the goods on which duty is leviable or which is required to be declared under the provisions of this Act and the true territory of origin, territory of export and means of carriage have been declared;
- (d) in the case of goods purchased by or sold, consigned or disposed of to any person in Botswana, a correct and sufficient invoice thereof, as specified, has been produced to the proper officer;
- (e) the correct duty due has been paid:

Provided that no bill of entry shall be invalid by reason of any deferment referred to in the proviso to section 41(1).

(2) Goods taken or delivered or removed by virtue of an entry which is not valid out of any aircraft, vehicle, transit shed, container terminal, container depot, customs and excise warehouse or other place where they have been deposited with the sanction of the Director, shall be deemed to be goods landed or taken without due entry thereof:

Provided that if such goods are included in any entry embracing more than one package, and it is shown that the invalidity arose without wilful default or negligence of anyone connected with the goods, and that such invalidity does not exist as to all the packages in that entry then

only the packages not validly entered shall be deemed to have been landed or taken without due entry.

(3) Subject to the provisions of sections 85 and 87 and on such conditions as the Director may impose and on payment of such fees as the Minister may prescribe by regulations-

- (a) an importer or exporter or manufacturer of goods shall on discovering that a bill of entry presented by him does not in every respect comply with section 41, or is invalid in terms of subsection (1), forthwith adjust that bill of entry by means of a voucher of correction or in such other manner as the Director may prescribe; or
- (b) if a bill of entry has been passed in error by reason of duty having been paid on goods intended for storage or manufacture in a customs and excise warehouse under section 20 or for purposes or use under rebate of duty under section 84, the Director may allow the importer, exporter or manufacturer concerned to adjust that bill of entry by substitution of a fresh bill of entry and cancellation of the original bill of entry, provided such goods, where a rebate of duty is being claimed, qualified at the time the duty was paid in all respects for that rebate:

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

(4) The provisions of subsection (3)(b) shall apply *mutatis mutandis* in respect of a bill of entry in which goods have according to the tariff heading, tariff subheading, item or circumstances according to which such goods are charged with duty, been described in error as goods other than goods intended for-

- (a) storage or manufacture in a customs and excise warehouse under section 20; or
- (b) purposes or use under rebate of duty under section 84,

in consequence of the fact that-

- (i) a determination of any such tariff heading, tariff subheading or item is, under section 52(15), amended with retrospective effect as from a date before or on the date on which the goods described in such bill of entry have been entered for home consumption;
- (ii) any such determination is, under the said section 52(15), withdrawn with such retrospective effect, and a new determination is thereunder made with effect from such withdrawal; or
- (iii) any Schedule is amended with such retrospective effect,

and in which such goods, if such amendment or new determination had been in operation on the date on which such goods were so entered, would have been described as goods intended for the said storage or manufacture or the said purposes or use.

(5) No application for such substitution as is referred to in subsection (3)(b) or in that subsection as read with subsection (4) shall be considered by the Director unless it is received by an officer, supported by the necessary documents and other evidence to prove that such substitution is justified, within a period of three months-

- (a) from the date of entry for home consumption as provided in section 47(3), of the goods to which the application relates; or
- (b) in the case of any amendment of a determination referred to in subparagraph (i) of subsection (4) or of a new determination referred to in subparagraph (ii) of the said subsection (4), from the date on which such amendment is effected or such new determination is made or, if such amendment or new determination is published by notice in the *Gazette*, the date on which such amendment or new determination is so published; or
- (c) in the case of an amendment referred to in subparagraph (iii) of the said subsection (4), from the date on which such amendment is published by notice in the *Gazette*.

#### **44. Particulars on invoices**

(1) The exporter of any goods imported into or exported from Botswana or the owner of

any excisable goods manufactured in any customs and excise warehouse shall render a true, correct and sufficient invoice, certificate of value and certificate of origin of such goods in such form and declaring such particulars of such goods as may be specified in the regulations and as may be necessary to make a valid entry of such goods and shall furnish such additional information in connection with such invoice, certificate, particulars or goods as the Director may, for the purposes of this Act, require at any time:

Provided that different requirements may be prescribed in the regulations in respect of invoices and certificates relating to goods of different classes or kinds or goods to which different circumstances specified in the regulations apply.

(2) Every exporter or manufacturer shall allocate to any goods of a class or kind specified in the regulations for the purposes of this subsection and exported to or from or manufactured in Botswana after a date specified by the Minister by notice published in the *Gazette*, a distinctive and permanent identification number, code, description, character or other mark in such manner and in accordance with such method as may be prescribed in the regulations and from the date immediately after such date such number, code, description, character or other mark shall be quoted or reproduced in all specified invoices relating to such goods and in all such other documents relating to such goods as may be specified in the regulations.

(3) All particulars in any prescribed invoice and certificate in respect of imported goods shall relate to the goods in the condition in which they are imported into Botswana and for the purposes of section 118(3) and (4) no change in such condition shall be deemed to have taken place between the time of importation and the time of any examination or analysis decided upon by the Director unless the importer is able to satisfy the Director of any such change and the extent thereof:

Provided that the Director may in his discretion refuse to act upon the result of any such examination or analysis if the particulars in such invoice are thereby proved to be incorrect.

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

(5) Any particulars referred to in subsection (4) and declared in any specified invoice or certificate in respect of any imported goods shall be subject to any credit or debit note passed by the exporter or to any refund made or becoming due by the exporter or any amount paid or becoming due to the exporter (directly or indirectly, in money or in kind or in any other manner) or to any change of any nature whatever in such particulars in respect of such goods after the date of issue of such invoice or certificate and the exporter shall whenever any such note is passed, or refund is made or becomes due or amount is paid or becomes due or change takes place forthwith issue an amended invoice or certificate to the importer who shall produce such amended invoice or certificate to the Director within one month of receipt thereof and report the circumstances to him.

(6) If any particulars referred to in subsection (4) of any imported goods are not declared in the prescribed invoice or certificate in respect thereof or if any change in the particulars declared in any prescribed invoice or certificate relating to any imported goods which occurs after the date of issue of any such invoice or certificate is not forthwith reported to the Director by the importer of such goods or if the Director has reason to believe that an offence referred to in section 97(f) or (g) has been committed in respect of any imported goods the Director may determine a transaction value, origin, date of purchase, quantity, description or the

characteristics of such goods according to the best information available to him, which shall, subject to a right of appeal to the Minister, be deemed to be the transaction value, origin, date of purchase, quantity, description or the characteristics of such goods.

(7) The right of appeal referred to in subsection (6) shall be exercised within a period of three months from the date of the determination concerned.

#### **45. Disposal of goods on failure to make due entry**

(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.

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

(3) If such goods are seized under section 99(1) and sold in terms of section 101 the proceeds thereof shall be disposed of as provided in subsection (4).

(4) If after the expiration of three months from the date of removal to the State warehouse or other place indicated by the proper officer or, where no such removal has taken place, from the date of expiry of the period prescribed in section 40(1) and (2), any goods remain unentered, the Director may cause them to be sold, and if so sold the proceeds thereof shall be applied in discharge of any duty, expenses incurred by the department, charges due to the department, charges due for freight, charges due to a container operator or a depot operator, and the surplus, if any, shall unless the Director is satisfied that such goods were imported in contravention of any law upon application be paid to the owner of the said goods: Provided that-

- (i) if the goods cannot be sold for a sum sufficient to cover the duty, expenses, charges and freight aforesaid the Director may accept the sum offered and apply it in discharge of the said debits in the order mentioned or direct that the goods in question be destroyed or appropriated to the State, or
- (ii) if the goods cannot be sold at a price regarded by the Director as reasonable, they may in his discretion be appropriated to the State, and
- (iii) no payment of surplus in respect of goods sold shall be made to the owner of the goods, unless the application for such payment is supported by proof of ownership of the goods and is received by the Director within two years from the date of sale of the goods.

(5) Notwithstanding anything to the contrary contained in this Act-

- (a) if any goods referred to in subsection (4) are of a perishable or dangerous nature, or if the Director considers that, unless the goods are sold at once, the proceeds would not be sufficient to cover the duties and charges due or charge which may become due in respect of those goods, he may forthwith direct the sale thereof and apply the proceeds as provided in subsection (4);
- (b) if any goods are sold in terms of this section subject to compliance by the purchaser with any condition, and the purchaser fails to comply with such condition within a period of three months from the date of sale of such goods, such sale shall be null and void and the net proceeds of sale may be refunded to the purchaser and the Director may direct that the goods in question be destroyed or appropriated to the State or be dealt with in such manner as he may deem fit.

#### **46. Liability for duty**

(1) Liability for duty on any goods to which section 10 relates shall commence from the time when such goods are in terms of that section deemed to have been imported into Botswana:



Provided that, subject to the provisions of subsection (9), any such liability shall cease if it is proved that such goods (excluding, except insofar as the regulations otherwise provide, goods which are missing from any individual package and in respect of which any fiscal, customs duty or surcharge, each taken separately, does not exceed 25 units of account) were not landed at any place in Botswana.

(2) Any excisable goods shall, for the purposes of this Act, be deemed to have been manufactured at that stage in the manufacturing process when the said goods have acquired the essential characteristics of and are in the opinion of the Director capable of use as such excisable goods, and liability for duty shall commence at the said stage.

(3) The pilot of an aircraft or carrier of goods by means of any other vehicle shall be liable for the duty on all goods which are removed from that aircraft or vehicle at a place in Botswana to which they are not consigned, and such liability shall continue until the goods have been duly entered or otherwise accounted for.

(4) The master, pilot or carrier concerned shall be liable for the duty on all goods deemed in terms of section 10 to have been imported, except goods in respect of which a bill of lading, air consignment note or other document was issued on loading of such goods on to the ship, aircraft or vehicle by means of which they were imported, stating that the said goods were accepted for conveyance at the risk of the owner thereof in all respects and not only as regards risk in respect of damage to such goods, provided such goods have not been landed and placed in a transit shed appointed or prescribed under section 7(1).

(5) The liability of the master, pilot or other carrier for duty in terms of subsection (4) shall cease-

- (a) upon lawful delivery of the goods, after due entry thereof has been made, to the importer or his agent;
- (b) if due entry of the goods has not been made, upon delivery thereof to the State warehouse or other place indicated for the purposes of this section by the Director;
- (c) upon delivery of the goods, if containerized, to a container operator; or
- (d) in respect of such goods for which an air cargo transfer manifest has been completed, upon delivery thereof to the scheduled air service operator.

(6) The liability of a container for duty in terms of subsection (8)(a) shall cease-

- (a) in respect of goods which are containerized, upon lawful delivery thereof, after due entry thereof has been made to the importer or his agent;
- (b) in respect of goods containerized in-
  - (i) L.C.L. containers; and
  - (ii) other containers delivered to a container operator as contemplated in subsection 5(c) and specified in a list to be compiled by the container operator concerned, upon delivery thereof to a depot operator; or
- (c) in respect of any of such goods of which due entry has not been made, upon delivery thereof to the State warehouse or other place indicated for the purposes of this section by the Director.

(7) The liability of a depot operator for duty in terms of subsection (8)(b) shall cease-

- (a) in respect of goods containerized in L.C.L. containers and the other containers referred to in subsection (6)(b)(ii), upon lawful delivery thereof, after due entry thereof has been made, to the importer or his agent; or
- (b) in respect of any such goods of which due entry has not been made, upon delivery thereof to the State warehouse or other place indicated for the purposes of this section by the Director;
- (c) in any other case, on the importer or the owner of such goods or any person who assumes such liability for any purpose under the provisions of this Act, subject to the approval of the Director and such conditions as he may determine.

(8) In all cases where the master, pilot or other carrier is not liable for the duty on any

imported goods or where the liability of the said master, pilot or other carrier has ceased in respect of such goods in terms of this section, liability for duty thereon shall, subject to the provisions of Part VII, rest-

- (a) in the case contemplated in subsection (5)(c), on the container operator concerned;
- (b) in the case contemplated in subsection (6)(b), on the depot operator concerned; and

(9) Notwithstanding anything to the contrary contained in this section, no importer shall be granted a refund of fiscal, customs duty or surcharge paid in respect of any goods missing from any individual imported package, if such fiscal, customs duty or surcharge, each taken separately, does not exceed 25 units of account.

(10) The manufacturer, owner, seller or purchaser of any excisable goods shall, subject to the provisions of Part VII, be liable for the duty on such goods, and his liability shall continue until such goods have been duly entered and the duty due thereupon paid.

(11) Notwithstanding anything to the contrary contained in this Act, any person who owns, purchases, removes, receives, takes, delivers or deals with or in any imported or excisable goods which should have been duly entered, in terms of any agreement, in any territory with the government of which such an agreement has been concluded under section 58, shall be liable for the duty on such goods brought into Botswana from such territory, and if the question arises whether such goods have been duly entered it shall be presumed, unless the contrary is proved, that such goods have not been so entered, and such goods shall be subject to the provisions of this Act as if they were goods which have, contrary to the provisions of section 53(1), not been duly entered in Botswana.

(12) For the purposes of subsection (5) an entry by bill of sight shall be deemed to be due entry.

(13) Any duty for which any person is liable in terms of this section shall be payable upon demand by the Director.

(14) Where any goods (other than goods on which all duties payable on entry into Botswana have been collected in some other part of the common customs area) are imported into Botswana the Minister may, if he is satisfied that no sufficient provision exists for the collection of duties by officers on entry of goods into Botswana, provide by regulations for the method of collection of such duties.

(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.

#### **47. Determination of duty applicable**

(1) Notwithstanding anything to the contrary contained in this Act, all goods consigned to or imported into Botswana or stored or manufactured in a customs and excise warehouse or removed in bond shall, upon being entered for home consumption, be liable to such duties (including anti-dumping duties, countervailing duties and safeguard duties specified in Schedule No. 2 and new or increased duties referred to in section 66(1) and duties imposed under the provisions of section 59) as may at the time of such entry be leviable upon such goods.

(2) Notwithstanding the provisions of subsection (1) but subject to the provisions of section 43, any dutiable goods imported into or manufactured in Botswana and which were removed, taken or delivered without due entry for home consumption having been made in respect of such goods, shall be liable to such duties as may be leviable upon such goods at the time of such removal, taking or delivery or at the time of assessment by an officer which ever yields the greater amount of duty.

(3) For the purposes of this section, the time of entry for home consumption of-

- (a) goods imported by post (and not entered at a customs and excise office before the Director) shall be deemed to be the time when such goods are assessed for duty; and
- (b) goods imported otherwise shall be deemed to be the time when the bill of entry concerned is delivered to the Director in terms of section 41(1) and at a place indicated by the Director, irrespective of whether that bill of entry is returned by the Director in order to be adjusted as required by the Director, provided it is redelivered, so adjusted, to the Director within five days after the day on which it was so returned by the Director.

**48. Joint and several liability for duty or certain amounts** Subject to the provisions of sections 38(2)(b)(i) and 111(3) whenever in terms of this Act liability for duty or any amount demanded under section 99(2)(a) devolves on two or more persons, each person shall, unless he satisfies the Director that his relevant liability has ceased in terms of this Act, be jointly and severally liable for such duty or amount, any one paying, the other or others to be absolved *pro tanto*.

#### **49. Origin of goods**

(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-

- (a) at least 25 per cent (or such other percentage as may be determined under subsection (2), (3) or (4)) of the production cost of those goods, determined in accordance with the regulations, is represented by materials produced and labour performed in that territory;
- (b) the last process in the production or manufacture of those goods has taken place in that territory; and
- (c) such other processes as the Minister may prescribe in respect of any class or kind of goods, have taken place in the production or manufacture of goods of such class or kind in that territory.

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

(3) The President may, by agreement with the government of any territory, increase or reduce for the purposes of section 58 the percentage prescribed in subsection (1) in so far as that territory is concerned, in regard to any class or kind of goods to which that subsection

applies.

- (4) The Minister may, by notice published in the *Gazette*-
- (a) in respect of any excisable or other goods produced or manufactured in Botswana or any class or kind of such goods in respect of which circumstances specified apply, increase or reduce the percentage prescribed in subsection (1);
  - (b) exclude any goods or class or kind of goods referred to in paragraph (a) from the provisions of subsection (1);
  - (c) prescribe that any goods or class or kind of goods referred to in paragraph (a) shall not be regarded as having been produced or manufactured in Botswana unless such processes in connection with the production or manufacture as may be specified in such notice have taken place in Botswana.

(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.

(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.

**50. Preferential tariff treatment** (1) In this section, unless the context otherwise indicates-

"circumvention" includes any circumvention of any provision of an enactment by-

- (a) transshipment, rerouting, false declaration concerning the country or place of origin or falsification of official documents; or
- (b) making any false declaration concerning fibre content, quantities, description or classification of goods,

as provided in article 5 of the Agreement on Textiles and Clothing included in Annex 1A of the Agreement established by the World Trade Organisation, kept by the Director as contemplated in subsection (2);

"enactment" includes the provisions of any legislative act by a government of a country providing for preferential tariff treatment, any administrative requirements of the customs administration of such country, any legislation or agreement incorporated by reference in such provisions and any amendment to such provisions, requirements, legislation or agreement, kept by the Director as contemplated in subsection (2);

"preferential tariff treatment" means the non-reciprocal preferential tariff treatment of goods exported from Botswana, allowed on importation into any country in terms of and on compliance with the requirements of any enactment of the government of such country;

"transshipment" has the meaning assigned thereto in section 113(b)(4) of the African Growth and Opportunity Act contained in the Trade and Development Act of 2000 of the United States of America, kept by the Director as contemplated in subsection (2).

(2) The Director shall-

- (a) keep two copies of any enactment and any amendment thereto received from the customs administration of the country allowing preferential tariff treatment;
- (b) record the date advised by such administration on which any such enactment or amendment becomes or became effective in such country for the purposes of such treatment; and
- (c) effect any such amendment to the enactment.

(3) Any enactment or amendment referred in subsection (2) shall, for the purposes of

this Act, be effective from the date so recorded.

(4) Wherever in any legal proceedings any question arises as to the contents of any enactment or as to the date upon which any enactment or any amendment thereto becomes effective, a copy of the enactment or the enactment as amended and any date so recorded shall be accepted as *prima facie* proof of the contents thereof and of the effective date of the enactment or the amendment thereto.

(5) Any such copy kept by the Director shall be accessible to any interested person during official working hours.

(6) The Minister may by order, publish any enactment or part thereof or amendment thereto in the *Gazette*.

(7) Notwithstanding anything to the contrary in this Act contained, the application of any provision of this Act relating to any importer, producer, manufacturer, exporter, 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, due entry or any other provision or customs procedure or any power, duty or function in connection therewith, shall, unless otherwise provided in, or in any rule made in terms of, this section, for the purposes of giving effect to any enactment, be subject to compliance with provisions of such enactment or any part or provision thereof, as the case may be.

(8) The provisions of section 6(14) shall apply *mutatis mutandis* in respect of any goods exported from Botswana for the purpose of benefiting from the preferential tariff treatment contemplated in an enactment, and any person referred to in section 6(14) shall be deemed to have agreed to comply with the requirements governing the allowing of such treatment by the government of the country to which the goods are exported, including requirements relating to-

- (a) maintaining complete books, accounts and other documents in respect of-
  - (i) the production or manufacture and any materials used in the production or manufacture of the goods exported;
  - (ii) the purchase of, cost of, value of and payment for the goods exported and all materials, including indirect materials used in the production or manufacture of the goods exported;
  - (iii) proof of the originating status of such goods in accordance with the relevant rules of origin; and
  - (iv) the exportation of the goods;
- (b) permitting and assisting customs officers of the country of importation to investigate-
  - (i) such books, accounts and other documents; and
  - (ii) any circumvention contemplated in subsection (17).

(9) In administering the provisions of any enactment or any part or provisions thereof and the application of any provisions of this Act to give effect thereto the Director may, notwithstanding anything to the contrary in this Act contained-

- (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 or determination or the performance of any duty or function or the imposing of any condition in respect of-
  - (i) any heading in Part 1 or any item of any other Part of the Schedule No. 1 applicable to any goods imported or produced, obtained, manufactured, exported or used in the production or manufacture of any goods, or the customs value of any such imported goods;
  - (ii) any action or procedure concerning-
    - (A) the origin or proof of origin of goods imported or exported;
    - (B) the importation or production or manufacture or exportation of goods and the ex-factory price of goods or the cost or value of materials;
    - (C) tariff quotas;

- (D) any circumvention and any action taken in respect thereof;
- (E) rendering mutual and technical assistance in respect of any customs co-operation, including any investigation, as required by any enactment, by any officer of the customs administration of the country allowing such preferential tariff treatment;
- (F) the keeping and the production of books, accounts and other documents and the furnishing of information in respect of any matter to which this section relates;
- (G) requirements in connection with any agency where any person is represented in the exportation of any goods involving proof of origin;
- (H) furnishing of a certificate of origin including in respect of multiple shipments of identical goods over a specified period;
- (I) any document relating to origin issued retrospectively;
- (J) the issue of or refusal to issue a visa;
- (iii) any other power, duty or function or procedure provided in any enactment or part or provision thereof contemplated in subsection (1) which requires either expressly or by implication customs administrative action in respect of goods produced, manufactured or exported for the purposes of such enactment;
- (b) enforce any regulations made by the Minister-
  - (i) concerning any matter referred to in paragraph (a);
  - (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) prescribing forms or procedures or specifying any condition or provision of this Act to be complied with for the purposes of such enactment;
  - (v) to delegate or assign subject to section 4(2), any power, duty or function to any officer or other person;
  - (vi) regarding any other matter which may be reasonably necessary for the purposes of administering such provisions;
- (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 producer, manufacturer or exporter, 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.

(10) Whenever any report is required by the importing country from time to time in terms of any enactment of such country in connection with the producer, manufacturer or exporter or any other person concerned with the export of goods for the purposes of preferential tariff treatment or the production, manufacture or export of such goods and the furnishing of such report is authorized by the Minister, the Director shall, notwithstanding anything to the contrary in this Act or any other law contained, furnish to the customs administration of such country such report containing such particulars as may be required in terms of any enactment kept by the Director as contemplated in subsection (2).

(11) Every producer, manufacturer or exporter of goods to which this section relates, shall be registered with the Director for the purposes of this section.

(12) No such goods may, from a date specified as the Minister may prescribe, be exported unless the producer, manufacturer or exporter thereof is registered.

(13) Application for such registration shall be made on the form prescribed for the purpose by the Minister, and the applicant shall comply with all the requirements specified therein and any additional requirements that may be prescribed as may be determined by the

Minister in each case.

(14) Any registered producer, manufacturer, or exporter of such goods shall comply with such requirements as the Minister may prescribe and determine in each case.

(15) The Director may-

- (a) refuse to register any applicant and for that purpose the provisions of section 68(2) shall apply *mutatis mutandis* to such application for registration;
- (b) cancel the registration of any producer, manufacturer or exporter of such goods-
  - (i) if any books, accounts or other documents are not kept or produced as required by or in terms of this Act; or
  - (ii) who is convicted of an offence or where forfeiture of any amount deposited or secured by such person is ordered by way of penalty under the provisions of section 102 in respect of any circumvention or contravention contemplated in subsection (17);
- (c) subject to any prohibition imposed for the purposes of subsection (18), re-register any person at any time after such cancellation on such conditions as the Director may impose in each case.

(16) No goods shall be exported with the object of obtaining any benefit of preferential tariff treatment in terms of an enactment unless the goods comply with the provisions of origin or any other provision of such enactment or of this Act governing the acquisition of origin or any other requirement which is to be complied with for the purposes of giving effect to such provisions.

(17) Any person who, in connection with any goods produced or manufactured or exported for the purposes of obtaining any preferential tariff treatment therefor in the country of importation in terms of any enactment-

- (a) makes any false statement or makes use of any declaration or document containing such statement or performs any other act for the purposes of circumvention of any provision of such enactment relating to the origin, production, manufacture or exportation of such goods;
- (b) contravenes or fails to comply with any other provision of this Act; or
- (c) attempts to circumvent or contravene any provision contemplated in subparagraphs (a) and (b), as the case may be,

shall be guilty of an offence and liable on conviction to a fine not exceeding P100 000 or three times the export value of the goods in respect of which the offence was committed, whichever is the greater, or to imprisonment for a term not exceeding 10 years, or to both such fine and such imprisonment and the goods in respect of which the offence was committed shall be liable to forfeiture in accordance with this Act.

(18) The Director may on conviction of any exporter or where forfeiture of any amount deposited or secured by such exporter is ordered by way of penalty under the provisions of section 102 in respect of any circumvention contemplated in subsection (17) prohibit, for a term not exceeding 5 years from the date of such conviction or order of forfeiture for any such circumvention involving transshipment, such exporter, any successor of such exporter, and any other entity, owned or operated by the principal of the exporter, from exporting any goods for the purposes of obtaining any benefit in terms of any enactment.

(19) The Minister may make any regulation under this section with retrospective effect as from 1st October, 2000 or any date thereafter.

(20) This section shall, except in so far as any offence is created by subsection (17), be deemed to have come into operation on 1st October, 2000.

## **51. Establishment of Fund**

(1) The Minister may establish a Fund for the purposes of this Act into which all moneys collected under this Act (other than moneys collected in any other country of the common customs area) shall be paid and out of which all moneys which may be paid out under this Act

shall be paid.

(2) In addition to any moneys which may be paid out of the fund under the provisions of this Act there may be paid out of such Fund any moneys which may be due under the terms of any agreement made or deemed to be made in accordance with the provisions of section 58.

## **52. Payment of duty and rate of duty applicable**

(1) Subject to the provisions of this Act, duty shall be paid for the benefit of the Fund on all imported goods, all excisable goods and all surcharge goods in accordance with the provisions of Schedule No. 1 at the time of entry for home consumption of such goods:

Provided that the Director may in his discretion condone any underpayment of such duty where the amount of such underpayment, in the case of-

- (a) goods imported by post, is less than 0,50 unit of account;
- (b) goods imported in any other manner, is less than five units of account; or
- (c) excisable goods, is less than two units of account.

(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.

(6) Any duty payable in terms of section 59, any anti-dumping duty payable in terms of section 62, any countervailing duty payable in terms of section 63, and any safeguard duty payable in terms of section 64 shall be paid to the benefit of the Fund in accordance with the provisions of the said sections.

(7) Wherever the tariff heading or subheading under which any goods are classified in Part 1 of Schedule No. 1 is expressly quoted in any tariff item, surcharge item or item of Part 2,



4, 5 or 6 of the said Schedule or in any item in Schedule No. 2 in which such goods are specified, the goods so specified in the said tariff item, surcharge item, or item of the said Part 2, 4, 5 or 6 or in the said item of Schedule No. 2 shall be deemed not to include goods which are not classified under the said tariff heading or subheading.

(8) The interpolation of Part 1 of Schedule No. 1 shall be subject to the Explanatory Notes to the Harmonized System and to the Customs Co-operation Council Nomenclature issued by the Customs Co-operation Council, Brussels, from time to time:

Provided that where the application of any part of such Notes or any addendum thereto or explanation thereof is optional, the application of such part, addendum or explanation shall be in the discretion of the Director.

(9) The Director shall obtain and keep in his office two copies of such Explanatory Notes and shall effect thereto any amendment of which he is notified by the said Council from time to time and shall record the date of effecting each such amendment and any such amendment shall, for the purposes of this Act, be effective from the date so recorded.

(10) Whenever in any legal proceedings any question arises as to the contents of such Explanatory Notes or as to the date upon which any amendment thereto was effected, a copy of such Explanatory Notes as amended in terms of subsection (9) shall be accepted as sufficient evidence of the contents thereof and of the effective date of any amendment thereto.

(11) The Director may, in writing, determine the tariff headings, tariff subheadings or items of any Schedule under which any imported goods or goods manufactured in Botswana shall be classified.

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

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

(14) The Director may within 90 days from the date of any such determination publish it by notice in the *Gazette*.

(15) The Director may whenever he deems it expedient amend any such determination or withdraw it and make a new determination with effect from the date of-

- (a) first entry of the goods in question;
- (b) the notice referred to in subsection (14);
- (c) the determination made under subsection (11);
- (d) such new determination; or
- (e) such amendment.

(16) An appeal against any such determination shall be lodged with a court of competent jurisdiction in Botswana in the area wherein the determination was made or the goods in question were entered for home consumption.

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

(18) Except where-

- (a) a determination has been made under subsection (11) or (15); or
- (b) any false declaration is made for the purposes of subsection (11),

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 tariff heading, tariff sub-heading or item of any Schedule, after a period of two years from the date of entry of such goods.

(19) Notwithstanding the provisions of subsection (18), any determination made under subsection (11) following an inspection of the books or documents of any importer or manufacturer, shall be deemed to have come into operation, in respect of the goods in question entered for customs and excise purposes, two years prior to the date on which the inspection

commenced.

**53. Prohibition of certain acts in respect of certain goods not duly entered** (1)

Subject to the provisions of this Act, no person shall remove, receive, take, deliver or deal with or in any imported or excisable goods unless such goods have been duly entered.

(2) ... **54. General amendment of Schedules**

(1) Notwithstanding anything contained elsewhere in this Act the Minister may by notice published in the *Gazette* amend any Schedule to this Act whether by increasing any duty, by imposing a new duty or otherwise to conform with any amendment made by any other country in the common customs area and in accordance with the obligations imposed under the Customs Union Agreement entered into between the Governments of Botswana, Lesotho, Namibia, South Africa and Swaziland.

(2) The provisions of section 55(8) shall apply *mutatis mutandis* to any amendment made under the provisions of this section.

**55. Amendment of Schedule No. 1**

(1) The Minister may from time to time by notice published in the *Gazette* amend the General Notes to Schedule No. 1 and Part 1 of the said Schedule and Part 2 of the said Schedule in so far as it relates to imported goods-

- (a) in order to give effect to any agreement concluded under section 57 or 58;
- (b) in order to give effect to any amendment to the Explanatory Notes to the Harmonized System and to the Customs Co-operation Council Nomenclature referred to in section 52(8), (9) and (10) or to the Nomenclature set out in the annex to the Convention on Nomenclature for the Classification of Goods in Customs Tariffs signed in Brussels in 1950;
- (c) by deleting any reference therein to any territory the government of which has cancelled without the consent of the Government of Botswana, Lesotho, Namibia, South Africa or Swaziland any preferential customs tariff rate applicable at the commencement of this Act to any goods produced or manufactured in any of those countries on their importation into such territory;
- (d) whenever he deems it expedient in the public interest to do so.

(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.

(2) The Minister may by like notice amend or withdraw or, if so withdrawn, insert Part 2, Part 4 or Part 5 of Schedule No. 1, whenever he deems it expedient in the public interest to do so:

Provided that the Minister may, whenever he deems it expedient in the public interest to do so, reduce any duty specified in the said Parts with retrospective effect from such date and to such extent as may be determined by him in such notice.

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

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

(b) Any application for such withdrawal with retrospective effect shall be submitted to the said Permanent Secretary or Director, as the case may be, not later than six months from the date of entry for home consumption as provided in section 47(3).

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

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

(b) The provisions of this subsection shall, in so far as they can be applied, apply *mutatis mutandis* in respect of any amendment made by Parliament which corresponds to an amendment made under this section, before the lapsing in terms of subsection (8) of such last mentioned amendment.

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

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

(c) Any such ordinary levy shall be paid for the benefit of the Fund as specified in section 52(1) and shall, for the purposes of that section, be deemed to be a duty paid in accordance with the provisions of Schedule No. 1.

(d) Notwithstanding the provisions of section 52(1), any ordinary levy paid in respect of any goods intended for consumption in any territory, other than Botswana, which forms part of the common customs area shall be paid by the Director to the government of such territory at such times as he may determine.

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

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

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

(b) If the National Assembly does not, during the next meeting of the Assembly which commences after such amendment, withdrawal or insertion has been laid, approve the same by resolution, such amendment, withdrawal or insertion shall lapse on the last day of such meeting.

(c) Any such lapse shall be without prejudice to the validity of such amendment, withdrawal or insertion before it has so lapsed, and, in particular but without prejudice to the generality of the foregoing, no duty collected by reason of such amendment, withdrawal or insertion before such lapse shall be refundable, and any duty due by reason of such amendment, withdrawal or insertion but not collected shall continue to be due.

(9) Any amendment made under this section may be made retrospective:

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

**56. Minister may amend Schedules under certain circumstances** (1) Whenever the Minister is satisfied that any provision of any Schedule to this Act differs from any similar provision in force immediately prior to January, 1988 and that such difference is to the detriment of any importer or manufacturer and was not so intended, he may, after consultation with the Ministry of Commerce and Industry, by means of an amendment effected by notice in the *Gazette*, adjust the provision concerned to the extent he deems fit, with effect from 1st January, 1988.

(2) The provisions of section 55(8) shall *mutatis mutandis* apply in respect of any amendment made under the provisions of subsection (1) of this section.

**57. Agreements with other governments** (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.

## **58. Agreements with African territories**

(1) The President may conclude an agreement with the government of any territory in Africa in which it is provided that, notwithstanding anything to the contrary contained in this Act-

- (a) goods produced or manufactured in or imported into Botswana shall be admitted into that territory free of duty or at special rates of duty and goods produced or manufactured in or imported into that territory shall be admitted into Botswana free of duty or at special rates of duty;
- (b) such arrangements (including arrangements providing for the prohibition or quantitative or other limitation or restriction of the importation of any goods) as may be agreed upon between the parties to the agreement shall apply in respect of the admission of any goods into the territory of one of the parties from the territory of the other party and in respect of the entry of and the collection of duty on goods on importation into the territory of any party from a territory other than the territory of the other party;
- (c) each party to the agreement shall be compensated in respect of duty on such goods to the extent and in the manner agreed upon between the parties to the agreement.

(2) Payment made by the government of any territory to the Government of Botswana in terms of any agreement concluded under the provisions of subsection (1) shall accrue to the Fund and payment due from the Government of Botswana to the government of any territory in terms of any such agreement shall be paid out of the Fund.

(3) For the purposes of this Act, the agreement between the Government of Botswana,

the Government of the Kingdom of Lesotho, the Government of Namibia, the Government of the Republic of South Africa and the Government of the Kingdom of Swaziland and any other agreement which purports to have been concluded in terms of any law relating to customs and which was being observed by Botswana immediately prior to the coming into operation of this Act as being in force between Botswana and any territory in Africa, shall be deemed to have been concluded in terms of and to be and at all relevant times to have been within the powers conferred by this section.

**58A. Imposition of fuel levy by party to customs union agreement** (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.

(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.

#### **59. Discrimination by other countries**

(1) If the Minister is satisfied that the government of any territory has-

- (a) imposed directly or indirectly on any goods wholly or partly produced or manufactured in Botswana any duty, charge or restriction which is not imposed upon like goods produced or manufactured in any third territory; or
- (b) has discriminated against the commerce of Botswana in such manner as to place it at a disadvantage in comparison with the commerce of any third territory,

he may in order to give effect to any recommendation of the Minister of Commerce and Industry, or whenever he deems it in the public interest, by notice in the *Gazette* impose-

- (i) on all goods or any class or kind of goods imported from the territory whose government has so acted, and
- (ii) on all goods or any class or kind of goods whencesoever imported, wholly or partly produced or manufactured in such territory,

additional duties not exceeding the value for duty purposes of such goods, and from a date to be specified in the notice there shall be paid on such goods, upon entry for home consumption thereof, the additional duties at the rates imposed in the notice, in addition to any other duties payable on such goods under the provisions of this Act.

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

(3) The provisions of section 55(7), (8) and (9) shall *mutatis mutandis* apply in respect of any amendment made under the provisions of this section.

#### **60. Special provisions regarding importation of cigarettes**

(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.

(2) No person shall import any cigarettes unless they have been packed in the prescribed manner and a stamp impression determined by the Director has been made on their containers:

Provided that the Director may allow cigarettes so to be imported, in such quantities and in such circumstances as he may deem fit, without such stamp impression having been made on such containers.

(3) No imported cigarettes shall be sold or disposed of or removed from the customs and excise warehouse concerned except in accordance with the provisions of this Act.

## **PART VI**

### **Anti-dumping, Countervailing and Safeguard Duties (ss 61-65)61. General provisions regarding anti-dumping, countervailing and safeguard duties**

(1) The goods specified in Schedule No. 2 shall, upon entry for home consumption, be liable, in addition to any other duty payable in terms of the provisions of this Act, to the appropriate anti-dumping, countervailing or safeguard duties provided for in respect of such goods in that Schedule at the time of such entry, if they are imported from a supplier, or originate in a territory, specified in that Schedule in respect of those goods.

(2)(a) The imposition of any anti-dumping duty in the case of dumping as defined in this Act, a countervailing duty in the case of subsidized export as defined in this Act, or a safeguard duty as defined in this Act and the rate at which or the circumstances in which such duty is imposed in respect of any imported goods shall be in accordance with any request by the Minister of Commerce and Industry.

(b) Any such anti-dumping duty or countervailing or safeguard duty may be imposed in respect of the goods concerned in accordance with such request with effect from the date on which any provisional payment in relation to anti-dumping or countervailing or safeguard duty is imposed in respect of those goods under section 65.

(3) Whenever any anti-dumping, countervailing or safeguard duty is imposed on any goods under the provisions of this Part, the owner of any such goods stored in a customs and excise warehouse shall produce the invoice and other documents relating to such goods to the proper officer not later than the time of entry of all or any part of such goods for removal from such warehouse.

(4) The provisions of subsection (3) shall not apply in the case of such goods entered for export from a customs and excise warehouse.

(5) An anti-dumping, countervailing or safeguard duty imposed under the provisions of this Part shall not apply to any goods entered under the provisions of any item specified in Schedule No. 3 or 4 unless such item is specified in Schedule No. 2 in respect of such goods.

(6) Notwithstanding the provisions of section 62 or 63, the Director may, subject to such conditions as he may impose in each case, exempt from payment of any anti-dumping, countervailing or safeguard duty, any goods which are imported in such circumstances or in such quantities that the importation of such goods does not, in his opinion, constitute regular importation of such goods for trade purposes.

**62. Imposition of anti-dumping duties** (1) The Minister may from time to time by notice published in the *Gazette*, amend Schedule No. 2 to impose an anti-dumping duty in accordance with the provisions of section 61(2).

(2) The Minister may, in accordance with any request by the Minister of Commerce and Industry, from time to time by notice published in the *Gazette*, withdraw or reduce, with or without retrospective effect and to such extent as may be specified in the notice, any anti-dumping duty imposed under subsection (1).

(3) The provisions of section 55(8) shall *mutatis mutandis* apply in respect of any amendment, withdrawal or reduction made under the provisions of subsection (1) or (2) of this section.

**63. Imposition of countervailing duties** (1) The Minister may from time to time by notice published in the *Gazette* amend Schedule No. 2 to impose a countervailing duty in accordance with the provisions of section 61(2).

(2) The Minister may, in accordance with any request by the Minister of Commerce and

Industry, from time to time by notice published in the *Gazette*, withdraw or reduce, with or without retrospective effect and to such extent as may be specified in the notice, any countervailing duty imposed under subsection (1).

(3) The provisions of section 55(8) shall *mutatis mutandis* apply in respect of any amendment, withdrawal or reduction made under the provisions of subsection (1) or (2) of this section.

**64. Imposition of a safeguard duty** (1) The Minister may from time to time by notice published in the *Gazette*, amend Schedule No. 2 to impose a safeguard duty in accordance with the provisions of section 61(2).

(2) The Minister may, in accordance with any request by the Minister of Commerce and Industry, from time to time by notice published in the *Gazette*, withdraw or reduce, with or without retrospective effect and to such extent as may be specified in the notice, any safeguard duty imposed under subsection (1).

(3) The provisions of section 55(8) shall *mutatis mutandis* apply in respect of any amendment, withdrawal or reduction made under the provisions of subsection (1) or (2) of this section.

**65. Provisional charges to anti-dumping duties** (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.

## **PART VII**

### ***Amendment of Duties (ss 66-67)***

**66. Time when new or increased duties become payable**

(1) Whenever the Minister by notice has amended any Schedule by imposing a new duty or increasing the rate of duty already payable, or has tabled in the National Assembly a taxation proposal imposing a new duty or increasing a duty already payable, upon any goods specified in the amendment or proposal as the case may be, such new duty or increased rate of duty shall, subject to the provisions of subsection (2), from the time when notice of such amendment was

deposited in the office of the Director in accordance with the provisions of section 55(10), or tabled in the National Assembly, be payable on all such goods as have not at the same time been entered for home consumption.

(2) Whenever the Minister has by notice or taxation proposal imposed any new duty or increased any existing duty relating to imported and excisable goods of the same class or kind, any such goods which the Minister may in the said notice or proposal specify for the purposes of this subsection, shall, though entered for home consumption prior to the time of such amendment and notwithstanding that they have passed out of customs and excise control, become liable to the new duty or the difference between the rate of duty at the time of such amendment and the increased rate provided for in the said amendment, if they have at the time of such notice or proposal not been delivered from the stocks of an importer, manufacturer or such class of dealer as the Minister may in the said notice or proposal specify.

(3) For the purposes of this section any goods which are specified by the Minister in any notice or proposal for the purposes of subsection (2) and which, at the time of the said amendment, are in transit to an importer, manufacturer or a class of dealer so specified by the Minister, shall be deemed to form part of the stocks of such importer, manufacturer or dealer, as the case may be, notwithstanding any terms to the contrary of any contract relating to the sale or delivery of such goods.

(4) Whenever the Minister has specified any goods in any notice or taxation proposal for the purposes of subsection (2), every importer or manufacturer or dealer specified in the said notice or proposal shall, in respect of any goods so specified-

- (a) forthwith take stock of all such goods which have not been delivered from his stocks at the time when the notice was given or the proposal was tabled, and make a clear and accurate record of such imported and excisable goods separately;
- (b) within seven days of the date on which the notice was given or the proposal was tabled, deliver to the Director a sworn statement giving separately the description and quantities of the said imported and excisable goods, which were in his stocks at the said time, and any other information which the Director may require of him.

(5) If the Minister has specified in any notice or proposal for the purposes of subsection (2) that any goods so specified shall be liable to the duties so specified if they have not been delivered from the stocks of a wholesale dealer at the time of the said notice or proposal, the provisions of subsection (4) shall apply to the stocks of such wholesale dealer and of any retail dealer conducting his business on the same premises:

Provided that the Director may, upon production by such wholesale dealer of such evidence as he may require, exclude from the stocks or the liability for duty of that wholesale dealer for the purposes of subsection (2)-

- (i) stocks of a class or kind which are sold by such retail dealer only; and
- (ii) such proportion of the total duty payable by such wholesale dealer as is represented by the proportion of retail sales to total sales of the goods concerned during the period of three months immediately preceding the date of such notice or proposal, such proportion to be calculated on the basis of quantities of each commodity concerned.

(6) For the purposes of this section-

- (a) "dealer" means any person who deals in any goods to which this Act relates and includes a club, co-operative society of any nature or any statutory body;
- (b) "retail dealer" means, subject to the provisions of paragraph (c), any dealer who deals in or holds a licence under any law to deal in retail quantities,
- (c) "wholesale dealer" means any dealer who deals in or holds a licence under any law to deal in wholesale quantities and the business and stocks of a wholesale dealer shall be deemed to include the business and stocks of any retail dealer who conducts business on the same premises on which the wholesale dealer conducts his business as such; and

(d) "deliver" includes any form of delivery except *traditio brevi manu* and *constitutum possessorium*.

(7) Whenever in any legal proceedings any question arises as to whether the Minister has in fact tabled a taxation proposal as described in this section, or as to the time when such proposal was tabled or the particulars contained in such proposal, a copy of the minutes or proceedings of the National Assembly, containing such proposal and certified by the Clerk of the National Assembly to be a true copy, shall be accepted as sufficient evidence that such proposal was tabled and of the time when it was tabled and of the particulars contained therein.

#### **67. Contract prices may be varied to extent of alteration in duty**

(1) Whenever any duty is imposed or increased, directly or indirectly, by notice or taxation proposal of any Schedule to this Act, on any goods and such goods, in pursuance of a contract made before such duty or increased duty became payable, are thereafter delivered to and accepted by the purchaser, the seller of the goods may, in the absence of agreement to the contrary, recover as an addition to the contract price a sum equal to any amount paid by him by reason of the said duty or increase.

(2) Whenever any duty is withdrawn or decreased, directly or indirectly, by amendment in any manner of any Schedule to this Act, on any goods, and such goods in pursuance of a contract made before the withdrawal or decrease became effective are thereafter delivered to the purchaser, the purchaser of the goods may, in the absence of agreement to the contrary, if the seller has in respect of those goods had the benefit of the withdrawal or decrease, deduct from the contract price a sum equal to the said duty or decrease.

(3) The provisions of this section shall also apply to a contract for the hiring of any goods or the use of any goods in rendering a service at a contract price, and the expressions "seller" and "purchaser" shall correspondingly be construed as including the person by whom and the person to whom the goods are hired or the service rendered.

### **PART VIII**

#### **Licensing (ss 68-74)**

#### **68. Licence fees according to Schedule No. 8**

(1) No person shall perform any act or be in possession of or use anything in respect of which a licence is required under this Act unless he has obtained the appropriate licence prescribed in Schedule No. 8 which shall not be issued unless the prescribed licence fee has been paid.

(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.

(3) The Minister may, whenever he deems it expedient in the public interest to do so, amend Schedule No. 8 by notice in the *Gazette*.

(4) The provisions of section 55(8) and (9) shall *mutatis mutandis* apply in respect of any amendment made under the provisions of subsection (3) of this section.

#### **69. Customs and excise warehouse licences**

(1) Before a customs and excise warehouse is licensed the person applying for such licence shall furnish such security as the Minister may require.

(2) The Minister 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.

(3) The Minister may by endorsement permit a licence to be transferred from one customs and excise warehouse to another customs and excise warehouse in the possession of the person to whom the licence has been issued, but no customs and excise warehouse licence shall be transferable from one person to another.

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

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

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

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

#### **70. Agricultural distillers**

(1) In granting a licence to an agricultural distiller the Minister may impose such conditions as he may deem necessary.

(2) Where a licence has been granted subject to conditions under the provisions of subsection (1) such conditions shall be endorsed on the licence.

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

(4) If any person who has been granted an agricultural distiller's licence fails to comply with any of the conditions imposed in respect thereof he shall be guilty of an offence and the Minister may cancel such licence.

#### **71. Stills to be licensed**

(1) No person shall own or have in his possession or under his control any still except under a licence prescribed in Schedule No. 8 and subject to the regulations:

Provided that the Minister may, subject to such conditions as he may impose, exempt from all or any of the provisions of this subsection-

- (i) any licensed still maker in so far as any still manufactured or imported by him for sale and in his possession is concerned; or
- (ii) any person in so far as any still is concerned which he has proved to the satisfaction of the Minister is in his possession solely as a curiosity or ornament or is used solely for any such purpose as the Minister may authorize.

(2) The provisions of section 70(3) and (4) shall *mutatis mutandis* apply in respect of any licence issued in respect of a still under this Act to any person to whom a licence under this Act has been or had at any time been issued as an agricultural distiller.

(3) If any agricultural distiller to whom a licence in respect of a still has been issued under this Act voluntarily abandons such still to the State, the Minister may, out of moneys appropriated by the National Assembly for the purpose, pay to him as compensation, such an amount as the Minister considers to be the current market value of such still.

(4) Where any person has so abandoned any still, no licence to own a still to be used by him in the capacity of an agricultural distiller shall thereafter be granted to him unless a new licence as an agricultural distiller has, after such abandonment, been issued to him under this Act.

(5) Any still abandoned under this section shall be destroyed by the Minister.

#### **72. Special warehouses for the manufacture of wine**

Unless the permission of the Minister has been obtained to manufacture wine in a customs and excise manufacturing warehouse, no person shall manufacture wine except in a special customs and excise warehouse licensed under this Act.

#### **73. Container depot licences**

(1) No person shall store or unpack, or pack for export, such containers as the Director may specify, except at a container depot licensed in terms of subsection (2).

(2) The Director may, subject to such conditions as he may in each case impose, license, for such period as he may in each case determine, at any place appointed for that purpose under the provisions of this Act, container depots approved by him for the storing, unpacking or packing of containers contemplated in subsection (1), provided such security as he may require is furnished.

(3) 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.

(4) The Director may require any container contemplated in subsection (1) to be detained in any container depot licensed in terms of subsection (2), for its examination or that of its contents.

**74. Clearing agent licences** (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.

### **PART IX**

#### **Value (ss 75-83)**

#### **75. Value for customs duty purposes**

(1) Subject to the provisions of this Act, the value for customs duty purposes of any imported goods shall, at the time of entry for home consumption, be the transaction value



thereof, within the meaning of section 76.

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

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

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

(4) 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.

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

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

(7) The Director may whenever he deems it expedient amend or withdraw any such determination and make a new determination with effect from-

- (a) the date of first entry of the goods in question;
- (b) the date of the determination made under subsections (4), (5) and (6);
- (c) the date of such new determination; or
- (d) the date of such amendment.

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

(9) Except where-

(a) a determination has been made under subsection (4) or (7); or  
(b) any false declaration is made for the purposes of subsections (4), (5), (6) or (7), there shall be no liability for any underpayment of customs duty on any goods, where such underpayment is due to the acceptance of a bill of entry bearing an incorrect customs value, after a period of two years from the date of entry of such goods.

(10) Notwithstanding the provisions of subsection (9), any determination made under subsection (4) following an inspection of the books or documents of any importer shall be deemed to have come into operation in respect of the goods in question entered for customs purposes, two years prior to the date on which the inspection commenced.

(11) Notwithstanding the provisions of subsections (1), (4), (5) and (6), the value for the purposes of the duty specified in Section B of Part 2 of Schedule No. 1 shall, in respect of imported goods (other than goods entered in terms of item 412.18 of Schedule No. 4), be the transaction value thereof plus 15 per cent of such value, plus any non-rebated customs duty payable in terms of Part 1 and Section A of Part 2 of Schedule No. 1 on such goods, but excluding the duty specified in the said Section B of Part 2 of Schedule No. 1 on such goods.

(12) The provisions of subsection (1)(a) and (b) or subsection (3) of section 76 shall *mutatis mutandis* apply to the ascertainment or determination of the value for the purposes of the duty specified in Section B of Part 2 of Schedule No. 1 in respect of any imported goods entered in terms of item 412.18 of Schedule No. 4.

(13) For the purposes of sections 76 and 77, unless the context otherwise indicates-

- (a) "buying commission", in relation to imported goods, means any fee paid by an importer to his agent for representing him abroad in the purchase of and the payment for the goods;
- (b) "goods of the same class or kind", in relation to imported goods, means goods

produced by a particular industry or industry sector in the country from which the imported goods were exported, and falling within the same group or range of goods as the imported goods;

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

#### **76. Transaction value**

(1) Subject to the provisions of this Act, the transaction value of any imported goods shall be the price actually paid or payable for the goods when sold for export to Botswana, adjusted in terms of section 77, provided-

- (a) there are no restrictions as to the disposal or use of the goods by the buyer other than restrictions which-
  - (i) are imposed or required by law;
  - (ii) limit the geographical area in which the goods may be resold; or
  - (iii) do not substantially affect the value of the goods;
- (b) the sale or such price of the goods is not subject to any term or condition for which a value cannot be determined;
- (c) no part of the proceeds of any disposal, use or subsequent resale of the goods by the buyer will accrue directly or indirectly to the seller, unless and appropriate adjustment can be made in terms of section 77;
- (d) subject to subsection (5), the seller and the buyer are not related within the meaning of subsections (2), (3) and (4).

(2) For the purposes of subsection (1)(d), two persons shall be deemed to be related only if-

- (a) they are officers or directors of one another's businesses;
- (b) they are legally recognized partners in business;
- (c) the one is employed by the other;
- (d) any person directly or indirectly owns, controls or holds five per cent or more of the equity share capital of both of them;
- (e) one of them directly or indirectly controls the other;
- (f) both of them are directly or indirectly controlled by a third person;
- (g) together they directly or indirectly control a third person; or
- (h) they are members of the same family.

(3) Persons who are associated in business with one another in that the one is the sole agent, sole distributor or sole concessionary, however described, of the other shall be deemed to be related only if they are so deemed in terms of subsection (2).

(4) Every importer of goods which are not exempted by regulations shall, when making entry of the goods, declare, in the manner prescribed by regulations, whether or not he is related to the supplier of the goods within the meaning of this section.

(5) Notwithstanding the provisions of subsection (1)(d), the fact that a buyer and a seller are related within the meaning of subsection (2) shall not in itself be a ground for not accepting the transaction value, where-

- (a) in the opinion of the Director such relationship did not influence the price paid or payable; or
- (b) the importer proves to the satisfaction of the Director that the transaction value closely approximates to one of the following values, namely-
  - (i) the transaction value of identical or similar goods sold at comparable trade and quantity levels to unrelated buyers in Botswana at or about the same time as the goods to be valued;
  - (ii) the value, ascertained in terms of subsections (12), (13) and (14) of identical or similar goods imported into Botswana at or about the same time as the goods to be valued;
  - (iii) the value, ascertained in terms of subsection (15), of identical or similar goods imported into Botswana at or about the same time as the goods to be valued.

(6) If the transaction value of any imported goods cannot be ascertained in terms of subsection (1), it shall be the price actually paid or payable for identical goods in a sale for export to Botswana at the same commercial level and in substantially the same quantity and exported at or about the same time as the goods to be valued, adjusted, with reference to differences in any costs and charges referred to in section 77, on account of differences in distances and modes of transport to the port or place of export.

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

(8) If in the application of subsections (6) and (7) more than one transaction value is ascertained, the lowest such value shall be the transaction value of the goods to be valued.

(9) If the transaction value of any imported goods cannot be ascertained in terms of subsections (6), (7) and (8), it shall be the price actually paid or payable for similar goods in a sale for export to Botswana at the same commercial level and in substantially the same quantity and exported at or about the same time as the goods to be valued, adjusted, with reference to differences in any costs and charges referred to in section 77, on account of differences in distances and modes of transport to the port or place of export.

(10) Where no such sale is found, the provisions of subsections (7) and (8) shall *mutatis mutandis* apply.

(11) If the transaction value of any imported goods cannot be ascertained in terms of subsections (9) and (10), it shall be ascertained in terms of subsections (12) to (14) or, when it cannot be ascertained in terms of any of those subsections, it shall be ascertained in terms of subsection (15):

Provided that at the request, in writing, of the importer concerned the order of application of subsections (12) to (14) and (15) shall be reversed.

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

- (a) commissions usually paid or agreed to be paid or additions usually made for profit and general expenses, including the direct and indirect costs of marketing the goods

relative to sales in Botswana of imported goods of the same kind or class as the goods to be valued, irrespective of the country of exportation;

- (b) the cost of transportation and the cost of loading, unloading, handling, insurance and associated costs incidental to the transportation of the goods from the port or place of export in the country of exportation to the importer's premises in Botswana; and
- (c) any duties or taxes paid or payable in Botswana by reason of the importation of the goods or sale of the goods within Botswana.

(13) If neither the imported goods nor identical nor similar imported goods are sold at or about the time of importation of the goods to be valued, the transaction value of the imported goods in terms of this subsection shall, subject to the provisions of subsection (12), be based on the unit price at which the imported goods or identical or similar imported goods are sold in Botswana in the same condition as that in which they were when imported, at the earliest date after the importation of the goods to be valued, but not later than 90 days after such importation.

(14) If neither the imported goods nor identical nor similar imported goods are sold in Botswana in the same condition as that in which they were imported, then, if the importer so requests in writing, the transaction value of the imported goods in terms of subsections (12) and (13) shall be based on the unit price at which the imported goods, after further processing, are sold in the greatest aggregate quantity to persons in Botswana not related to the sellers of such goods, due allowance being made for the value added by such processing and the deductions referred to in subsection (12).

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

- (a) the cost or value of materials and manufacture or other processing in producing the goods;
- (b) the cost of-
  - (i) packing, including that of the labour or materials concerned; and
  - (ii) containers which are dealt with as being for customs purposes one with the goods in question;
- (c) the value, apportioned to the imported goods as deemed appropriate by the Director, with due regard to any relevant request by the importer, of any of the following goods and services if supplied directly or indirectly by the importer free of charge or at reduced cost, for use in connection with the production and sale for export of the imported goods, in so far as such value has not been included in the price actually paid or payable, namely-
  - (i) materials, components, parts and similar articles forming part of the imported goods;
  - (ii) tools, dies, moulds and similar articles used in the production of the imported goods;
  - (iii) materials consumed in the production of the imported goods;
  - (iv) engineering, development work, art work, design work, plans and sketches undertaken elsewhere than in Botswana and necessary for the production of the imported goods;
- (d) the cost of transportation, loading, unloading, handling and insurance and associated costs incidental to delivery of the imported goods at the port or place of export in the country of exportation and place those goods on board ship or on any vehicle, or in a container as defined in section 2(2), at that port or place
- (e) an amount for profit and general expenses equal to that generally applicable in sales of goods of the same class or kind as the imported goods, which are made by producers in the country of exportation.

(16) Where the transaction value of any imported goods cannot be ascertained in terms

of the provisions of subsection (15), the Director may determine such value under section 75(4) on the basis of a previous determination or, where there is no previous determination, by such application as he may deem reasonable of any manner of ascertaining the transaction value in terms of subsection (1), (6), (9), (12) or (15), but no such determination shall be based on-

- (a) the selling price in Botswana of goods produced in Botswana;
- (b) a system which provides for the acceptance for customs purposes of the higher of two alternative values;
- (c) the selling price of goods on the domestic market of the country of origin or of exportation of the imported goods;
- (d) the cost of production, other than computed values which have been determined for identical or similar goods in accordance with subsection (15);
- (e) the price of the goods for export to a country other than Botswana;
- (f) a system of minimum customs values; or
- (g) arbitrary or fictitious values.

(17) For the purposes of subsection (12)(b) or (15)(d), goods which are exported to Botswana from any country but pass in transit through another country shall, subject to any conditions which may be prescribed by relations, be deemed to have been exported direct from the first-mentioned country.

(18) For the purposes of subsection (12)(b) or (15) (d), the port or place of export referred to therein shall be the place in the country of exportation where the goods in question-

- (a) are packed in a container as defined in section 2(2) or, if not so packed in a container, placed on board ship or on any vehicle which conveys them from or across the border of that country; or
- (b) if they are ships or vehicles moving under their own power, finally leave that country for Botswana.

## **77. Adjustments to price actually paid or payable**

(1) In ascertaining the transaction value of any imported goods in terms of section 76(1), there shall be added to the price actually paid or payable for the goods-

- (a) to the extent that they are incurred by the buyer but not included in the price actually paid or payable-
  - (i) any commission other than a buying commission;
  - (ii) brokerage;
  - (iii) the cost of packing, including that of the labour and materials concerned;
  - (iv) the cost of containers which are dealt with as being for customs purposes one with the goods;
- (b) the value, apportioned to the imported goods as deemed appropriate by the Director, of any of the following goods and services if supplied directly or indirectly by the importer free of charge or at reduced cost, for use in connection with the production and sale for export of the imported goods, to the extent that such value has not been included in the price actually paid or payable, namely-
  - (i) materials, components, parts and similar articles forming part of the goods;
  - (ii) tools, dies, moulds and similar articles used in the production of the goods;
  - (iii) materials consumed in the production of the goods;
  - (iv) engineering, development work, art work, design work, plans and sketches undertaken elsewhere than in Botswana and necessary for the production of the goods;
- (c) royalties and licence fees in respect of the imported goods, including payments for patents, trade marks and copyright and for the right to distribute or resell the goods, due by the buyer, directly or indirectly, as a condition of sale of the goods for export to Botswana, to the extent that such royalties and fees are not included in the price actually paid or payable, but excluding charges for the right to reproduce the imported

- goods in Botswana;
- (d) the value of any part of the proceeds of any subsequent resale, disposal or use of the imported goods that accrues directly or indirectly to the seller; and
- (e) to the extent that they are not included in the price actually paid or payable for the goods, the cost of transportation, loading, unloading, handling and insurance and associated costs incidental to delivery of the goods at the port or place of export in the country of exportation and placing those goods on board ship or on any vehicle, or in a container as defined in section 2(2), at that port or place.

(2) In ascertaining the transaction value of any imported goods in terms of section 76(1), there shall be deducted from the price actually paid or payable for the goods, to the extent that they are included therein, amounts equal to-

- (a) the cost of transportation and the cost of loading, unloading, handling, insurance and associated costs incidental to the transportation of the goods from the port or place of export in the country of exportation to the place of importation in Botswana;
- (b) any of the following costs, charges or expenses if identified separately from the balance of the price actually paid or payable for the goods, namely-
  - (i) any expenditure incurred for the construction, erection, assembly or maintenance of, or technical assistance provided in respect of, the goods after they are imported;
  - (ii) the cost of transport and insurance of the goods within Botswana;
  - (iii) any duties or taxes paid or payable by reason of the importation of the goods or sale of the goods in Botswana;
  - (iv) any duty or tax applicable in the country of exportation from which the goods have been or will be relieved by way of refund, drawback, rebate or remission;
  - (v) buying commission;
  - (vi) interest charged in respect of the price payable for the goods;
  - (vii) any charge for the right to reproduce the imported goods in Botswana.

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

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

- (a) are packed in a container as defined in section 2(2) or, if not so packed in a container, placed on board ship or on any vehicle which conveys them from or across the border of that country; or
- (b) if they are ships or vehicles moving under their own power, finally leave that country for Botswana.

**78. Value for excise duty purposes** (1)(a) For the purpose of assessing the excise duty on any goods manufactured in Botswana and specified in Section B of Part 2 of Schedule No. 1, the value thereof shall, subject to the provisions of this section, be taken to be the full and final market price (before deduction of any discounts other than cash discounts) at which, at the time of sale, such or similar goods are freely offered for sale, for consumption in Botswana, for purposes of trade in the principal markets of Botswana in the ordinary course of trade, in the usual wholesale quantities and in the condition and the usual packing ready for sale in the retail trade, to any merchant wholesaler in Botswana not deemed to be related as specified in section 76(2)(a) under fully competitive conditions, plus the cost of packing and packages and all other expenses incidental to placing the goods on any vehicle for delivery to the purchaser, plus any non-rebated excise duty payable in terms of Section A of Part 2 of Schedule No. 1 on such goods, but excluding the non-rebated excise duty payable in terms of Section B of Part 2 of Schedule No. 1 or any sales tax payable on such goods:

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

(b) For the purposes of this subsection the Director may specify-

- (i) the quantity which shall be deemed to be the usual wholesale quantity;
- (ii) the packing which shall be deemed to be the usual packing ready for sale in the retail trade;
- (iii) the cost of packing or packages or any other expenses incidental to placing the goods on any vehicle.

(2)(a)(i) For the purpose of assessing the excise duty on any goods specified in Section A of Part 2 of Schedule No. 1 (other than goods specified in items 117.01.10 and 117.05 to 117.30), the value thereof shall be the price paid or payable for such goods when sold for home consumption in the ordinary course of trade, in the usual trade packing, where applicable, to any buyers not deemed to be related as specified in section 76(2)(a), plus any non-rebated excise duty payable in terms of Section A of Part 2 of Schedule No. 1, on fuel levy payable on such goods.

(ii) For the purpose of assessing the excise duty on any goods specified in items 117.01.10 and 117.05 to 117.30 of Section A of Part 2 of Schedule No. 1, the value thereof shall be the price paid or payable for such goods when sold for home consumption in the ordinary course of trade to any buyers not deemed to be related as specified in section 76(2)(a), plus any non-rebated excise duty payable in terms of Section B of Part 2 of Schedule No. 1, but excluding any sales tax payable on such goods.

(b) For the purpose of paragraph (a), "price paid or payable" means the total payment made or to be made, either directly or indirectly, by the buyer to or for the benefit of the seller of the goods, but does not include dividends or other payments passing from the buyer to the seller which do not directly relate to the goods.

(3) If in the opinion of the Director goods are sold or otherwise disposed of under such conditions that the value thereof cannot be ascertained in terms of subsection (1)(a) or (2), as the case may be, the Director may determine a value, which shall, subject to the right of appeal to the court, be deemed to be correct for the purposes of this Act, and any amount due in terms of any such determination shall remain payable as long as such determination remains in force.

(4) The Director may, whenever he deems it expedient, amend or withdraw any such determination and make a new determination with effect from-

- (a) the date of first entry of the goods in question;
- (b) the date of the determination made under subsection (3);
- (c) the date of such new determination; or
- (d) the date of such amendment.

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

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

(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.

#### **79. Value of certain specified goods**

(1) The value for duty purposes of any goods imported into Botswana ex customs warehouses or ex bonded warehouses within the district of Maputo shall be calculated or determined in accordance with this Part as if such goods were imported directly into Botswana from the territory whence they were exported to Maputo.

(2) Where any motor vehicle is imported by an individual for his own use and not for sale, the Director may, notwithstanding the provisions of section 75(1), (4), (5) and (6) but with due regard to the provisions of section 76 determine a value which shall, subject to a right of appeal to the court, *mutatis mutandis* in accordance with the provisions of section 75(8), be deemed to be the value for duty purposes of such vehicle:

Provided that-

- (i) where any individual who was the owner of and has used such motor vehicle in any territory outside Botswana, imports such vehicle into Botswana, from a territory other than the territory in which it was produced or manufactured, for his own use, and not for sale, the Director may determine the value for duty purposes of such vehicle as if it were imported into Botswana from the territory in which it was produced or manufactured; and
- (ii) no period of use of any such motor vehicle outside Botswana, while in the possession of any person normally resident in Botswana, which is less than six months shall be taken into consideration in determining such value.

#### **80. Value of goods exported**

(1) For the purposes of this Act, the value of any goods exported from Botswana shall be the price of those goods free on board at the place of despatch from Botswana, which value shall be declared on the bill of entry export.

(2) If there is no such free on board price, the value determined by the Director shall be regarded as the value for the said purposes.

(3) If the value of any exported goods of a single denomination is, according to the provisions of this section-

- (a) in excess of one unit of account and includes a fraction of a unit of account, such value shall be calculated to the nearest unit of account, an amount in excess of 0,50 unit of account being regarded as one unit of account; or
- (b) less than one unit of account, such value shall be calculated as one unit of account.

**81. Conversion of prices expressed in foreign currency** (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.

**82. Value of goods not liable to *ad valorem* duty**

(1) Subject to the provisions of subsection (2), the customs value of any imported goods shall be declared by the importer on entry of such goods.

(2) The Minister may by regulations exempt, to the extent specified in the regulations, any class or kind of such goods or any such goods to which circumstances so specified apply, from the provisions of subsection (1).

**83. Interpretation of sections 75, 76 and 77**

(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.

(2) The Director shall obtain and keep in his office two copies of such Agreement, Interpretative Notes, Advisory Opinions, Commentaries and Explanatory Notes, Case Studies and Studies and shall effect thereto any amendment thereof of which he is notified by the Secretariat of the Customs Co-operation Council, Brussels.

(3) Whenever in any legal proceedings any question arises as to the contents of the said Agreement, or any such Interpretative Note, Advisory Opinion, Commentary, Explanatory Note, Case Study or Study (in this subsection referred to as the relevant document), or as to the date upon which any amendment thereof was effected thereto in terms of subsection (2), a copy of the relevant document shall be accepted as sufficient evidence of the contents thereof or of the effective date of any amendment thereof, as the case may be.

(4) The provisions of subsection (1) shall not derogate from the interpretation which would but for that subsection be given to section 75, 76 or 77.

**PART X**

***Rebates, Refunds and Drawbacks of Duty (ss 84-87)***

**84. Specific rebates, drawbacks and refunds of duty** (1) Subject to the provisions of this Act and to any conditions which the Director may impose-

- (a) any imported goods described in Schedule No. 3 shall be admitted under rebate of any customs duties applicable in respect of such goods at the time of entry for home consumption thereof, to the extent and for the purpose of use stated in the item of Schedule No. 3 in which they are specified;
- (b) any imported goods described in Schedule No. 4 shall be admitted under rebate of any customs duties or fuel levy applicable in respect of such goods at the time of entry for home consumption thereof, to the extent and for the purpose or use stated in the item of Schedule No. 4 in which such goods are specified;
- (c) a drawback or a refund of the ordinary customs duty, anti-dumping duty, countervailing duty, safeguard duty, surcharge and fuel levy actually paid on entry for home consumption on any imported goods described in Schedule No. 5 shall, subject to the provisions of paragraph (g)(i), be paid to the person who paid such duties or any person indicated in the notes to the said Schedule, subject to compliance with the provisions of the item of the said Schedule in which those goods are specified.
- (d) in respect of any excisable goods or fuel levy goods described in Schedule No. 6 a

rebate of the excise duty or fuel levy specified in Part 2 of Schedule No. 1 or the fuel levy specified in Part I of Schedule No. 1 in respect of such goods at the time of entry for home consumption thereof or a refund of the excise duty or fuel levy actually paid at the time of entry for home consumption shall be granted to the extent and in the circumstances stated in the item of Schedule No. 6 in which such goods are specified, subject to compliance with the provisions of the said item and any refund under this paragraph may be paid to the person who paid the duty or any person indicated in the notes to the said Schedule No. 6;

- (e) in respect of any imported goods described in Schedule No. 9, a rebate of the additional duty specified in Part 7 of Schedule No. 1 in respect of such goods at the time of entry for home consumption thereof shall be granted to the extent and in the circumstances stated in the item of Schedule No. 9 in which such goods are specified, subject to compliance with the provisions of the said item;
- (f) (i) a refund of the ordinary customs duty, countervailing duty, safeguard duty and surcharge on any distillate fuel shall be granted to the extent stated in item 533.01 or 540.02 of Schedule No. 5 in which such fuel is specified, subject to compliance with the provisions of the said item, or a refund of the excise duty leviable on such fuel shall be granted to the extent stated in item 609.05.10 or 640.03 of Schedule No. 6 in which such fuel is specified, subject to compliance with the provisions of the said item and any refund under this paragraph may be paid to any user who has purchased and used such distillate fuel in accordance with the provisions of the said items of Schedule No. 5 or 6 to any person indicated in the notes to the said Schedule No. 5 or 6:

Provided that no such refund shall be paid to the State or any government, department, administration or any body, institution or authority mentioned in the notes to the said Schedule No. 5 or 6;

- (ii) notwithstanding the provisions of subparagraph (i) the Director may in his discretion investigate any such purchase or use to establish whether such fuel has been duly entered in terms of this Act or has been so used, and may refuse to allow or pay any such refund if he is not satisfied that such fuel has been so entered or used;
- (iii) any such distillate fuel purchased shall be deemed to have been used in the order of the dates of such purchases;
- (iv) the extent of the refund referred to in subparagraph (i) shall be the rate of such refund of duty specified in such items of Schedule No. 5 or 6 at the last date of any period for which such refund in respect of such use is claimed;
- (v) any refund referred to in subparagraph (i) may be granted and paid to any person entitled to that refund in terms of this Act.

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

- (a) only in respect of goods entered for use in the production or manufacture of goods in the industry and for the purpose specified in the item of the said Schedule in which those goods are specified;
- (b) only in respect of goods entered for use in-
  - (i) a factory approved by the Minister; or
  - (ii) a mine or works situated in an area approved by the Minister; or
  - (iii) elsewhere in any other activity which the Minister may in his discretion approve for the purposes of this subparagraph;
- (c) only in respect of goods entered for use in such industry in a factory, mine, works or activity which complies with such requirements in respect of quantity of material used or quantity of goods produced or manufactured as the Minister may impose.

(3) ... (4) Notwithstanding the provisions of section 62, 63 or 64, a rebate of any anti-dumping duty, countervailing duty or safeguard duty specified in Schedule No. 2 in respect of any goods entered under the provisions of any item specified in Schedule No. 3 or 4 may be granted if it is expressly stated in such item of Schedule No. 3 or 4 that the extent of the rebate includes such anti-dumping duty, countervailing duty or safeguard duty.

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

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

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

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

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

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

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

Provided that the Director may-

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

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

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

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

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

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

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

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

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

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

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

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

(10) Wherever the tariff heading or subheading or the tariff item or subitem under which any goods are classified in Schedule No. 1 is expressly quoted in any item of Schedule No. 3, 4,

5 or 6 in which such goods are specified, the goods so specified in the said item of Schedule No. 3, 4, 5 or 6 shall be deemed not to include goods which are not classified under the said tariff heading or subheading or tariff item or subitem.

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

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

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

Provided that the Director may, subject to such conditions as he may in each case impose, exempt, with or without retrospective effect, any such person from the provisions of this subsection.

(b) Application for such exemption for the purpose of applying for a refund of duty shall be made to the Director within six months from any date specified in section 43(5) as the circumstances may require.

(c) For the purposes of the application of sections 43(3), (4) and (5) to any such exemption-

- (i) any bill of entry passed in relation to goods in respect of which exemption is granted under paragraph (a) of this subsection, shall be deemed to have passed in error by reason of duty having been paid on goods intended for purposes or use under rebate of duty under this section;
- (ii) the goods concerned shall be deemed to have qualified at the time duty was paid on such goods in all respects for rebate; and
- (iii) the duty paid on the goods concerned, shall be deemed to have been paid on the date on which the exemption referred to in subparagraph (i) was granted.

(13) Notwithstanding anything to the contrary in this Act contained, the Director may, in respect of Schedule No. 5 or 6 for the purpose of calculating the amount of duty refundable on any imported or excisable goods or used in the manufacture, reconditioning, mixing or blending of any goods exported or marketed in Botswana, determine the quantity of such exported goods or such goods marketed in Botswana which shall be deemed to have been produced, reconditioned, mixed or blended from a given quantity of such imported or excisable goods or the quantity of such imported or excisable goods or which shall be deemed to have been used in the production, reconditioning, mixing or blending of a given quantity of such exported goods or such goods marketed in Botswana.

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

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

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

(a) in the case of goods exported-

- (i) where the goods were exported by post, within a period of six months from the date on which such goods were posted; or
- (ii) where the goods were exported in any other manner, within a period of six months from the date of entry of such goods for export; and

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

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

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

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

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

(b) For the purposes of the application of section 43(3), (4) and (5)-

- (i) any bill of entry passed in relation to goods in respect of which a permit is issued under paragraph (a) shall be deemed to have been passed in error by reason of duty having been paid on goods intended for purposes of use under rebate of duty under this section;
- (ii) the goods in respect of which such a permit is issued, shall be deemed to have qualified at the time duty was paid on such goods, in all respect for rebate; and
- (iii) the duty paid on the goods concerned, shall be deemed to have been paid on the date on which the permit referred to in paragraph (a) was issued.

(18)(a) Subject to the provisions of subsection (17) any Minister, other than the Minister of Finance and Development Planning, any Permanent Secretary designated by such Minister, or the Director, may, in respect of goods which may, in terms of any item of Schedule No. 3, 4, 5 or 6, be entered under rebate of duty or be subject to a drawback or a refund of duty or be subject to such conditions as such Minister, Permanent Secretary or the Director may specify, with or without retrospective effect, a permit or certificate authorizing entry of those goods under rebate of duty, or authorizing a drawback or a refund of duty in accordance with the provisions of the item concerned, provided the Director is satisfied in respect of the goods concerned where the permit or certificate concerned is issued with retrospective effect, that the provisions of such item and such conditions have been complied with.

(b) The provisions of subsection (17)(a) shall apply *mutatis mutandis* in respect of any permit or certificate referred to in paragraph (a) of this subsection.

(c) Application for such permit or certificate shall be made to the Minister or Permanent Secretary or the Director within six months from any date specified in section 43(5), as the circumstances may require.

(19)(a) The Minister may from time to time by notice published in the *Gazette* amend

Schedule No. 3, 4, 5 or 6 in order to give effect to any request by the Minister of Commerce and Industry or whenever he deems it expedient to do so.

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

- (i) by like notice amend any Schedule with retrospective effect from such date as he may specify in that notice; or
- (ii) by like notice declare any amendment made under paragraph (a) to apply with retrospective effect from such date as he may specify in that notice.

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

(d) The provisions of subsections (7), (8) and (9) of section 55 shall *mutatis mutandis* apply in respect of any amendment made under the provisions of this subsection.

(20) The Director may refuse to accept an entry under rebate or an application for drawback or refund under any item of Schedule No. 3, 4, 5 or 6 from any person who has persistently contravened or failed to comply with the provisions of this Act or who has committed an offence referred to in section 90, 94, 95, 96 or 97 and he may cancel any registration under the provisions of this Act of such person or suspend any such registration for such period as he may deem fit.

(21) Subject to the provisions of the proviso to section 20(9) and items 412.07, 412.08, 412.09, 531.00, 532.00, 608.01, 608.02, 608.03, 608.04, 615.01, 615.02 and 615.03 of Schedules Nos. 4, 5 and 6 no rebate or refund of duty in respect of any loss or deficiency of any nature of any goods shall be allowed, but the Director may allow the deduction from the dutiable quantity of the undermentioned goods of a quantity equal to the percentage stated below in each case, namely-

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

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

Provided that only the owner of a warehouse referred to in section 69(4) shall be entitled to such deduction; and

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

Provided that only the owner of a warehouse referred to in section 69(4) shall be entitled to such deduction.

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

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

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

**85. General refunds in respect of imported goods or excisable goods** (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.

(2) The Director shall, subject to the provisions of subsection (4), consider any application for a refund or payment from any applicant who contends that he has paid any duty or other charge for which he was not liable or that he is entitled to any payment under this Act by reason of-

- (a) an error in determining an assessment or calculating the amount thereof;
- (b) the duty having been assessed on a value higher than the value for duty purposes;
- (c) a determination under section 52(11) or (15) or incorrect tariff classification;
- (d) the goods concerned having been damaged, destroyed or irrecoverably lost by circumstances beyond his control prior to the release thereof for home consumption;
- (e) all or part of such goods having been shortlanded, shortshipped or shortpacked;
- (f) the substitution of any bill of entry in terms of section 43(3); or
- (g) the duty having been reduced or withdrawn as provided for in section 55(2) or (3).

(3) Except with the permission of the Director, any application for a refund under this section shall not relate to more than one bill of entry or other document in respect of which the alleged overpayment was made.

(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.

(5) If, after considering any application for a refund or payment in terms of this section, the Director is satisfied that the applicant is entitled to any such refund or payment, the Director may pay to the applicant the amount due to him:

Provided that no refund shall be made under this section if, in the case of goods imported by post, the amount thereof is less than fifty thebe or, in the case of goods imported in any other manner, less than five pula or, in the case of excisable goods manufactured in Botswana, less than two pula, unless the Director is satisfied that exceptional circumstances exist which warrant such refund.

**85A. Limitation on refund claims** (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).

**85B. Set off on refund against amount tax owing** 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.

**86. Recovery of certain amounts not duly payable** (1) If the Director, purporting to act under the provisions of section 82 or 83, pays to any person by way of a refund or drawback any amount which was not duly payable to that person under those provisions or which was in excess of the amount due to that person by way of a refund or drawback under those provisions, that amount or the excess, as the case may be, shall be repaid by the person concerned to the Director upon demand, failing which it shall be recoverable in terms of this Act as if it were the duty or charge concerned or part of such duty or charge, as the case may be.

(2) The provisions of subsection (1) shall apply *mutatis mutandis* to any amount set off in terms of section 87(1)(a).

**87. Set-off of certain amounts** (a) A licensee of a customs and excise warehouse who, in terms of the regulations, is permitted to pay any duty monthly or quarterly, and who-

- (i) paid any duty for which he was not liable; or
- (ii) granted any provisional refund in terms of section 84; or
- (iii) becomes entitled to a refund in terms of item 534.00 of Schedule No. 5 or any item of Schedule No. 6,

may, subject to the approval of the Director, at any time within a period of two years from the date on which that duty was paid, such provisional refund was granted or such licensee became entitled to such refund, set off such duty, provisional refund or amount refundable against that particular duty for which such licensee subsequently becomes liable, except that the duty refundable in terms of the said item 534.00 be set off against the excise duty specified in Section B of Part 2 of Schedule No. 1 for which such licensee subsequently becomes liable, provided the monthly or quarterly accounts or bills of entry submitted by such licensee in

respect of the payment of any duty against which any duty, provisional refund or amount refundable has been set off are accompanied by a full statement by such licensee, supported by a certificate by an officer, giving full particulars and a full account of the circumstances in respect of such set-off and by such documentary evidence as the Director may in each case require.

(b) If such set-off is not approved by the Director in terms of paragraph (a), it shall be debited to the account of such licensee.

## **PART XI**

### ***Penal Provisions (ss 88-107)***

#### **88. Offences not expressly mentioned**

(1) Any person who contravenes any provision of this Act or who fails to comply with any such provision with which it is his duty to comply, shall, even where such contravention or failure is not elsewhere declared an offence, be guilty of an offence.

(2) Any person guilty of an offence under this Act shall, where no punishment is expressly provided for such offence, be liable 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 term not exceeding two years, or to both.

(3) A person who is convicted of an offence referred to in subsection (2) within a period of three years after he was convicted of any offence referred to in that subsection shall be liable to a fine not exceeding P16,000 or treble the value of the goods in respect of which such offence was committed, whichever is the greater, or to imprisonment for a term not exceeding four years, or to both.

#### **89. Less serious offences and their punishment**

(1) Any person who-

- (a) supplies the means or materials for, or assists in establishing, repairing, maintaining or working any still being made or made, imported, used, set up or in the possession or custody of any person without lawful authority;
- (b) is found without lawful excuse in any place where distillation is illegally carried on;
- (c) ... (d) sells, offers or keeps for sale or distributes or exhibits any issue of a publication which is in terms of section 124(4) deemed for the purposes of that section to be indecent, obscene or objectionable;
- (e) falsely holds himself out to be an officer;
- (f) resists or hinders an officer in the exercise of his powers or the performance of his functions under this Act;
- (g) rescues any person apprehended for any offence under this Act, or prevents the apprehension of any person who has committed any such offence; or
- (h) makes a statement which is incorrect in any material particular, whether orally or in a document or declaration, in connection with any matter dealt with in this Act,

shall be guilty of an offence and liable to a fine not exceeding P8,000 or to imprisonment for a term not exceeding two years, or to both.

(2) A person who is convicted of an offence referred to in subsection (1) within a period of three years after he was convicted of an offence referred to in that subsection shall be liable to a fine not exceeding P16,000 or to imprisonment for a term not exceeding four years, or to both.

#### **90. Serious offences and their punishment**

(1) Any person who-

- (a) has upon his premises or in his custody or under his control, or purchases, sells, or otherwise disposes of any illicit goods knowing the same to be illicit goods;
- (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.
- (c) removes or assists in or permits the removal of goods in contravention of any provision of this Act;
  - (d) deodorises, clarifies or, prior to sale, reduces the strength of methylated spirits to a strength below a strength of 91.4 per cent absolute alcohol by volume, or prepares or sells or offers for sale or consumption, as a beverage, any preparation containing methylated spirits or spirits recovered from methylated spirits;
  - (e) removes or breaks or interferes with any lock, meter, gauge, rod, seal, mark or fastening placed on or fitted to any warehouse, vessel, package, container or other article, place or plant, by an officer under any provision of this Act;
  - (f) damages, destroys or disposes of any goods to prevent the securing or seizure thereof under the provisions of this Act by any officer or other person authorized to secure or seize the same, or takes back any goods which are being detained or have been seized;
  - (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;
  - (h) makes improper use of a licence, permit or other document issued in respect of goods to which this Act relates;
  - (i) claims or receives any rebate, drawback, refund or payment or sets off any amount in terms of the provisions of section 87(1) to which he knows he is not entitled under this Act;
  - (j) not being authorized to do so, gives or promises to give, directly or indirectly, any reward to an officer or any person employed by the Government, in respect of the performance or non-performance by any such officer or person of his duty or employment under this Act or agrees with or proposes to any such officer or person to do or permit anything in contravention or evasion of this Act;
  - (k) being an officer or a person employed by the Government, demands or receives, except from or through the Government, any reward in respect of the performance or non-performance of his duty or employment under this Act or by any wilful act, neglect or default does or permits or agrees to do or permit anything in contravention or evasion of this Act;
  - (l) attempts to commit or assists in committing any offence mentioned in this section;
  - (m) from any goods made from or containing excisable goods extracts or recovers such excisable goods in contravention of the provisions of this 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).
  - (o) fails to comply with any conditions determined under section 118(3);
  - (p) contravenes or fails to comply with any provision of any agreement contemplated in sections 57 or 58,

shall be guilty of an offence and liable to a fine not exceeding P20,000 or treble the value of the goods in respect of which such offence was committed, whichever is the greater, or to imprisonment for a term not exceeding five years, or to both.

(2) When any person is charged with a contravention of subsection (1)(a) he shall, until the contrary is proved, be presumed to have known that the goods in question were illicit goods.

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

**91. Non-declaration of goods** Any person who contravenes or fails to comply with the

provisions of section 14, shall be guilty of an offence and liable to a fine not exceeding P8,000 or treble the value of the goods in question, whichever is the greater, and to imprisonment for two years, and the goods in question and any other goods contained in the same package as well as the package itself shall be liable to forfeiture.

**92. Prohibition with regard to stamps** (1) Any person who without lawful excuse (the onus of proof of which shall be upon him) uses, or has under his control or in his possession, any stamp or makes available to another person any stamp-

- (a) which is used in the Office under the authority of the Director;
- (b) the imprint of which is identical to or resembles the imprint of a stamp referred to in paragraph (a) or of any stamp used by a governmental authority in a foreign country under any law of such country relating to customs or excise or to the import or export of goods,

shall be guilty of an offence and liable on conviction to a fine not exceeding P20 000.00 or to imprisonment for a term not exceeding five years or to both such fine and such imprisonment.

(2) Any person who without lawful excuse (the onus of proof of which shall be upon him) manufactures or has in his possession or under his control any stamp the imprint of which depicts the name of a company, firm or other business entity in a foreign country, or any signs or letters which could be reasonably understood to be a reference to such company, firm or business entity, shall be guilty of an offence and liable on conviction to a fine not exceeding P20 000.00 or imprisonment for a period not exceeding five years, or to both such fine and such imprisonment.

**93. Irregular export or carriage of munition**

If any goods referred to in section 124(7) are, in contravention of any notice issued in terms thereof, exported from Botswana, or carried in transit through Botswana, the exporter, owner or consignor thereof shall be guilty of an offence and liable to a fine not exceeding P2000 or to imprisonment for a term not exceeding two years, or to both, and such goods shall be liable to forfeiture.

**94. Irregular dealing with or in goods**

Any person who-

- (a) deals or assists in dealing with any goods contrary to the provisions of this Act;
- (b) knowingly has in his possession any goods liable to forfeiture under this Act; or
- (c) makes or attempts to make any arrangement with a supplier, manufacturer, exporter or seller of goods imported or to be imported into or manufactured or to be manufactured in Botswana or with any agent of any such supplier, manufacturer, exporter or seller, regarding any matter to which this Act relates, with the object of defeating or evading the provisions of this Act,

shall be guilty of an offence and liable to a fine not exceeding P20,000 or treble the value of the goods in respect of which such offence was committed, whichever is the greater, or to imprisonment for a term not exceeding five years or to both, and the goods in respect of which such offence was committed shall be liable to forfeiture.

**95. False documents and declarations**

(1) Any person who makes a false statement in connection with any matter dealt with in this Act, or who makes use for the purposes of this Act of a declaration or document containing any such statement shall, unless he proves that he was ignorant of the falsity of such statement and that such ignorance was not due to negligence on his part, be guilty of an offence and liable to a fine not exceeding P40,000 or treble the value of the goods to which such statement, declaration or document relates, whichever is the greater, or to imprisonment for a term not exceeding ten years, or to both, and the goods in respect of which such false statement was made or such false declaration or document was used shall be liable to forfeiture.

(2) For the purposes of subsection (1), any invoice or other document relating to any denomination, description, class, grade or quantity of goods shall be deemed to contain a false

statement if the price charged by the exporter or any value, price, commission discount, cost, charge, expense, royalty, freight, duty, tax, drawback, refund, rebate, remission or other information whatever declared therein which has a bearing on value for the purposes of payment of any duty or on classification in terms of any Schedule to this Act or on anti-dumping duty, countervailing duty or safeguard duty or on the extent of rebate, refund or drawback of duty-

- (a) is not, except in so far as may be otherwise specified, exclusively related to goods of the denomination, description, class, grade or quantity declared in such invoice or document;
- (b) is influenced, adjusted or amended as a result of any separate transaction, arrangement, agreement or other consideration of any nature whatever particulars of which are not specified in such invoice or document;
- (c) represents any average or adjustment or amendment, particulars of which are not disclosed in such invoice or document, of such values, prices, commissions, discounts, costs, charges, expenses, royalties, freight, duties, taxes, drawbacks, refunds, rebates, remissions or other information in respect of goods of the same or of different denominations, descriptions, classes, grades or quantities supplied by the same supplier.

**96. Beer of higher density than indicated by label on container** 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.

**97. Certain specified offences**

Any person who-

- (a) fails to advise the Director of the receipt of any amended prescribed invoice or any credit note or debit note or of any change in the circumstances or particulars of whatever nature as declared in any prescribed invoice or in any other document or of any refund of money or deferred or secret discount, commission or other credit or debit which relates to any goods and which would increase the duty on such goods or exclude them from any rebate or refund or other privilege under this Act;
- (b) fails to declare in or omits from any prescribed invoice any particulars (including value and origin) in respect of the goods to which such invoice relates and which would increase the duty on such goods or exclude them from any rebate or refund or other privilege under this Act;
- (c) applies any money or credit received by or due to him as a commission in such a manner as to avoid or evade any duty or obligation or to obtain any rebate or refund or other privilege in respect of any goods under this Act;
- (d) issues two or more different prescribed invoices or certificates in respect of the same goods or fails to issue an amended prescribed invoice or certificate where any particulars declared in any prescribed invoice or certificate in respect of any goods have changed in any manner whatever;
- (e) makes or attempts to make or assists in making or attempting to make any arrangement of whatever nature with any person inside or outside Botswana in connection with any goods imported or to be imported into Botswana with the object of or having the effect of defeating or evading the provisions of any agreement entered into between Botswana and any exporting territory which provides for the restriction of

or control over the exportation to Botswana of any goods in any manner or any restriction of or control over the exportation of any goods to Botswana imposed by any exporting territory in any manner by arrangement with or at the instance or suggestion of or with the approval of Botswana;

- (f) produces to the Director for the purposes of section 41(5), any sample which is not a sample of the goods of which it purports to be a sample or who so produces any copy of any invoice or other document or of any blueprint, illustration, drawing, plan or illustrated and descriptive literature which does not relate to the goods to which it purports to relate or which is incorrect or incomplete or misleading in any respect;
- (g) allocates the same identification number, code, description, character or other mark referred to in section 44(2) to goods of different classes or kinds or allocates more than one such identification number, code, description, character or other mark to goods of the same class or kind or who quotes or reproduces any such identification number, code, description, character or other mark in any invoice or document relating to goods to which such number, code, description, character or other mark has not been allocated; or
- (h) contravenes or fails to comply with the provisions of section 113 or of any regulations made in terms of section 81 or 113,

shall be guilty of an offence and liable to a fine not exceeding P40,000 or treble the value of the goods in respect of which such offence was committed whichever is the greater, or to imprisonment for a term not exceeding ten years, or to both, and the goods in respect of which such offence was committed shall be liable to forfeiture.

**97A. Publication of particulars of offenders** (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.

**98. Goods irregularly dealt with liable to forfeiture**

(1) Any goods imported, exported, manufactured, warehoused, removed or otherwise dealt with contrary to the provisions of this Act or in respect of which any offence under this Act has been committed (including the containers of any such goods) or any plant used contrary to the provisions of this Act in the manufacture of any goods shall be liable to forfeiture wheresoever and in possession of whomsoever found:

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.

(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.

(3) .....

## **99. Seizure**

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

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

(c) No person shall remove any ship, vehicle, material or goods from any place where it was detained or from a place of security determined by an officer, magistrate or member of the police force.

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

(e) The Director may seize any other vehicle, plant, material or goods liable to forfeiture under this Act.

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

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

(3) If the amount demanded is not paid within a period of 14 days after the demand for payment was made it may be recovered in terms of the provisions of this Act as if it were a forfeiture incurred under this Act.

(4) The provisions of this Act shall, in so far as they can be applied, apply *mutatis mutandis* in respect of any amount paid to the Director or recovered in terms of subsections (2) and (3) as if such amount were the goods in question and as if such amount had been seized under subsection (1).

## **100. Notice of claim by owner in respect of seized goods**

(1) Any vehicle, plant, material or goods which have been seized under this Act, shall be deemed to be condemned and forfeited and may be disposed of in terms of section 101 unless the person from whom such vehicle, plant, material or goods have been seized or the owner thereof or his authorized agent gives notice in writing, within one month after the date of the seizure, to the person seizing or to the Director, that he claims or intends to claim the said vehicle, plant, material or goods under the provisions of this section.

(2) If no such notice is given, no legal proceedings whatever shall thereafter be instituted against the State, the Minister, the Director or any officer, based merely upon the seizure of such vehicle, plant, material or goods.

(3) When a notice in writing has been given in terms of subsection (1), the person giving such notice shall, within 90 days of the date of such notice, but, except with the consent of the Director, not earlier than one month from the date thereof, institute proceedings in a court of competent jurisdiction for release of the said vehicle, plant, material or goods.

## **101. Disposal of seized goods**

(1) Whatever is seized as being liable to forfeiture under this Act, shall forthwith be delivered to the Director at the customs and excise office nearest to the place where it was seized or it may be secured by the Director 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.

(2) The Director shall, after condemnation thereof, cause the thing in question to be sold by public auction or in any other manner which he may deem suitable:

Provided that-

- (i) the Director may direct that, in lieu of being sold, any such thing shall be destroyed or shall be appropriated to the State;
- (ii) if any such thing is of a perishable or dangerous nature the Director may direct the sale or destruction thereof before condemnation.

#### **102. Admission of guilt**

(1) If any person-

- (a) has contravened any provision of this Act or failed to comply with any such provision with which it was his duty to comply;
- (b) agrees to abide by the Director's decision; and
- (c) deposits with the Director such sum as the latter may require of him but not exceeding the maximum fine which may be imposed upon a conviction for the contravention or failure in question or makes such arrangements or complies with such conditions with regard to securing the payment of such sum as the Director may require,

the Director may, after such enquiry as he deems necessary, determine the matter summarily and may, without legal proceedings, order forfeiture by way of penalty of the whole or any part of the amount so deposited or secured.

(2) Anything done for the purposes of subsection (1) by an agent generally or specially authorized thereto by any person, shall be deemed to have been duly done by that person in terms of that subsection.

(3) There shall be a right of appeal to the Minister from any determination or order of the Director under subsection (1) whereby a penalty exceeding P1,000 is imposed, provided such right is exercised within a period of three months from the date of such determination or order, and the Minister's decision on any such appeal shall be final.

(4) The imposition of a penalty under subsection (1) shall not be regarded as a conviction in respect of a criminal offence, but no prosecution for the relevant offence shall thereafter be competent.

(5) Nothing in this section shall in any way affect liability to forfeiture of goods or payment of duty or other charges thereon.

#### **103. Payment and disposal of fines and penalties**

Any fine or penalty recovered under this Act shall be paid to the Director and shall be paid by him into the Fund, and the proceeds of sale of anything forfeited or seized and condemned under this Act shall also be paid into the said Fund:

Provided that the Director may in his discretion withhold a sum not exceeding one-third of any such fine, penalty or proceeds which he may then award to any person (including any officer) by whose means or information the fine or penalty or forfeiture was imposed or the seizure made.

#### **104. Remission or mitigation of penalties and forfeiture**

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.

#### **105. Recovery of penalties by process of law**



(1) Without derogation from any powers conferred upon the Director any penalty, fine or forfeiture incurred under this Act may be recovered either by civil action or upon criminal prosecution in any court of competent jurisdiction, and in the case of a criminal prosecution the court passing sentence may also make an order regarding any unpaid duty or charge and impose civil penalties or enforce forfeiture.

(2) Any civil proceedings under this section may be instituted in the name of the Director.

#### **106. Jurisdiction of courts**

(1) A court shall have jurisdiction to try any person for an offence under this Act whenever the thing in respect of which such offence was committed was found within or was conveyed from, to or through the area of jurisdiction of that court.

(2) Any person who at any place deemed under section 7(2) to be a place of entry for Botswana or in any territory with the Government of which an agreement has been concluded under section 58, performs any act which constitutes an offence under this Act, shall be guilty of such offence, which shall, for purposes in relation to jurisdiction of a court to try the offence, be deemed to have been committed at any place where the accused happens to be.

(3) Notwithstanding anything to the contrary contained in any other law, a court of a Magistrate Grade I or over shall have jurisdiction to impose any punishment prescribed by or make any order of court provided for in this Act.

(4) Notwithstanding anything to the contrary contained in any other law, a court of a Magistrate Grade I or over shall have jurisdiction to give judgment for any amount claimed under this Act together with the costs of obtaining the judgment.

#### **107. Period for bringing action**

Subject to the provisions of section 100, the period of extinctive prescription in respect of legal proceedings against the State, the Minister, the Director or an officer on a cause of action arising out of the provisions of this Act shall be one year and shall begin to run on the date when the right of action first arose.

### **PART XII**

#### **General (ss 108-130)**

#### **108. Approval of container operators**

The Director may, with the concurrence of the Permanent Secretary, Ministry of Works, Transport and Communications, subject to such conditions as the Director may generally or in respect of a particular case determine, approve, for operating containers in Botswana, any person providing international transportation of containerized goods.

#### **109. Container operator or pilot may appoint agent**

Notwithstanding anything to the contrary contained in this Act, a container operator or the pilot of an aircraft, instead of himself performing any act, including the answering of questions required by or under any provisions of this Act to be performed by him, may, at his own risk, appoint an agent to perform any such act, and any such act performed by such agent shall in all respects and for all purposes be deemed to be the act of the container operator or pilot, as the case may be:

Provided that the personal attendance of the container operator or pilot may be demanded by the proper officer.

#### **110. Liability of principal for acts of agent**

Every importer, exporter, container operator, pilot, manufacturer, licensee, remover of goods in bond or other principal shall, for the purposes of this Act, be responsible for any act done by an agent acting on his behalf, whether within or outside Botswana.

**111. Liability of agent for obligations imposed on principal** (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.

(4) Every shipping and forwarding agent and every agent acting for the pilot or an aircraft and any other class of agent which the Minister may prescribe shall, before transacting any business with the department, and any class of carrier of goods to which this Act relates which the Minister may prescribe shall, before conveying any such goods, give such security as the Director may from time to time require for the due observance of the provisions of this Act:

Provided that the Director may call for special or additional security in respect of any particular transaction or conveyance of goods from any agent or carrier.

(5) An agent (including a representative or associate of the principal) representing or acting for or on behalf of any exporter, manufacturer, supplier, shipper or other principal outside Botswana who exports goods to Botswana, shall be liable, in respect of any goods ordered through him or obtained by an importer by means of his services, for the fulfilment of all obligations imposed upon such exporter, manufacturer, supplier, shipper or other principal by this Act, and to any penalties or amounts demanded under section 99(2)(a) which may be incurred by such exporter, manufacturer, supplier, shipper or other principal under this Act:

Provided that any such agent shall cease to be so liable if he proves to the satisfaction of the Director that-

- (i) he was not a party to the non-fulfilment, by any such exporter, manufacturer, supplier, shipper or other principal, of any such obligation;
- (ii) when he became aware of such non-fulfilment, he forthwith notified the Director thereof; and
- (iii) all reasonable steps were taken by him to prevent such non-fulfilment.

(6) Every agent of a class referred to in subsection (5) and specified in the regulations for the purposes of this subsection shall register himself with the Director and furnish such security as the Director may from time to time require for the due observance of the provisions of this Act:

Provided that the Director may accept such security from any association of such agents approved by him which undertakes to give security on behalf of its members.

(7) No agent referred to in subsection (6) shall transact any business on behalf of any such exporter, manufacturer, supplier, shipper or other principal after a date specified by the Minister by notice published in the *Gazette* unless he has complied with the provisions of subsection (6).

(8) The registration and operations of any agent referred to in subsection (6) shall be subject to such conditions as the Director may impose and the Director may cancel the registration of any agent who has committed an offence referred to in section 90, 94, 95, 96, or 97.

**111A. Registration with Director** (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.

**112. Agent may be called upon to produce written authority**

If any person makes an application to an officer to transact any business on behalf of another person or if any person represents himself to an officer as the agent of another person, such officer may require the person so applying or representing himself to produce a written authority in the form approved by the Director, from the person on whose behalf such application is made or on whose behalf the person so representing himself is alleged to be acting, and in default of the production of such authority, the officer may refuse to transact such business.

**113. Business accounts, documents, etc. to be available for inspection**

(1) Any person carrying on any business in Botswana shall keep within Botswana in English and such other language as the Minister may specify by notice, such books, accounts and documents relating to his transactions as the Minister may prescribe and such books, accounts and documents shall be kept in such form and manner and shall be retained for such period as the Minister may prescribe.

(2) Different provisions may be so prescribed in respect of different classes or kinds of books, accounts and documents and different classes of persons.

(3) The Director may, subject to such conditions as he may determine, allow any person referred to in subsections (1) and (2) to retain in lieu of any book, account or document required to be retained in terms of those subsections a reproduction of any such book, account or document obtained by means of microfilming or any other process.

(4) Any person referred to in subsections (1) and (2) shall upon demand by the Director produce to him such books, accounts or documents referred to in the said subsections (1) and (2) as he may require and such person shall render such returns or submit such particulars in connection with his transactions to the Director as he may require.

(5) The Director may, subject to such conditions as he may determine, allow any such person to produce in lieu of any such book, account or document required to be produced in terms of subsection (4), a copy thereof obtained by means of a reproduction referred to in subsection (3), and any such copy shall, subject to compliance with such conditions, for all purposes have all the effects of the original book, account or document concerned.

(6) The Minister may prescribe-

- (a) the books, accounts, documents, transactions or operations in respect of which a chartered accountant's certificate shall be produced to the Director by such class of persons referred to in subsections (1) and (2) as he may so prescribe; and
- (b) the nature and form of such certificate and the intervals at which such a certificate shall be produced.

**114. Sellers of goods to produce proof of payment of duty**

(1) Any person selling, offering for sale or dealing in imported or excisable goods or any

person removing the same, or any person having such goods entered in his books or mentioned in any document referred to in section 113 shall, when requested by an officer, produce proof as to the person from whom the goods were obtained and, if he is the importer or manufacturer or owner, as to the place where the duty due thereon was paid, the date of payment, the particulars of the entry for home consumption and the marks and numbers of the cases, packages, bales and other articles concerned, which marks and numbers shall correspond to the documents produced in proof of the payment of the duty.

(2) In any prosecution or proceedings under this Act, any statement in any record, letter or any other document kept, retained, received or despatched by or on behalf of any person to the effect that any goods of a particular price, value (including any commission, discount, cost, charge, expense, royalty, freight, tax, drawback, refund, rebate, remission or other information which relates to such goods and has a bearing on such price or value), or quantity, quality, nature, strength or other characteristic have been manufactured, imported, ordered, supplied, purchased, sold, dealt with or in or held in stock by him at any time, shall be admissible in evidence against him as an admission that he has at that time manufactured, imported, ordered, supplied, purchased, sold, dealt with or in or held in stock goods of that price, value, quantity, quality, nature, strength or other characteristic.

(3) If in any such prosecution or proceedings the question arises whether any goods have been sold or used or disposed of or are or were in the possession of any person in such a manner as not to render them subject to duty, it shall be presumed that such goods have not been so sold or used or disposed of or are not or were not in the possession of such person in the said manner unless the contrary is proved.

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

(5) If in any prosecution under this Act or in any dispute in which the State, the Minister or the Director or any officer is a party, it is alleged by or on behalf of the State or the Minister or the Director or such officer that any goods or plant have been or have not been imported, exported, manufactured in Botswana, removed or otherwise dealt with or in, it shall be presumed that such goods or plant have been or (as the case may be) have not been imported, exported, manufactured in Botswana, removed or otherwise dealt with or in, unless the contrary is proved.

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

**116. Interest on outstanding amounts** Notwithstanding anything to the contrary in any written law-

(a) interest shall be payable, as from such date and for such period as the Director may

- determine, on any outstanding amount payable in terms of this Act, other than the outstanding amount of any penalty or forfeiture payable in terms of this Act;
- (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*;
  - (c) the Director may and on such conditions as he may consider necessary-
    - (i) remit any interest for which any person is liable by virtue of this section;
    - (ii) permit payment of any amount referred to in paragraph (a) by instalments of such amount and at such times as he may determine;
  - (d) any such instalment paid shall be utilized by the Director to discharge any penalty, forfeiture, interest and duty and other amounts due, in that order;
  - (e) any such interest shall be calculated monthly, and a portion of a month shall be regarded as a full month; and
  - (f) any such interest recovered shall be paid into the Consolidated Revenue Fund.

### **117. Samples**

(1) An officer may on entry of any imported goods or during the manufacture of any excisable goods, or at any time after such entry or manufacture, take, without payment, from any person in possession of such imported goods or of any manufactured or partly manufactured excisable goods, samples of such imported, manufactured or partly manufactured goods or of materials intended for the manufacture of excisable goods or of goods used under the provisions of Part X, for examination or for ascertaining the duties payable thereon or for such other purpose as the Director deems necessary, and the samples shall be dealt with and accounted for in such manner as the Director may direct.

(2) For the purpose of determining the duty leviable in respect of any goods comprising a single consignment, or in any vessel, tank or other container of goods, the nature or characteristics of all the goods in that consignment, vessel, tank or other container shall be deemed to correspond to the nature or characteristics of any sample taken by the officer from such consignment, vessel, tank or other container.

### **118. Expenses of landing, examination, weighing, analysis, etc.**

(1) All handling of and dealing with goods for the purposes of this Act shall be performed by or at the expense and risk of the importer, exporter, manufacturer or owner of the goods, whoever has control of such goods, except in the case of goods examined at a customs and excise warehouse, where such handling of and dealing with goods shall be performed at the expense and risk of the owner thereof.

(2) Any goods remaining in the custody or under the department after expiry of a period of 28 days from the date of due entry thereof may be removed by the proper officer to the state warehouse or other place indicated by the proper officer and may thereupon be disposed of in terms of section 45(4).

(3) Subject to the provisions of this Act, the Director shall not, except on such conditions, including conditions relating to security, as may be determined by him, allow goods to pass from his control until the provisions of this Act or any law relating to the importation or exportation or transit carriage through Botswana of goods, have been complied with in respect of such goods, and the State or the Director or any officer shall in no case be liable in respect of any claim arising out of the detention of goods pending the decision of the Director or for the costs of such detention.

(4) Whenever the Director considers it necessary for the purposes of subsection (3) or section 117(1) that any goods should be analysed he may direct that such goods be analysed by a person designated by him and that the analysis be done in accordance with a method determined by him.

(5) The cost of analysis of any goods for the purposes of subsection (3) shall be borne by the importer, exporter, manufacturer or owner of such goods except where the Director considers the analysis necessary for the purposes of the said subsection (3) and the result of

the analysis confirms the correctness of the declaration or bill of entry made or presented by such importer, exporter, manufacturer or owner in respect of such goods:

Provided that the cost of analysis shall in no case be borne by the State where it is carried out in connection with any application of refund of duty or substitution of any entry or where the result of analysis shows that the goods in question were incorrectly or insufficiently described on the relative prescribed invoice.

#### **119. Control in respect of manufacturers of certain goods, etc.**

(1) The manufacturer of any goods or materials used or capable of being used in the manufacture of any goods to which this Act applies, shall, in accordance with the directions of the Director-

- (a) register with the Director any such formula, factory, machinery, instrument, appliance or apparatus used in connection with the manufacture of such goods or materials or the carrying out of any such process as the Director may require;
- (b) comply with such conditions relating to such manufacture or the carrying out of any such process as the Director may impose in each case;
- (c) keep such records as the Director may require as to-
  - (i) the nature, characteristics, source, origin and quantities of the ingredients of such goods or materials and of such other particulars of the ingredients of such goods or materials as the Director may specify;
  - (ii) the processes carried out in respect of such goods or materials;
  - (iii) the persons on whose behalf such processes were carried out; and
  - (iv) the purchasers of such goods or materials;
- (d) render such returns or furnish such certificates in respect of such goods or materials, as the Director may require; and
- (e) produce such documents in support of any records kept in terms of paragraph (c) or returns or certificates rendered or furnished in terms of paragraph (d), as the Director may require.

(2) For the purposes of subsection (1) any preliminary, intermediate or supplementary process in connection with any goods or materials mentioned in that subsection shall include any such process relating to the ordering, purchasing, selling or disposal of, and the entering into any contract for the manufacture of, any such goods or materials.

#### **120. Destruction of goods and detention of vehicles**

(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-

- (a) cause any goods under customs and excise control forthwith to be destroyed or otherwise disposed of; or
- (b) delay the departure of any vehicle from any place in Botswana for a period not exceeding 48 hours.

(2) No person shall be entitled to any compensation for loss arising out of any *bona fide* action of the Director under subsection (1).

#### **121. Instruments and tables**

(1) Except as elsewhere provided in this Act, the Minister may prescribe the instruments, meters, gauges, and other appliances and the tables, formulae and other methods of calculation to be used in ascertaining the mass, quantity, strength, relative density, temperature, pressure or any other characteristic of any goods for the purposes of this Act.

(2) For calculating the full quantity of any goods which have been manufactured or used under the provisions of this Act, the Minister may prescribe tables indicating the quantity of goods which shall be deemed to have been manufactured from any given quantity of any goods or the quantity of goods which shall be deemed to have been used in the manufacture of any given quantity of any goods manufactured therefrom.

**122. Registration of imported motor vehicles** A motor vehicle imported into Botswana shall not be registered in Botswana without the production to the registering authority of a certificate issued by an officer stating that the requirements of this Act in respect of the importation of such motor vehicle have been complied with.

**123. Wreck**

(1) For the purposes of this section "wreck" includes any portion of any aircraft which has been wrecked or abandoned or of the cargo, stores or equipment thereof or any other article thereon.

(2) Any person who has in his possession any wreck, shall without delay give notice thereof to the Director and shall (unless he is the owner of such wreck or the duly authorized agent of the owner) if required, forthwith deliver that wreck or permit it to be delivered to the Director, and unless it is necessary for the preservation or safe-keeping thereof, no person shall without the permission of the Director remove or alter in quantity or quality any such wreck.

(3) A wreck found in or brought into Botswana may, at any time after it has come under the control of the Director, be disposed of by him in the manner set forth in section 45, but shall otherwise be subject to the provisions of this Act.

(4) The Minister may prescribe the circumstances under which and the conditions subject to which a licence may be issued by the Director to any person entitling him to search or search for any wreck, but no such licence shall give the holder thereof the exclusive right of searching for or salvaging any particular wreck.

**124. Prohibitions and restrictions** (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.

(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.

**125. Duty constitutes a debt to the State**

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

(b) any interest payable under this Act and any fine penalty or forfeiture incurred under this Act shall, from the time when it should have been paid, constitute a debt to the State by the person concerned, and any goods in a customs and excise

warehouse or in the custody of the department (including goods in a rebate storeroom) and belonging to that person, and any goods afterwards imported or exported by the person by whom the debt is due, and any imported goods in the possession or under the control of such person or on any premises in the possession or under the control of such person and any goods in respect of which any excise duty is prescribed (whether or not such duty has been paid) and any materials for the manufacture of such goods in the possession or under the control of such person and any vehicles, machinery, plant or equipment in the possession or under the control of such person in which fuel in respect of which any duty is prescribed (whether or not such duty has been paid), is used, transported or stored, may be detained in accordance with the provisions of subsection (2) and shall be subject to a lien until such debt is paid.

(2) Any plant and stills for the manufacture of any goods in respect of which an excise duty is prescribed which is in the possession or under the control of such person, or on any premises in the possession or under the control of such person, shall be subject to a lien from the time when the liability for the duty payable as contemplated in subsection (1) in respect of any goods so manufactured commences until the debt in question is paid, as if such plant and stills are detained in accordance with the provisions of subsection (5):

Provided that the Director may allow any such plant or still to be used under such conditions as he may impose in each case.

(3) Any capital goods in respect of which any surcharge has been withdrawn in terms of any permit issued by the Permanent Secretary, Ministry of Commerce and Industry shall be subject to a lien as security for the surcharge so withdrawn until the conditions specified in such permit have been complied with to the satisfaction of the said Permanent Secretary, as if such goods are detained in accordance with the provisions of subsection (5) unless other security is furnished to the satisfaction of the Director.

(4) The claims of the State shall have priority over the claims of all persons upon anything subject to a lien contemplated in subsection (1) or (2) and may be enforced by sale or other proceedings if the debt is not paid within three months after the date on which it became due:

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).

(5) Any refund of duty or a deposit or any other amount due to such person in respect of any matter whatsoever may be set off against such debt.

(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.

(7) Except with the permission of the Director, no person shall remove-

- (a) any plant or stills, subject to a lien in terms of subsection (2), from the place indicated by an officer;
- (b) anything detained under subsection (6) from the premises referred to in that subsection or from the place of security to which it may have been removed under that subsection.

(8) Any reference to goods in this section shall be deemed to include a reference to the containers of such goods.

#### **126. Entries, oaths, etc. made outside Botswana of full force and effect**

Any entry, writing, oath or declaration required to be made under this Act shall, if made outside Botswana to or before an officer of Botswana, be binding and of full force and effect in Botswana.

#### **127. Manufacture of excisable goods solely for use by the manufacturer thereof**

(1) Notwithstanding anything to the contrary contained in this Act, the Director may, in respect of any excisable goods (except ethyl alcohol) manufactured by individuals (except under item 604.00 of Schedule No. 6) for their own use and not for sale or disposal in any manner-

- (a) if he considers that such manufacturing results or is likely to result in loss of revenue or is, or is likely to be detrimental to any industry in Botswana to such extent as to warrant any action described in this paragraph-
  - (i) by notice published in the *Gazette* prohibit the sale to any such individual of any plant, apparatus, appliance, instrument or material as he deems fit;
  - (ii) for the purpose of calculating the duty payable on such excisable goods manufactured by any such person, estimate the quantity thereof so manufactured or the strength or other characteristic of any such quantity in any manner he may deem fit; or
  - (iii) in respect of any quantity of such excisable goods in respect of which duty will become payable, accept duty (or any portion thereof), calculated according to any basis which he deems reasonable, from any person who sells or disposes of any material for use in the manufacture of such excisable goods to the manufacturer thereof;
- (b) if he considers that such manufacturing does not result or is not likely to result in loss of revenue or is not likely to be detrimental to any industry in Botswana to the extent stated in paragraph(a); or
- (c) if in the manufacture of such excisable goods used parts or material on which any duty had been paid previously was used to such extent as he deems reasonable,

exempt such excisable goods from the whole or any portion of the duty thereon, subject to such conditions as he may in each case impose.

(2) Any estimate made by the Director for the purposes of subsection (1)(a)(ii) or any decision given by him as to the basis of calculating the duty to be accepted in terms of subsection (1)(a)(iii) or as to the amount of any duty payable in terms of this section, shall be final.

(3) The manufacturer of any goods exempted from the whole or any portion of the duty in terms of this section shall be liable for payment of the whole or such portion of the duty as the Director may determine if they are sold or disposed of by such manufacture.

(4) The Director may, subject to such conditions as he may in each case impose, exempt any goods to which this section relates from any provision of Part IV, V or VIII of this Act.

#### **128A. Delegation of powers and assignment of duties**

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.

#### **128. Statistics**

(1) Such statistics of the import and export trade of Botswana and of excisable goods manufactured in Botswana as the Minister may determine, shall be compiled and tabulated by the Government Statistician and published at such times and in such manner as the Minister may direct.

(2) For the purposes of subsection (1) any person-

- (a) entering any goods for import or export shall furnish, in addition to any particulars necessary for making due entry of such goods, such particulars of such goods as the Director may from time to time require for the compilation of import and export statistics; or
- (b) manufacturing any excisable goods shall furnish, in such manner and at such times as the Director may require, the value for excise duty purposes in terms of section 78 of all excisable goods manufactured by him, whether or not such goods are subject to *ad valorem* duty or to a duty calculated according to a unit or quantity, volume or other measurement, as the case may be.

#### **129. Substitution of Schedules**

Whenever any Schedule to this Act or any part or item thereof, is substituted and the new Schedule or part or item provides that the Minister or the Director may impose or prescribe any condition or approve of any matter or thing in relation to any class of goods, any condition imposed or prescribed or approval given by the Minister or the Director under the Schedule or part or item in relation to such class of goods before substitution shall be deemed to have been imposed, prescribed or given under the new Schedule or part or item.

#### **130. Regulations**

The Minister may, by statutory instrument, make regulations for anything required to be made by regulations-

- (a) prescribing the powers, duties and hours of attendance of officers;
- (b) determining services for which charges shall be payable, the rate and the method of payment of such charges and the conditions attaching to such services;
- (c) as to the reporting inwards and outwards of aircraft (including such reporting of aircraft calling or landing at places not appointed as places of entry or customs and excise airports under this Act), the entry or departure of vehicles overland, the landing, loading, removal, detention, release, examination, conveyance and handling of cargo (including transit cargo), the control of persons (including their baggage and goods) entering or leaving Botswana, the placing into or removal from any State warehouse of goods and the removal in bond of goods;
- (d) as to the control of the storage or manufacture of goods in customs and excise warehouses (including the suitability of any buildings, plant and method of manufacture for the purposes of this Act, the hours of conducting any or all operations in any such warehouse, the supervision by officers of any such operations, the securing or marking of such plant, the inspection of such warehouses and the removal of goods from such warehouses), the testing of the output of stills, the conditions on which stills may be made, possessed, imported, disposed of or used;
- (e) as to the importation, exportation or transit of goods, the entry of goods, the payment of

- duties and other charges and fees, the costs which shall, for the purposes of section 49, be included in or excluded from the production cost of goods in general or of goods of any class or kind, and the movement of goods to and from any territory with the government of which an agreement has been concluded under section 58;
- (f) prescribing the form of and the particulars to be inserted on invoices or certificates in respect of any goods to which this Act applies and which are imported into or manufactured in Botswana;
  - (g) as to the collection of duty by means of stamps, the method of applying stamps or stamp impressions to containers, the cancellation of stamps, the use of franking or counting machines, inks, dies and other appliances and materials, the accounting for stamp labels and stamp duties and the disposal of stamp labels;
  - (h) as to the collection of excise duties and fuel levy, the time, manner and terms of payment and the calculation thereof;
  - (i) as to the collection of duties which become payable under section 66(2);
  - (j) as to the circumstances under which licences may be granted and the manner of issuing and renewing licences;
  - (k) governing the entry of goods under any item of Schedule No. 3, 4, 5 or 6 and prescribing the conditions on which such goods may be so entered or such goods may be transferred from one manufacturer or owner to another or such goods may be used, and as to the registration of manufacturers or owners so entering goods (including requirements as to the suitability of buildings, premises, storerooms and methods of manufacture for the purposes of this Act to be complied with by such manufacturers or owners), the records to be kept by such manufacturers or owners and the form of the application for registration and the particulars to be furnished by such manufacturers or owners;
  - (l) prescribing the returns and price lists to be rendered by importers or manufacturers or owners of any class or kind of goods;
  - (mA) as to matters relating to security;
  - (m) prescribing the form of any licence, bill of entry, certificate and any other document, register, stock book or return which he considers necessary for the effective administration of this Act;
  - (n) as to all matters which by this Act are required or permitted to be prescribed;
  - (o) as to such other matters as are necessary or useful to be prescribed for the purposes of this Act.