



SWAZILAND

GOVERNMENT GAZETTE

EXTRAORDINARY

VOL. XXV]

MBABANE, Friday, May 22nd., 1987

[No. 519

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PUBLISHED BY AUTHORITY

SUPPLEMENT TO
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THE CUSTOMS, FISCAL, EXCISE AND SALES DUTY (AMENDMENT)
BILL, 1987

(Bill No. 6 of 1987)

(To be presented by the Minister for Finance)

MEMORANDUM OF OBJECTS AND REASONS

The object of this Bill is to amend various provisions of the Customs, Fiscal, Excise and Sales Duties Act, 1971 so as to bring them into conformity with the corresponding provisions of the Customs and Excise Act, 1964, of the Republic South Africa, in accordance with Swaziland's obligations under Article 10 of the 1969 Customs Union Agreement, and in particular to amend the Act so as—

- (a) to amend the article by which the Act may be cited;
- (b) to further define certain expressions used in the Act;
- (c) to provide for a Commissioner of Customs in place of a Secretary;
- (d) to make special provision in regard to the appointment of places of entry for Swaziland;
- (e) to make other provisions regarding goods imported by post;
- (f) to further determine the manner in which any person entering or leaving Swaziland shall declare goods in his possession and pay such duties as may be assessed thereon;
- (g) to regulate the transfer or pledging of warehoused goods;
- (h) to provide further for the manufacture of excisable goods and the collection of excise duty;
- (i) to provide for the determination of the time of exportation of certain goods;
- (j) to determine the value for customs purposes of goods sold in transit;
- (k) to further regulate the adjustment of bills of entry which have been passed in error;
- (l) to further regulate the liability of a container operator for duty;
- (m) to provide for the determination of the duty applicable to dutiable goods imported into or manufactured in Swaziland which were removed without entry for home consumption having been made;
- (n) to further regulate the liability for duty on excisable, sales duty and imported goods;
- (o) to make further provision regarding the operation of the determination by the Commissioner of Customs and Excise of the classification of goods with reference to the duty payable thereon;
- (p) to prohibit certain acts in respect of goods intended for home consumption which have not been duly entered for such purpose;
- (q) to make further provision for the imposition of anti-dumping duties;
- (r) to make further provision regarding the operation of the determination by the Commissioner of Customs and Excise of the value of imported goods for customs duty purposes;
- (s) to make new provision for the determination of the value of certain imported goods and certain goods manufactured in Swaziland;

- (t) to further regulate the calculation of the value for duty purposes of certain imported goods;
- (u) to make further provisions with regard to the interpretation of sections 65, 66 and 67 of the Act;
- (v) to further regulate rebate of duty in respect of certain goods entered for use in certain activities;
- (w) to delete the provisions in relation to the entry of kerosene under rebate of duty;
- (x) to empower the Minister of Commerce, Industry and Tourism to authorise entry of imported goods under rebate of duty;
- (y) to make further provisions for refunds of duty in respect of dutiable goods;
- (z) to increase certain penalties and create or amend certain offences;
- (aa) to empower the Commissioner to approve certain persons as container operators;
- (ba) to create a certain legal fiction in connection with particular forms and invoices;
- (ca) to extend the lien in favour of the Government for duties unpaid to certain additional goods, machinery, plant and equipment;
- (da) to provide for the furnishing of certain information regarding the compilation and tabulation of certain statistics; and
- (ea) to provide for matters incidental thereto.

D.P. MAKANZA
Attorney—General

A BILL
FOR

An Act to amend the Customs, Fiscal, Excise and Sales Duties Act, 1971.

ENACTED by the King and the Parliament of Swaziland.

Short title.

1. This Act may be cited as the Customs, Fiscal, Excise and Sales Duties (Amendment) Act, 1986 and shall be read as one with the Customs, Fiscal, Excise and Sales Duties Act, 1971 (hereinafter called the "principal Act").

Amendment of Section 1.

2. Section 1 of the principal Act is amended by replacing subsection (1) with the following—
- “(1) This Act may be cited as the Customs and Excise Act, 1971 and, subject to subsection (2) shall, except as may otherwise be provided, be deemed to have come into force on 1st March, 1969”.

Amendment of section 2.

3. Section 2 of the principal Act is amended—
- (a) by inserting after the definition of “beer” the following—
“Commissioner” means the Commissioner of Customs and Excise appointed under section 3;”

- (b) by replacing the definition of "container operator" with the following—

"'container operator' means any person providing international transportation of containerized goods, and approved by the Commissioner under section 96(*bis*), for operating containers in Swaziland;" and

- (c) by deleting the definition of "Secretary".

Amendment of section 3.

4. Section 3 of the principal Act is amended by replacing the word "Secretary" with the word "Commissioner", and any reference in the Act thereafter to "Secretary" shall be deemed to be a reference to "Commissioner".

Amendment of section 5.

5. Section 5 of the principal Act is amended by adding after subsection (1) the following—

"(1*bis*) Any place outside Swaziland may be deemed by the Commissioner to be a place of entry for Swaziland through which goods may be imported or exported, or where goods may be landed for transit or where goods may be entered for customs and excise purposes."

Amendment of section 9.

6. Section 9 of the principal Act is amended by replacing subsection (2) with the following—

"(2) For the purposes of subsection (1) a place outside Swaziland deemed by the Commissioner under section 5(1*bis*) to be a place of entry for goods consigned to Swaziland shall be deemed to be a place in Swaziland in respect of goods consigned to such place for removal to Swaziland overland."

Amendment of section 12.

7. Section 12 of the principal Act is amended—

- (a) by replacing subsection (1) with the following—

"(1) For the purposes of entry and collection of duty on goods imported into Swaziland 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 37: Provided that the Minister may by regulation exclude from the provisions of this subsection any goods of a class or kind specified in such regulation or any such goods imported in circumstances so specified.";

- (b) by deleting subsection (2);

- (c) by replacing subsection (3) with the following—

"(3)(a) 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, 5, or 7 specified by the Commissioner after consultation with the Director of Posts and Telecommunications shall be so entered at a customs and excise office before a Controller.

- (b) Notwithstanding anything contained in subsection (1), any goods imported by such class of addressee, or any goods imported by post and of such class or kind, as may be specified by the Commissioner after consultation with the Director of Posts and Telecommunications, shall be entered at a customs and excise office before a Controller.”;
- (d) by replacing subsection (4) with the following—

“(4) In the case of goods exported by post, any form or label affixed to or completed in respect of a postal item, on which a description of the contents and their value are set forth, shall be deemed to be a bill of entry export as required by this Act.”.
- (e) by adding after subsection (4) the following—

“(5) Notwithstanding anything contained in subsection (1) or in any other law but subject to the provisions of subsection (3), 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 Controller, who may examine such postal item, and if he finds that the goods therein do not agree in all respects with the particulars relating to the value, description or quantity appearing on the form or label referred to in subsection (1) or the invoice concerned, such goods shall notwithstanding anything to the contrary in any other law be liable to forfeiture.”.

Amendment of section 13.

8. Section 13 of the principal Act is amended—

- (a) by replacing subsection (1) with the following—

“(1) Any person entering or leaving Swaziland shall, in such manner as the Commissioner may determine, unreservedly declare all goods in his possession which brought with him into Swaziland or proposes taking with him beyond the borders of Swaziland and shall furnish an officer with full particulars thereof, answer full 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 examination by the said officer and shall pay the duties assessed by such officer to the Controller”; and
- (b) by adding after subsection (1) the following—

“(1 bis) Any declaration made under 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.”.

Amendment of section 24.

9. Section 24 of the principal Act is replaced with the following—

- “24 (1) Except with prior permission of the Commissioner,—
- (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 goods referred to in paragraph (a) have been pledged or hypothecated may not enter into any agreement whereby any rights obtained by him by virtue of such pledge or hypothecation are ceded to any other person.
- (2) Any agreement entered into contrary to subsection (1) shall for the purposes of this Act be deemed to be null and void."

Amendment of section 35.

10. Section 35 of the principal Act is replaced with the following—

"Special provisions in respect of manufacture of sales duty goods or goods specified in Section B of Part 2 of Schedule No. 1 and collection of sales duty or excise duty specified in Section B of Part 2 of Schedule No. 1.

35 (1) A manufacturer of sales duty goods or excisable goods specified in Section B of Part 2 of Schedule No. 1 or an owner of sales duty goods or excisable goods specified in Section B of Part 2 of the said Schedule manufactured for him partly or wholly from materials owned by such owner, and a manufacturer of and dealer in pearls, precious and semi-precious stones, precious metals, rolled precious metals or articles containing or manufactured of such pearls, precious and semi-precious stones, precious metals or rolled precious metals (excluding imitation jewellery), shall license his premises as a special warehouse for sales duty purposes of excise duty specified in Section B of Part 2 of Schedule No. 1.

- (2) A manufacturer, owner or dealer referred to in subsection (1) shall not manufacture or deal in or with sales duty goods or excisable goods specified in Section B of Part 2 of Schedule No. 1 unless he has licensed his premises as specified in the said subsection.

Provided that the Commissioner may to the extent he deems fit, and on conditions he may impose exempt, any manufacturer, owner or dealer from the requirements of this Act.

- (3) Notwithstanding anything to the contrary in this Act,

- (a) where the value added by any process in the manufacture of sales duty goods or excisable goods specified in Section B of Part 2 of Schedule No. 1 is, in the opinion of the Commissioner, low in relation to the manufacture selling price of such goods, or where any process in the manufacture of sales duty goods or excisable goods specified in Section B of Part 2 of the said Schedule presents in his opinion exceptional difficulties in the collection of sales duty or excise duty specified in Section B of Part 2 of the said Schedule 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 determine, and the processes which shall be deemed to be included for the purposes of calculating the value for sales duty purposes or for purposes of excise duty specified in Section B of Part 2 of the said Schedule of such goods shall be as determined by him;

- (b) the Commissioner may, subject to such conditions as he may impose,

- (i) where the production and disposal of any sales duty goods or excisable goods specified in Section B of Part 3 of Schedule No. 1 are performed by different persons, or under circumstances rendering it expedient in his opinion to do so, issue one licence under this Act in respect of the premises of two or more persons

concerned, and thereupon each such person shall be jointly and severally liable for the sales duty or excise duty specified in Section B of Part 2 of the said Schedule on all the sales duty goods or excisable goods specified in Section B of Part 2 of the said Schedule anyone paying, the other or others to be absolved *pro tanto*;

- (ii) include in a special duty warehouse licence issued under this Act in respect of the premises of any manufacturer of sales duty goods or 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 Commissioner and in which any such goods owned by such manufacturer are stored, and thereupon such goods shall, for the purposes of this Act, be deemed to be in the licensed special duty warehouse of such manufacturer, and the licensee concerned shall be liable for compliance with the requirements of this Act including liability for the sales duty or excise duty specified in Section B of Part 2 of the said Schedule on such goods so stored;
- (iii) and in such circumstances as he may deem expedient, license the premises of any dealer in sales duty goods or excisable goods specified in Section B of Part 2 of Schedule No. 1 as a special duty warehouse under the provisions of this Act, and thereupon such dealer shall comply with the requirements of this Act relating to the collection of sales duty or excise duty specified in Section B of Part 2 of the said Schedule on such sales duty goods or excisable goods specified in Section B of Part 2 of the said Schedule as the Commissioner may determine, and such dealer shall be liable for the sales duty or excise duty specified in Section B of Part 2 of the said Schedule on such goods; and
- (iv) make such temporary or permanent adjustment to the sales duty value of any sales duty goods or excise duty value of 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) Sales duty goods or excisable goods specified in Section B of Part 2 of Schedule No. 1 manufactured in Swaziland by a natural person for his own use and not for sale or disposal in circumstances which in the opinion of the Commissioner do not constitute a business venture, may, subject to such conditions as he may impose be exempted from payment of sales duty or excise duty specified in Section B of Part 2 of the said Schedule.

(4) Sales duty goods or excisable goods specified in Section B of Part 2 of Schedule No. 1 manufactured in Swaziland by any other person, or any class or kind of such goods, may, subject to such conditions as the Minister may impose, be exempted by the Commissioner from the payment of sales duty or excise duty specified in Section B of Part 2 of the said Schedule if—

- (a) the average value for sales duty purposes or for purposes of excise duty specified in Section B of Part 2 of the said Schedule of such goods or such class or kind of goods has during such period as the Minister may determine, not exceeded a certain amount determined by the Minister; or

- (b) the value for sales duty purposes or for purposes of excise duty specified in Section B of Part 2 of the said Schedule of such goods or such class or kind of goods is in the opinion of the Commissioner not likely to exceed the amount referred to in paragraph (a) during one calendar year; or
- (c) such circumstances as the Commissioner may specify apply.”.

Amendment of section 37.

11. Section 37 of the principal Act is amended—

- (a) by replacing subsection (4) with the following—

“(4)(a) An exporter of any goods shall, before such goods are exported from Swaziland, deliver to the Controller a bill of entry in the prescribed form:

But the Commissioner may—

 - (i) 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
 - (ii) in the case of goods to be exported overland by means of a vehicle (excluding an aircraft and a railway train) which are loaded for export at a place other than a place appointed under section 5,

allow such a bill of entry to be delivered at such time as he deems reasonable.
- (b) For the purpose of paragraph (a), in respect to the delivery of a bill of entry, the goods referred to therein shall be deemed to have been exported from Swaziland—
 - (i) in the case of goods to be exported in a ship, at the time when such goods are delivered to the railway operator, a depot operator, the master of the ship or a container operator, as the case may be;
 - (ii) 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 or are brought within the control area of the airport authority concerned, as the case may be;
 - (iii) in the case of goods to be exported in a railway train, at the time when such goods are delivered to the railway operator; or
 - (iv) in the case of goods to be exported overland in a vehicle other than an aircraft or a railway train, subject to paragraph (a), at the time when such goods are loaded on the vehicle”.

Amendment of the principal Act.

12. The principal Act is amended after section 38 by adding the following section—

“Sale in transit.

- 38 *bis* Notwithstanding anything to the contrary in this Act, the importer of any goods purchased from any Customs Union consignee after shipment of such goods but before the date of entry thereof, shall produce to the Controller the invoice relating to such purchase, and the price actually paid or payable for such goods by virtue of such purchase shall for the purposes of section 65 (1) be the transaction value of such goods.”.

Amendment of section 39.

13. Section 39 of the principal Act is amended—

- (a) by replacing subsection (3) with the following—

“(3) Subject to the provisions of sections 76 and 77 and on such conditions as the Commissioner may impose and on payment of such fees as the Minister may prescribe—

- (i) an importer or exporter or manufacturer of goods shall on discovering that a bill of entry presented by him does not comply in every respect with section 38, 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 Commissioner may prescribe; or
- (ii) if a bill of entry has been passed in error by reason of duty having been paid on goods intended for storage or manufacture in a customs and excise warehouse under section 18 or for purposes or use under rebate of duty under section 75, the Commissioner may allow the importer, exporter or manufacturer 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 in all respects at the time the duty was paid 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.”;

- (b) by replacing subsection (4) with the following—

“(4) The provisions of subsection (3)(ii) shall apply *mutatis mutandis* in respect of a bill of entry in which goods have according to the tariff heading, tariff sub-heading, 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 18; or
- (b) purposes or use under rebate of duty under section 75, in consequence of the fact that—
 - (i) a determination of any such tariff heading, tariff sub-heading or item is, under section 46(12)(d), 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 46(12)(d), 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”; and
- (c) by adding after subsection (4) the following—
 - “(5) No application for any substitution under this section shall be considered by the Commissioner unless it is received by the Controller, 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 on which the duty to which the application relates was paid; or
- (b) in the case of any amendment of a determination referred to in subsection (4)(b)(i) or a new determination referred to in subsection (4)(b)(ii), 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 subsection (4)(b)(iii), from the date on which such amendment is published by notice in the Gazette.”.

Amendment of section 43.

14. Section 43 of the principal Act is amended—

- (a) in subsection (5 *bis*) by replacing paragraph (b) with the following—
 - “(b) in respect of goods containerised 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”;
- (b) in subsection (5 *ter*) by replacing paragraph (a) with the following—
 - “(a) in respect of goods containerised in L.C.L. containers and the other containers referred to in subsection (5 *bis*) (b) (ii), upon lawful delivery thereof, after due entry thereof has been made, to the importer or his agent; or”;
- (c) by replacing subsection (9) with the following—
 - “(9) The manufacturer, owner, seller or purchaser of any excisable goods or sales duty 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 thereon paid”.
- (d) by adding after subsection (9) the following—
 - “(9 *bis*) Notwithstanding any provision to the contrary 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 for home consumption in any territory, under section 51 with a government of whom such an agreement has been concluded, shall be liable for the duty on such goods brought into Swaziland from such territory, and if the question arises whether such goods have been duly entered for home consumption 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 46 *bis* (1) not been duly entered for home consumption in Swaziland.”.

Amendment of section 44.

15. Section 44 of the principal Act is amended by replacing subsection (1) with the following—

- “(1) (a) Notwithstanding anything to the contrary contained in this Act, all goods consigned to or imported into Swaziland 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 and countervailing duties specified in Schedule No. 2 and new or increased duties referred to in section 58(1) and duties imposed under section 53) as may time of such entry be leviable upon such goods.
- (b) Notwithstanding paragraph (a) and subject to section 39, any goods imported into or manufactured in Swaziland, which are liable to duty and which were removed, taken or delivered without 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 delivery or at the time of assessment by an officer, whichever yields the greater amount of duty.”.

Amendment of section 46.

16. Section 46 of the principal Act is amended by adding after subsection (13) the following—

- “(14) Notwithstanding the provisions of subsection (13), any determination made under subsection (12)(a) following upon 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.”.

Amendment to the principal Act.

17. The principal Act is amended after section 46 by adding the following—

“Prohibition of dealing with goods not entered for home consumption.

- (46 bis) (1) Subject to this Act, no person shall remove, receive, take, deliver or deal with in any imported or excisable goods intended for home consumption unless such goods have been duly entered for home consumption.
- (2) If an officer discovers any imported or excisable goods which are alleged to have been duly entered, in terms of any agreement, for home consumption in any territory with a government of which Swaziland has concluded such an agreement in terms of section 51 and he has reasonable cause to believe that such goods have not been so entered, he may detain such goods, and such goods shall thereupon be presumed, unless the contrary is proved, not to have been so entered and shall be subject to this Act as if they were goods which have, contrary to subsection (1), not been duly entered for home consumption in Swaziland.”.

Amendment of section 56.

18. Section 56 of the principal Act is amended—

(a) by replacing subsection (1 *bis*) with the following—

“(1 *bis*) the Minister may, in respect of any class or kind of imported goods on which a provisional charge has been imposed under section 57 *bis* amend Schedule No. 2—

(a) with effect from the date from which that provisional charge has been imposed; or

(b) with effect from a date not more than three months prior to the date with effect from which that provisional charge has been imposed if he is satisfied that—

(i) such goods have been repeatedly dumped, as contemplated in subsection (2), and have caused material injury to an established industry in Swaziland; or

(ii) the importer should have been aware that the exporter is so dumping and that such dumping would cause such injury and the Minister is of opinion that the dumping operates to such an extent in such quantities and for such short period that in order to prevent such dumping, he deems it necessary so to amend Schedule No. 2”; and

(b) by adding after subsection (2)(b)(ii) the following—

(iii) the highest comparable price for identical or comparable goods when exported from any other territory to Swaziland in the ordinary course of trade; or ”; and

(c) by deleting subsection (7).

Amendment of section 57 bis.

19. Section 57 *bis* of the principal Act is amended by replacing subsection (1) with the following—

“(1) If the Minister is satisfied before any anti-dumping duty is imposed under section 56 that the requirements of section 56(1)(a), (b) and (c) are met in respect of any class or kind of imported goods, he may by notice in the Gazette impose a provisional charge in relation to anti-dumping on imported goods of that class or kind for a period not exceeding four months as from date of publication of such notice, or, if requested by the exporter concerned before the expiry of the said period, for a further period not exceeding two months.”.

Amendment of section 65.

20. Section 65 of the principal Act is amended—

(a) by adding after subsection (6) the following—

“(6 *bis*) Notwithstanding the provisions of subsection (6), any determination made under subsection (4)(a) following upon 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 and entered for customs purposes, two years prior to the date on which the inspection commenced.”; and

(b) by replacing subsection (7) with the following—

- “7(a) Notwithstanding the provisions of subsections (1) and (4), 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 fifteen percent 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 Section B of Part 2 of Schedule No. 1 on such goods.
- (b) Subsection (3) or (4) of section 70 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.”

Amendment of section 69.

21. Section 69 of the principal Act is amended—

(a) by replacing subsection (4) with the following—

- “(4) Notwithstanding subsections (1) and (2), the value for excise duty purposes of any goods manufactured in Swaziland and specified in Section B of Part 2 of Schedule No. 1 (other than goods entered under item 627.01 of Schedule No. 6) shall be the value for excise duty purposes of such goods calculated or determined in terms of subsection (1) or (2), plus any non-rebated excise duty payable under Section A of Part 2 of Schedule No. 1 on such goods.

(b) by replacing subsection (5) with the following—

- “(5) Section 70(3) or (4) shall *mutatis mutandis* apply to the calculation or determination of the value for excise duty purposes of any goods specified in Section B of Part 2 of Schedule No. 1 and entered in terms of item 617.01 of Schedule No. 6.”

Amendment of section 71.

22. Section 71 of the principal Act is amended by replacing the words in subsection (2) preceding the first proviso with the following—

- “If any motor vehicle is imported by an individual for his own use and not for resale, the Commissioner may, notwithstanding section 65(1) and (4) but with due regard to section 66, determine a value which shall, subject to a right of appeal to the Minister be deemed to be the value for duty purposes of such vehicle.”

Amendment of section 74bis.

23. Section 74bis of the principal Act is replaced with the following—

- “74bis (1) The interpretation of section 65, 66 and 67 shall be subject to the agreement known as the Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade, concluded at Geneva on 12th April, 1979 and the Interpretative Notes thereto and the Advisory Opinions, Commentaries, Explanatory Notes, Case Studies and Studies issued under the said Agreement (hereinafter in this section called the agreement).

- (2) The Commissioner shall obtain and keep in his office two copies of the agreement and shall effect thereto any amendment of which he is notified by the Secretariat of the General Agreement on Tariffs and Trade.
- (3) Whenever in any legal proceedings any question arises to the contents of the agreement, or as to the date upon which any amendment was effected thereto in terms of subsection (2) a copy of the agreement or if amended as contemplated in subsection (2) a copy of the agreement as amended, shall be accepted as sufficient evidence of the contents thereof or of the effective date of any amendment thereto 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 65, 66 or 67."

Amendment of section 75.

24. Section 75 of the principal Act is amended—

(a) in subsection (2)—

(i) by replacing paragraph (b) with the following—

"(b) a factory, a mine or elsewhere in any other activity which the Commissioner may approve.

(ii) by replacing paragraph (c) with the following—

"(c) 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 Commissioner may impose";

(b) by replacing subsection (4bis) with the following—

"(4bis) (a) Notwithstanding anything to the contrary in this Act, any distillate fuel or residual fuel oil which may be entered under rebate of duty under any item of Schedule No. 4 or 6, shall be so entered by the supplier thereof.

(b) Any distillate fuel or residual fuel oil so entered shall, if supplied to a reseller or user thereof, be so supplied in such manner and on such conditions as may be prescribed by regulation.

(c) Any reseller so supplied who supplies such distillate fuel or residual fuel oil to any user, shall so apply it in such manner and on such conditions as may be prescribed by regulation.

(d) Notwithstanding anything to the contrary in this Act, any supplier or reseller who has supplied to any reseller or user any distillate fuel or residual fuel oil entered as stated in paragraph (a) who fails to forthwith furnish an officer at his request with the forms and invoices required by regulation to be completed and kept in respect of the supply of any such distillate fuel or residual fuel oil so supplied, shall be deemed to have so supplied such distillate fuel or residual fuel oil for a purpose other than a purpose or use stated in any item of Schedule No. 4 or 6, and shall be liable for and shall pay no demand by the Commissioner, the following duty—

(i) in the case of such supplier, such duty as contemplated in paragraph (e);

(ii) in the case of such reseller, such duty as is contemplated in paragraph (f).

- (e) If a supplier referred to in paragraph (a) supplies any distillate fuel or residual fuel oil entered as stated in paragraph (a) to any reseller or user contrary to the manner or conditions prescribed therefor he shall be liable for such duty thereon as may be leviable at the time of such entry, or if the duty concerned has after such entry been increased, to the payment of such increased duty, as if no rebate of duty applied thereto.
- (f) If any seller referred to in paragraph (c) supplies any distillate fuel or residual fuel oil to any user contrary to the manner or conditions prescribed, he shall be liable for the duty thereon to the extent of the rebate allowed to the supplier referred to in paragraph (a) at the time of entry:

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.”;

- (c) by replacing the words preceding the proviso to subsection (6) with the following-

“(6) Any person to whom any distillate fuel or residual fuel oil has been supplied from stocks which have been entered under rebate of duty 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 or any portion thereof for any other purpose, shall be guilty of an offence and shall, notwithstanding the provisions of subsection (5) 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 Commissioner may determine.”;

- (e) by adding after subsection (16) the following—

“(16bis) (a) Subject to the concurrence of the Minister, the Minister for Commerce, Industry and Tourism may at any time after a permit by virtue of which imported goods may in terms of any item of Schedule No 3, 4, 5 or 6 be entered under rebate of duty has been refused, but not later than two years after duty was paid on those goods, issue a permit authorising entry of those goods under rebate of duty in accordance with the provisions of the item concerned if, with due regard to any facts which became known after such a permit has been refused, he is satisfied that he would have issued such a permit if those facts were then known.

- (b) For purposes of section 3(3)—

- (i) any bill of entry passed in relation to imported 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 or use under rebate of duty under section 75;
- (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 respects for rebate; and

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

(f) In subsection 19—

(i) by replacing the words preceding paragraph (a) with the following—

Subject to subsection 18(8) and items 412.07, 412.08, 412.09, 531.00, 532.00, 608.01, 608.02, 608.03, 608.04, 707.01, 707.02, and 707.03 of Schedules Nos. 4, 5, 6 and 7, no rebate of refund of duty in respect of any loss or deficiency of any nature of any goods shall be allowed, but the Commissioner may allow the deduction from the dutiable quantity of the undermentioned goods of the quantity equal to the percentage stated below in the case of—

(ii) by replacing paragraph (a) with the following—

“(a) Wine spirits (ethyl alcohol) manufactured in Swaziland and entered for storage in a customs and excise storage warehouse, excluding spirits specified in paragraph (b *bis*), 1,5 per cent of the quantity so entered;”;

(iii) by adding after paragraph (b) the following—

“(b *bis*) 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, the percentage, but not exceeding 1.25 per cent of the quantity so removed, as may in the opinion of the Commissioner represent a loss incurred while the spirits in question are so removed and stored as the Commissioner may determine;”

(iv) by replacing paragraph (e) with the following—

“(e) imported crude naphtha for use in the refining of petroleum products, or imported excisable petrol, 0,25 per cent of any quantity entered for storage in any customs and excise storage warehouse;”;

Amendment of section 76.

25. Section 76 of the principal Act is amended by replacing subsection (4) with the following—

“(4) An application for a refund or payment under this section shall not be considered by the Commissioner unless it is duly completed and supported by the necessary documents and other evidence to prove that such refund or payment is due under this section, and is received by the Controller, within a period of two years—

(a) from the date on which the duty or charge to which the application relates was paid; or

- (b) in the case where a determination of a tariff heading, tariff subheading or item referred to in section 46(12)(a) or of a value referred to in section 65(4)(a) is, under section 46(12)(d), or section 65(5), as the case may be, amended with retrospective effect from a date before or on the date on which the duty to which the application relates was paid, or any such determination is, under the said section 46(12)(d) or section 65(5), as the case may be, withdrawn with such retrospective effect, and a new determination is thereunder made with effect from such withdrawal, 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 where any Schedule is amended with such retrospective effect, from the date on which such amendment is published by notice in the Gazette:
Provided that the Commissioner may, in such circumstances as he may consider exceptional, consider any such application after expiration of such period.”

Amendment of section 78.

26. Section 78 of the principal Act is amended—

- (a) in subsection (2) by replacing the words “four hundred rand” with the words “one thousand rand”
- (b) in subsection (3) by replacing the words “six hundred rand” with the words “one thousand five hundred rand”

Amendment of section 79.

27. Section 79 of the principal Act is amended—

- (a) in subsection (1) by replacing the words “four hundred rand” with the words “one thousand rand”
- (b) in subsection (2) by replacing the words “six hundred rand” with the words “one thousand five hundred rand”

Amendment of section 80.

28. Section 80 of the principal Act is amended—in subsection (1)

- (a) by replacing paragraph (h) in the following—
“(h) without lawful excuse (the proof of which shall lie upon him), brings into Swaziland 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 Swaziland;”;
- (b) by deleting the word “or” at the end of paragraph (n)—
- (c) by replacing paragraph (o) with the following—
“(o) contravenes section 18(7), 33 *bis* (4), 60(1), 63(1) or 75(20); or”;
- (d) after paragraph (o) by adding the following—
“(p) fails to comply with any conditions determined under section 106(2).”;
and
- (e) by replacing the words “one thousand rand” with the words “two thousand five hundred rand”.

Amendment of section 81.

29. Section 81 of the principal Act is amended by replacing the words "two thousand rand" with the words "five thousand rand".

Amendment of section 83.

30. Section 83 of the principal Act is amended by replacing the words "two thousand rand" with the words "five thousand rand".

Amendment of section 84.

31. Section 84 of the principal Act is amended in subsection (1) by replacing the words "two thousand rand" with the words "five thousand rand".

Amendment of section 85.

32. Section 85 of the principal Act is amended by replacing the words "two thousand rand" with the words "five thousand rand".

Amendment of section 86.

33. Section 86 of the principal Act is amended by replacing the words "two thousand rands" with the words "five thousand rand".

Amendment of section 95.

34. Section 95 of the principal Act is amended—

- (a) by deleting subsection (3);
- (b) by renumbering subsection (2) as subsection (3); and
- (c) by adding a new subsection (2) as follows:

"(2) Any person who at any place deemed under section 5 (1 *bis*) to be a place of entry for Swaziland or in any territory with the government with which an agreement has been concluded under section 51, performs any act which constitutes an offence under this Act shall be guilty of such offence, which shall for purposes of jurisdiction of a court to try the offence, be deemed to have been committed at any place where the accused happens to be.";

Amendment of the principal Act.

35. The principal Act is amended after section 96 by adding the following—

"Approval of container operators.

96 *bis* The Commissioner may, subject to such conditions as he may generally or in respect of a particular case determine, approve for operating containers in Swaziland any person providing international transportation of containerized goods."

Amendment of section 102.

36. Section 102 of the principal Act is amended by replacing subsection (4) with the following—

- "(4) If any prosecution under this Act or in any dispute in which the Government, the Minister of the Commissioner or any officer is a party, the question arises whether the proper duty has been paid or whether any goods of plant have

been lawfully imported, exported, manufactured, removed or otherwise dealt with or in, or whether any forms or invoices required by regulation to be completed and kept, exist or have been duly completed and signed 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 imported, exported, manufactured, removed or otherwise dealt with or in, or that such forms or invoices do not exist or have not been duly completed and signed or have not been furnished, as the case may be, unless the contrary is proved by the accused”.

Amendment of section 106.

37. Section 106 of the principal Act is amended by replacing subsection (2) with the following—

- “(2) Subject to this Act, the Commissioner 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 he has satisfied himself that this Act or any law relating to the importation or exportation or transit carriage of goods through Swaziland has been complied with in respect of such goods, and the Government or the Commissioner or any officer shall in no case be liable in respect of any claims arising out of the detention of goods pending the decision of the Commissioner or for the cost of such detention.”.

Amendment of section 114.

38. Section 114 of the principal Act is amended by replacing subsection (1) with the following—

- “(1) (a) The correct amount of duty payable in respect of any goods imported into or exported from Swaziland or any goods manufactured in Swaziland and 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 Government by the person concerned; and
- (b) any goods in a customs and excise warehouse or in the custody of any officer (including goods in a rebate storeroom) and belonging to the person, referred to in paragraph (a), and any goods afterwards imported or exported by that person, 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 an excise or sales duty is prescribed (whether or not such duty has been paid) and any materials for the manufacture of such goods in the possession or under the control of such person or any premises 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 dutiable fuel 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.”.

Amendment of section 118.

39. Section 118 of the principal Act is amended—

- (a) by adding the figure “(1)” before the opening words.
- (b) by adding the following subsection—

“(2) For the purpose of subsection (1) any person —

- (a) entering any goods for import or export shall, in addition to any particulars necessary for making due entry of such goods, furnish such particulars of such goods as the Commissioner 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 Commissioner may require the value for excise duty purposes in terms of section 69 of all excisable goods manufactured by him, whether or not such goods are subject to *ad valorem* or to a duty calculated according to a unit of quantity, volume or other measurement, as the case may be.”.