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THE CUSTOMS AND EXCISE (AMENDMENT) BILL, 2001

(Bill No. 10 of 2001)

(To be presented by the Minister for Finance)

MEMORANDUM OF OBJECTS AND REASONS

The object of this Bill is to amend the Customs and Excise Act, 1971 so as to provide for preferential treatment of goods exported from Swaziland allowed on importation into any country in terms of or in compliance with the requirements of any enactment of the government of such country and for matters related or incidental thereto.

P.M. DLAMINI
Attorney-General

A BILL entitled

An Act to amend the Customs and Excise Act, 1971

ENACTED by the King and the Parliament of Swaziland.

Short title

1. This Act may be cited as the Customs and Excise (Amendment) Act, 2001 and shall be read as one with the Customs and Excise Act, 1971 (hereafter referred to in this Act as the "Principal Act")

Amendment of Section 2

2. Section 2 of the Principal Act is amended by replacing the definition of "this Act" with the following new definition –

"This Act" includes any government notice, regulations or rule issued or made or agreement concluded thereunder, any agreement contemplated in Section 49 or any amendment to a schedule contemplated in Section 58";

Amendment of Section 4

2. Section 4 of the Principal Act is amended by inserting the following new subsection immediately after subsection (12)-

- (12.bis) (a) Where on the exportation of any goods from Swaziland 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 45 bis, 49 or 51 or any other requirement or any practice, an officer may, for the purposes of verifying or investigating such certificate, declaration or other proof, require the exporter, or any other person appearing to the officer to have been concerned in any way with;

- (aa) the production or manufacture or exportation of such goods;
- (bb) any goods from which directly or indirectly such goods have been produced or manufactured; or
- (cc) the furnishing of such certificate, declaration or other proof,

to furnish such information in such a 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 lading, bills of entry, books of account or other documents in whatever form, as the officer may specify.

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

Amendment of Section 45

4. Section 45 of the Principal Act is amended by inserting the following new section immediately after Section 45 –

“Non-reciprocal preferential tariff treatment of goods exported from Swaziland”.

45bis (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 Commissioner 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 Commissioner as contemplated in subsection (2);

‘preferential tariff treatment’ means the non-reciprocal preferential tariff treatment of goods exported from Swaziland 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(4)(b) 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 Commissioner as contemplated in subsection (2).

(2) (a) The Commissioner shall –

- (i) keep two copies of any enactment and any amendment thereto received from the Customs administration of the country allowing preferential tariff treatment;

- (ii) 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
 - (iii) effect any such amendment to the enactment.
- (b) Any enactment or amendment thereto shall for the purposes of this Act, be effective from the date so recorded.
- (c) 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 became 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.
- (d) Any such copy kept by the Commissioner shall be accessible to any interested person during official working hours.
- (e) The Commissioner may publish any enactment or part thereof or amendment thereto in the Gazette.
- (3)(a) 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 any rule made in terms of, this section for the purposes of giving effect to any enactment, be subject to compliance with the provisions of such enactment or any part or provision thereof, as the case may be.
- (b) The provisions of section 4(12)bis shall apply *mutatis mutandis* in respect of any goods exported from Swaziland for the purposes of benefiting from the preferential tariff treatment contemplated in an enactment and any person referred to in section 4(12bis)(a) 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 the requirements relating to –
 - (i) maintaining complete books, accounts and other documents in respect of -
 - (aa) the production or manufacture and any materials used in the production or manufacture of the goods exported;
 - (bb) 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;
 - (cc) proof of the originating status of such goods in accordance with the relevant rules of origin; and
 - (dd) the exportation of the goods;
 - (ii) permitting and assisting customs officers of the country of importation to investigate –
 - (aa) such books, accounts and other documents; and
 - (bb) any circumvention contemplated in subsection (8).

(4) In administering the provisions of any enactment or any part or provision thereof and the application of any provisions of this Act to give effect thereto the Commissioner may, notwithstanding 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 I or any item or any other part of Schedule No. I 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 –

(aa) the origin or proof of origin of goods imported or exported;

(bb) the importation or production or manufacture or exportation of goods and the ex-factory price of goods or the cost or value of materials;

(cc) tariff quotas;

(dd) any circumvention and any action taken in respect thereof;

(ee) 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;

(ff) 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;

(gg) requirements in connection with any agency where any person is represented in the exportation of any goods involving proof of origin;

(hh) furnishing of a certificate of origin including in respect of multiple shipments of identical goods over a specified period;

(ii) any document relating to origin issued retrospectively;

(jj) 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) make rules –

(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 3 (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 Commissioner 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.
- (5) Whenever any report is required by any 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 authorised by the Minister, the Commissioner 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 Commissioner as contemplated in subsection (2).
- (6)(a) (i) Every producer, manufacturer or exporter of goods to which this section relates, shall be registered with the Commissioner for the purposes of this section.
 - (ii) No such goods may, from a date to be specified by rule, be exported unless the producer, manufacturer or exporter thereof is registered.
 - (b) Application for such registration shall be made on the form prescribed by the Commissioner by rule and the applicant shall comply with all the requirements specified therein and any additional requirements that may be prescribed in any other rule and as may be determined by the Commissioner in each case.
 - (c) Any registered producer, manufacturer or exporter of such goods shall comply with such requirements as the Commissioner may prescribe by rule and determine in each case.
 - (d) The Commissioner may –
 - (i) refuse to register any applicant and for that purpose the provisions of this Act shall apply to such application for registration;
 - (ii) cancel the registration of any producer, manufacturer or exporter of such goods –
 - (aa) if any books, accounts or other documents are not kept or produced as required by or in terms of this Act; or
 - (bb) 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 this Act in respect of any circumvention or contravention contemplated in subsection (8);

- (iii) subject to any prohibition imposed for the purposes of subsection (8)(b), reregister any person at any time after such cancellation on such conditions as the Commissioner may impose in each case.

(7) 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.

(8)(a) 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 –

- (i) 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;
- (ii) contravenes or fails to comply with any other provision of this Act, or
- (iii) attempts to circumvent or contravene any provision contemplated in sub-paragraphs (i) and (ii), as the case may be,

shall be guilty of an offence and liable on conviction to a fine not exceeding E100 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 period 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.

- (b) The Commissioner 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 this Act in respect of any circumvention contemplated in paragraph (a) prohibit, for a period 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.