

GENERAL AGREEMENT ON TARIFFS AND TRADE

RESTRICTED

VAL/1/Add.16 *

28 March 1985

Special Distribution

Committee on Customs Valuation

Original: English

INFORMATION ON IMPLEMENTATION AND ADMINISTRATION OF THE AGREEMENT

Legislation of Botswana

The following communication has been received from the Botswana Department of Customs and Excise.

Enclosed please find copies of the following:**

- (1) Botswana Act, No. 26 of 1983, which introduced the GATT Valuation Code into the Customs and Excise Duty Act (Cap 50:01, Laws of Botswana);
- (2) Customs and Excise Duty (Amendment) (No. 2) Regulations, 1983, which implemented the working of the new Code;
- (3) Departmental Instruction No. 29 issued to all members of the Botswana Customs and Excise Service.

As you are aware Botswana is a member of the Southern African Customs Union, together with Lesotho, South Africa and Swaziland.

In effect this means that all the countries have identical Customs legislation. South Africa is responsible for the clearance through her points of entry of the majority of imported goods and accordingly, is primarily concerned with matters relating to valuation and the application of the GATT Code.

In the circumstances, it is regretted that Botswana is not yet in possession of sufficient information to enable the checklist, VAL/2/Rev.1, to be completed. However, to the extent that our importers are dealt with by South Africa for valuation purposes, it can be accepted that the latter's replies to the aforementioned questionnaire will apply equally in the case of Botswana.

* English only/anglais seulement/Inglés solamente

** These texts are reproduced in Annexes 1 (page 2), 2 (page 21) and 3 (page 29) respectively of this document.

ANNEX 1

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CUSTOMS AND EXCISE DUTY (AMENDMENT) ACT, 1983

No.26



of 1983

ARRANGEMENT OF SECTIONS

SECTION

1. Short title and commencement
2. Amendment of section 19 of Cap. 50:01
3. Amendment of section 41 of principal Act
4. Amendment of section 42 of principal Act
5. Amendment of section 44 of principal Act
6. Amendment of section 46 of principal Act
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17. Amendment of section 79 of principal Act
18. Amendment of section 80 of principal Act
19. Amendment of section 81 of principal Act
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21. Repeal of section 101 of principal Act
22. Amendment of section 104 of principal Act
23. Amendment of section 118 of principal Act

An Act to amend the Customs and Excise Duty Act.

Date of Assent: 5.9.83

Date of Commencement: 9.9.83

ENACTED by the Parliament of Botswana.

1. (1) This Act may be cited as the Customs and Excise Duty (Amendment) Act, 1983.

Short title
and com-
mencement

(2) Sections 4, 11, 12, 13, 14, 15 and 16 shall be deemed to have come into operation on 1st July, 1983, whilst section 19 shall be deemed to have come into operation on 3rd July, 1978.

2. Section 19 of the Customs and Excise Duty Act (in this Act referred to as "the principal Act") is hereby amended —

Amendment
of section 19
of Cap. 50:01

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(a) by substituting for paragraph (a) of subsection (2) thereof, the following new paragraph —

- “(a) (i) 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 79 (19), the debiting to stock of any excess found on receipt of such goods at such warehouse.
- (ii) The licensee referred to in subparagraph (i) shall immediately upon the receipt of such goods report to the Director any such excess so found.”; and

(b) by deleting subsection (8) thereof.

Amendment
of section 41
of principal
Act

3. Section 41 of the principal Act is hereby amended by substituting for paragraph (a) of subsection (3) thereof the following new paragraph —

- “(a) Subject to the provisions of sections 80 and 81 and on such conditions as the Director may impose and on payment of such fees as the Minister may prescribe by regulation —
- (i) 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 40, 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
- (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 19 or for use under rebate of duty under section 79, the Director may allow the importer, exporter or manufacturer concerned to adjust that bill of entry by substitution of a fresh bill

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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. Section 42 of the principal act is hereby amended —

- (a) by substituting for paragraph (a) of subsection (4) thereof the following new paragraph —**

**Amendment
of section 42
of principal
Act**

"(a) 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."; and

- (b) by substituting for paragraph (c) of subsection (4) thereof the following new paragraph —**

"(c) If any particulars referred to in paragraph (a) 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 90 (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."

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Amendment
of section 44
of principal
Act

5. Section 44 of the principal Act is hereby amended by substituting for subsection (2) thereof the following new subsection —

“(2) (a) 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.

(b) If such goods are seized under section 92 (1) and sold in terms of section 94 the proceeds thereof shall be disposed of as provided in subsection (3).”.

Amendment
of section 46
of principal
Act

6. Section 46 of the principal Act is hereby amended by substituting for subsection (2) thereof the following new subsection —

“(2) 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 40 (1) (a) 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.”.

Amendment
of section 49
of principal
Act

7. Section 49 of the principal Act is hereby amended by substituting for subsection (6) thereof the following new subsection —

“(6) Any duty payable in terms of section 54, any anti-dumping duty payable in terms of section 57 and any countervailing duty payable in terms of section 58 shall be paid for the benefit of the Fund in accordance with the provisions of the said sections.”.

Amendment
of section 51
of principal
Act

8. Section 51 of the principal Act is hereby amended —

(a) by substituting for the words preceding the proviso to subsection (2) thereof the following new words —

“The Minister may from time to time by like notice amend or withdraw or, if so withdrawn, insert Part 2, Part 3 or Part 4 of Schedule No. 1, whenever he deems it expedient in the public interest to do so;” and

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

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“(6) Every amendment, withdrawal or insertion made by the Minister under this section shall be laid before the National Assembly. If the National Assembly shall 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. 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. Section 62 of the principal Act is hereby amended by substituting for subsection (2) thereof the following new subsection —

Amendment
of section 62
of principal
Act

“(2) The Director may, subject to an appeal to the Minister, whose decision shall be final —

- (a) refuse any application for a new licence; or
- (b) 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, 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 incurred a penalty under section 95 (1); or
 - (iv) has been convicted of an offence involving dishonesty.”.

10. Section 64 of the principal Act is hereby amended by substituting for subsection (3) thereof the following new subsection —

Amendment
of section 64
of principal
Act

“(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.”.

Cap. 32:10

11. Section 69 of the principal Act is hereby amended by substituting for that section the following new section —

Substitution
of section 69
of principal
Act

“Value for
customs duty
purposes

69. (1) Subject to the provisions of this Act, the

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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 70.

(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) (a) If in the opinion of the Director the transaction value of any imported goods cannot be ascertained in terms of section 70 or has been incorrectly ascertained by the importer, the Director may determine a value, which shall, subject to a right of appeal to the Minister, be deemed to be the value for customs duty purposes of the goods.

(b) 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.

(c) 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.

(5) The Director may whenever he deems it expedient and subject to a right of appeal to the Minister 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 (4);

(c) the date of such new determination; or

(d) the date of such amendment.

(6) An appeal against any such determination shall be lodged with the Minister in the manner prescribed

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by regulation within a period of 90 days from the date of the determination.

(7) Except where —

(a) a determination has been made under subsection (4) (a) or (5), or

(b) any false declaration is made for the purposes of subsection (4) or (5),

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.

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

(b) The provisions of subsection (3) or (4) of section 73 shall *mutatis mutandis* apply to the ascertainment or determination of the value for customs duty purposes of any such imported 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.

(9) For the purposes of sections 70 and 71, 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;

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- (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."

Substitution
of section 70
of principal
Act

12. Section 70 of the principal Act is hereby amended by substituting for that section, the following new section —

"Transaction
value

70. (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 71, 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;

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- (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 an appropriate adjustment can be made in terms of section 71;
 - (d) subject to subsection (3), the seller and the buyer are not related within the meaning of subsection (2) (a).
- (2) (a) For the purposes of subsection (1) (d), two persons shall be deemed to be related only if —
- (i) they are officers or directors of one another's businesses;
 - (ii) they are legally recognized partners in business;
 - (iii) the one is employed by the other;
 - (iv) any person directly or indirectly owns, controls or holds five per cent or more of the equity share capital of both of them;
 - (v) one of them directly or indirectly controls the other;
 - (vi) both of them are directly or indirectly controlled by a third person;
 - (vii) together they directly or indirectly control a third person; or
 - (viii) they are members of the same family.
- (b) 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 paragraph (a).
- (c) Every importer of goods which are not exempted by regulation shall, when making entry of the goods, declare, in the manner prescribed by regulation, whether or not he is related to the supplier of the goods within the meaning of this section.
- (3) Notwithstanding the provisions of subsection (1) (d), the fact that a buyer and a seller are related within the the meaning of subsection (2) (a) shall not in itself be a ground for not accepting the transaction value, where —

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- (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 subsection (7), 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 (8), of identical or similar goods imported into Botswana at or about the same time as the goods to be valued.
- (4) (a) 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 71, on account of differences in distances and modes of transport to the port or place of export.
- (b) 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.
- (c) If in the application of this subsection more than one transaction value is ascertained, the lowest such value shall be the transaction value of the goods to be valued.
- (5) (a) If the transaction value of any imported goods cannot be ascertained in terms of subsection (4), 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 71, on account of differences in distances and modes of transport to the port or place of export.

(b) Where no such sale is found, the provisions of paragraphs (b) and (c) of subsection (4) shall *mutatis mutandis* apply.

(6) If the transaction value of any imported goods cannot be ascertained in terms of subsection (5), it shall be ascertained in terms of subsection (7) or, when it cannot be ascertained in terms of subsection (7), it shall be ascertained in terms of subsection (8):

Provided that at the request, in writing, of the importer concerned the order of application of subsections (7) and (8) shall be reversed.

(7) (a) 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 —

- (i) 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;
- (ii) 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
- (iii) any duties or taxes paid or payable in Botswana by reason of the importation of the goods or sale of the goods within Botswana.

(b) 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 paragraph (a), be

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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.

(c) 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 this subsection 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 paragraph (a).

(8) 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;

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- (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 and the cost of loading, unloading, handling, transport and insurance and associated costs incidental to delivery of the imported goods at the port or place of export in the country of exportation, ready for export to Botswana;
 - (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.
- (9) Where the transaction value of any imported goods cannot be ascertained in terms of the provision of subsection (8), the Director may determine such value 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), (4), (5), (7) or (8), 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 (8);
 - (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.
- (10) For the purposes of subsection (7)(a)(ii) or (8)(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 regulation, be deemed to have been exported direct from the first-mentioned country.

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(11) For the purposes of subsection (7) (a) (ii) or (8) (d), the port or place of export referred to therein shall be the place where the goods in question are —

- (a) packed in a container as defined in section 2 (2) in the country of export or, if not so packed in a container, placed on board ship or on any vehicle in the country of exportation ready for export to Botswana; or
- (b) placed on the vehicle which conveys them across the border of the country from which they are exported to Botswana."

Substitution
of section 71
of principal
Act

13. Section 71 of the principal Act is hereby amended by substituting for that section, the following new section —

"Adjust-
ments to
price
actually paid
or payable

71. (1) In ascertaining the transaction value of any imported goods in terms of section 70 (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 are 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 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 it is not included in the price actually paid or payable for the goods, the cost of transportation and the cost of loading, unloading, handling, insurance and associated costs incidental to delivery of the goods at the port or place of export in the country of exportation ready for export to Botswana.
- (2) In ascertaining the transaction value of any imported goods in terms of section 70 (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

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- 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 regulation, 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 where the goods in question are —

- (a) packed in a container as defined in section 2(2) in the country of export or, if not so packed in a container, placed on board ship or on any vehicle in the country of exportation ready for export to Botswana; or
- (b) placed on the vehicle which conveys them across the border of the country from which they are exported to Botswana.”.

Amendment
of section 73
of principal
Act

14. Section 73 of the principal Act is hereby amended by substituting for subsection (1) thereof the following new subsection —

“(1) (a) The value for sales duty purposes of any imported goods, other than goods entered in terms of item 709.01 of Schedule No. 7, shall be the customs value thereof, plus 15 per cent of such value, plus any non-rebated customs duty payable in terms of Part 1 and Part 2 of Schedule No. 1 on such goods, but excluding the sales duty on such goods.

(b) The provisions of sections 69, 70, 71 and 74 shall *mutatis mutandis* apply to the calculation or determination of the value for sales duty purposes of any imported goods.”.

Amendment
of section 77
of principal
Act

15. Section 77 of the principal Act is hereby amended by substituting for subsection (1) thereof the following new subsection —

“(1) Subject to the provisions of subsection (2), the customs

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value of any imported goods shall be declared by the importer on entry of such goods.”.

16. Section 78 of the principal Act is hereby amended by substituting for that section the following new section —

Substituting
of section 78
of principal
Act

“Inter-pretation of sections 69, 70 and 71 78. (1) The interpretation of sections 69, 70 and 71 shall be subject to the agreement concluded at Geneva on 12th April, 1979 and known as the Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade, the Interpretative Notes thereto and the Advisory Opinions, Commentaries and Explanatory Notes 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 and shall effect thereto any amendment thereof which he is notified by the Secretariat of the General Agreement on Tariffs and Trade.

(3) The provisions of subsection (1) shall not derogate from the interpretation which would but for that subsection be given to section 69, 70 or 71.”.

17. Section 79 of the principal Act is hereby amended by substituting for paragraph (b) of subsection (15) thereof, the following new paragraph —

Amendment
of section 79
of principal
Act

“(b) in all other cases, within a period of six months from the date when such refund first becomes due:”.

18. Section 80 of the principal Act is hereby amended —

Amendment
of section 80
of principal
Act

(a) in subsection (2) thereof by substituting for —

(i) paragraph (d) therein, the following new paragraph —

“(d) the goods concerned having been damaged, destroyed or irrecoverably lost by circumstances beyond his control prior to the release thereof for home consumption;” and

(ii) paragraph (f) therein, the following new paragraph —

“(f) the substitution of any bill of entry in terms of section 41 (3).”; and

(b) by deleting subsection (6) thereof.

19. Section 81 of the principal Act is hereby amended by substituting for paragraph (a) of subsection (1) thereof, the following new paragraph —

Amendment
of section 81
of principal
Act

“(a) Any amount due to a licensee of a customs and excise warehouse who, in terms of the regulations, is permitted to

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pay excise duty or sales duty monthly or quarterly, in respect of such duty paid by him for which he was not liable or which is refundable to him in terms of item 534.00 of Schedule No. 5 or any item of Schedule No. 6 or No. 7 may, at any time within a period of two years from the date on which such amount first becomes due, be set off against any amount for which such licensee subsequently becomes liable in respect of excise duty or sales duty, provided the accounts or bills of entry submitted by such licensee in respect of the payment of any amount against which any amount so due to him has been set off are accompanied by a full statement by such licensee, supported by a certificate by an officer, giving full particulars of the excise duty or sales duty so paid and a full account of the circumstances under which the payment thereof took place and by such documentary evidence as the Director may in each case require."

Amendment
of section 84
of principal
Act

20. Section 84 of the principal Act is hereby amended by substituting for paragraph (i) of subsection (1) thereof the following new paragraph —

"(i) claims or receives any rebate, drawback, refund or payment to which he knows he is not entitled under this Act;"

Repeal of
section 101
of principal
Act

21. Section 101 of the principal Act is hereby repealed.

Amendment
of section 104
of principal
Act

22. Section 104 of the principal Act is hereby amended by adding at the end of paragraph (a) of subsection (2) thereof the following new proviso —

"Provided that such agent or person 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 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."

Amendment
of section 118
of principal
Act

23. Section 118 of the principal Act is hereby amended by deleting paragraphs (a), (c), (d), (i) and (j) of subsection (1) thereof.

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PASSED by the National Assembly this 12th day of August, 1983.

B.K. TEMANE,
Clerk of the National Assembly.

ANNEX 2

Supplement C. -- Botswana Government Gazette dated 30th December, 1983

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Statutory Instrument No. 167 of 1983

CUSTOMS AND EXCISE DUTY ACT

(50:01)

**CUSTOMS AND EXCISE DUTY (AMENDMENT) (No. 2)
REGULATIONS, 1983***(Published on 30th December, 1983)***ARRANGEMENT OF REGULATIONS****REGULATION**

1. Citation
2. Amendment of regulation 53 of Cap. 50:01 (Sub. Leg.)
3. Amendment of regulation 54 of principal Regulations
4. Insertion of regulations 54A to 54G in principal Regulations
5. Amendment of Second Schedule to principal Regulations
6. Amendment of paragraph 10, Item 410.00 of Fourth Schedule to principal Regulations

IN EXERCISE of the powers conferred on the Minister of Finance and Development Planning by section 125 of the Customs and Excise Duty Act, the following Regulations are hereby made —

1. These Regulations may be cited as the Customs and Excise Duty (Amendment) (No. 2) Regulations, 1983. Citation

2. Regulation 53 of the Customs and Excise Duty Regulations (in these Regulations referred to as "the principal Regulations") is hereby amended by substituting for that regulation the following new regulation — Amendment
of regulation
53 of Cap.
50:01 (Sub.
Leg.)

"Foreign
currency"

53. (1) When the value of or the prices 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 units of account at a rate determined by the Director to be current at the date of shipment of the goods or, if a rate at that date cannot be determined, the latest rate determined before that date shall be used.

(2) If there is no official rate for a particular currency the Director may determine a rate of exchange.

(3) For the purposes of subregulations (1) and (2), the date of shipment of non-containerised goods shall be the date of the bill of lading, air waybill, consignment note or such other document as the Director may require.

(4) The date of shipment of 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 air waybill, consignment note or such other document as the Director may require."

3. Regulation 54 of the principal Regulations is hereby amended by substituting for that regulation, the following new regulation — Amendment
of regulation
54 of
principal
Regulations

"Exemptions"

54. The following classes or kinds of goods are exempted from the requirements of section 70(2) (c) of the Act —

(a) goods not exceeding 1 000 units of account in value;

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- (b) goods which are not liable to an *ad valorem* duty, or to an *ad valorem* duty in addition to or as an alternative to any other duty;
- (c) goods cleared under the provisions of paragraphs (i) to (iv) of the proviso to section 39 (1) (a);
- (d) goods entered under rebate of duty provided for in items 401.00 to 404.02, 404.03/30.02, 405.01, 405.02, 405.03/37.05 to 405.03/90.10, 405.04/II to 405.02/92.12, 405.05/92.00, 405.05/92.12, 405.05/II, 405.06 to 405.08, 405.20 to 408.01, 408.02/94.00 to 408.03, 410.01 to 410.02/12.01, 410.03/22.03 to 411.00/85.01 (3), 411.00/89.01, 411.00/89.02, 412.02 to 412.04, 412.06, 412.08 to 412.14, 412.16, 412.20 to 460.06/29.02 (2), 460.06/29.04 to 460.06/29.16 (1), 460.06/29.31, 460.06/29.35, 460.06/30.03 (2) to 460.16/85.21, 460.17/87.01 (2), 460.24 and all items of Part 3 of Schedule No. 4; and
- (e) goods which the Director may from time to time exempt from the obligation to make the prescribed declaration."

Insertion of regulations 54A to 54G in principal Regulations

4. The principal Regulations are hereby amended by inserting immediately after regulation 54 thereof the following new regulations —

"Related persons

54A. The tests provided for in section 70 (3) (b) of the Act shall be used on request of the importer and for comparative purposes only.

Valuation code on bill of entry

54B. (1) For the purposes of section 70 (2) (c) of the Act any importer who is —

- (a) related to the supplier of the goods shall so indicate, in the field "Valuation Code" on the bill of entry, by inserting the letter "R";
- (b) not related to the supplier of the goods shall so indicate, in the field "Valuation Code" on the bill of entry, by inserting the letter "N".

Valuation methods.

(2) Every importer of goods exempted in terms of regulation 54 shall indicate such exemption by inserting the letter "E" in the field "Valuation Code" on the bill of entry.

54C. The valuation methods prescribed in sections 70 (1), 70 (4), 70 (5), 70 (7), 70 (8) and 70 (9) of the Act shall be known as Valuation Methods 1 to 6, respectively, and every importer shall indicate which Valuation Method is applicable to his goods by inserting in the field "Valuation Code" on the bill of entry after the letter "R" or "N" as required by regulation 54B the appropriate method number:

Provided that importers of the classes or kinds of goods enumerated in regulation 54 are exempted from this requirement.

Furnishing of information

54D. The Director shall, whenever he deems it expedient, for purposes of determining a customs value, request the importer to furnish such information as he may require on a form CE 55 or in any other manner, and the importer shall furnish the Director with such information not later than 30 days from the date of such request.

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Value determination	54E. The Director shall allocate a number to any determination in respect of a customs value issued by him and shall notify the importer in writing of such determination and its number. The importer shall, in respect of future consignments from the same supplier, insert such value determination number in the field "Additional Information" on the bill of entry.
Method of determining value	54F. The Commissioner shall on request advise the importer in writing of the method used in determining the customs value of his goods, provided such request is received within 30 days from the date of such determination.
Additions to price	54G. The Director shall in determining the value for duty purposes of any imported goods make no additions, except those specified in section 71 (1) of the Act, to the price actually paid or payable for such goods."

5. The Second Schedule to the principal Regulations is hereby amended —

Amendment
of Second
Schedule
to
principal
Regulations

- (a) by deleting therefrom the following Index of Forms, namely, "CE.10, CE.12, CE.13, CE.16, CE.17, CE.18, CE.19, CE.20, CE.21, CE.50, CE.51 and CE.52";
- (b) by substituting for Index of Forms, "CE.137, CE.137A and CE.138", the following new Index of Forms —
 - "CE.137 Declaration to be furnished by users of distillate fuels (Gas Oil and Diesel Oil) and residual fuel oils (Furnace Oil) supplied under rebate of duty
 - CE.138 Declaration to be furnished by resellers of distillate fuels (Gas Oil and Diesel Oil) and residual fuel oils (Furnace Oil) supplied under rebate of duty
 - CE.139 Blanket declaration to be furnished by users of distillate fuels (Gas Oil and Diesel Oil) and residual fuel Oils (Furnace Oil) supplied under rebate of duty
 - CE.140 Blanket declaration to be furnished by resellers of distillate fuels (Gas Oil and Diesel Oil) and residual fuel Oils (Furnace Oil) supplied under rebate of duty."; and
- (c) by adding at the end of the Schedule the following new Index of Forms —
 - "CE.500 Bill of Entry (direct)
 - CE.501 Continuation Sheet: Bill of Entry (direct)
 - CE.504 Voucher of Correction: Bill of Entry (direct)
 - CE.600 Bill of Entry (ex warehouse) Imported Goods
 - CE.601 Continuation Sheet: Bill of Entry (ex warehouse) Imported Goods.
 - CE.604 Voucher of Correction: Bill of Entry (ex warehouse) Imported Goods
 - CE.610 Bill of Entry (ex warehouse) Local Products
 - CE.611 Continuation Sheet: Bill of Entry (ex warehouse) Local Products
 - CE.614 Voucher of Correction: Bill of Entry (ex warehouse) Local Products".

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Amendment
of
paragraph
10, item
410.00 of
Fourth
Schedule
to
principal
Regulations

6. Paragraph 10 item 410.00 of the Fourth Schedule to the principal Regulations, is hereby amended by substituting for subparagraph (9) thereof, the following new subparagraph —

"(9) 410.04.04

(I) For the purposes of this regulation —

(a) "supplier" means any of the following companies —

**BP Botswana (Proprietary) Limited
Caltex Oil (Botswana) (Proprietary) Limited
Mobil Oil Botswana (Proprietary) Limited
Shell Oil Botswana (Proprietary) Limited
Total Botswana (Proprietary) Limited**

(b) "reseller" means any person who deals in rebated fuel as defined in subparagraph (c) in the course of or as part of the activities of a business carried on by him, but excluding any person who supplies such fuel to any other person in terms of a contract of letting or hiring of work or services;

(c) "rebated fuel" means distillate fuels or residual fuel oils entered under rebate of duty in terms of section 79 (5) of the Act for the purposes or uses mentioned in paragraphs (1) to (4) of tariff heading No. 27.10 of item 410.04;

(d) "user" means any person who obtains rebated fuel for the purposes mentioned in paragraphs (1) to (4) of tariff heading No. 27.10 of item 410.04 and includes any persons who supplies such fuel to any other person in terms of a contract of letting or hiring of work or services.

(II) No person shall be entitled to be supplied with rebated fuel, unless, at the time of purchase or delivery thereof he furnishes the supplier or reseller with a declaration in form CE.137 or CE.138, as the case may be, and no supplier or reseller shall supply or sell rebated fuel unless the person to whom it is supplied or sold, has complied with the provisions of this paragraph:

Provided that the Director may allow in lieu of a separate declaration, the furnishing of a blanket declaration in form CE.139 or CE.140, as the case may be, for purchaser deliveries in bulk quantities of not less than 200 litres per container other than pump deliveries into vehicle fuel tanks:

Provided further that a supplier or a reseller may deliver rebated fuel purchased in terms of the provisions of paragraphs (2) and (3) of tariff heading No. 27.10 of item 410.04 in any quantities and in any manner, except as provided for in item 410.04.04 (4), provided a blanket declaration has been furnished to such supplier or reseller.

(III) The blanket declaration provided for in paragraph (II) or the benefits it confers shall not be transferable.

(IV) No supplier or reseller shall dispense rebated fuel into a vehicle fuel tank from a tanker lorry or trailer or other portable or mobile container.

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- (V) Any reseller of rebated fuel may —
- (a) purchase it at a price which includes any of the effective rates of duty;
 - (b) sell it at a price which includes any duty equal to or in excess of the 3.65 UA per 1 000 litre duty paid by the supplier on entering such fuel for home consumption;
 - (c) use it in the ordinary course of his business or dispose thereof in circumstances which render it liable to duty equal to or in excess of 3.65 UA per 1 000 litres; or
 - (d) mix it in his fixed vessel with distillate fuel or residual fuel oil on which the full duty has been paid:

Provided that he alternates his purchases on each occasion at prices which include the different effective rates of duty to the extent that such purchases are duly reconciled with sales, disposals or uses of such fuel in circumstances which render it liable to different effective rates of duty.

- (VI) No supplier or reseller shall supply, sell, otherwise dispose of or use rebated fuel unless a numbered and dated invoice is issued indicating the quantity, price, buyer's name and business address and the registration letters and numbers of the vehicle when it is supplied as fuel into the tank of such vehicle.
- (VII) A supplier or reseller shall keep declarations (excluding blanket declarations) with the copies of the relative invoices issued by him.
- (VIII) The supply or sale of rebated fuel under cover of invoices or declarations which are not completed in all respects shall be regarded as being in conflict with the manner and conditions mentioned in this subparagraph and such supplier or reseller shall be liable for the duty thereon as provided for in section 79 (5) of the Act:

Provided that a supplier or reseller shall be allowed a period of 60 days from the date of receipt of a blanket declaration which is not complete in all respects to have such declaration completed.

- (IX) Any supplier of rebated fuel shall keep a monthly reconciliation of opening stock, receipts, total supplied, sold or used and closing stock of such fuel and shall render to the proper officer in addition to the return specified in sub-subparagraph (XIII) such returns in the form and at the time as the Director may determine.
- (X) (a) Any reseller of rebated fuel shall be registered with the proper officer to obtain such fuel.
- (b) Any reseller of rebated fuel shall keep a bound register in which at least the following particulars shall be entered on a daily basis —
- (i) total purchases and total quantity supplied, sold or used in respect of each of the rebated fuels subject to the different extent of rebate of duty;

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- (ii) total quantity of rebated fuel supplied or sold at a price which includes the full duty or used or disposed of in any circumstances which render it liable to such full duty;
 - (iii) purchases and sales of distillate fuels or residual fuel oils at a price which includes the full duty.
 - (c) The register shall be balanced on a three monthly basis and opening and closing stocks as well as any deficiency or surplus must be reflected therein.
 - (d) The register shall contain a declaration certifying to the correctness of all entries made therein. Such declaration shall be entered in the register at the end of each three monthly period and shall, in the case of a sole proprietorship be given by the owner, in the case of a partnership by a partner and in the case of a company by a director, manager, secretary or accountant.
 - (e) The books, documents and stocks of a person registered under this subparagraph (hereinafter referred to as a "registered person") shall at all reasonable times be open for inspection by the proper officer.
 - (f) A registered person shall notify the proper officer immediately, or in advance, of any change, no matter of what nature, in his legal identity, the name under which he trades and the address of his premises.
 - (g) The Director may, at any time, call upon the registered person to submit a statement of account in a form approved by him.
 - (h) Any reseller who supplies, sells, disposes of or uses rebated fuel without the declaration mentioned in sub-subparagraph (II) having been obtained or in any manner whatsoever in circumstances where the full duty is due in terms of section 79 (5) of the Act and these Regulations, shall purchase distillate fuel or residual fuel oil from the supplier at a price inclusive of the full duty in substitution of rebated fuel for the purpose of the reconciliation referred to in sub-subparagraph (V).
- (XI) (a) Any supplier who uses or who supplies or sells rebated fuel to resellers, users or any other person —
- (i) at a price which includes any duty in excess of the 3.65 UA per 1 000 litres duty paid on entering such fuel for home consumption; or
 - (ii) for a purpose which renders it liable to duty in excess of 3.65 UA per 1 000 litres; or
 - (iii) without the declaration mentioned in subparagraph (II) having been furnished or obtained; or
 - (iv) in any manner whatsoever in circumstances where duty is due in terms of section 79 (5) of the Act and these Regulations,

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shall pay the duty due, in excess of the 3.65 UA per 1 000 litres paid on entering such fuel for home consumption, within 30 days after the date of closing of his accounts for the month in which such supply, sale, disposal or use took place.

- (b) The payment of duty mentioned in the preceding provisions of this sub-subparagraph shall be made in a single amount to the proper officer in whose area of control such supplier is situated or to such other officer as the Director may determine.
- (XII) (a) Any user of rebated fuel subject to different extent of rebate of duty may receive and mix it with distillate fuel or residual fuel oil on which the full duty has been paid in his fixed vessel provided such user, other than a supplier who uses such rebated fuel in the ordinary course of his business, alternates his purchases on each occasion at prices which include the different effective rates to the extent that such purchases are duly reconciled with uses of rebated fuel in circumstances which render it liable to a different effective rate of duty.
- (b) Failure to balance purchases with uses as provided for in the preceding provisions of this sub-subparagraph shall be deemed to be application of rebated fuel contrary to the provisions of the rebate item under which it was acquired and shall render such act and such fuel subject to the provisions of section 79 (6) (b) of the Act.
- (XIII) (a) A supplier of rebated fuel shall furnish to the proper officer in the form approved by the Director and at the times required by him, a return for any period of three months or as indicated by him, which shall include —
- (i) depot number;
 - (ii) name, address and account number of purchaser;
 - (iii) invoice number and date;
 - (iv) quantity supplied at each effective rate of duty;
 - (v) names and addresses of resellers purchasing rebated fuel at a price which includes any of the effective rates of duty;
 - (vi) a progressive total of rebated fuel supplied to each purchaser at each effective rate of duty during any accounting year of the supplier.
- (b) A supplier shall maintain a record at his head office reflecting separate quantities of rebated fuel supplied or sold at prices which include in each case a rate of duty in excess of 3.65 UA per 1 000 litres.
- (XIV) (a) Any supplier or reseller shall keep safely copies of the required invoices of purchases, supply or sales, disposals or uses, declarations (including blanket declarations which shall be kept in alphabetical order), the returns and such other books and documents

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relating to such purchases, supply or sales, disposals or uses, as the Director may require, for a period of two years from the date of such purchases, supply or sales, disposals or uses and have them available at all reasonable times for inspection by the proper officer.

(b) Any user who —

- (i) obtains rebated fuel; or
- (ii) obtains rebated fuel as well as distillate fuel or residual fuel oil on which the full duty has been paid, shall keep safely all invoices and receipts, a record of use in the form approved by the Director and such other books and documents as the Director may require, for a period of two years from the date of use and have them available at all reasonable times for inspection by the proper officer.

(XV) Copies of section 79 (5) and (6) of the Act, the relevant rebate items and these Regulations shall be displayed prominently in the office of the supplier or reseller of rebated fuel.

MADE this 16th day of December, 1988.

P.S. MMUSI,
*Vice-President and Minister of
Finance and Development Planning.*

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ANNEX 3

DEPARTMENT OF CUSTOMS AND EXCISE

DEPARTMENTAL INSTRUCTION NO. 29

VALUATION OF GOODS FOR CUSTOMS PURPOSES

1. GENERAL

1.01 With effect from 1st July, 1983, a new Customs Valuation System will operate in the Common Customs Area. This incorporates the principles of customs valuation evolved by the international customs community in terms of the agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade, otherwise known as the GATT Valuation Code. The new system which, in the Common Customs Area, replaces the "Brussels Definition of Value" attempts to establish fair and neutral international valuation rules, to bring about a harmonization of the differing national valuation systems and to limit the scope for arbitrary valuation decisions. In time the GATT Valuation Code is likely to be applied to most of the world's trade.

1.02 The GATT Valuation Code establishes a "positive" definition of value, under which the price is based, whenever possible, on the price actually paid or payable for the imported goods themselves. When this is not possible, alternative methods of valuation are prescribed. The Agreement provides five methods - a primary one and four alternatives - each alternative being tried in turn only if the customs value cannot be determined under the previous one.

- (a) Under the primary method, the customs value of imported goods is based on the transaction value, i.e. the price actually paid or payable for the goods when sold for export to Botswana (Article 1 of the Agreement), to which various costs (selling commissions, brokerage, packing and containers, royalties and licence fees) may be added (Article 8).

Article 1 is to be applied provided that four conditions are met, namely that (a) there are no restrictions as to the use or disposition of goods other than certain limited ones which are specified; (b) the sale or price is not subject to some condition or consideration for which the value cannot be determined; (c) no part of the proceeds of resale or disposal accrues directly or indirectly to the seller; (d) if buyer and seller are related, their relationship did not influence the price.

- (b) If the customs value cannot be determined under the primary method, then it is to be based on the transaction value of identical goods sold for export to Botswana at or about the same time as the goods being valued (Article 2).
- (c) If neither of these two methods can be applied, the customs value is based on the transaction value of similar goods (sold under the same conditions as in (b) above) (Article 3).

- (d) If neither of the three foregoing methods can be applied, then the value is determined under one of two other methods, applied in whichever order the importer may select.

Normally, the fourth method is a "deductive value" (Article 5). This method starts with the selling price in Botswana and works back to the customs value by the deduction of post importation costs. Deductive value is defined in the Agreement as the "unit price at which the imported goods or identical or similar imported goods are sold in the greatest aggregate quantity, at or about the time of the importation of the goods being valued, to persons who are not related to the persons from whom they buy such goods", after deduction of various costs, duly listed in Article 5.

- (e) The fifth (or fourth, according to the exporter's preference) method is based on the "computed value" (Article 6) consisting of a customs value re-constructed from production costs (raw materials, manufacturing process, profits and overheads).

As a last resort, in case none of the foregoing methods can be applied, the customs value may be determined by using "reasonable means consistent with the principles and general provisions of the GATT Valuation Code and Article VII of the General Agreement" (Article 7). The Agreement lays down rules to prevent this provision from being used as a means of protection or leading to the adoption of fictitious or arbitrary values.

1.03 The implementation of this value concept will in its practical application not differ materially from the administration of the Brussels Definition of Value as operated in the Common Customs Area because in the latter instance valuation was also primarily based on the price actually paid or payable for imported goods.

1.04 The Articles of the Agreement and interpretive notes thereon appear in greater detail in Appendix A to this Instruction.

2. DEFINITIONS

In the GATT Valuation Code :-

- (a) "Identical goods" means goods which are the same in all respects, including physical characteristics, quality and reputation. Minor differences in appearance would not preclude goods otherwise conforming to the definition from being regarded as identical.
- (b) "Similar goods" means goods which, although not alike in all respects, have like characteristics and like component materials which enable them to perform the same functions and to be commercially interchangeable. The quality of the goods, their reputation and the existence of a trade-mark are among the factors to be considered in determining whether goods are similar.

- (c) The terms "identical goods" and "similar goods" do not include, as the case may be, goods which incorporate or reflect engineering, development, artwork, design work, and plans and sketches for which no adjustment has been made under Article 8.1 (b) (iv) because such elements were undertaken in the country of importation.
- (d) Goods shall not be regarded as "identical goods" or "similar goods" unless they were produced in the same country as the goods being valued.
- (e) Goods produced by a different person shall be taken into account only when there are no identical goods or similar goods, as the case may be, produced by the same person as the goods being valued.

3. LEGAL AUTHORITY

- 3.01 Sections 69 to 78 of the Customs and Excise Duty Act (Cap. 50:01).
- 3.02 Regulations 53 and 54 of the Customs and Excise Duty Regulations (Statutory Instrument No. 36 of 1974, as amended).

4. VALUATION OF GOODS WITHIN THE COMMON CUSTOMS AREA

- 4.01 The value for Fiscal and Customs duty purposes in respect of goods directly imported into Botswana from places outside the Common Customs Area is defined in section 70 of the Act as being the "transaction value". This is amplified in subparagraph 1.02 (a) above and in the Appendix.
- 4.02 The value for ordinary excise duty purposes in respect of goods manufactured or produced in Botswana is defined in section 72 of the Act as being the full and final market price at which the goods are freely offered for sale in Botswana in the ordinary course of trade, plus the cost of packing and all expenses incidental to placing the goods on rail for delivery to the purchaser, that is to say the "free on rail" price (F.O.R.), but excluding the excise duty on the goods. (N.B. This subparagraph applies only to the value of goods for the purpose of excise duty charged in terms of Section A of Part 2 to Schedule No. 1 of the Act. For "Ad Valorem" excise duty goods, see sub-paragraph 4.03 below).
- 4.03 The value for ad valorem excise duty purposes is defined in Sections 69 (8) and 73 of the Act -

- (a) Goods imported from outside the CCA

the transaction value plus fifteen percent of such value plus any non-rebated fiscal and customs duty payable in terms of Part 1 and Part 2 of Schedule No. 1, but excluding the ad valorem excise duty on such goods.

(b) Goods manufactured in Botswana:

the value for excise duty purposes of such goods calculated or determined in terms of section 72 as if they were excisable goods, plus any non-rebated excise duty on such goods not included in the price of such goods, but excluding the ad valorem excise duty on such goods.

Note: Because of the fact that many products are not sold in the manner envisaged in section 72, the Director is empowered to negotiate a "neutral value" of locally manufactured goods with the industry concerned and any neutral value thus determined is deemed to be the value for ad valorem excise duty purposes.

- 4.04 The value of goods for Additional Customs Duty purposes is defined in paragraph 3.01 of Department Instrument No. 44 as the cost, insurance and freight price (c.i.f.) at the place of entry into Botswana, plus the amount of any customs, fiscal or excise duty paid or levied prior to, or at the time of, importation into Botswana. The value should not include any sales tax paid or payable.
- 4.05 The value of goods exported is defined in section 75 as being the price of the goods free on board (f.o.b.) at the place of despatch from Botswana or such value as may be determined by the Director.
- 4.06 The definitions indicated above are in summary form only and any case of dispute or misunderstanding must be resolved by reference to the full text of the relevant legislation or Departmental Instructions.

5. **DEFINITIONS OF "f.o.b." AND "c.i.f." VALUES**

- 5.01 The expression "free on board" (f.o.b.) means the price of goods including all costs of manufacture, profit, etc and cost of local transport from the place of manufacture to the point where the goods are deposited on the carrying vessel, plus the cost of loading into the vessel.
- 5.02 The expression "free on rail" (f.o.r.) has the same meaning as "f.o.b." but relates to goods being consigned by rail rather than ship.
- 5.03 The expression "cost, insurance, freight" (c.i.f.) means the price of goods including all costs of manufacture, profit, insurance, freight and all charges up to the point where the goods are discharged from the carrying vessel at the port of entry in the Common Customs Area, or, for Additional duty purposes, the place of entry in Botswana.

6. **ADJUSTMENTS** (See Appendix, Article 8, and Interpretative Note thereto)

6.01 Adjustments to an invoice price may be necessary by deductions or additions to establish the transaction value for duty purposes, i.e.:

- (I) An invoice price c.i.f. should be adjusted by deduction of all costs and charges incurred subsequent to placing the goods on the exporting vessel.

Examples of such charges are :-

- (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.
- (II) Conversely, if the invoice price shown is an ex-factory price in the country of supply, all costs and expenses incurred to the point where the goods were deposited on the exporting vessel must be added to the invoice price. (See 6.02 to 6.09 below).

6.02 Insurance expenses incurred in insuring goods to the place of exportation are dutiable and must be included in the transaction value.

6.03 Packing and Containers

- (i) As a general rule, the packing and containers of imported goods are to be treated as part of the goods themselves for Customs purposes. Thus the cost of packing and the value of any packing material and containers used are to be included in determining the value of the goods for the purpose of ad valorem duty. The separate assessment of containers at their appropriate duty rate is not to be allowed where it would be less favourable to the revenue, i.e. where the contents are liable to a higher rate of ad valorem duty than the containers would be if assessed separately.
- (ii) This rule, however, is intended to relate only when the containers are not more than customary and necessary packing for the goods concerned. If the containers are needlessly elaborate, having regard to the value and nature of the contents, or if they are really separate articles of commerce such as leather cases for cameras, they are to be assessed separately at their appropriate rate of duty.

6.04 Duty-paid price

If the price shown on the invoice is a duty-paid price the duty element must be calculated and deducted.

Similarly any included post-importation charges must be identified, calculated and deducted.

6.05 Inspection or Analysis Fees

If such fees are clearly identifiable on invoices, they should be excluded from the Customs value.

6.06 Cost of Research, Moulds, Patterns, Tools, Dies, etc.

The cost of moulds, patterns, tools, dies, etc., used in the production of imported articles is usually recovered by the manufacturer in the price he charges for the articles, the cost being spread over the whole of the production. Sometimes, particularly where the importer requires goods of an unusual type for which there is no general demand (e.g. particular shapes of glass bottles), the manufacturer may make a separate charge for moulds, etc., bought from another supplier. Charges of this kind must be included in the value for duty of such imported articles.

6.07 Charges for engineering, development work, art work, design work, plans and sketches undertaken elsewhere than in Botswana and necessary for the production of the goods must be included in the value for duty.

6.08 Royalties and Bulk Payments

ROYALTY is a fee or compensation paid to the owner of a patent, trade mark or a copyright for the use of it or the right to act under it, usually at a certain rate for each article manufactured, used, sold, etc., or, in the form of a percentage based on output, to the owner of an article, especially a machine, by a person hiring it.

Payments in the nature of royalties (whether called "royalties" or not) without which articles cannot legitimately be imported and sold or leased in Botswana are properly includible in the statutory value of the articles for Customs purposes, irrespective of whether the payment is made to the supplier of the articles or to some person wherever resident, and whether made at the time of importation or later.

Royalties, etc., are includible in the value for duty purposes to the extent that such fees are not included in the price actually paid or payable but charges for the right to reproduce imported goods in Botswana should be excluded.

6.09 Incidental Charges

The following, and similar expenses if charged by the supplier or intermediary to the importer on the invoice for the goods, are to be regarded as charges incidental to the sale and delivery of the goods and are includible in the value for duty purposes :-

- (i) Cost of telegrams
- (ii) Cable charges
- (iii) Customs entry (export)
- (iv) Export licence fees
- (v) Postage
- (vi) Consular Fees
- (vii) Bill stamp or stamp duty but not including local bank charges.
- (viii) Airway bills

Where it is necessary to apportion dutiable costs, charges and expenses between various lines on a bill of entry, such apportionment must be made on the basis of the invoice price of each line, irrespective of the type of duty applicable.

7. **FINANCE**

- 7.01 Buying Commission is a fee charged by an intermediary to a purchaser for services rendered in purchasing and, frequently, inspecting the goods. Although it is part of the price at which goods are supplied and was previously included in the value for Customs purposes as applied in the C.C.A., buying commission is not a payment made to or for the benefit of the seller of the goods and does not therefore form part of the transaction value.

7.02 Finance Commission is a charge by an intermediary to a purchaser for the use of money with which to finance the purchase and thus relates to the granting of credit facilities rather than to the contract of sale. Such a charge is not considered part of the defined value for Customs purposes.

7.03 Confirming Commission

A confirming agent is a person, usually in the country of export, who acts for the importer in confirming a purchase and the payment therefor. His charge for the service does not form part of the transaction value.

7.04 Selling Commission

The fee for a selling agent is normally paid by the supplier who quotes inclusive prices to his customers. However, if the terms of the sale require the customer to pay the commission direct to the agent, the commission must be added to the invoice price when determining the transaction value.

7.05 Brokerage

Payable to a broker who acts as intermediary putting buyer and seller in touch with one another. The fee is usually a percentage of the value of the business and is paid by the supplier who includes it in the invoice price. If brokerage is paid by the buyer to the agent it is to be included in the transaction value.

7.06 Interest

Since the transaction value is based on a cash price, any interest charged for deferred payment should NOT be included in the dutiable value. Where deferred payment is arranged between buyer and seller it should not be assumed that interest has been charged thus warranting an automatic reduction in the value for duty.

7.07 Credits and Debits

Credits shown on invoices which reduce the gross price payable but which relate to previous transactions are not permitted to reduce the value of the current consignment. However, a credit shown may justify the re-assessment of an earlier duty charge on application by the importer. A debit shown on an invoice indicates an under-declaration of value on a previous importation. A Voucher of Correction is to be required to collect the amount of duty under-paid.

7.08 Cash Discounts

The GATT system is based on the positive transaction value concept which is defined in the Code as the "price actually paid or payable" for the goods. It follows, therefore, that the nett amount shown on an invoice must form the basis for valuation.

7.09 Prepayment Discounts

Where payment is made by the buyer before full delivery of the goods and a discount is given solely because of the prepayment, the price reduced by this discount would be less than the transaction value. The discount offered must be added to the invoice price for duty purposes.

7.10 Sample Discount

Where duty is chargeable on samples they have to be valued in the same manner as any other goods, irrespective of the fact that they are imported as samples and not for sale. A sample discount may be allowed provided the purchase satisfies the requirements of Article 1 of the Code.

7.11 Sales in Transit

Between the time when goods are purchased for importation and the time when they are entered they may have been resold. In such cases the value for duty is to be ascertained on the last sale prior to the goods being entered.

8. **SPECIAL DISCOUNTS**

8.01 The basic concept of transaction value as defined is that of an open market price. It follows, therefore, that discounts and price reductions which are freely available to any buyer in the open market are allowable in determining the dutiable value of the goods. Cases of doubtful trade and quantity discounts, i.e. where there is reason to doubt their validity or non compliance with Article 1 of the Code, should be referred to Headquarters. Trade and quantity discounts granted retrospectively are not allowed.

9. **DOUBTFUL DISCOUNTS**

9.01 If the nature of any discount is not revealed on the invoice and it is not possible to say whether it is an allowable deduction or not, the importer is to be instructed to include that item in the value for Customs purposes and is to be informed that a claim for refund of the duty paid on the disallowed deduction may be made in the light of any further information, evidence or documents he may be able to produce at a later date.

10. **VALUATION OF GOODS PROCESSED OR REPAIRED ABROAD**

10.01 Goods re-imported into Botswana after process or repair abroad may, subject to conditions described in Tariff Item 409.00, qualify for certain rebates. Normally duty is charged only on the value of the process or repair, such value being determined in accordance with the GATT Valuation Code.

10.02 Goods Reimported Without Change of Form or Character:

Goods reimported after process or repair abroad without change of form or character which are chargeable with duty (apart from any liability to repayment of drawback paid on exportation) on the increase in the value attributable to the process or repair operation, are to be dealt with as follows:-

(a) Value

- (i) The value for duty may ordinarily be taken to be the actual amount paid by the importer for the execution of the process or repair unless there are unusual features attending the transaction, in which event the facts are to be reported to the Director for ruling on the value for duty to be adopted. If the goods require to be entered, the value for duty should be declared in the "Value" column;
- (ii) Where it is claimed that goods have been repaired free of charge the claim may, provided satisfactory documentary evidence can be produced to substantiate the claim, be admitted and reimportation allowed duty free, the entry or direct assessment documents being endorsed accordingly.

(b) Documentation

In addition to any reimportation certificate the entry or direct assessment document must, where a charge has been made, be accompanied by the processor's or repairer's invoice showing the actual cost of the process or repair operation. Costs, charges and expenses associated with the delivery of the goods to the repairer or processor must be included in the value for Customs purposes.

10.03 Processing Involving a Change of Form or Character

In such cases the transaction value of the imported product must include the costs of the basic material and delivering it from Botswana to the processor's premises abroad.

11. INVOICES

11.01 The attention of all officers processing Bills of Entry for goods imported directly into Botswana from outside the CCA is drawn to Part V of the Customs and Excise Duty Regulations, and especially to Regulation 40.

11.02 Officers are reminded that dutiable goods are to be entered against a prescribed Bill of Entry supported by a commercial invoice. An invoice written in any language other than English is to have a duly certified translation attached. Invoices are to be retained permanently with the original Bill of Entry. Invoices are not be returned to the importer or his agent under whatever circumstances.

11.03 Normally only a commercial invoice is to be accepted as evidence of value. Officers may NOT accept packing lists, consignment notes, delivery notes, bank statements or copy airway bills as evidence of value to support a Bill of Entry or a Transfer Traffic form unless authorised to do so by their Collector.

12. VALUE FOR CUSTOMS UNION AGREEMENT FORMULA

- 12.01 Under the terms of Article 14 (2) of the 1969 Customs Union Agreement the value of goods for the purpose of computing the shares of the common revenue pool to be taken by Botswana is the c.i.f. value (cost, insurance and freight) at the Botswana border. This applies irrespective of the source of supply of the goods.
- 12.02 Officers must be careful to ensure that in addition to the value for duty purposes the c.i.f. Botswana border value is also declared in the appropriate space on all bills of entry.
- 12.03 It should be noted that transfer traffic form E requires the f.o.r. value to be declared and the other charges making up the c.i.f. cost (i.e. freight and insurance) to be declared separately. The f.o.r. value to be declared is the total value of the goods at the point of despatch in the Common Customs Area, before deduction of commission or any discount. Customs form H requires both the value for duty and c.i.f. value to be declared and, in a separate column, the value of transport and insurance charges from the first port of importation into the Common Customs Area to the Botswana border.

13. VALUE BY APPRAISAL

- 13.01 The instructions set out above apply to all goods imported into Botswana in the course of business of trade and, in general, should be applied also to personal or private importations. Cases do occur, however, when the normal requirements of invoicing and determination of value for duty purposes cannot be applied and it becomes necessary for the value of goods to be appraised by the officer. Such cases should be dealt with in the manner set out in the following sub-paragraphs.

13.02 Valuation of Used Motor Vehicles

Detailed instructions for the valuation of used motor vehicles are given in Departmental Instruction No. 22.

13.03 Valuation of Privately Imported Goods

In any case where a private importer is unable for good reason to produce the prescribed form of invoice or other documentary evidence of value, the officer is to assess a value by reference to current market prices for similar goods. A sound knowledge of current market prices is an essential attribute of an efficient Customs Officer and officers should take every opportunity by reference to invoices lodged with the Department, catalogues and price lists to familiarise themselves with current market trends. Values assessed by appraisal should always be agreed with the importer concerned and any case of dispute should be referred to the Collector. Once the value has been determined, the importer is to be required to endorse the relevant documents "I hereby accept the value assessed as stated herein as final". Such endorsement should be dated and signed by the importer.

14. NON-OPEN MARKET TRANSACTIONS

14.01 It is anticipated that in respect of the majority of importations it will be possible to determine the transaction value of the goods using the primary method as described in Article 1 (See Appendix A).

14.02 In the case of goods

- (i) imported on hire or lease and
- (ii) consigned by a foreign exporter to his agent in Botswana for replenishment of the agency stocks and subsequent sale for the account and risk of the foreign supplier there is no sale. The goods cannot be value under Method 1 and the procedure laid down in 14.03 should be applied.

14.03 If the invoice price is unacceptable because it does not comply with Article 1 of the Code, the Passing Officer should take a deposit based on the invoice value plus 20% and report the facts, with full details to the Director. Headquarters will be responsible for ascertaining and agreeing with the importer an acceptable value using one of the alternative methods described in Articles 2, 3, 5, 6 or 7, as appropriate.

15. TIME OF VALUATION

Section 69 (1) of the Act prescribes that the value for Customs purposes of imported goods must be established at the time of entry for home consumption thereof. In practice, however, this will not be the case. Normally the values declared at the time of first entry, whether for home consumption or warehousing, will be accepted as the values for Customs purposes.

16. PROCEDURE

16.01 As from 1 July, 1983, importers will no longer be required to tender forms CE 50, CE 51 and CE 52. Instead the following procedures must be followed:

Where an importer is -

- (i) related to his supplier, as defined in section 70 (2) (a) of the Act, he must declare accordingly by showing "Valuation Code R" in a prominent place within the name and address box of the relevant bill of entry;
- (ii) not related to his supplier, the words "Valuation Code N" must be inserted in that place.

16.02 Immediately after the code letter indicating relationship the importer must indicate which of the valuation Methods 1 through to 6 he considers to apply in his case.

- 16.03 For example, should an importer declare that there is no relationship between his supplier and himself, and considers Method 1 to apply he must write "Valuation Code N 1" in the place indicated in 16.01.
- 16.04 Action as at 14.03 should be taken in respect of all Valuation Codes other than "N 1". Headquarters will follow-up with the importer, as necessary, using for the purpose a questionnaire form CE 55 (See Appendix B) which must be completed by the importer and returned to Headquarters within 14 days.
- 16.05 Value determinations issued to importers will be advised to the Service by means of amendment to Appendix C of this instruction.
- 16.06 Thereafter, importers, or their clearing agents acting on the instructions of the importers, will be required to show in association with the Valuation Code detail "Additional Information" consisting of the number of the value determination as shown in Appendix C. Values should be declared accordingly and may be accepted without further reference to Headquarters.

17. CURRENCY CONVERSION

- 17.01 The conversion of invoiced foreign currency into Units of Account (ONE UNIT OF ACCOUNT = ONE RAND) must be made at the selling rate of exchange current at the date of shipment of the goods.
- 17.02 If the value of any imported goods of a single denomination exceeds one Unit of Account, the value shall be calculated for duty assessment to the nearest whole Unit of Account, an amount of 0,50 Unit of Account being regarded as less than one half of a Unit of Account. A value of less than one Unit of Account shall be calculated as one Unit of Account.

B. J. MIRFIN
for/DIRECTOR OF CUSTOMS AND EXCISE

February, 1983

APPENDIX A

**AGREEMENT ON IMPLEMENTATION OF ARTICLE VII
OF THE GENERAL AGREEMENT ON TARIFFS AND TRADE**

RULES ON CUSTOMS VALUATION:

Note: The rules have been adapted to identify Botswana as the country of importation

Article 1

1. The customs value of imported goods shall be the transaction value, that is the price actually paid or payable for the goods when sold for export to Botswana adjusted in accordance with the provisions of Article 8, provided:

- (a) that there are no restrictions as to the disposition or use of the goods by the buyer other than restrictions which:
 - (i) are imposed or required by law or by the public authorities in Botswana;
 - (ii) limit the geographical area in which the goods may be resold; or
 - (iii) do not substantially affect the value of the goods;
 - (b) that the sale or price is not subject to some condition or consideration for which a value cannot be determined with respect to the goods being valued;
 - (c) that no part of the proceeds of any subsequent resale, disposal or use of the goods by the buyer will accrue directly or indirectly to the seller, unless an appropriate adjustment can be made in accordance with the provisions of Article 8; and
 - (d) that the buyer and seller are not related, or where the buyer and seller are related, that the transaction value is acceptable for customs purposes under the provisions of paragraph 2 of this Article.
- (a) In determining whether the transaction value is acceptable for the purposes of paragraph 1, the fact that the buyer and the seller are related within the meaning of Article 15 shall not in itself be grounds for regarding the transaction value as unacceptable. In such cases the circumstances surrounding the sale shall be examined and the transaction value shall be accepted provided that the relationship did not influence the price. If, in the light of information provided by the importer or otherwise, the customs administration has grounds for considering that the relationship influenced the price, it shall communicate its grounds to the importer and he shall be given a reasonable opportunity to respond. If the importer so requests, the communication of the grounds shall be in writing.

(b) In a sale between related persons, the transaction value shall be accepted and the goods valued in accordance with the provisions of paragraph 1 whenever the importer demonstrates that such value closely approximates to one of the following occurring at or about the same time:

- (i) the transaction value in sales to unrelated buyers of identical or similar goods for export to Botswana;
- (ii) the customs value of identical or similar goods as determined under the provisions of Article 5;
- (iii) the customs value of identical or similar goods as determined under the provisions of Article 6;

In applying the foregoing tests, due account shall be taken of demonstrated differences in commercial levels, quantity levels, the elements enumerated in Article 8 and costs incurred by the seller in sales in which he and the buyer are not related that are not incurred by the seller in sales in which he and the buyer are related.

(c) The tests set forth in paragraph 2 (b) are to be used at the initiative of the importer and only for comparison purposes. Substituted values may not be established under the provisions of paragraph 2 (b).

INTERPRETATIVE NOTE TO ARTICLE 1

Price actually paid or payable

In the Protocol to the Agreement it is stated that the price actually paid or payable includes all payments actually made or to be made as a condition of sale of the imported goods, by the buyer to the seller, or by the buyer to a third party to satisfy an obligation of the seller.

Otherwise, the price actually paid or payable is the total payment made or to be made by the buyer to or for the benefit of the seller for the imported goods. The payment need not necessarily take the form of a transfer of money. Payment may be made by way of letters of credit or negotiable instruments. Payment may be made directly or indirectly. An example of an indirect payment would be the settlement by the buyer, whether in whole or in part, of a debt owed by the seller.

Activities undertaken by the buyer on his own account, other than those for which an adjustment is provided in Article 8, are not considered to be an indirect payment to the seller, even though they might be regarded as of benefit to the seller. The costs of such activities shall not, therefore, be added to the price actually paid or payable in determining the customs value.

The customs value shall not include the following charges or costs, provided that they are distinguished from the price actually paid or payable for the imported goods:

- (a) charges for construction, erection, assembly, maintenance or technical assistance, undertaken after importation on imported goods such as industrial plant, machinery or equipment;
- (b) the cost of transport after importation;
- (c) duties and taxes of the country of importation.

The price actually paid or payable refers to the price for the imported goods. Thus the flow of dividends or other payments from the buyer to the seller that do not relate to the imported goods are not part of the customs value.

Paragraph 1 (a) (iii)

Among restrictions which would not render a price actually paid or payable unacceptable are restrictions which do not substantially affect the value of the goods. An example of such restrictions would be the case where a seller requires a buyer of automobiles not to sell or exhibit them prior to a fixed date which represents the beginning of a model year.

Paragraph 1 (b)

If the sale or price is subject to some condition or consideration for which a value cannot be determined with respect to the goods being valued, the transaction value shall not be acceptable for customs purposes. Some examples of this include:

- (a) the seller establishes the price of the imported goods on condition that the buyer will also buy other goods in specified quantities;
- (b) the price of the imported goods is dependent upon the price or prices at which the buyer of the imported goods sells other goods to the seller of the imported goods;
- (c) the price is established on the basis of a form of payment extra-neous to the imported goods, such as where the imported goods are semi-finished goods which have been provided by the seller on condition that he will receive a specified quantity of the finished goods.

However, conditions or considerations relating to the production or marketing of the imported goods shall not result in rejection of the transaction value. For example, the fact that the buyer furnishes the seller with engineering and plans undertaken in Botswana shall not result in rejection of the transaction value for the purposes of Article 1. Likewise, if the buyer undertakes on his own account, even though by agreement with the seller, activities relating to the marketing of the imported goods, the value of these activities is not part of the customs value nor shall such activities result in rejection of the transaction value.

Paragraph 2

1. Paragraphs 2 (a) and 2 (b) provide different means of establishing the acceptability of a transaction value.

2. Paragraph 2 (a) provides that where the buyer and the seller are related, the circumstances surrounding the sale shall be examined and the transaction value shall be accepted as the customs value provided that the relationship did not influence the price. It is not intended that there should be an examination of the circumstances in all cases where the buyer and the seller are related. Such examination will only be required where there are doubts about the acceptability of the price. Where the customs administration have no doubts about the acceptability of the price, it should be accepted without requesting further information from the importer. For example, the customs administration may have previously examined the relationship, or it may already have detailed information concerning the buyer and the seller, and may already be satisfied from such examination or information that the relationship did not influence the price.

3. Where the customs administration is unable to accept the transaction value without further inquiry, it should give the importer an opportunity to supply such further detailed information as may be necessary to enable it to examine the circumstances surrounding the sale. In this context, the customs administration should be prepared to examine relevant aspects of the transaction, including the way in which the buyer and seller organize their commercial relations and the way in which the price in question was arrived at, in order to determine whether the relationship influenced the price. Where it can be shown

that the buyer and seller, although related under the provisions of Article 15, buy from and sell to each other as if they were not related, this would demonstrate that the price had not been influenced by the relationship. As an example of this if the price had been settled in a manner consistent with the normal pricing practices of the industry in question or with the way the seller settles prices for sales to buyers who are not related to him, this would demonstrate that the price had not been influenced by the relationship. As a further example, where it is shown that the price is adequate to ensure recovery of all costs plus a profit which is representative of the firm's overall profit realized over a representative period of time (e.g. on an annual basis) in sales of goods of the same class or kind, this would demonstrate that the price had not been influenced.

4. Paragraph 2 (b) provides an opportunity for the importer to demonstrate that the transaction value closely approximates to a "test" value previously accepted by the customs administration and is therefore acceptable under the provisions of Article 1. Where a test under paragraph 2 (b) is met, it is not necessary to examine the question of influence under paragraph 2 (a). If the customs administration has already sufficient information to be satisfied, without further detailed inquiries, that one of the tests provided in paragraph 2 (b) has been met, there is no reason for it to require the importer to demonstrate that the test can be met. In paragraph 2 (b) the term "unrelated buyers" means buyers who are not related to the seller in any particular case.

Paragraph 2 (b)

A number of factors must be taken into consideration in determining whether one value "closely approximates" to another value. These factors include the nature of the imported goods, the nature of the industry itself, the season in which the goods are imported, and, whether the difference in values is commercially significant. Since these factors may vary from case to case, it would be impossible to apply a uniform standard such as a fixed percentage, in each case. For example, a small difference in value in a case involving one type of goods could be unacceptable while a large difference in a case involving another type of goods might be acceptable in determining whether the transaction value closely approximates to the "test" values set forth in Article 1.2 (b).

Article 2

(Applies, inter alia, to goods acquired under "No charge", loan, etc. arrangements as well as to unacceptable related sales).

1. (a) If the customs value of the imported goods cannot be determined under the provisions of Article 1, the customs value shall be the transaction value of identical goods sold for export to Botswana and exported at or about the same time as the goods being valued.
 - (b) In applying this Article, the transaction value of identical goods in a sale at the same commercial level and in substantially the same quantity as the goods being valued shall be used to determine the customs value. Where no such sale is found, the transaction value of identical goods sold at a different commercial level and/or in different quantities, adjusted to take account of differences attributable to commercial level and/or to quantity, shall be used, provided that such adjustments can be made on the basis of demonstrated evidence which clearly establishes the reasonableness and accuracy of the adjustment, whether the adjustment leads to an increase or a decrease in the value.
2. Where the costs and charges referred to in Article 3.2 are included in the transaction value, an adjustment shall be made to take account of significant differences in such costs and charges between the imported goods and the identical goods in question arising from differences in distances and modes of transport.
3. If, in applying this Article, more than one transaction value of identical goods is found, the lowest such value shall be used to determine the customs value of the imported goods.

Article 3

(Could apply, inter alia, to goods acquired under "No Charge" Loan, etc., arrangements as well as to unacceptable related sales)

1. (a) If the customs value of the imported goods cannot be determined under the provisions of Articles 1 and 2, the customs value shall be the transaction value of similar goods sold for export to Botswana and exported at or about the same time as the goods being valued.
- (b) In applying this Article, the transaction value of similar goods in a sale at the same commercial level and in substantially the same quantity as the goods being valued shall be used to determine the customs value. Where no such sale is found, the transaction value of similar goods sold at a different commercial level and/or in different quantities, adjusted to take account of differences attributable to commercial level and/or to quantity, shall be used, provided that such adjustments can be made on the basis of demonstrated evidence which clearly establishes the reasonableness and accuracy of the adjustment, whether the adjustment leads to an increase or a decrease in the value.

2. Where the costs and charges referred to in Article 8.2 are included in the transaction value, an adjustment shall be made to take account of significant differences in such costs and charges between the imported goods and the similar goods in question arising from differences in distances and modes of transport.

3. If, in applying this Article, more than one transaction value of similar goods is found, the lowest such value shall be used to determine the customs value of the imported goods.

Article 4

If the customs value of the imported goods cannot be determined under the provisions of Articles 1, 2 and 3 the customs value shall be determined under the provisions of Article 5 or, when the customs value cannot be determined under that Article, under the provisions of Article 6 except that, at the request of the importer, the order or application of Article 5 and 6 shall be reversed.

Article 5

1. (a) If the imported goods or identical or similar imported goods are sold in Botswana in the condition as imported, the customs value of the imported goods under the provisions of this Article shall be based on the unit price at which the imported goods or identical or similar imported goods are so sold in the greatest aggregate quantity, at or about the time of the importation of the goods being valued, to persons who are not related to the persons from whom they buy such goods, subject to deduction for the following:
 - (i) either the commissions usually paid or agreed to be paid or the additions usually made for profit and general expenses in connection with sales in Botswana of imported goods of the same class or kind;
 - (ii) the usual costs of transport and insurance and associated costs incurred within Botswana;
 - (iii) where appropriate, the costs and charges referred to in Article 8.2; and
 - (iv) the customs duties and other national taxes payable in Botswana by reason of the importation or sale of the goods.
- (b) If neither the imported goods nor identical nor similar imported goods are sold at or about the time of importation of the goods being valued, the customs value shall, subject otherwise to the provisions of paragraph 1 (a) of this Article, be based on the unit price at which the imported goods or identical or similar imported goods are sold in Botswana in the condition as imported at the earliest date after the importation of the goods being valued but before the expiration of ninety days after such importation.

2. If neither the imported goods nor identical nor similar imported goods are sold in Botswana in the condition as imported, then, if the importer so requests, the customs value 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 who are not related to the persons from whom they buy such goods, due allowance being made for the value added by such processing and the deductions provided for in paragraph 1 (a) of this Article.

Article 6

1. The customs value of imported goods under the provisions of this Article shall be based on a computed value. Computed value shall consist of the sum of:

- (a) the cost or value of materials and fabrication or other processing employed in producing the imported goods;
- (b) an amount for profit and general expenses equal to that usually reflected in sales of goods of the same class or kind as the goods being valued which are made by producers in the country of exportation for export to Botswana;
- (c) the cost or value of all other expenses necessary to reflect the valuation option chosen by the Party under Article 8.2

2. No Party may require or compel any person not resident in its own territory to produce for examination, or to allow access to, any account or other record for the purposes of determining a computed value. However, information supplied by the producer of the goods for the purposes of determining the customs value under the provisions of this Article may be verified in another country by the authorities of Botswana with the agreement of the producer and provided they give sufficient advance notice to the government of the country in question and the latter does not object to the investigation.

Article 7

1. If the customs value of the imported goods cannot be determined under the provisions of Articles 1 to 6, inclusive, the customs value shall be determined using reasonable means consistent with the principles and general provisions of this Agreement and of Article VII of the General Agreement and on the basis of data available in Botswana.

2. No customs value shall be determined under the provisions of this Article on the basis of:

- (a) the selling price in Botswana of goods produced in such country;
- (b) a system which provides for the acceptance for customs purposes of the higher of two alternative values;
- (c) the price of goods on the domestic market of the country of exportation;
- (d) the cost of production other than computed values which have been determined for identical or similar goods in accordance with the provisions of Article 6;

- (e) the price of the goods for export to a country other than Botswana;
- (f) minimum customs values; or
- (g) arbitrary or fictitious values.

3. If he so requests, the importer shall be informed in writing of the customs value determined under the provisions of this Article and the method used to determine such value.

Article 8

1. In determining the customs value under the provisions of Article 1, there shall be added to the price actually paid or payable for the imported goods:

- (a) the following, to the extent that they are incurred by the buyer but are not included in the price actually paid or payable for the goods;
 - (i) commissions and brokerage, except buying commissions;
 - (ii) the cost of containers which are treated as being one for customs purposes with the goods in question;
 - (iii) the cost of packing whether for labour or materials;
- (b) the value, apportioned as appropriate, of the following goods and services where supplied directly or indirectly by the buyer 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:
 - (i) materials, components, parts and similar items incorporated in the imported goods;
 - (ii) tools, dies, moulds and similar items used in the production of the imported goods;
 - (iii) materials consumed in the production of the imported goods;
 - (iv) engineering, development, artwork, design work, and plans and sketches undertaken elsewhere than in Botswana and necessary for the production of the imported goods;
- (c) royalties and licence fees related to the goods being valued that the buyer must pay, either directly or indirectly, as a condition of sale of the goods being valued, to the extent that such royalties and fees are not included in the price actually paid or payable;
- (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.

2. In framing its legislation, each Party shall provide for the inclusion in or the exclusion from the customs value, in whole or in part, of the following:

- (a) the cost of transport of the imported goods to the port or place of importation;
- (b) loading, unloading and handling charges associated with the transport of the imported goods to the port or place of importation; and
- (c) the cost of insurance.

3. Additions to the price actually paid or payable shall be made under this Article only on the basis of objective and quantifiable data.

4. No additions shall be made to the price actually paid or payable in determining the customs value except as provided in this Article.

INTERPRETATIVE NOTE TO ARTICLE 8

Paragraph 1 (a) (i)

The term "buying commissions" means fees paid by an importer to his agent for the service of representing him abroad in the purchase of the goods being valued.

Paragraph 1 (b) (ii)

1. There are two factors involved in the apportionment of the elements specified in Article 8.1 (b) (ii) to the imported goods - the value of the element itself and the way in which that value is to be apportioned to the imported goods. The apportionment of these elements should be made in a reasonable manner appropriate to the circumstances and in accordance with generally accepted accounting principles.

2. Concerning the value of the element, if the importer acquires the element from a seller not related to him at a given cost, the value of the element is that cost. If the element was produced by the importer or by a person related to him, its value would be the cost of producing it. If the element had been previously used by the importer, regardless of whether it had been acquired or produced by such importer, the original cost of acquisition or production would have to be adjusted downward to reflect its use in order to arrive at the value of the element.

3. Once a value has been determined for the element, it is necessary to apportion that value to the imported goods. Various possibilities exist. For example, the value might be apportioned to the first shipment if the importer wishes to pay duty on the entire value at one time. As another example, the importer may request that the value be apportioned over the number of units produced up to the time of the first shipment. As a further example, he may request that the value be apportioned over the entire anticipated production where contracts or firm commitments exist for that production. The method of apportionment used will depend upon the documentation provided by the importer.

4. As an illustration of the above, an importer provides the producer with a mould to be used in the production of the imported goods and contracts with him to buy 10 000 units. By the time of arrival of the first shipment of 1 000 units, the producer has already produced 4 000 units. The importer may request the customs administration to apportion the value of the mould over 1 000 units, 4 000 units or 10 000 units.

Paragraph 1 (b) (iv)

1. Additions for the elements specified in Article 8.1 (b) (iv) should be based on objective and quantifiable data. In order to minimize the burden for both the importer and customs administration in determining the values to be added, data readily available in the buyer's commercial record system should be used in so far as possible.

2. For those elements supplied by the buyer which were purchased or leased by the buyer, the addition would be the cost of the purchase or the lease. No addition shall be made for those elements available in the public domain, other than the cost of obtaining copies of them.

3. The ease with which it may be possible to calculate the values to be added will depend on a particular firm's structure and management practice, as well as its accounting methods.

4. For example, it is possible that a firm which imports a variety of products from several countries maintains the records of its design centre outside the country of importation in such a way as to show accurately the costs attributable to a given product. In such cases, a direct adjustment may appropriately be made under the provisions of Article 8.

5. In another case, a firm may carry the cost of the design centre outside Botswana as a general overhead expense without allocation to specific products. In this instance, an appropriate adjustment could be made under the provisions of Article 8 with respect to the imported goods by apportioning total design centre costs over total production benefiting from the design centre and adding such apportioned cost on a unit basis to imports.

6. Variations in the above circumstances will, of course, require different factors to be considered in determining the proper method of allocation.

7. In cases where the production of the element in question involves a number of countries and over a period of time, the adjustment should be limited to the value actually added to that element outside Botswana.

Paragraph 1(c)

1. The royalties and licence fees referred to in Article 8.1 (c) may include, among other things, payments in respect to patents, trademarks and copyrights. However, the charges for the right to reproduce the imported goods in Botswana shall not be added to the price actually paid or payable for the imported goods in determining the customs value.

2. Payments made by the buyer for the right to distribute or resell the imported goods shall not be added to the price actually paid or payable for the imported goods if such payments are not a condition of the sale for export to Botswana of the imported goods.

Paragraph 3

Where objective and quantifiable data do not exist with regard to the additions required to be made under the provisions of Article 8, the transaction value cannot be determined under the provisions of Article 1. As an illustration of this, a royalty is paid on the basis of the price in a sale in Botswana of a litre of a particular product that was imported by the kilogram and made up into a solution after importation. If the royalty is based partially on the imported goods and partially on other factors which have nothing to do with the imported goods (such as when the imported goods are mixed with domestic ingredients and are no longer separately identifiable, or when the royalty cannot be distinguished from special financial arrangements between the buyer and the seller), it would be inappropriate to attempt to make an addition for the royalty. However, if the amount of this royalty is based only on the imported goods and can be readily quantified, an addition to the price actually paid or payable can be made.

CUSTOMS AND EXCISE VALUATION QUESTIONNAIRE				CE 55
Name		IMPORTER		Address
		Code Number		
Name		SUPPLIER		Address
DESCRIPTION OF GOODS (eg. chemicals, motor spares)				
NOTES				
(a) Wherever a 'yes' or 'no' answer is required, the appropriate block must please be indicated by an 'X'.				
(b) Wherever details are required and the space provided is insufficient, annexes may be used, reference being made to the annexes on the questionnaire.				
1. ARE THE GOODS ACQUIRED THROUGH OUTRIGHT PURCHASE?	YES	NO	If 'yes' state terms of sale (eg. FOB, CIF, ex works etc.)	
2. ARE THE TERMS CONSTANT?	YES	NO	If 'no' state basis of acquisition (eg. lease, hire, consignment etc.)	
3. HAS THE SUPPLIER IMPOSED ANY RESTRICTION REGARDING THE DISPOSAL, USE OR SUBSEQUENT RESALE OF THE IMPORTED GOODS WHICH SUBSTANTIALLY INFLUENCE THE PRICE TO YOU?				YES
				NO
If 'yes', give details, including extent of influence on price.				
4. IS THE SALE OR PRICE SUBJECT TO SOME OTHER CONDITION OR CONTINGENCY FOR WHICH A VALUE CANNOT BE DETERMINED? (please refer to par. 1(b) of Note to Article 1 of the Valuation Code)				YES
				NO
If 'yes', give details				
5. DOES ANY PART OF THE PROCEEDS OF SUBSEQUENT RESALE, DISPOSAL OR USE OF THE IMPORTED GOODS ACCRUE DIRECTLY OR INDIRECTLY TO THE SUPPLIER? (ROYALTIES, LICENCE FEES AND DIVIDENDS EXCLUDED)				YES
				NO
If 'yes', give details of the arrangements with the supplier and attach a copy of any agreement you may have with him in this regard.				

1. ARE YOU RELATED TO THE SUPPLIER WITHIN THE MEANING OF SECTION 70(1)(b) OF THE CUSTOMS AND EXCISE ACT?					YES	NO	
If 'yes', give details and state to what extent the relationship influences the price							
Note: If it is claimed that the relationship has no influence on the price, evidence that the suppliers prices to you are acceptable as open market prices or approximate the price of identical or similar goods sold to unrelated importers in Botswana must be furnished							
2. ARE YOU CHARGED A SELLING COMMISSION?					YES	NO	
If 'yes'							
2.1 How much?		2.2 Is it included in the supplier's invoice price	YES	NO	2.3 Is it paid by you direct to the supplier's local agent?	YES	NO
3. ARE BOUNTIES AND LICENCE FEES RELATED TO THE IMPORTED GOODS PAYABLE BY YOU AS A CONDITION OF SALE?					YES	NO	
If 'yes', give details, including a copy of your agreement and where possible, the amount payable expressed as a percentage of the FOB value of the imported goods							
4. DO YOU SUPPLY ANY OF THE FOLLOWING GOODS OR SERVICES FREE OF CHARGE OR AT A REDUCED COST TO YOUR SUPPLIER FOR USE IN THE PRODUCTION, AND SALE TO YOU, OF THE IMPORTED GOODS?							
4.1 Materials, components, parts and similar items incorporated in the imported goods					YES	NO	
4.2 Tools, dies, moulds and similar items used in the production of the imported goods					YES	NO	
4.3 Materials consumed in the production of the imported goods, but not incorporated therein					YES	NO	
4.4 Engineering development, artwork, designwork and plans and sketches undertaken outside Botswana and necessary for production of the imported goods					YES	A	
Give details i.e. on the 'yes' answers in question 4							
I HEREBY DECLARE THAT THE DETAILS CONTAINED IN THIS QUESTIONNAIRE ARE TRUE AND CORRECT AND THAT NO INFORMATION HAS BEEN WITHHELD							
..... SIGNATURE	 DESIGNATION	 DATE			

APPENDIX C

VALUE DETERMINATIONS ISSUED TO IMPORTERS

(see paras. 14.03, 16.04 and 16.05)