

# GENERAL AGREEMENT ON TARIFFS AND TRADE

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## Committee on Customs Valuation

### INFORMATION ON IMPLEMENTATION AND ADMINISTRATION OF THE AGREEMENT

#### Addendum

#### Legislation of Lesotho

#### Contents

	<u>Page</u>
Excerpt from Section 5 of the Customs and Excise Act 1982, as amended. <sup>1</sup>	2
Excerpt from Section 107 of the Customs and Excise Act 1982, as amended. <sup>1</sup>	3
Sections 67-71 and 73-75A of the Customs and Excise Act 1982, as amended. <sup>1</sup>	4
Sections 51 and 52 of the Customs and Excise Regulations, 1984. <sup>1</sup>	32
Reconciliation of Articles of the Agreement with corresponding provisions of the Customs and Excise Act and the Regulations thereto.	36
Guide to Customs Valuation in Lesotho	39

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<sup>\*</sup> English only/anglais seulement/inglés solamente

<sup>1</sup> The full text of the Customs and Excise Act 1982 and of the Customs and Excise (Amendment) Acts 1983 and 1984 together with the full text of the Customs and Excise Regulations, 1984, have been made available to the secretariat, where they can be consulted by delegations (Mr. A. Otten, extension 2181).

CHAPTER II - ADMINISTRATION, GENERAL DUTIES AND POWERS OF DIRECTOR  
AND OFFICERS, AND APPLICATION OF ACT

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Excerpt from Section 5

5. (3) No officer shall disclose any information relating to any person firm or business acquired in the performance of his duties except-:
- (a) for the purposes of this Act; or
  - (b) when required to do so as a witness in a court of law; or
  - (c) to an accounting officer designated by the Minister for specific revenue purposes.

Excerpt from Section 107.

107. (2) (a) Subject to the provisions of this Act, the Director shall not, except on such conditions, including conditions relating to security as may be determined by him allow goods to pass from his control until he has satisfied himself that the provisions of this Act or any law relating to the importation or exportation or transit carriage through Lesotho of goods have been complied with in respect of such goods and the State or the Director or any officer shall in no case be liable in respect of any claim arising out of the detention of goods pending the decision of the Director, or for the costs of such detention.

CHAPTER IX - VALUE FOR FISCAL AND CUSTOMS DUTY PURPOSES

Section 67

67. (1) Subject to the provisions of this Act, the value for fiscal and 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 68.
- (2) If the value of any imported goods of a single denomination is :-
- (a) in excess of one loti, such value shall, for the purposes of assessing the amount of duty payable, be calculated to the nearest loti, an amount of fifty lisente being regarded as less than one half of one lot;
- (b) less than one loti, such value shall be calculated as one loti.
- (3 a) If in the opinion of the Director the transaction value of any imported goods cannot be ascertained in terms of section 68 (1) or has been incorrectly ascertained by the importer, the Director may determine a value which shall, subject to a right of appeal to the Court, be deemed to be the value for customs duty purposes of those 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;

CHAPTER IX    -    VALUE FOR FISCAL AND CUSTOMS  
DUTY PURPOSES

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Section 67

- (4) 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 fiscal and Customs duty purposes.
- (5) The Director may whenever he deems it expedient amend or withdraw any such determination and make a new determination with effect from:-
- (a) the date of first entry of goods in question;
  - (b) the date of the determination made under subsection (3);
  - (c) the date of such new determination; or
  - (d) the date of such amendment;
- (6)
- (a) An appeal against any such determination shall lie to the High Court of Lesotho;
  - (b) Such appeal shall be presecuted within a period of 90 days from the date of the determination;
- (7) Save where:-
- (a) a determination has been made under subsection (3) (a) or (5); or
  - (b) any false declaration is made for the purposes of subsection (3) or (5),  
there shall be no liability for any underpayments 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.

CHAPTER IX - VALUE FOR FISCAL AND CUSTOMS  
DUTY PURPOSES

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- (8) Section 67
- (a) Notwithstanding the provisions of subsections (1) and (3) the value for customs duty purposes of any imported goods specified in section 8 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 8 of Part 2 of schedule No. 1 on such goods.
- (b) The provisions of subsection (2) or (3) of section 70 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 68 and 69A 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;

CHAPTER IX - VALUE FOR FISCAL AND CUSTOMS  
DUTY PURPOSES

Section 67

- (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 art work, design work, plans or sketches undertaken in Lesotho;
- (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 Lesotho .

TRANSACTION VALUE

Section 68

68. (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 Lesotho, adjusted in terms of section 69A:
- Provided that,
- (a) there are no restrictions as to the disposal or use of the goods by the buyer other than restrictions which :-
    - (i) are imposed or required by law;
    - (ii) limit the geographical area in which the goods may be resold; or
    - (iii) do not substantially affect the value of the goods;
  - (b) the sale or such price of the goods is not subject to any term or condition for which a value cannot be determined;
  - (c) no part of the proceeds of any disposal, use or subsequent resale of the goods by the buyer will accrue directly or indirectly to the seller, unless an appropriate adjustment can be made in terms of section 69A;
  - (d) subject to sub-section (3) the seller and the buyer are not related within the meaning of sub-section (2) (a).



## Section 68

- (2) 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 business;
  - (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.

Section 68

- (3) Notwithstanding the provisions of subsection (1) (d), the fact that a buyer and a seller are related within the meaning of subsection (2) (a) shall not in itself be a ground for not accepting the transaction value, where:-
- (a) in the opinion of the Director such relationship did not influence the price paid or payable, or
  - (b) the importer proves to the satisfaction of the Director that the transaction value closely approximate to one of following values, namely:-
    - (i) the transaction value of identical or similar goods sold at comparable trade and quantity levels to unrelated buyers in Lesotho 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 Lesotho 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 Lesotho 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 Lesotho 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 69A, on account of differences in distances and modes of transport to the port or place of export;

## Section 68

- (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 Lesotho 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 costs and charges referred to in section 69A 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 request, in writing, of the importer concerned the order of application of subsections (7) and (8) shall be reversed.

Section 68

- (7.)        (a)        If the imported goods or identical or similar imported goods are sold in Lesotho 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 Lesotho 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 Lesotho 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 Lesotho; and
  - (iii)      any duties or taxes paid or payable in Lesotho by reason of the importation of the goods or sale of the goods within Lesotho;

## Section 68

- (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 based on the unit price at which the imported goods or identical or similar imported goods are sold in Lesotho 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 Lesotho 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 Lesotho not related to the sellers of such goods, due allowances 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 of value of materials and manufacture or other processing in producing the goods;

Section 68

- (b) the cost of -
  - (i) packing, including that of the labour or materials concerned; and
  - (ii) containers which are dealt with as being for customs purposes one with the goods in question;
  
- (c) the value, apportioned to the imported goods as deemed appropriate by the Director, with due regard to any relevant request by the importer, of any of the following goods and services if supplied directly or indirectly by the importer, free of charge or at reduced cost, for use in connection with the production and sale for export of the imported goods, in so far as such value has not been included in the price actually paid or payable, namely :-
  - (i) materials, components, parts and similar articles forming part of the imported goods;
  - (ii) tools, dies, moulds, and similar articles used in the production of the imported goods;
  - (iii) materials consumed in the production of the imported goods;
  - (iv) engineering, development work, art work, design work, plans and sketches undertaken elsewhere than in Lesotho and necessary for the production of the imported goods;

## Section 68

- (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 Lesotho;
- (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 provisions of subsection (8), the Director may determine such value on the basis of 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 Lesotho of goods produced in Lesotho;
- (b) a system which provides for the acceptance for customs purposes of the higher or 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 Lesotho;
- (f) a system of minimum Customs values; or
- (g) arbitrary or fictitious values.

Section 68

- (10.) For the purposes of subsection (7) (a) (ii) or (8) (d), goods which are exported to Lesotho 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.
- (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 1 (2) in the country of export or, if not so packed in a container, placed on any vehicle in the country of exportation ready for export to Lesotho; or
  - (b) placed on the vehicle which conveys them across the border of the country from which they are exported to Lesotho.



VALUE FOR EXCISE DUTY PURPOSES

## Section 69

69. (1) Whenever it is necessary, for the purpose of assessing the excise duty on any goods manufactured in Lesotho, to determine the value of such goods, the value thereof shall, subject to the provisions of this section, be taken to be the full and final market price (before deduction of any discounts other than cash discounts) at which, at the time of sale, such or similar goods are freely offered for sale, for consumption in Lesotho, for purposes of trade in the principal markets of Lesotho in the ordinary course of trade, in the usual wholesale quantities and in the condition and the usual packing ready for sale in the retail trade to any independent merchant wholesaler in Lesotho under fully competitive conditions, plus the cost of packing and packages and all other expenses incidental to placing the goods on rail for delivery to the purchaser, but excluding the excise duty on such goods;

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

Section 69

- (2) Whenever any such goods are sold or otherwise disposed of in Lesotho under such conditions that the value thereof cannot be calculated in terms of subsection (1), the Director may determine a value which shall subject to the right of appeal to the Minister, be regarded as the value of such goods determined in terms of subsection (1).
- (3) The Director may, in respect of any such goods or any class or kind of such goods :-
  - (a) specify, for the purposes of subsection (1), the quantity which shall be deemed to be the usual wholesale quantity;
  - (b) specify, for the purposes of subsection (1), the packing which shall be deemed to be the usual packing ready for sale in the retail trade;
  - (c) determine, for the purposes of subsection (1), the cost of packing or packages or any other expenses incidental to placing the goods on rail,and his decision shall, subject to the right of appeal to the Minister, be final.
- (4) (a) Notwithstanding the provisions of subsection (1) and (2), the value for excise duty purposes of any goods manufactured in Lesotho and specified in section B of part 2 of Schedule No. 1 (other than pearls, precious and semi-precious stones, precious metals or rolled precious metals, or articles containing or manufactured of such pearls, precious and semi-precious stones, precious metals or rolled precious metals), shall be the value for excise duty purposes of such goods calculated or determined in terms of subsection (1) or (2), plus any non-rebated excise duty payable in terms of section A of part 2 of Schedule No. 1 on such goods.

Section 69

- (b) The provisions of subsection (3) or (4) of section 70 shall mutatis mutandis apply to the calculation or determination of the value for excise duty purposes of any such 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.

ADJUSTMENT TO PRICE ACTUALLY PAID OR PAYABLE

## Section 69 A

- 69A. (1) In ascertaining the transaction value of any imported goods in terms of section 68 (1), there shall be added to 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 is 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;

## Section 69 A

- (iv) engineering, development work, art work, design work, plans and sketches undertaken elsewhere than in Lesotho and necessary for the production of the goods;
  - (c) royalties and licence fees in respect of the imported goods, including payments for patents, trade marks and copyright and for the right to distribute or resell the goods, due by the buyer, directly or indirectly, as a condition of sale of the goods for export to Lesotho, 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 Lesotho;
  - (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 Lesotho.
- (2) In ascertaining the transaction value of any imported goods in terms of section 68 (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 port or place of importation in Lesotho;

Section 69 A

- (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 Lesotho;
  - (iii) any duties or taxes paid or payable by reason of the importation of the goods or sale of the goods in Lesotho;
  - (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 Lesotho;
- (3) For the purposes of subsection (1) (e) or (2) (a), goods which are exported to Lesotho 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 exported direct from the first mentioned country.

Section 69 A

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

VALUE FOR SALES DUTY PURPOSES

Section 70

70. (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 fifteen per cent of such value, plus any no-rebated fiscal and 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 67, 68, 69A and 71 shall mutatis mutandis apply to the calculation or determination of the value for sales duty purposes of any imported goods.
- (2) The value for sales duty purposes of any goods manufactured in Lesotho, other than goods entered in terms of sales duty item 144.00, except under tariff heading 71.16 thereof, of Schedule No.1, shall be the value for excise duty purposes of such goods, calculated or determined in terms of section 69 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 sales duty on such goods.



## Section 70

- (3) The value for sales duty purposes of any imported goods entered in terms of item 709.01 of Schedule No. 7 and any goods manufactured in Lesotho and entered in terms of sales duty item 144.00, except under tariff heading 71.16 thereof, of Schedule No. 1, shall be :-
- (a) in a sale between a manufacturer as seller and an independent wholesale dealer or an independent bulk buyer or a buyer purchasing at a preferential price or other reseller as purchaser, the highest price (excluding sales duty) at which the manufacturer sells such goods at factory to an independent retail dealer, without any deduction except a cash discount not exceeding two and a half per cent, if any, plus the cost of packing and packages and all other expenses incidental to placing the goods on rail for delivery to the purchaser;
- (b) in a sale between a manufacturer and end consumer or between a wholesale dealer or retail dealer or other resellers as seller and an independent retail dealer or end consumer as purchaser, the highest price (excluding sales duty) at which such goods are sold by any such seller to an end consumer without any deduction except thirty-three and a third per cent, plus the cost of packing packages and all other expenses incidental to placing the goods on rail for delivery to the purchaser.

Section 70

- (4) (a) Whenever any imported goods entered in terms of item 709.01 of Schedule No. 7 or any goods manufactured in Lesotho and entered in terms of sales duty item 144.00, except under tariff heading 71.16 thereof, of schedule No.1, are sold in such circumstances that the value thereof for sales duty purposes cannot be calculated in terms of subsection (3), the Director may determine a value which shall, subject to a right of appeal to the Minister, be deemed to be the value for sales duty purposes of such goods.
- (b) Any such appeal shall be lodged with the Minister in the manner prescribed by regulation within a period of three months after the date on which a value has been so determined.

VALUE OF CERTAIN SPECIFIED GOODS

## Section 71

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

(2) Where any used motor vehicle is imported or where any new motor vehicle is imported by a natural person for his own use and not for sale, the Director may determine the value for duty purposes of such vehicle and his determination shall be final :

Provided that where any natural person who was the owner of and has used such motor vehicle in any territory outside Lesotho imports such vehicle into Lesotho, from a territory other than the territory in which it was produced or manufactured, for his own use, and not for sale, the Director may determine the value for duty purposes of such vehicle as if it were imported into Lesotho from the territory in which it was produced or manufactured:

Provided further that no period of use of any such motor vehicle, outside Lesotho, while in the possession of any person normally resident in Lesotho which is less than six months shall be taken into consideration in determining such value.

VALUE OF GOODS EXPORTED

Section 73

73. (a) For the purposes of this Act, the value of any goods exported from Lesotho shall be the price of those goods free on board at the place of despatch from Lesotho, which value shall be declared on the bill of entry export.
- (b) If there is no such free on board price, the value determined by the Director shall be regarded as the value for the said purposes.
- (c) If the value of any exported goods of a single denomination is, according to the provisions of this section :-
- (i) in excess of one loti and includes a fraction of a loti, such value shall be calculated to the nearest loti, an amount in excess of fifty lisente being regarded as one loti.
  - (ii) less than one loti, such value shall be calculated as one loti.

CONVERSION OF PRICES

Section 74

74. The Minister may by regulation determine the rate and time at which the price paid or payable in respect of imported goods shall, if expressed in a foreign currency, be converted into the currency of Lesotho.

VALUE OF GOODS NOT LIABLE TO AD VALOREM DUTY

Section 75

75. (1) Subject to the provisions of subsection (2), the customs value of any imported goods shall be declared by the importer on entry of such goods.
- (2) The Minister may by regulation exempt, to the extent specified in the regulations, any class or kind of such goods or any such goods to which circumstances so specified apply, from the provisions of subsection (1).

INTERPRETATION OF SECTION 67, 68 AND 69A

Section 75 A

- 75A. (1) The interpretation of sections 67, 68 and 69A shall be subject to the agreement concluded at Geneva on 12 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 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 of 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 67, 68 or 69A.

R E G U L A T I O N S

CHAPTER IX

VALUE

Section 51

Currency Conversion

51. (1) When the value of or the price paid or payable for any imported goods is expressed in a foreign currency, it shall for the purpose of calculating the customs value thereof, be converted into the currency of Lesotho (M1.00 = R1.00) at the **selling rate quoted** by an authorised dealer in exchange in Lesotho and acceptable to the Director for this purpose, at the date of shipment of the goods or if no such rate is quoted for the date of shipment, the latest rate quoted before that date shall be used.
- (2) If no selling rate for a particular currency is quoted in Lesotho, the Director may, after consultation with the Central Bank of Lesotho determine such rate.
- (3) For the purposes of sub-regulations (1) and (2) the date of shipment of :-
- (a) non-containerised goods shall be the date of bill of lading, air waybill, consignment note or such other document as the Director may require; and
- (b) containerised goods shall be the date on which the container is taken on board ship as endorsed on the bill of lading or arrival notification or, if imported otherwise than by sea, the date of the air waybill, consignment note or such other document as the Director may require.



DECLARATION

Section 52

52. (1) The following classes or kinds of goods are exempted from the requirements of section 68 (2) (c) of the Act:
- (a) goods not exceeding M1000 in value;
  - (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 sub-paragraphs (i) to (iv) of the proviso to section 39 (1) (a) of the Act;
  - (d) goods entered under rebate of duty provided for in items 401.01 to 402.02, 404.03/30.02, 405.01, 405.02, 405.03/37.05 to 405.03/90.10, 405.04, 405.05/92.00, 405.05/92.12, 405.05 (II), 405.06 to 405.10, 405.20 to 408.01, 408.02/94.00 to 408.03, 410.01 to 410.01/12.01, 410.03/03.01 to 411.00/85.01 (3), 411.00/89.01, 411.00/89.02 to 412.04, 412.06, 412.08 to 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.

Section 52

- (2) In the case of related persons, the tests provided for in section 68 (3) (b) of the Act shall be used on request by the importer and for comparative purposes only ;
- (3) For the purpose of section 68 (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"; and
  - (b) not related to the supplier of the goods shall so indicate, in the field "ValuationCode" on the bill of entry, by inserting the letter "N"
- (4) Every importer of goods exempted in terms of sub-regulation (1) shall indicate such exemption by inserting letter "E" in the field "Valuation Code" on the bill of entry.
- (5) The valuation methods prescribed in section 68 (1), (4), (5), (7), (8) and (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 sub-regulation (3), the appropriate method number:

Provided that importers of the classes or kinds of goods enumerated in sub-regulation (1) are exempted from this requirement.

## Section 52

- (6) The Director may whenever he deems it expedient for purposes of determining a customs value, request the importer to furnish such information as he may require on an approved form or in any other manner, and the importer shall furnish the Director with such information not later than thirty days from the date of such request.
- (7)
- (a) 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;
- (b) the Director 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 thirty days from the date of such determination.
- (8) The Director shall, in determining the value for duty purposes of any imported goods, make no additions, except those additions specified in section 69 A (1) of the Act, to the price actually paid or payable for such goods.

RECONCILIATION OF ARTICLES OF THE AGREEMENT WITH CORRESPONDING  
PROVISIONS OF THE CUSTOMS AND EXCISE ACT AND THE REGULATIONS THERETO

<u>AGREEMENT</u>		<u>LEGISLATION</u>	
Article	1.1	Section	67 (1), 68 (1)
"	1.1 (a)	"	68 (1) (a)
"	1.1 (a) (i)	"	68 (1) (a) (i)
"	1.1 (a) (ii)	"	68 (1) (a) (ii)
"	1.1 (a) (iii)	"	68 (1) (a) (iii)
"	1.1 (b)	"	68 (1) (b)
"	1.1 (c)	"	68 (1) (c)
"	1.1 (d)	"	68 (1) (d)
"	1.2 (a)	"	68 (3), 68 (3) (a)
"	1.2 (b)	"	68 (3) (b)
"	1.2 (b) (i)	"	68 (3) (b) (i)
"	1.2 (b) (ii)	"	68 (3) (b) (ii)
"	1.2 (b) (iii)	"	68 (3) (b) (iii)
"	1.2 (c)	Regulation	52 (1)
"	2.1 (a)	Section	68 (4) (a)
"	2.1 (b)	"	68 (4) (a) and (b)
"	2.2	"	68 (4) (a)
"	2.3	"	68 (4) (c)
"	3.1 (a)	"	68 (5) (a)
"	3.1 (b)	"	68 (5) (a) and (b)
"	3.2	"	68 (5) (a)
"	3.3	"	68 (5) (b)
"	4	"	68 (6)
"	5.1 (a)	"	68 (7) (a)
"	5.1 (a) (i)	"	68 (7) (a) (i)
"	5.1 (a) (ii)	"	68 (7) (a) (ii)
"	5.1 (a) (iii)	"	68 (7) (a) (ii)

Article	5.1 (a) (iv)	Section	68 (7) (a) (iii)
"	5.1 (b)	"	68 (7) (b)
"	5.2	"	68 (7) (c)
"	6.1	"	68 (8)
"	6.1 (a)	"	68 (8) (a)
"	6.1 (b)	"	68 (8) (e)
"	6.1 (c)	"	68 (8) (d)
"	7.1	"	68 (9)
"	7.2 (a)	"	68 (9) (a)
"	7.2 (b)	"	68 (9) (b)
"	7.2 (c)	"	68 (9) (c)
"	7.2 (d)	"	68 (9) (d)
"	7.2 (e)	"	68 (9) (e)
"	7.2 (f)	"	68 (9) (f)
"	7.2 (g)	"	68 (9) (g)
"	7.3	Regulation	52 (7) (b)
"	8.1	Section	69 A (1)
"	8.1 (a)	"	69 A (1) (a)
"	8.1 (a) (i)	"	69 A (1) (a) (i) and (ii)
"	8.1 (a) (ii)	"	69 A (1) (a) (iv)
"	8.1 (a) (iii)	"	69 A (1) (a) (iii)
"	8.1 (b)	"	69 A (1) (b)
"	8.1 (b) (i)	"	69 A (1) (b) (i)
"	8.1 (b) (ii)	"	69 A (1) (b) (ii)
"	8.1 (b) (iii)	"	69 A (1) (b) (iii)
"	8.1 (b) (iv)	"	69 A (1) (b) (iv)
"	8.1 (c)	"	69 A (1) (c)
"	8.1 (d)	"	69 A (1) (d)
"	8.2 (a), (b) & (c)	"	69 A (1) (e)
"	8.4	Regulation	52 (8)
"	9.1	"	51 (1)
"	9.2	"	51 (1)
"	10	Section	5 (3)
"	11	"	67 (6)

Article	14	Section	75 A (1)
"	15.1 (a)	"	67 (4)
"	15.2 (a)	"	67 (9) (c)
"	15.2 (b)	"	67 (9) (e)
"	15.2 (c)	"	67 (9) (c) and (e)
"	15.2 (d)	"	67 (9) (c) and (e)
"	15.2 (e)	"	67 (9) (c) and (e)
"	15.3	"	67 (9) (b)
"	15.4 (a)	"	68 (2) (a) (i)
"	15.4 (b)	"	68 (2) (a) (ii)
"	15.4 (c)	"	68 (2) (a) (iii)
"	15.4 (d)	"	68 (2) (a) (iv)
"	15.4 (e)	"	68 (2) (a) (v)
"	15.4 (f)	"	68 (2) (a) (vi)
"	15.4 (g)	"	68 (2) (a) (vii)
"	15.4 (h)	"	68 (2) (a) (viii)
"	15.5	"	68 (2) (b)
"	16	Regulation	52 (7) (b)
Note to Article 1 ("Price actually Paid or Payable")		Section	67 (9) (d); 69 A (2) (b) (i), (ii) & (iii)
Note to Article 5, paragraph 7		"	68 (7) (a) (i)
Note to Article 6, paragraph 3		"	68 (8) (c)
Note to Article 7		"	68 (9)
Note to Article 8 ("paragraph 1 (c) ")		"	69 A (1) (c)
Note to Article 11 paragraph 1		"	67 (3) (a)



**DEPARTMENT OF CUSTOMS AND EXCISE**

**GUIDE TO**

**C U S T O M S   V A L U A T I O N**

**IN**

**L E S O T H O**

CONTENTS

<u>Paragraph</u>		<u>Page</u>
1	Introduction	1
2	Valuation methods	2
3	Adjustments to transaction value	3
4	Currency conversion	4
5	Unascertainable value	4
6	Release of goods in advance of final decision	4
7	Written explanation concerning customs valuation	4



## INTRODUCTION

The purpose of the GATT Valuation Code is to provide a fair and uniform system for valuation of goods for customs purposes.

This system conforms to commercial realities and outlaws the use of arbitrary or fictitious customs values.

This guide is an explanation of the requirements and procedures in the correct application of principles regarding valuation of goods imported into Lesotho.

It explains the law covering the GATT Valuation Code which has been embodied in Lesotho laws as follows:  
Customs & Excise Act 1982 (Act no. 10 of 1982) - principal  
Customs & Excise (Amendment) Act 1983 (Act no. 4 of 1983)  
Customs & Excise (Amendment) Act 1984 (Act no. 3 of 1984)  
Customs & Excise Regulations 1984 (L.N. no. 126 of 1984)

Further clarification of the law and procedures can be obtained from the Director of Customs & Excise,  
P.O. Box 891, Maseru 100, Lesotho

## VALUATION METHODS

The system consists of six ways of valuing goods for customs purposes. No. 1 is the BASIC method: The transaction value of the goods to be valued. If this cannot be used, alternative methods are available:

Method 2: the transaction value of identical goods  
Method 3: The transaction value of similar goods  
Method 4: The deductive method  
Method 5: The computed value  
Method 6: The "fall-back" method

The main principle is to base the customs value (the value for duty) of imported goods as far as possible on the transaction value of the goods - the price actually paid or payable for them. This should apply to the majority of importations.

When method 1 cannot be applied, methods 2 to 6 provide alternatives which must be tried in numerical order, except that the importer may opt to use method 5 before method 4 if he so desires. Therefore method 1 should normally be used, but if it cannot be, method 2 should be applied. Failing that, method 3 is used. If, however, methods 1, 2 and 3 cannot be used, then the importer can use method 4 or 5 in whatever order he prefers. Failing any of the first five methods he must fall back on method 6.

Method 1 TRANSACTION value. This is the price actually paid or payable. As F.O.B. is used in Lesotho the following may be deducted if they have been included in the price:

- (a) transportation costs from the port of exportation;
- (b) insurance
- (c) loading and unloading costs;
- (d) handling costs.

NB: If the buyer and seller are related the transaction value will only be acceptable if the relationship did not influence the price.

Method 2 Transaction value of IDENTICAL goods

Method 3 Transaction value of SIMILAR goods

Method 4 DEDUCTIVE value, based on a sale in Lesotho of either the imported goods or of identical or similar goods. This value is calculated by taking the price (exclusive of duty) at which the goods are sold, in the condition as imported, to an unrelated buyer in Lesotho and deducting from it the non-dutiable elements mentioned in 1 above.

Method 5 COMPUTED value, comprising the producer's costs in making and selling the goods, i.e. cost of materials, fabrication, general expenses and profit.

Method 6 "FALL-BACK", which provides a more flexible application of the first five methods when initial attempts to establish the customs value by these methods have been unsuccessful.

### 3 ADJUSTMENTS TO TRANSACTION VALUE

In determining the customs value under the provisions of method 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 the country of importation 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.

The legal basis of valuation in Lesotho is the F.O.B. value. Therefore the following may be deducted:

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

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

4 CURRENCY CONVERSION

Where the conversion of currency is necessary for the determination of the customs value, the rate of exchange to be used is the selling rate quoted by an authorised dealer in exchange in Lesotho. If none is quoted, the Director may determine a rate after consultation with the Central Bank of Lesotho. The rate applicable is that on the date of shipment of the goods.

5 UNASCERTAINABLE VALUE

The Director has the power to determine a value if in his opinion a transaction value cannot be ascertained or if he considers that the value has been incorrectly ascertained by the importer. The importer has the right of appeal to the High Court against this determination.

6 RELEASE IN ADVANCE OF DECISION

If there is delay in determining the value the goods may be released pending final decision provided adequate security for the duty is given.

7 WRITTEN EXPLANATION

Upon written request the importer has the right to a written explanation of how the customs value of his goods was determined.