

CUSTOMS AND EXCISE DUTY (AMENDMENT) ACT, 1994

No. 4



of 1994

ARRANGEMENT OF SECTIONS

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An Act to amend the Customs and Excise Act

Date of Assent : 8th April, 1994.

Date of Commencement : 15th April, 1994.

ENACTED by the Parliament of Botswana.

1. This Act may be cited as the Customs and Excise Duty (Amendment) Act, 1994.

Short title

2. Section 2 of the Customs and Excise Duty Act (hereinafter referred to as "the Act") is amended —

Amendment
of section 2
of Cap. 50:01

(a) by inserting, immediately after the definition of the word "Director", the following new definitions —

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

"dumping" means the export or the proposed export of goods to Botswana —

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

- (b) by inserting, immediately after the definition of the word “still maker”, the following new definition —
 “ “subsidized export” means the export or the proposed export of goods to Botswana from any country where the authority of that country or any other country provides any form of financial aid or other assistance in respect of those goods, including assistance in respect of the production, manufacture, transport or export thereof;”.

Amendment
of section
47 of the Act

3. Section 47 of the Act is amended by substituting, for subsection (1) thereof, the following new subsection —

“(1) Notwithstanding anything to the contrary contained in this Act, all goods consigned to or imported into Botswana or stored or manufactured in a customs and excise warehouse or removed in bond shall, upon being entered for home consumption, be liable to such duties (including anti-dumping duties, countervailing duties and safeguard duties specified in Schedule No. 2 and new or increased duties referred to in section 62 (1) and duties imposed under the provisions of section 56) as may at the time of such entry be leviable upon such goods.”

Amendment
of section
50 of the Act

4. Section 50 of the Act is amended by substituting for subsection (6) thereof, the following new subsection —

“(6) Any duty payable in terms of section 56, any anti-dumping duty payable in terms of section 59, any countervailing duty payable in terms of section 60, and any safeguard duty payable in terms of section 60A shall be paid to the benefit of the Fund in accordance with the provisions of the said sections.”

Amendment of
section 51 of
the Act
Repeal of
section 51A
of the Act
Amendment
of section
53 of the Act

5. Section 51 of the Act is amended by deleting subsections (2A) and (4) thereof.

6. The Act is amended by repealing section 51A thereof.

7. Section 53 of the Act is amended —

- (a) by substituting, for the words “Part 2, Part Act 3 or Part 4” which appear therein, the words “Part 2, Part 4 or Part 5”; and
- (b) by substituting, for the words “Part 5” which appear in subsection (4) thereof, the words “Part 6”.

8. Section 56 of the Act is amended by substituting, for the words immediately following paragraph (b) and preceding subparagraph (i) thereof, the following new words —

Amendment
of section
56 of the Act

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

9. The Act is amended by substituting, for the heading of Part VI thereof, the following new heading —

Amendment
of heading
to Part VI
of the Act

“ PART VI *Anti-dumping, Countervailing and Safeguard Duties* ”.

10. Section 58 of the Act is amended by substituting, for that section, the following new section —

Amendment
of section
58 of the Act

“General
provisions
regarding
anti-dumping,
counter-vailing
and safeguard
duties

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

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

(b) Any such anti-dumping duty or countervailing duty may be imposed in respect of the goods concerned in accordance with such request with effect from the date on which any provisional payment in relation to anti-dumping or countervailing duty is imposed in respect of those goods under section 61.

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

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

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

(6) Notwithstanding the provisions of section 59 or 60, the Director may, subject to such conditions as he may impose in each case, exempt from payment of any anti-dumping, countervailing or safeguard duty, any goods which are imported in such circumstances or in such quantities that the importation of such goods does not, in his opinion, constitute regular importation of such goods for trade purposes.”

Amendment
of section
59 of the Act

11. Section 59 of the Act is amended by substituting, therefor, the following new section —

Imposition of
anti-dumping
duties

59 (1) The Minister may from time to time by notice published in the Gazette, amend Schedule No. 2 to impose an anti-dumping duty in accordance with the provisions of section 58 (2).

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

(3) The provisions of section 53 (8) shall mutatis mutandis apply in respect of any amendment, withdrawal or reduction made under the provisions of subsection (1) or (2) of this section.”

Amendment
of section
60 of the Act

12. Section 60 of the Act is amended by substituting, therefor, the following new section —

“Imposition
of count-
ervailing
duties

60 (1) The Minister may from time to time by notice published in the Gazette amend Schedule No. 2 to impose a countervailing duty in accordance with the provisions of section 58 (2).

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

(3) The provisions of section 53 (8) shall mutatis mutandis apply in respect of any amendment, withdrawal or reduction made under the provisions of subsection (1) or (2) of this section.”

13. The Act is amended by inserting, immediately after section 60 thereof, the following new section —

“Imposition
of a safeguard
duty

60A (1) The Minister may from time to time by notice published in the Gazette, amend Schedule No. 2 to impose a safeguard duty in accordance with the provisions of section 58 (2).

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

(3) The provisions of section 53 (8) shall mutatis mutandis apply in respect of any amendment, withdrawal or reduction made under the provisions of subsection (1) or (2) of this section.”

14. Section 61 of the Act is amended by inserting, immediately after subsection (3) thereof, the following new subsection —

“(4) If the amount of any such provisional charge on the said goods —

(a) exceeds the amount of any anti-dumping or countervailing duty retrospectively imposed on such goods under section 59 or section 60, the difference shall be refunded; or

(b) is less than the amount of the anti-dumping duty so imposed, the difference shall not be collected”.

15. Section 81 of the Act is amended —

(a) in subsection (1) thereof, by —

(i) substituting, for paragraph (c) thereof, the following new paragraph —

“(c) a drawback or a refund of the ordinary customs duty, anti-dumping duty, countervailing duty, safeguard duty and surcharge actually paid on entry for home consumption on any imported goods described in Schedule No. 5 shall, subject to the provisions of paragraph (g) (i), be paid to the person who paid such duties or any person indicated in the notes to the said Schedule, subject to compliance with the provisions of the item of the said Schedule in which those goods are specified.”,

(b) substituting, for paragraph (g) (i) thereof, the following new paragraph —

“(g) (i) a refund of the ordinary customs duty, countervailing duty, safeguard duty and surcharge on any distillate fuel shall be granted to the extent stated in item 533.01 or 540.02 of Schedule No. 5 in which such fuel is specified, subject to compliance with the provisions of the said item, or a refund of the excise duty leviable on such fuel shall be granted to the extent stated in item 609.05.10 or 640.03 of Schedule No. 6 in which such fuel is specified, subject to compliance with the provisions of the said item and any refund under this paragraph may be paid to any user who has purchased and used such distillate fuel in accordance with the provisions of the said items of Schedule No. 5 or 6 to any person indicated in the notes to the said Schedule No. 5 or 6:

Insertion
of section
60A in Act

Amendment
of section
61 of the Act

Amendment
of section
81 of the Act

Provided that no such refund shall be paid to the State or any government, department, administration or any body, institution or authority mentioned in the notes to the said Schedule No. 5 or 6;”;
(c) by substituting, for subsection (4) thereof, the following new subsection —

“(4) Notwithstanding the provisions of section 59, 60 or 60A, a rebate of any anti-dumping duty, countervailing duty or safeguard duty specified in Schedule No. 2 in respect of any goods entered under the provisions of any item specified in Schedule No. 3 or 4 may be granted if it is expressly stated in such item of Schedule No. 3 or 4 that the extent of the rebate includes such anti-dumping duty, countervailing duty or safeguard duty.”; and

(d) in subsection (19) thereof, by substituting, for paragraph (a) thereof, the following new paragraph —

“(a) The Minister may from time to time by notice published in the Gazette amend Schedule No. 3, 4, 5 or 6 in order to give effect to any request by the Minister of Commerce and Industry or whenever he deems it expedient to do so.”

Amendment
of section 90 of
the Act

16. Section 90 of the Act is amended in subsection (2) thereof by substituting, for the words immediately preceding paragraph (a), the following new words —

“For the purposes of subsection (1), any invoice or other document relating to any denomination, description, class, grade or quantity of goods shall be deemed to contain a false statement if the price charged by the exporter or any value, price, commission discount, cost, charge, expense, royalty, freight, duty, tax, drawback, refund, rebate, remission or other information whatever declared therein which has a bearing on value for the purposes of payment of any duty or on classification in terms of any Schedule to this Act or on anti-dumping duty, countervailing duty or safeguard duty or on the extent of rebate, refund or drawback of duty —”.

PASSED by the National Assembly this 25th day of March, 1994.

T.G.G.G. SEELETSO,
Clerk of the National Assembly.