

*Bill No. 37 of 2025*

**CUSTOMS (AMENDMENT) BILL, 2025**  
(Published on 15th December, 2025)

MEMORANDUM

1. A draft of the above Bill, which it is intended to present to the National Assembly is set out below.

2. The object of the Bill is to amend the Customs Act (Cap. 50:02) to introduce new rules to enhance the services of the Revenue Service; to enhance the penalties with a view to promote compliance and to effect some corrections to errors and omissions that occurred when the Act was enacted.

3. This Bill therefore —

3.1 generally, amends a number of provisions to effect the necessary corrections; and

3.2 specifically, in —

3.2.1 clause 23 amends section 49. The section as is currently permits even those goods that are prohibited to be imported as long as they are *de minimis* imports. It therefore defeats the purpose of prohibiting importation of some goods if they can be allowed when in small quantities. The clause cures this loophole by ensuring that this *de minimis* exception is only available in relation to goods that are not prohibited;

3.2.2 clause 41 amends the Act by inserting 85A to address those persons leaving Botswana on foot or otherwise, for example, bicycles or horseback so that these are also required to report their departure and ensure that they declare any goods on them;

3.2.3 clause 44 amends section 88 to cater for transit passengers who are already on board the aircraft at a different airport and those who are boarding at another airport where the aircraft stops on its way to its final destination. The amendment requires of an operator of an aircraft to give the Revenue Service an advance notice of departure;

3.2.4 clause 49 amends section 94 to make clear that it is the responsibility of the aircraft carrier to make departure report to the Revenue Service. Prior to this, it was unclear as to on whom the responsibility fell and therefore this presented a compliance problem;

3.2.5 clause 61 amends section 138 by deleting the words “imported” and “import” because otherwise it is a distortion for the section to reference only imports as transactions may relate to goods manufactured locally and cleared for local consumption. Removing the words therefore renders the section neutral enough to apply to all the relevant situations;

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- 3.2.6 clause 73 inserts a new Part VIIA to address treatment of goods within the Special Economic Zones. Special rules are introduced to enable goods that may be admitted into the Special Economic Zones, the special procedure for placement of such goods, duration of stay of goods treated under the procedure, removal and closure procedures.
- 3.2.7 clause 75 inserts section 254A to address the issuance of stores during intermediate stops. Currently, there is no provision that allows passengers on board a stationary aircraft to be given stores (food for subsistence) during intermediate stops between airports. Food on an aircraft can only be consumed where there is a legal provision allowing for such. This provision therefore introduces this recommended practice;
- 3.2.8 clause 84 amends section 307 on anti-dumping and countervailing duties. Currently the Act does not provide for imposition of such duties and does not address the delegation of duty to the Minister to apply anti-dumping or countervailing duties at any time, though this is a necessary power;
- 3.2.9 clause 85 amends clause 308, in compliance with the pre-requisites for international trade agreements such as the AGOA. Rules of Origin provide for specific measures which are analogous and unique to the Rules and so by clearly spelling out these Rules as enabled by this insertion, regional bodies and other trade partners will have direct sight of authority of the Commissioner General and the Minister to enter into International Agreements and implementation of the Rules of Origin;
- 3.2.10 clause 92 amends section 326. The current Act does not establish rules on customs valuation methods. The amendment therefore inserts an essential part of the transaction value test to include considerations such as commercial levels, quantity levels and costs incurred which are key factors in determining cost. It also enables the importer to use the test for comparison purposes;
- 3.2.11 clause 96 amends section 330 to incorporate an important component in ensuring that customs values are correct. It therefore requires that valuation be done at the earliest date after the importation of the goods; and
- 3.2.12 clause 107 amends section 345. There is currently a gap in the law as there is no provision under section 345 which addresses the issue of precedence of determinations or re-determinations. It is therefore addressed in this section by laying down principles on tariff classification and origin determinations and re-terminations;

- 3.2.13 clauses 122 and 123 insert an elaborate menu of offences and penalties under the Act. It is intended to make transparent as possible what constitutes offences under the Act for ease of reference by users and at 122 to enable for administrative resolution of contraventions in line with the whole purpose of the law which is to collect as much revenue as possible and only impose criminal sanctions in appropriate cases. The Commissioner General is therefore dressed with the necessary administrative authority to assess cases as they present; and
- 3.2.14 clause 124 inserts provisions on how the fines and penalties recovered under this Act are to be treated.

NDABAN. GAOLATHE,  
*Minister of Finance.*

ARRANGEMENT OF SECTIONS

SECTION

1. Short title and commencement
2. Amendment of section 2 of Cap. 50:02
3. Amendment of section 5 of the Act
4. Amendment of section 8 of the Act
5. Amendment of section 11 of the Act
6. Amendment of section 14 of the Act
7. Amendment of section 15 of the Act
8. Amendment of section 16 of the Act
9. Amendment of section 17 of the Act
10. Amendment of section 21 of the Act
11. Amendment of section 23 of the Act
12. Insertion of section 24A in the Act
13. Amendment of section 28 of the Act
14. Amendment of section 29 of the Act
15. Amendment of section 33 of the Act
16. Amendment of section 34 of the Act
17. Amendment of section 38 of the Act
18. Amendment of section 40 of the Act
19. Amendment of section 41 of the Act
20. Amendment of section 43 of the Act
21. Amendment of section 46 of the Act
22. Amendment of section 47 of the Act
23. Amendment of section 49 of the Act
24. Amendment of section 58 of the Act
25. Amendment of section 59 of the Act
26. Amendment of section 60 of the Act
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30. Amendment of section 65 of the Act
31. Amendment of section 66 of the Act
32. Amendment of section 67 of the Act
33. Amendment of section 69 of the Act
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35. Amendment of section 71 of the Act
36. Amendment of section 73 of the Act
37. Amendment of section 77 of the Act
38. Amendment of section 83 of the Act
39. Amendment of section 84 of the Act
40. Amendment of section 85 of the Act
41. Insertion of section 85A in the Act
42. Amendment of section 86 of the Act
43. Amendment of section 87 of the Act

44. Amendment of section 88 of the Act
45. Amendment of section 89 of the Act
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49. Amendment of section 94 of the Act
50. Amendment of section 96 of the Act
51. Amendment of section 99 of the Act
52. Amendment of section 101 of the Act
53. Amendment of section 106 of the Act
54. Amendment of section 107 of the Act
55. Amendment of section 113 of the Act
56. Amendment of section 127 of the Act
57. Amendment of section 129 of the Act
58. Amendment of section 134 of the Act
59. Amendment of section 135 of the Act
60. Amendment of section 137 of the Act
61. Amendment of section 138 of the Act
62. Amendment of heading B under Part VII of the Act
63. Amendment of section 146 of the Act
64. Amendment of section 153 of the Act
65. Amendment of section 160 of the Act
66. Amendment of section 165 of the Act
67. Amendment of section 167 of the Act
68. Amendment of section 173 of the Act
69. Amendment of section 174 of the Act
70. Amendment of section 223 of the Act
71. Amendment of section 224 of the Act
72. Amendment of section 225 of the Act
73. Insertion of Part VIIA in the Act
74. Amendment of section 245 of the Act
75. Insertion of section 254A in the Act
76. Amendment of section 257 of the Act
77. Amendment of section 258 of the Act
78. Amendment of section 262 of the Act
79. Amendment of section 265 of the Act
80. Amendment of section 267 of the Act
81. Amendment of section 270 of the Act
82. Amendment of section 302 of the Act
83. Amendment of section 304 of the Act
84. Amendment of section 307 of the Act
85. Amendment of section 308 of the Act
86. Amendment of section 311 of the Act
87. Amendment of section 317 of the Act
88. Amendment of section 318 of the Act
89. Amendment of section 319 of the Act

90. Amendment of section 323 of the Act
91. Insertion of sections 325A, etc. in the Act
92. Amendment of section 326 of the Act
93. Amendment of section 327 of the Act
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98. Amendment of section 332 of the Act
99. Amendment of section 333 of the Act
100. Amendment of section 334 of the Act
101. Insertion of section 335A in the Act
102. Amendment of section 336 of the Act
103. Insertion of section 336A in the Act
104. Amendment of section 339 of the Act
105. Amendment of section 343 of the Act
106. Amendment of section 344 of the Act
107. Amendment of section 345 of the Act
108. Amendment of section 350 of the Act
108. Amendment of section 352 of the Act
110. Amendment of section 353 of the Act
111. Amendment of section 354 of the Act
112. Amendment of section 355 of the Act
113. Amendment of section 357 of the Act
114. Amendment of section 358 of the Act
115. Insertion of section 358A in the Act
116. Amendment of section 361 of the Act
117. Amendment of section 364 of the Act
118. Insertion of section 371A in the Act
119. Amendment of section 372 of the Act
120. Amendment of section 375 of the Act
121. Amendment of section 378 of the Act
122. Amendment of section 380 of the Act
123. Amendment of section 385 of the Act
124. Insertion of sections in the Act
125. Substitution of Schedules in the Act

**A Bill**

– entitled –

**An Act to amend the Customs Act.**

*Date of Assent:*

*Date of Commencement:*

ENACTED by the Parliament of Botswana.

1. This Act may be cited as the Customs (Amendment) Act, 2025, and shall come into operation on such date as the Minister may, by Order published in the Gazette, appoint.

Short title and commencement

2. The Customs Act (hereinafter referred to as “the Act”), is amended in section 2 by —

Amendment of section 2 of Cap. 50:02

(a) inserting the following new definitions in their correct alphabetical order —

“advance binding ruling” means a written decision by the Commissioner General to an applicant prior to the importation or exportation of the goods covered by the application that sets forth the treatment that shall be provided to the goods at the time of import or export, based upon the facts presented by the applicant;

“bearer negotiable instrument” means a non-cash form of instrument intended to enable the person to whom it is issued to obtain paper money or coin or a right of credit or balance at a bank or with another person and includes a currency order or bond;

“bonded carrier” means a carrier that transports goods that are not in free circulation in Botswana and that is required to furnish a guarantee to Customs for any liability imposed by the provisions of the Customs legislation;

“carrier” means the person actually transporting goods or persons or in charge of or responsible for the operation of the means of transport;

“compensating products” means finished products resulting from the manufacturing, processing or repair of goods for which the use of the inward or outward processing was permitted;

“customs officer” means a person appointed or designated by the Commissioner General to perform any duty relating to the Customs legislation;

“customs value of imported goods” means the value of goods for the purposes of levying ad valorem duties of customs on imported goods;

“currency” means —

- (a) the paper money and coin money of a country that is —
  - (i) designated as legal tender; and
  - (ii) customarily used or accepted as a medium of exchange in the country of issuance; or
- (b) a bearer negotiable instrument intended to enable the person to whom it is issued to obtain —
  - (i) paper money or coin; or
  - (ii) a right to credit or balance at a bank or with another person;

- “Customs” means a function or process, division, offices and officials of the Botswana Unified Revenue Service, which is responsible for the administration of the Customs legislation and the collection of duties and taxes and which also has the responsibility for the application of other laws and regulations relating to the importation, exportation, transit movement or storage of goods;
- “customs declaration” means a statement by a declarant made in the manner prescribed by the Customs legislation;
- “Customs legislation” means statutory provisions relating to the importation, exportation, movement or storage of goods and their placing under any control, the administration and enforcement of which are specifically charged to Customs and any regulations under Customs legislation;
- “drawback” means the amount of import duties and taxes refunded under a drawback procedure;
- “equivalent goods” means goods in free circulation, identical by their description, quality and technical characteristics to those that are imported for the inward processing, or exported for the outward processing procedure or drawback procedure which they replace;
- “exporter” means a person who, at the time of exportation —
- (a) owns the goods exported;
  - (b) carries the risk of the goods exported;
  - (c) represents that or acts as if he or she is the exporter or owner of the goods exported;
  - (d) takes or attempts to take the goods from Botswana;
  - (e) is beneficially interested in any way in the goods exported;
  - (f) acts on behalf of a person referred to in paragraphs (a) to (e);
- or
- (g) in relation to imported goods, including the manufacturer, supplier or shipper of such goods or a person inside or outside Botswana representing or acting on behalf of such manufacturer, supplier or shipper;
- “goods” means any wares, supplies, merchandise, articles, products, commodities, substances, documents or any other things capable of being transported, whether loose packed or holder containerised or in bulk, and includes —
- (a) any animals, whether dead or alive, or parts of animals;
  - (b) any plants, whether dead or alive or parts of plants;
  - (c) any postal items;
  - (d) any baggage belonging to persons entering or leaving Botswana, whether accompanied or unaccompanied;
  - (e) any vessels, aircraft, locomotives, railway carriages, vehicles or other means of transport, whether or not used for the transport of goods or persons;

- (f) any transport equipment whether or not used in the transport of goods, including reusable transport equipment;
  - (g) currency;
  - (h) any commodity capable of being pumped through pipelines or conveyed by means of cable-car or conveyor belt or electric cable or transmission line;
  - (i) electricity or electronics;
  - (j) water;
  - (k) gas; and
  - (l) any other items as may be prescribed;
- “importer” means a person who at the time of importation –
- (a) owns the goods imported;
  - (b) actually brings the goods into Botswana;
  - (c) carries the risk of the goods imported;
  - (d) represents or acts for the importer;
  - (e) represents or acts as if he or she is the importer or owner of goods imported;
  - (f) is beneficially interested in any way in the goods imported;
  - (g) acts on behalf of a person referred to in paragraphs (a) to (e); or
  - (h) in relation to exported goods, includes the manufacturer, supplier or shipper of such goods or a person inside or outside Botswana representing or acting on behalf of such manufacturer, supplier or shipper;
- “means of transport” means a mode of conveyance of any kind, capable of transporting goods or capable of moving on land, water, air or rail, whether self-propelled or not, which includes an aircraft, road vehicle, trailer, semi-trailer, combinations of vehicle, container, any pack animal when used as a means of conveyance, train, railway rolling stock, vessel (including barges and hydrofoils) or hovercraft, which is used in international traffic for the transport of persons, for commercial or private use;
- “personal effects” means all articles and belongings, whether new or used including those which a traveller may reasonably need for his or her personal use during the journey or at his or her destination, taking into account all the circumstances of the journey, but excludes any goods imported or exported for commercial purposes;
- “private carrier” means a person who conducts a business involving goods that are not in free circulation and that are owned exclusively by that person or in which the person has a material interest and who in the course of conducting that business transports those goods;
- “rate of yield” means the quantity or percentage of processed products obtained from the processing of a given quantity of goods placed under a processing procedure;

“release of goods” means placing goods at the disposal of a person including the action by which Customs permits goods undergoing clearance to be placed at the disposal of the persons concerned;

“relief consignments” means any goods of prime necessity, forwarded as aid to those affected by disaster and for disaster relief personnel in order to perform their duties and to support them in living and working in the territory of the disaster throughout the duration of their mission;

“replacement system” means the substitution of an imported replacement product in place of a compensating product when the outward processing operation consists of repairing the goods;

“right holder” means —

- (a) a person who, according to any applicable law, is to be regarded as the owner of a protected intellectual property right;
- (b) a person’s successors in title;
- (c) a licensee; or
- (d) an individual, corporation or an association authorised by any of the aforementioned persons to protect the right; and

“state warehouse” means any premises provided by or operated on behalf of the Government of Botswana for the custody of goods under Customs control pending compliance with the provisions of any law in relation to those goods; and

(b) by deleting the definition of “transport unit”.

3. The Act is amended in section 5 —

(a) by inserting immediately after paragraph (f), the following new paragraphs —

- “(g) impose any penalty or fine under this Act;
- (h) investigate and decide any matter that is the subject of an offence under this Act by administrative settlement or compromise settlement in accordance with this Act; and
- (i) determine the criteria for classification and requirements of small medium and micro traders.”; and

(b) by inserting the following new subsections immediately after paragraph (f) —

“(2) The Commissioner General may delegate any duty or power conferred on him or her under this Act to any customs officer or designated person.

(3) Any decision made and any notice or communication signed or issued by any such officer may be withdrawn or amended by the Commissioner General or by the officer concerned, with effect from the date of making such decision or signing or issuing such notice or communication or the date of withdrawal or amendment thereof, and shall, until it has been so withdrawn, be deemed, except for the purposes of this subsection, to have been made, signed or issued by the Commissioner General.”.

4. The Act is amended in section 8 by substituting for the word, “it” appearing in that section, the words “he or she”. Amendment of section 8 of the Act
5. The Act is amended by substituting for the word, “them”, appearing in section 11(2), the words “him or her”. Amendment of section 11 of the Act  
 Amendment of section 14 of the Act
6. The Act is amended in section 14 by inserting immediately after subsection (6), the following new subsection — Amendment of section 14 of the Act  
 “(7) A person who contravenes subsection (4) commits an offence and is liable to a fine not exceeding P1 000 000, imprisonment for a term not exceeding ten years, or to both and the goods, means of transport, accounts, documents or records in respect of which such offence was committed shall be liable to forfeiture.”.
7. The Act is amended in section 15 by inserting immediately after subsection (3), the following new subsection — Amendment of section 15 of the Act  
 “(4) A person who contravenes this section commits an offence and is liable to a fine not exceeding P1 000 000, imprisonment for a term not exceeding ten years, or to both and the goods, means of transport, accounts, documents or records in respect of which such offence was committed shall be liable to forfeiture.”.
8. The Act is amended in section 16 by substituting for subsection (2) the following new subsection — Amendment of section 16 of the Act  
 “(2) A person who —  
 (a) knowingly submits forged or falsified information, account, document or record which is required to be furnished under this section; or  
 (b) has possession of any false or fraudulent information, accounts or documents or makes the same available to another person for submission to the Revenue Service,  
 commits an offence and shall be liable to a fine not exceeding P1 000 000; or treble the value of the goods in respect of such offence or whichever is greater; or to imprisonment for a term not exceeding ten years; or to both; and the goods, means of transport, accounts, documents or records or devices containing such information in respect of which the offence was committed shall be liable to forfeiture.”.
9. The Act is amended in section 17 substituting for subsection (1), the following new subsection — Amendment of section 17 of the Act  
 “(1) A customs officer may search a person where the customs officer has reasonable grounds to suspect that the person is concealing goods, information, documents or records in respect of which a breach of this Act is being or is likely to be committed.”.
10. The Act is amended in section 21 by substituting for subsection (3) the following new subsection — Amendment of section 21 of the Act

“(3) A person who contravenes this section commits an offence and is liable to a fine not exceeding P1 000 000, imprisonment for a term not exceeding ten years, or to both and the goods, means of transport, accounts, documents or records in respect of which such offence was committed shall be liable to forfeiture.”.

Amendment of section 23 of the Act

**11.** The Act is amended in section 23(1) by deleting the word “,” appearing immediately before the word “upon” where it appears in the chapeau to that subsection.

Insertion of section 24A in the Act

**12.** The Act is amended by inserting immediately after section 24 the following new section –

“Agreements with African territories

24A. (1) The President may conclude an agreement with the government of any territory in Africa in which it is provided that, notwithstanding anything to the contrary contained in this Act –

- (a) goods produced or manufactured in or imported into Botswana shall be admitted into that territory free of duty or at special rates of duty and goods produced or manufactured in or imported into that territory shall be admitted into Botswana free of duty or at special rates of duty;
- (b) such arrangements (including arrangements providing for the prohibition or quantitative or other limitation or restriction of the importation of any goods) as may be agreed upon between the parties to the agreement shall apply in respect of the admission of any goods into the territory of one of the parties from the territory of the other party and in respect of the entry of and the collection of duty on goods on importation into the territory of any party from a territory other than the territory of the other party; and
- (c) each party to the agreement shall be compensated in respect of duty on such goods to the extent and in the manner agreed upon between the parties to the agreement.

(2) Payment made by the government of any territory to the Government of Botswana in terms of any agreement concluded under the provisions of subsection (1) shall accrue to the Fund and payment due from the Government of Botswana to the government of any territory in terms of any such agreement shall be paid out of the Fund.

(3) For purposes of this Act, the agreement between the Government of Botswana, the Government of the Kingdom of Lesotho, the Government of Namibia, the Government of the Republic of South Africa and the Kingdom of Eswatini and any other agreement which it is purported to have been concluded in terms of any law relating to customs and which was being observed by Botswana immediately prior to the coming into operation of this Act as being in force between Botswana and any territory in Africa, shall be deemed to have been concluded in terms of and to be at all relevant times to have been within the powers conferred by this section.”.

**13.** The Act is amended in section 28 by inserting immediately after the word “revoked”, the words, “or modified”, wherever that word appears in that section.

Amendment of section 28 of the Act

**14.** The Act is amended in section 29 by substituting for the words “an importer, exporter or any interested person”, appearing in subsection (1), the words “a registered person”.

Amendment of section 29 of the Act

**15.** The Act is amended in section 33 by inserting immediately after subsection (3), the following new subsection —

Amendment of section 33 of the Act

“(4) A person who contravenes this section commits an offence and is liable to a fine not exceeding P1 000 000, or to imprisonment for a term not exceeding ten years, or to both.”.

**16.** The Act is amended in section 34 by substituting for subsection (3), the following new subsection —

Amendment of section 34 of the Act

“(3)A person who fails to comply with subsection (1) commits an offence and is liable to —

- (a) a fine not exceeding P1 000 000 or treble the value of the goods in respect of such offence, whichever is the greater; and
- (b) the forfeiture of any goods, means of transport, information, accounts, documents or records in relation to the offence.”.

**17.** The Act is amended in section 38 by inserting immediately after subsection (3), the following new subsection —

Amendment of section 38 of the Act

“(4) A person who contravenes this section commits an offence and is liable to a fine not exceeding P1 000 000, or to imprisonment for a term not exceeding ten years, or to both, and any goods, means of transport, information, accounts, documents or records in relation to the offence shall be liable to forfeiture.”.

**18.** The Act is amended in section 40 by substituting for subsection (1) the following new subsection —

Amendment of section 40 of the Act

“(1)A holder of an intellectual property right who has valid reason to suspect that the importation or exportation of goods with counterfeit or pirate marks, which infringes his or her right, is envisaged or infringes in progress, may apply to the Revenue Service for the suspension of release of the goods.”.

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Amendment  
of section 41  
of the Act

**19.** The Act is amended in section 41 (2) (c) by substituting for the word, “applicant”, where it appears in that paragraph the word “declarant”.

Amendment  
of section 43  
of the Act

**20.** The Act is amended in section 43 —

(a) subsection (1) by substituting for the word “evidence”, the words “reasonable cause to suspect”; and

(b) subsection (2) —

(i) paragraph (a) by substituting for the word “applicant”, the word “declarant”, and

(ii) paragraph (b) by inserting the words “intellectual property of”, immediately before the words “right holder”.

Amendment  
of section 46  
of the Act

**21.** The Act is amended in section 46 by substituting for that section the following new the words “of the” appearing immediately after the word “consignor”, the word “including”.

Amendment  
of section 47  
of the Act

**22.** The Act is amended in section 47 by substituting for subsection (1), the following new subsection —

“(1)Notwithstanding the other rights of action open to a holder of an intellectual property right and subject to the declarant’s right to appeal, once a determination has been made by the Companies and Intellectual Property Authority in consultation with the holder of the intellectual property right that the goods are infringing, the Revenue Service shall dispose of the goods in accordance with this Act.”.

Amendment  
of section 49  
of the Act

**23.** The Act is amended in section 49 by inserting the words, “Subject to section 35,” before the words “The provisions”.

Amendment  
of section 58  
of the Act

**24.** The Act is amended in section 58 by deleting the word “non-uniformed” appearing in subsection (1).

Amendment  
of section 59  
of the Act

**25.** The Act is amended in section 59 by inserting —

(a) the words “or passengers” after the word “goods”, appearing in subsection (1)(b); and

(b) immediately after subsection (2), the following new subsection —  
“(3) A person who contravenes this section commits an offence and is liable to a fine not exceeding P100 000.”.

Amendment  
of section 60  
of the Act

**26.** The Act is amended in section 60 by inserting immediately after subsection (2), the following new subsection —

“(3) A person who contravenes this section commits an offence and is liable to a fine not exceeding P100 000.”.

Amendment  
of section 62  
of the Act

**27.** The Act is amended in section 62 by inserting immediately after subsection (2), the following new subsection (3) —

“(3)A person who contravenes this section commits an offence and is liable to a fine not exceeding P100 000.”.

Amendment  
of section 63  
of the Act

**28.** The Act is amended in section 63 by inserting immediately after paragraph (c), the following new subsection —

“(2) A person who contravenes this section commits an offence and is liable to a fine not exceeding P100 000.”.

- 29.** The Act is amended in section 64 by inserting immediately after subsection (2), the following new subsection —  
 “(3)A person who contravenes this section commits an offence and is liable to a fine not exceeding P100 000.”  
 Amendment of section 64 of the Act
- 30.** The Act is amended in section 65 by inserting immediately after subsection (2), the following new subsection —  
 “(3)A person who contravenes this section commits an offence and is liable to a fine not exceeding P100 000.”  
 Amendment of section 65 of the Act
- 31.** The Act is amended in section 66 by inserting immediately after subsection (3), the following new subsection —  
 “(4)A person who fails to comply with this section commits an offence and is liable to —  
 (a) a fine not exceeding P200 000 or imprisonment for a term not exceeding two years; and  
 (b) forfeiture of any goods, means of transport, information, accounts, documents or records in relation to the offence.”  
 Amendment of section 66 of the Act
- 32.** The Act is amended in section 67 by inserting immediately after paragraph (d), the following new subsection —  
 “(2) A person who contravenes this section commits an offence and is liable to a fine not exceeding P100 000.”  
 Amendment of section 67 of the Act
- 33.** Section 69 is amended —  
 (a) by substituting for subsection (1), the following new subsection —  
 “(1) The Revenue Service shall immediately register a manifest lodged in accordance with this Act.”; and  
 (b) by inserting immediately after subsection (6), the following new subsection —  
 “(7) A person who contravenes this section commits an offence and is liable to a fine not exceeding P500 000.”  
 Amendment of section 69 of the Act
- 34.** The Act is amended in section 70 by inserting immediately after subsection (4) the following new subsection —  
 “(5) A person who contravenes subsections (2) or (3) commits an offence and is liable to a fine not exceeding P100 000.”  
 Amendment of section 70 of the Act
- 35.** The Act is amended in section 71 by inserting immediately after subsection (6), the following new subsection —  
 “(7) A person who fails to comply with subsection (1), (4) or (6) commits an offence and is liable to —  
 (a) a fine not exceeding P200 000 or imprisonment for a term not exceeding two years or to both; and  
 (b) forfeiture of any goods, means of transport, information, accounts, documents or records in relation to the offence.”  
 Amendment of section 71 of the Act
- 36.** The Act is amended in section 73 by inserting immediately after subsection (4) the following new subsection —  
 “(5)A person who contravenes this section commits an offence and is liable to a fine not exceeding P100 000.”  
 Amendment of section 73 of the Act

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Amendment  
of section 77  
of the Act

**37.** The Act is amended in section 77 by substituting for subsection (4) the following subsection —

“(4)When, at the expiration of the time limit under this section, a customs declaration has not been lodged to place the goods under a customs procedure, a temporary storage operator shall take the goods to a State warehouse or other place authorised by the Revenue Service, where they shall be placed in storage.”.

Amendment  
of section 83  
of the Act

**38.** The Act is amended in section 83 —

(a) subsection (1) by inserting the word, “passengers or”, before the words “commercial goods”; and

(b) by substituting for subsection (3) (a), the following new paragraph —

“(a) advance notice to the Revenue Service of the scheduled departure of the train, crew and any passengers or cargo on board to a destination outside Botswana;” and

(c) by inserting immediately after subsection (3), the following new subsection —

“(4) A person who contravenes this section commits an offence and is liable to a fine not exceeding P100 000.”.

Amendment  
of section 84  
of the Act

**39.** The Act is amended in section 84 —

(a) subsection (1) by inserting the word “immediately” after the word “Service”;

(b) subsection (2) by inserting the words, “immediately upon arrival”, after the word, “Service”; and

(c) by inserting immediately after subsection (2), the following new subsection —

“(3)A person who contravenes this section commits an offence and is liable to a fine not exceeding P100 000.”.

Amendment  
of section 85  
of the Act

**40.** The Act is amended in section 85 by inserting immediately after paragraph (b), the following new subsection —

“(2)A person who contravenes this section commits an offence and is liable to a fine not exceeding P100 000.”.

Insertion of  
section 85A in  
the Act

**41.** The Act is amended by inserting immediately after section 85, the following new section —

“Report of departure on foot, etc. 85A. (1) A person departing Botswana overland, on foot or otherwise, shall whether or not he or she has any goods in his or her possession, report immediately to a customs officer or other assigned officer at the designated place of exit, where he or she crosses the border.

(2) If the person has any goods in his or her possession, the person shall provide a declaration regarding the goods to the Revenue Service.

(3) A person who contravenes this section commits an offence and is liable to a fine not exceeding P100 000.”.

- 42.** The Act is amended in section 86 by inserting immediately after subsection (2), the following new subsection —
- Amendment  
of section 86  
of the Act
- “(3) A person who contravenes this section commits an offence and is liable to —
- (a) a fine not exceeding P200 000 or imprisonment for a term not exceeding two years; and
  - (b) forfeiture of any goods, means of transport, information, accounts, documents or records in relation to the offence.”.

**43.** The Act is amended in section 87 by inserting immediately after subsection (2), the following new subsection —

Amendment  
of section 87  
of the Act

“(3) A person who contravenes this section commits an offence and is liable to —

    - (a) a fine not exceeding P200 000 or imprisonment for a term not exceeding two years; and
    - (b) forfeiture of any goods, means of transport, information, accounts, documents or records in relation to the offence.”.

**44.** The Act is amended in section 88 —

Amendment  
of section 88  
of the Act

(a) by substituting for subsection (1), the following new subsection —

“(1) A person operating an aircraft bound to a place outside Botswana shall give advance notice to the Revenue Service of —

      - (a) the scheduled departure of the aircraft and crew from a customs airport or other designated place of departure; and
      - (b) any outgoing passengers who boarded and who are scheduled to board the aircraft at that airport, if the aircraft is to transport passengers out of Botswana.”; and

(b) by inserting immediately after subsection (5), the following new subsection —

“(6) A person who contravenes this section commits an offence and is liable to a fine not exceeding P100 000.”.

**45.** The Act is amended in section 89 by inserting immediately after subsection (5), the following new subsection —

Amendment  
of section 89  
of the Act

“(6) A person who contravenes this section commits an offence and is liable to —

      - (a) a fine not exceeding P200 000 or imprisonment for a term not exceeding two years; and
      - (b) forfeiture of any goods, means of transport, information, accounts, documents or records in relation to the offence.”.

**46.** The Act is amended in section 90 —

Amendment  
of section 90  
of the Act

(a) by substituting for subsection (1) the following new subsection —

“(1) Goods and stores shall only be loaded on board an aircraft for export or use as stores on a flight to a place outside Botswana —

        - (a) at a customs airport or other place designated by the Commissioner General;
        - (b) after an advance notice of departure has been lodged for the goods and stores; and with the permission of the Revenue Service.”; and

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(b) by inserting immediately after subsection (2), the following new subsection —

“(3) A person who contravenes this section commits an offence and is liable to —

- (a) a fine not exceeding P200 000 or imprisonment for a term not exceeding two years;
- (b) revocation of authorisation; and
- (c) forfeiture of any goods, means of transport, information, accounts, documents or records in relation to the offence.”.

Amendment of section 91 of the Act

**47.** The Act is amended in section 91 by substituting for that section the following new section —

“Departure by air 91. A person leaving Botswana on board an aircraft bound to any place outside Botswana shall not board that aircraft at any place other than at a customs airport or a designated place.”.

Amendment of section 93 of the Act

**48.** The Act is amended in section 93 —

- (a) by substituting for the word, “re-land”, where it appears in the side note of that section, the word “unload”; and
- (b) by inserting immediately subsection (1), the following new subsection —

“(2) A person who contravenes this section commits an offence and is liable to —

- (a) a fine not exceeding P200 000 or imprisonment for a term not exceeding two years; and
- (b) forfeiture of any goods, means of transport, information, accounts, documents or records in relation to the offence.”.

Amendment of section 94 of the Act

**49.** The Act is amended in section 94 —

(a) subsection (1) by substituting for paragraph (b), the following new paragraph —

“(b) if the aircraft —

- (i) is operated by a commercial carrier, by the carrier, unless the Revenue Service permits otherwise, or
- (ii) is not operated by a commercial carrier, by the operator of the aircraft, unless the Revenue Service permits otherwise.”; and

(b) by inserting immediately after subsection (2), the following new subsection —

“(3) A person who contravenes this section commits an offence and is liable to a fine not exceeding P100 000.”.

Amendment of section 96 of the Act

**50.** The Act is amended in section 96 —

(a) by substituting for subsection (8), the following new subsection —

“(8) A person who contravenes this section commits an offence and shall be liable to a fine not exceeding P1 000 000, or treble the value of the goods in respect of such offence, whichever is greater; or imprisonment for a term not exceeding ten years.”; and

- (b) by inserting immediately after subsection (8), the following new subsection —  
 “(9) Any —  
     (a) goods, means of transport or other instrument or container used in the removal or carriage of any goods liable to forfeiture under this Act or constructed, adapted, altered or fitted in any manner for the purpose of concealing goods; or  
     (b) goods conveyed, mixed, packed or found with goods liable to forfeiture under this Act on or in any vehicle, container or other transport equipment, in respect of which the offence is committed shall be liable to forfeiture.”.

**51.** The Act is amended in section 99 —

- (a) by substituting for subsection (2), the following new subsection —  
 “(2) Where a declarant is not in possession of the necessary information to complete a customs declaration, a customs officer may allow the declarant, before lodging the complete declaration to —  
     (a) inspect the goods; or  
     (b) draw samples from the goods; and

Amendment  
of section 99  
of the Act

- (b) by substituting for subsection (4), the following new subsection —  
 “(4) A declarant under subsection (2) shall not alter the presentation of any goods that have been inspected.”.

**52.** The Act is amended in section 101 —

- (a) in subsection (1), by deleting the word “are” appearing before the word “declared”;  
 (b) in subsection (2), by substituting for the word “as”, the words, “to be”;  
 (c) in subsection (3), by substituting for the word “as” where it appears for the second time in that subsection, the word “in”; and  
 (d) by inserting immediately after subsection (3), the following new subsection —  
 “(4) A person who contravenes this section commits an offence and is liable to —  
     (a) a fine not exceeding P500 000 or imprisonment for a term not exceeding five years, or to both; and  
     (b) forfeiture of any goods, means of transport, information, accounts, documents or records in relation to the offence.”.

Amendment  
of section 101  
of the Act

**53.** The Act is amended in section 106 by substituting for that section the following new section —

“Lodgment prior to arrival of goods 106. (1) A customs declaration shall be lodged, after commercial goods are loaded onboard a means of transport, prior to arrival of such goods at the customs office.

Amendment  
of section 106  
of the Act

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(2) A customs declaration under subsection (1) shall be lodged in a prescribed manner.

(3) Goods under subsection (1) shall enter or exit at the place specified as the customs office on the customs declaration.

(4) Where a customs declaration is received before the goods arrive at a customs office, the Revenue Service may proceed with checking and registration of the declaration but shall not release or clear the goods before the arrival of goods at the customs office.

(5) A person who contravenes this section commits an offence and shall be liable to a fine not exceeding P50 000.”.

Amendment of section 107 of the Act

**54.** The Act is amended by substituting for section 107 the following new section —

“Lodgment on arrival 107. (1) Notwithstanding section 106, a customs declaration may be lodged on the day of, or within three days after, the arrival of goods at the customs office.

(2) The Revenue Service may authorise an extension of the time limit referred to in subsection (1) for a period not exceeding seven days.

(3) A customs declaration lodged under subsection (1) shall be lodged as prescribed.

(4) A person who contravenes this section commits an offence and shall be liable to a fine not exceeding P50 000”.

Amendment of section 113 of the Act

**55.** The Act is amended in section 113 (2) by substituting for the words “111(2)” appearing in that subsection the words, “subsection (1)”.

Amendment of section 127 of the Act

**56.** The Act is amended in section 127 by substituting for that section, the following new section —

“When goods are deemed cleared 127. Goods shall be deemed cleared by the Revenue Service when the Revenue Service is satisfied that all the formalities for the requested customs procedure have been accomplished.”.

Amendment of section 129 of the Act

**57.** The Act is amended in section 129 by inserting immediately after subsection (3), the following new subsection —

“(4) A person who contravenes this section commits an offence and is liable to —

(a) a fine not exceeding treble the value of the goods or imprisonment for a term not exceeding five years, or to both; and

(b) forfeiture of any goods, means of transport, information, accounts, documents or records in relation to the offence.”.

Amendment of section 134 of the Act

**58.** The Act is amended in section 134 by substituting for that section the following new section —

“Requirement for customs declaration 134. Goods placed under a customs procedure under section 133 shall be the subject of a customs declaration for that procedure.”.

- 59.** The Act is amended in section 135 by substituting for the word, “or” appearing in paragraph (a) the word, “and”.
- Amendment of section 135 of the Act
- 60.** The Act is amended in section 137 (1) by deleting the word “imported”.
- Amendment of section 137 of the Act
- 61.** The Act is amended by substituting for section 138, the following new section —
- Amendment of section 138 of the Act
- “Loss of home use status 138. Goods cleared for home use shall lose their status as goods in free circulation where the duties and taxes relating to the goods are refunded or remitted —
- (a) by placement under another customs procedure; or
- (b) in respect of goods that are refused as defective goods, or which fail to comply with a contract and are exported or destroyed under customs supervision.”
- 62.** The Act is amended by substituting for the heading for heading “B – Home use of goods”, the following new heading “B – Re-importation of goods”.
- Amendment of heading B under Part VII of the Act
- 63.** The Act is amended in section 146 by substituting for the sidenote, the following new sidenote “Notice of failure to export goods cleared for outright export”.
- Amendment of section 146 of the Act
- 64.** The Act is amended in section 153 by inserting immediately after subsection (2), the following new subsection —
- Amendment of section 153 of the Act
- “(3) A person who contravenes this section commits an offence and is liable to a fine not exceeding P100 000.”
- 65.** The Act is amended in section 160 by inserting immediately after subsection (6), the following new subsection —
- Amendment of section 160 of the Act
- “(7) A person who contravenes this section commits an offence and is liable to —
- (a) a fine not exceeding P200 000 or imprisonment for a term not exceeding two years; and
- (b) forfeiture of any goods, means of transport, information, accounts, documents or records in relation to the offence.”
- 66.** The Act is amended in section 165 by inserting the word, “public”, before the words “customs”, wherever that word appears in that section.
- Amendment of section 165 of the Act
- 67.** The Act is amended in section 167 (1) by inserting immediately before the word, “customs”, where it appears in that subsection, the word, “transit”.
- Amendment of section 167 of the Act
- 68.** The Act is amended in section 173 by inserting immediately after subsection (3), the following new subsection —
- Amendment of section 173 of the Act
- “(4) A person who contravenes this section commits an offence and is liable to —
- (a) a fine not exceeding P200 000 or imprisonment for a term not exceeding two years or to both; and
- (b) forfeiture of any goods, means of transport, information, accounts, documents or records in relation to the offence.”

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Amendment of section 174 of the Act

**69.** The Act is amended in section 174 by inserting immediately after paragraph (e), the following new subsection —

“(2) A person who contravenes this section commits an offence and is liable to —

- (a) a fine not exceeding P100 000 or imprisonment for a term not exceeding two years or to both; and
- (b) forfeiture of any goods, means of transport, information, accounts, documents or records in relation to the offence.”.

Amendment of section 223 of the Act

**70.** The Act is amended by substituting for section 223, the following new section —

“Identification 223. The Revenue Service may take such steps as are necessary for the identification of compensating products obtained from goods exported under the outward processing procedure when those products are re-imported by —

- (a) recording or affixing specific marks or numbers on goods exported under the outward processing procedure before their export;
- (b) taking samples or making use of illustrations or technical descriptions of such goods; and
- (c) requesting evidence concerning the processing outside Botswana of the exported goods.”.

Amendment of section 224 of the Act

**71.** The Act is amended by deleting the word “that” appearing in section 224.

Amendment of section 225 of the Act

**72.** The Act is amended in section 225 by substituting for the word “or” appearing at the end of paragraph (a), the word, “and”.

Insertion of Part VIIA in the Act

**73.** The Act is amended by inserting immediately after section 230, the following new Part —

“Part VIIA — *Special Economic Zones*

Goods eligible for admission to special economic zone 230A. The Commissioner General shall determine for each special economic zone —

- (a) the categories of goods to be admitted;
- (b) the methods of operation to which the goods may be subjected; and
- (c) the conditions under which such goods consumed inside the special economic zone may benefit from the relief from duties and taxes.

Placement of goods under special economic zone procedure 230B. (1) A person shall declare all goods, whether or not in free circulation, that are brought into a special economic zone, in accordance with such form and in such manner as may be prescribed.

(2) Goods brought into a special economic zone shall be deemed duly placed under the special economic zones procedure —

(a) at the point of entry into the special economic zone; or  
 (b) if they have already been placed under another customs procedure, at the point where that procedure is terminated.

Duration of stay of goods in special economic zone 230C. The duration of stay of goods in a special economic zone shall be as may be prescribed.

Removal of goods from special economic zone 230D. (1) When goods are removed from a special economic zone into or out of Botswana, their origin shall be determined in accordance with Part XIV, paragraph B of this Act.  
 (2) The date to be taken into account in determining the value and quantity of the goods that may be cleared for home use upon removal from a special economic zone, as well as the rates of duties and taxes applicable shall be the date of registration of the customs declaration for home use for such goods:

Provided that duties and taxes shall be applied only to non-SACU goods used in the processing of the goods removed from the special economic zone.

Closure of special economic zone 230E. (1) Where a special economic zone is closed, any person concerned shall transfer his or her goods to another special economic zone or place them under another customs procedure if the applicable conditions and formalities in each situation are fulfilled.

(2) The person who is required to transfer his or her goods under subsection (1) shall remove his or her goods to another zone or to place them under home use or another customs procedure, within one month from the date of notice of closure.

(3) Where goods are not processed in accordance with subsection (2), the Revenue Service shall remove the goods to a state warehouse at the expense of the person concerned or such goods shall be forfeited to the state where such person cannot be found.”.

74. The Act is amended in section 245 by inserting immediately after subsection (2), the following new subsection —

“(3) A person who contravenes this section commits an offence and is liable to —

- (a) a fine not exceeding P200 000 or imprisonment for a term not exceeding two years or to both; and
- (b) forfeiture of any goods, means of transport, information, accounts, documents or records in relation to the offence.”.

75. The Act is amended by inserting immediately after section 254, the following new section —

Amendment of section 245 of the Act

Insertion of section 254A in the Act

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- “Issuance of stores during intermediate stops
- 254A. Where an aircraft entering or departing from Botswana is to make a stopover in several airports located in Botswana, the stores for consumption that are on board may be issued to the passengers and crew during a stopover of the aircraft at the intermediate airports and during the flight between these airports:
- Provided that the quantities of such stores are reasonable having regard to the number of passengers and crew and to the length of stay of the aircraft.”
- Amendment of section 257 of the Act
- 76.** The Act is amended in section 257 by inserting immediately after subsection (2), the following new subsection —
- “(3) A person who contravenes this section commits an offence and is liable to a fine not exceeding P100 000.”
- Amendment of section 258 of the Act
- 77.** The Act is amended by deleting the words “for Revenue Service” that appear on the sidenote to section 258.
- Amendment of section 262 of the Act
- 78.** The Act is amended in section 262 (1) by deleting the words “by Revenue Service” that appear in paragraph (d).
- Amendment of section 265 of the Act
- 79.** The Act is amended in section 265 by inserting immediately after paragraph (a), the following new subsection —
- “(2) A person who contravenes this section commits an offence and is liable to —
- (a) a fine not exceeding P200 000 or imprisonment for a term not exceeding two years or to both; and
- (b) forfeiture of any goods, means of transport, information, accounts, documents or records in relation to the offence.”
- Amendment of section 267 of the Act
- 80.** The Act is amended in section 267 by inserting immediately after subsection (2), the following new subsection —
- “(3) A person who contravenes this section commits an offence and is liable to a fine not exceeding P100 000.”
- Amendment of section 270 of the Act
- 81.** The Act is amended in section 270 (1) by substituting for paragraph (d), the following new paragraph —
- “(d) that have been forfeited to the State;”
- Amendment of section 302 of the Act
- 82.** The Act is amended in section 302 by inserting immediately after subsection (2), the following new subsection —
- “(3) A person who contravenes this section commits an offence and is liable to —
- (a) a fine not exceeding P100 000 or imprisonment for a term not exceeding two years or to both; and
- (b) forfeiture of any goods, means of transport, information, accounts, documents or records in relation to the offence.”
- Amendment of section 304 of the Act
- 83.** The Act is amended in section 304(1) by inserting immediately after paragraph (b), the following new paragraph -
- “(c) in accordance with this Act, other Customs legislation and other relevant legislation.”

**84.** The Act is amended in section 307 by substituting for that section, the following new section —

“Provisional  
countervailing  
anti-dumping  
or safeguard  
duties

307. (1) The Minister shall, by Order published in the Gazette, impose a provisional countervailing, anti-dumping or safeguard duty on goods imported from a specific country or territory from a date, for a period and for an amount as the Minister may prescribe.

(2) An Order made in terms of subsection (1) shall —

(a) take effect on a date specified in the Notice, which may be a date on or after the date of publication of the Notice; and

(b) commence at the beginning of the day on which it takes effect, unless the Order specifies otherwise.

(3) A provisional countervailing, anti-dumping or safeguard duty imposed on goods shall be paid and recovered as if the duty has been imposed on the goods in the Customs Tariff Schedules as from the date of imposition of the provisional duty.

(4) A provisional anti-dumping, countervailing or safeguard duty on goods shall lapse at the end of the period for which it is imposed, unless the duty is definitively imposed on such goods in the Customs Tariff Schedules before the end of that period.

(5) If a provisional anti-dumping, countervailing or safeguard duty is imposed in the Customs Tariff Schedules and the rate of the provisional duty on the goods exceeds the rate of the duty definitively imposed, any excess amount paid to the Commissioner General shall be refunded to the person who made the excess payment and the shortfall may not be recovered as an underpayment of duty.

(6) If a provisional anti-dumping, countervailing or safeguard duty is not definitively imposed in the Customs Tariff Schedules on the goods concerned before the end of the period for which the provisional duty was imposed, the amount of all payments made to the Commissioner General in respect of the provisional duty shall be refunded to the person who made the payments.

(7) A refund or remission of duties and taxes shall not apply to refunds in terms of subsection (5) and (6), and the Commissioner General shall make the refund to the person entitled to such refund.”

**85.** The Act is amended in section 308 by inserting immediately after subsection (2) the following new subsection —

“(3) The Minister shall prescribe rules on the implementation of Rules of Origin under this Act and any applicable bilateral and multilateral trade agreement.”

Amendment  
of section 307  
of the Act

Amendment of  
section 308 of  
the Act

**B.980**

Amendment  
of section 311  
of the Act

**86.** The Act is amended in section 311 by substituting for that section, the following new section —

“Substantial  
transformation

311. (1) Goods whose production was undertaken in more than one country or territory shall be deemed by Revenue Service to originate in the country or territory where they underwent their last substantial processing or working, resulting in the manufacture of a new product or representing an important stage of manufacture.

(2) Goods shall be regarded as substantially transformed in a country or territory if —

(a) at least 25 per cent of the production cost of the goods, or such other percentage as may be prescribed by the Minister, is represented by the materials produced and labour performed in that country or territory; and

(b) the last process in the production or manufacture of those goods has taken place in that country or territory.

(3) The Minister shall determine the method of calculation of the production cost, the materials and the labour performed referred to under subsection (2).

(4) For purposes of subsection (1), the following processes shall not be taken as constituting the last substantial process in the production of goods —

(a) processing necessary to preserve the goods during transportation or storage;

(b) processing to improve the packaging or the marketable quality of the goods or to prepare the goods for transportation, such as breaking bulk, grouping of packages, sorting, grading or repacking;

(c) simple assembly operations;

(d) mixing of goods of different origin, provided that the characteristics or properties of the resulting product are not essentially different from the characteristics or properties of the goods which have been mixed; or

(e) a process which does not contribute, or which only contributes to a minor degree, to the essential characteristics or properties of the goods.

(5) Any process or work in respect of which it may be demonstrated, on the basis of the preponderance of evidence, that the sole objective was to avoid the provisions of this section shall be considered as insufficient to support a claim that the goods produced or worked originate in a particular country or territory.”.

Amendment  
of section 317  
of the Act

**87.** The Act is amended in section 317 by substituting for that section the following new section —

“Proof of origin for goods of Botswana origin

317. (1) A certificate of origin for goods originating in Botswana may be issued by the Revenue Service or any other competent authority.

(2) An origin declaration for goods of Botswana origin may be issued by the producer, supplier or exporter of the goods in such form as may be prescribed.”.

**88.** The Act is amended in section 318 —

- (a) by substituting for the words “certified declaration of origin” and “declaration of origin”, wherever they appear in that section the words, “origin declaration”; and
- (b) by deleting subsection 3 (a).

Amendment of section 318 of the Act

**89.** The Act is amended in section 319 by substituting for the words, “declaration of origin”, the words “origin declaration”.

Amendment of section 319 of the Act

**90.** The Act is amended in section 323 by substituting for the words “Application of preferential tariff” appearing on the sidenote the words “Application of preferential tariff under bilateral or multilateral trade agreement”.

Amendment of section 323 of the Act

**91.** The Act is amended by inserting immediately after section 325 the following new sections —

Insertion of sections 325A etc. in the Act

“Implementation of Africa Growth and Opportunity Act (AGOA)

325A. (1) In this section, unless the context otherwise indicates —

“circumvention” includes any circumvention of any provision of an enactment by —

- (a) transshipment, rerouting, false declaration concerning the country or place of origin or falsification of official documents; or
- (b) making any false declaration concerning fiber content, quantities, description or classification of goods, as provided in article 5 of the Agreement on Textiles and Clothing included in Annex 1A of the Agreement established by the World Trade Organization, kept by the Revenue Service as contemplated in subsection (2);

“enactment” includes the provisions of any legislative act by a government of a country providing for preferential tariff treatment, any administrative requirements of the customs administration of such country, any legislation or agreement incorporated by reference in such provisions and any amendment to such provisions, requirements, legislation or agreement, kept by the Revenue Service as contemplated in subsection (2);

“preferential tariff treatment” means reduced or zero tariff rate including the non-reciprocal preferential tariff on goods exported from Botswana, accorded on importation into any country in terms of and on compliance with the requirements of any enactment of the government of such country;

“transshipment” has the meaning assigned thereto in section 113 (b) (4) of the African Growth and Opportunity Act contained in the Trade and Development Act of 2000 of the United States of America, kept by the Revenue Service as contemplated in subsection (2).

(2) The Revenue Service shall —

- (a) keep two copies of any enactment and any amendment thereto received from the customs administration of the country allowing preferential tariff treatment;
- (b) record the date advised by such administration on which any such enactment or amendment becomes or became effective in such country for the purposes of such treatment; and
- (c) effect any such amendment to the enactment.

(3) Any enactment or amendment referred in subsection (2) shall, for the purposes of this Act, be effective from the date so recorded.

(4) Wherever in any legal proceedings any question arises as to the contents of any enactment or as to the date upon which any enactment or any amendment thereto becomes effective, a copy of the enactment or the enactment as amended and any date so recorded shall be accepted as *prima facie* proof of the contents thereof and of the effective date of the enactment or the amendment thereto.

(5) Any such copy kept by the Revenue Service shall be accessible to any interested person during official working hours.

(6) The Minister may by Order, publish any enactment or part thereof or amendment thereto in the *Gazette*.

(7) Notwithstanding anything to the contrary in this Act contained, the application of any provision of this Act relating to any importer, producer, manufacturer, exporter, licensee or other principal or any agent or the importation or exportation of goods, the preferential tariff treatment of goods, goods obtained, produced or manufactured, due entry or any other provision or customs procedure or any power, duty or function in connection therewith, shall, unless otherwise provided in, or in any rule made in terms of, this section, for the purposes of giving effect to any enactment, be subject to compliance with provisions of such enactment or any part or provision thereof, as the case may be.

(8) The provisions of section 16 shall apply with necessary modifications in respect of any goods exported from Botswana for the purpose of benefiting from the preferential tariff treatment contemplated in an enactment, and any person referred to in section 16 shall be deemed to have agreed to comply with the requirements governing the allowing of such treatment by the government of the country to which the goods are exported, including requirements relating to —

- (a) maintaining complete books, accounts and other documents in respect of maintaining complete books, accounts and other documents in respect of —
    - (i) the production or manufacture and any materials used in the production or manufacture of the goods exported,
    - (ii) the purchase of, cost of, value of and payment for the goods exported and all materials, including indirect materials used in the production or manufacture of the goods exported,
    - (iii) proof of the originating status of such goods in accordance with the relevant rules of origin, and
    - (iv) the exportation of the goods; and
  - (b) permitting and assisting customs officers of the country of importation to investigate —
    - (i) such books, accounts and other documents; and
    - (ii) any circumvention contemplated in subsection (17).
- (9) In administering the provisions of any enactment or any part or provisions thereof and the application of any provisions of this Act to give effect thereto the Revenue Service may, notwithstanding anything to the contrary contained in this Act —

- (a) decide on or determine any matter or perform any duty or function or impose any condition in connection with the provisions so administered, including any decision or determination or the performance of any duty or function or the imposing of any condition in respect of —
  - (i) any heading in Part 1 or any item of any other Part of the Schedule No. 1 applicable to any goods imported or produced, obtained, manufactured, exported or used in the production or manufacture of any goods, or the customs value of any such imported goods,
  - (ii) any action or procedure concerning —
    - (A) the origin or proof of origin of goods imported or exported;

- (B) the importation or production or manufacture or exportation of goods and the ex-factory price of goods or the cost or value of materials;
  - (C) tariff quotas;
  - (D) any circumvention and any action taken in respect thereof;
  - (E) rendering mutual and technical assistance in respect of any customs co-operation, including any investigation, as required by any enactment, by any officer of the customs administration of the country allowing such preferential tariff treatment;
  - (F) the keeping and the production of books, accounts and other documents and the furnishing of information in respect of any matter to which this section relates;
  - (G) requirements in connection with any agency where any person is represented in the exportation of any goods involving proof represented in the exportation of any goods involving proof of origin;
  - (H) furnishing of a certificate of origin including in respect of multiple shipments of identical goods over a specified period;
  - (I) any document relating to origin issued retrospectively;
  - (J) the issue of or refusal to issue a visa, and
- (iii) any other power, duty or function or procedure provided in any enactment or part or provision thereof contemplated in subsection (1) which requires either expressly or by implication customs administrative action in respect of goods produced, manufactured or exported for the purposes of such enactment;
- (b) enforce any regulations made by the Minister-
- (i) concerning any matter referred to in paragraph (a),

- (ii) where reference is made to customs or competent authorities, to domestic, national or customs law or any like reference or any other matter which requires either expressly or by implication application of customs legislation,
  - (iii) in connection with the entry of goods imported or exported and documents to be produced in support thereof,
  - (iv) prescribing forms or procedures or specifying any condition or provision of this Act to be complied with for the purposes of such enactment,
  - (v) to delegate or assign subject to section 5, any power, duty or function to any officer or other person, and
  - (vi) regarding any other matter which may be reasonably necessary for the purposes of administering such provisions; and
- (c) subject to such conditions as the Revenue Service may in each case impose, enter into any agreement with any person, with the concurrence of any producer, manufacturer or exporter, as the case may be, to perform any function or provide any service for the purposes of establishing and reporting on the origin of goods or issuance of any proof of origin.

(10) Whenever any report is required by the importing country from time to time in terms of any enactment of such country in connection with the producer, manufacturer or exporter or any other person concerned with the export of goods for the purposes of preferential tariff treatment or the production, manufacture or export of such goods and the furnishing of such report is authorised by the Minister, the Revenue Service shall, notwithstanding anything to the contrary in this Act or any other law contained, furnish to the customs administration of such country such report containing such particulars as may be required in terms of any enactment kept by the Revenue Service as contemplated in subsection (2).

(11) Every producer, manufacturer or exporter of goods to which this section relates, shall be registered with the Revenue Service for the purposes of this section.

(12) No such goods may, from a date specified as the Minister may prescribe, be exported unless the producer, manufacturer or exporter thereof is registered.

(13) Application for such registration shall be made on the form prescribed for the purpose by the Minister, and the applicant shall comply with all the requirements specified therein and any additional requirements that may be prescribed as may be determined by the Minister in each case.

(14) Any registered producer, manufacturer, or exporter of such goods shall comply with such requirements as the Minister may prescribe and determine in each case.

(15) The Revenue Service may —

- (a) refuse to register any applicant and for that purpose the provisions of section 281 shall apply to such application for registration;
- (b) cancel the registration of any producer, manufacturer or exporter of such goods —
  - (i) if any books, accounts or other documents are not kept or produced as required by or in terms of this Act; or
  - (ii) who is convicted of an offence or where forfeiture of any amount deposited or secured by such person is ordered by way of penalty under the provisions of section 386 in respect of any circumvention or contravention contemplated in subsection (17); and
- (c) subject to any prohibition imposed for the purposes of subsection (18), re-register any person at any time after such cancellation on such conditions as the Revenue Service may impose in each case.

(16) No goods shall be exported with the object of obtaining any benefit of preferential tariff treatment in terms of an enactment unless the goods comply with the provisions of origin or any other provision of such enactment or of this Act governing the acquisition of origin or any other requirement which is to be complied with for the purposes of giving effect to such provisions.

(17) Any person who, in connection with any goods produced or manufactured or exported for the purposes of obtaining any preferential tariff treatment therefor in the country of importation in terms of any enactment —

- (a) makes any false statement or makes use of any declaration or document containing such statement or performs any other act for the purposes of circumvention of any provision of such enactment relating to the origin, production, manufacture or exportation of such goods;

- (b) contravenes or fails to comply with any other provision of this Act; or
- (c) attempts to circumvent or contravene any provision contemplated in subparagraphs (a) and (b), as the case may be, shall be guilty of an offence and liable on conviction to a fine not exceeding P100 000 or three times the export value of the goods in respect of which the offence was committed, whichever is the greater, or to imprisonment for a term not exceeding 10 years, or to both such fine and such imprisonment and the goods in respect of which the offence was committed shall be liable to forfeiture in accordance with this Act.

(18) The Revenue Service may on conviction of any exporter or where forfeiture of any amount deposited or secured by such exporter is ordered by way of penalty under the provisions of section 386 in respect of any circumvention contemplated in subsection (17) prohibit, for a term not exceeding five years from the date of such conviction or order of forfeiture for any such circumvention involving transshipment, such exporter, any successor of such exporter, and any other entity, owned or operated by the principal of the exporter, from exporting any goods for the purposes of obtaining any benefit in terms of any enactment.

(19) The Minister may make any regulations under this section with retrospective effect as from 1st October, 2000 or any date thereafter.

(20) This section shall, except in so far as any offence or liability is created by subsection (17), be deemed to have come into operation on 1st October, 2000.

Value for  
customs  
purposes

325B. (1) The Revenue Service may determine the transaction value of any imported goods, which is required to be ascertained or may be determined under this Act, and such determined value shall be deemed to be the value for customs duty purposes of the goods.

(2) The customs value of goods shall be determined in accordance with the WTO Customs Valuation Agreement, the Interpretative Notes thereto, the Advisory Opinions, Commentaries and Explanatory Notes, Case Studies issued under the said Agreement and the provisions of this Act.

(3) Subject to the provisions of this Act, the value for customs duty purposes of any imported goods shall, at the time of entry for home consumption, be the transaction value.

(4) 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.

(5) 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 Botswana currency at the selling rate at the date of shipment of the goods as determined by the Commissioner General, in consultation with the Bank of Botswana, or if no such rate is determined for such date, the latest rate determined before that date shall be used.

(6) For the purposes of subsection (6), the date of shipment of —

- (a) non-containerised goods shall be the date of the bill of lading, air way bill, consignment note or such other document as the Commissioner General 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 airway bill, consignment note or such other document as the Commissioner General may require.

(7) The Commissioner General may, for the purposes of any agreement contemplated in this Act —

- (a) publish arrangements in connection with amounts to be used in currencies in respect of goods imported or exported between Botswana and the country or countries or group of countries concerned; or
- (b) determine any measures applicable to the implementation of such arrangements.

(8) Where the customs value provided for under this section is not available, the customs value shall, except as provided for in this Act, be determined by proceeding sequentially through the customs valuation methods provided succeeding the method under section 326.

(9) For the purposes of determining customs value under this Act —

- (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;
- (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;
- (f) “produced” includes grown, manufactured and mined; and
- (g) “country of importation” means country or customs territory of importation.”.

**B.990**

Amendment  
of section 326  
of the Act

- 92.** The Act is amended in section 326 —
- (a) subsection (1) by substituting for the word, “333” where it appears in that subsection, the word, “334”;
  - (b) subsection (5) —
    - (i) by substituting for paragraph (b), the following new paragraph —

“(b) the customs value of identical goods or similar goods as determined under the provisions of section 330;”, and
    - (ii) by substituting for paragraph (c), the following new paragraph —

“(c) the customs value of identical or similar goods as determined under the provisions of section 331.”; and
  - (c) by inserting immediately after subsection (6), the following new subsections —

“(7) In applying the tests under subsection (5), due account shall be taken of demonstrated differences in commercial levels, quantity levels, the elements listed under section 334 and the costs incurred by the seller in sales in which the seller and the buyer are not related that are not incurred by the seller in sales in which the seller and the buyer are related.

(8) The tests under subsection (5) —

    - (a) shall be used at the initiative of the importer and only for comparison purposes; and
    - (b) shall not be used to establish substitute values.”.

Amendment  
of section 327  
of the Act

- 93.** The Act is amended in section 327 —
- (a) by substituting for subsection (3), the following new subsection —

“(3) Where no sale is established, the transaction value of identical goods sold at a different commercial level or in different quantities, adjusted to take account of differences attributable to commercial level or to quantity, shall be used by the Revenue Service:

Provided that such adjustments may 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 of the goods.”; and
  - (b) by substituting for subsection (4) the following new subsection —

“(4) Where the costs and charges referred to in section 334 (2) are included in the transaction value, an adjustment shall be made by the Revenue Service to take account of significant differences in the costs and charges between the imported goods and the identical goods in question arising from differences in distances and modes of transport.”.

- 94.** The Act is amended in section 328 —
- (a) by substituting for subsection (3), the following new subsection —  
“(3) Where no sale is established, the transaction value of similar goods sold at a different commercial level or in different quantities, adjusted to take account of differences attributable to commercial level or to quantity, shall be used by the Revenue Service:  
Provided that such adjustments may 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 of goods.”; and
- (b) subsection (4) by substituting for the word “333”, the word “334”.
- 95.** The Act is amended in section 329 —
- (a) subsection (1), by substituting for the word “340”, the word “330” and for the word “344”, the word “331”; and
- (b) subsection (2), by substituting for the word “340”, the word “330” and for the word “344”, the word “331”.
- 96.** The Act is amended in section 330 by —
- (a) substituting for subsection (2), the following new subsection —  
“(2) If neither imported goods, identical or similar imported goods are sold at or about the time of importation of the goods being valued, the Revenue Service shall base the customs value on the unit price at which the imported goods are sold in Botswana in the condition as imported at the earliest date after the importation of the goods, within 90 days of importation.”; and
- (b) substituting for the words “subsection (1) (a)” appearing in subsection (3), the words “subsection (1)”.
- 97.** The Act is amended in section 331 —
- (a) subsection (2), by substituting for paragraph (b) the following new paragraph —  
“(b) an amount for profit and general expenses equal to that usually reflected in sales of goods of the same class as the goods being valued which are made by producers in the country or territory of exportation for export to Botswana; and”;
- (b) subsection (3) by deleting the words “of imported goods” where they appear.
- 98.** The Act is amended in section 332 (2) by substituting for paragraph (d), the following new paragraph —  
“(d) the cost of production, other than a computed value which has been determined for identical or similar goods in accordance with the provisions of section 331;”.
- 99.** The Act is amended by deleting section 333.

Amendment  
of section 328  
of the Act

Amendment  
of section 329  
of the Act

Amendment  
of section 330  
of the Act

Amendment  
of section 331  
of the Act

Amendment  
of section 332  
of the Act

Amendment  
of section 333  
of the Act

**B.992**

Amendment of  
section 334 of  
the Act

**100.** The Act is amended by substituting for section 334 the following new section —

“Adjustment  
of price paid  
or payable

334.(1) In determining the customs value under this Act, there shall be added to the price actually paid or payable for the imported goods the following —

- (a) 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, and
    - (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, and
    - (iv) engineering, development, artwork, design work, 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; and
  - (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 determining the customs value there shall be added to the price actually paid or payable for imported goods to the extent that they are not included in the customs value, in whole or in part, the following —
- (a) the cost of transport of the imported goods to the port or place of exportation;

- (b) loading, unloading and handling charges associated with the transport of the imported goods to the port or place of exportation; and
  - (c) the cost of insurance.
- (3) In determining the customs value there shall be deducted from the price actually paid or payable for imported goods to the extent that they are included in the customs value, in whole or in part, 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.
- (4) Any additions to the price actually paid or payable shall be made on the basis of objective and quantifiable data.
- (5) No additions shall be made to the price actually paid or payable in determining the customs value except as provided in this section.”.

**101.** The Act is amended by inserting, immediately after section 335, the following new section —

“Determination of ad valorem value 335A. (1) For the purposes of application of Section B of Part 2 of Schedule No. 1 of the Customs Tariff Schedules (Ad-valorem duty), the value of imported goods shall, in respect of imported goods (other than goods entered in terms of item 412.18 of Schedule No. 4) be —

- (a) the transaction value thereof plus 15 per cent of such value; and
- (b) any non-rebated customs duty payable in terms of Part 1 and Section A of Part 2 of Schedule No. 1 on such goods; but excludes the duty specified in Section B of Part 2 of Schedule No. 1 on such goods.

(2) The provisions of section 326 (1) (a) and (b) and 326 (3) shall with necessary modifications apply to the ascertainment or determination of the value for the purposes of the duty specified in Section B of Part 2 of Schedule No. 1 in respect of any imported goods entered in terms of item 412.18 of Schedule No. 4.”.

Insertion of section 335A in the Act

**102.** The Act is amended in section 336 by substituting for subsection (1), the following new subsection —

“(1) Goods, including a motor vehicle, that have been used by an individual outside Botswana and are imported into Botswana for use by the individual in Botswana, shall be valued for customs purposes according to a valuation method in accordance with section 329.”.

Amendment of section 336 of the Act

## B.994

Insertion of section 336A in the Act

**103.** The Act is amended by inserting, immediately after section 336, the following new section —

“Exemption from declaring Customs value 336A. The Minister may by Regulations —  
(a) exempt any class or kind of imported goods, or  
(b) specify the circumstances to be applied to exempt imported goods, from the requirement to declare the Customs value of those goods in the Customs declaration.”.

Amendment of section 339 of the Act

**104.** The Act is amended in section 339 —

(a) by deleting the word “imported” wherever it appears in subsections (3), (4), (5) and (6); and

(b) by substituting for the words “unless the goods are exempted from this requirement as may be prescribed”, appearing in subsection (3)(b), the words “as defined under section 326 (2)”.

Amendment of section 343 of the Act

**105.** The Act is amended in section 343 (3) (b) by inserting, immediately after subparagraph (iv), the following new subparagraphs —

- “(v) a rectification of an underpayment or non-payment of duties and taxes that occurred as a result of fraud, misrepresentation, a false declaration or non-disclosure of material facts, or
- (vi) Customs and the declarant agree before the expiry of the five years’ period to the re-assessment.”.

Amendment of section 344 of the Act

**106.** The Act is amended in section 344 by substituting for the side note the following new side note, “Use of information to determine customs value, etc.”.

Amendment of section 345 of the Act

**107.** The Act is amended in section 345 —

(a) in subsection (3), by substituting for the word “or”, appearing at the end of paragraph (a) the word “and”;

(b) in subsection (6), by inserting the word “classification” immediately after the word “tariff”;

(c) in subsection (7), by inserting the word “classification” immediately after the word “tariff”; and

(d) by inserting immediately after subsection (7), the following new subsections —

“(7A) If the Revenue Service makes a tariff classification or re-determination or an origin re-determination in relation to goods for which a previous tariff classification or origin determination or re-determination is in force, the latest tariff classification or origin re-determination supersedes the previous one and becomes the tariff or origin re-determination that shall be applied to —

(a) the goods in respect of which it was made;

(b) in the case of a tariff classification or re-determination, all identical goods declared for a customs procedure by the same person, whether the goods were declared before or after the date of that latest tariff classification or re-determination;

- (c) in the case of an origin re-determination in accordance with the non-preferential rules of origin to all identical goods —
    - (i) produced by the same producer, and
    - (ii) declared for a customs procedure by the same person who declared the goods for which that re-determination was made, whether the goods were declared before or after the date of that latest re-determination; or
  - (d) in the case of an origin re-determination made in accordance with rules of origin that may be applicable in terms of a bilateral or multilateral trade agreement on non-reciprocal Generalised System of Preferences to all identical goods —
    - (i) for which preferential tariff treatment may be claimed under the applicable bilateral or multilateral trade agreement or non-reciprocal Generalised System of Preferences,
    - (ii) produced by the same producer, and
    - (iii) declared for a customs procedure by the same person who declared the goods for which that re-determination was made, whether the goods were declared before or after the date of that latest re-determination.
- (7B) In regard to a customs value, tariff classification or origin determination or re-determination —
- (a) the right of appeal as provided for under Part XXI shall mean the right of appeal without imposition of a penalty by the Revenue Service on the importer or any other person liable for the payment of the duties and taxes for the duration of the appeals process; and
  - (b) notwithstanding paragraph (a), the Revenue Service may require payment of the assessed duties and taxes prior to an appeal.”.

**108.** The Act is amended in section 350 by substituting for that section, the following new section —

“Form of  
guarantee

350. A guarantee of a customs debt may be prescribed or be provided in the form of —

- (a) a security bond issued on behalf of the person required to provide the guarantee;
  - (i) by a financial institution registered or approved by the Bank of Botswana or the Non-Bank Financial Institutions Regulatory Authority, and
  - (ii) on conditions approved by the Commissioner General;

Amendment  
of section 350  
of the Act

**B.996**

- Amendment of section 352 of the Act

  - (b) a guarantee allowed in terms of an international legal instrument;
  - (c) an electronic funds transfer; or
  - (d) other forms as may be prescribed.”.

**109.** The Act is amended in section 352 —

  - (a) by substituting for the side note the words, “General liability for customs debt”; and
  - (b) (3) by substituting for that subsection, the following new subsection —  
“**(3)** For purposes of subsection (1), a debtor shall be the importer, owner of the goods, declarant or the person acting on behalf of the owner of the goods.”.
- Amendment of section 353 of the Act

**110.** The Act is amended in section 353 by substituting for the sidenote the following new side note “Liability for customs debt upon unlawful entry, removal and non-compliance”.
- Amendment of section 354 of the Act

**111.** The Act is amended in section 354 by substituting for the side note the following new side note, “Liability for customs debt upon recovery from guarantee”.
- Amendment of section 355 of the Act

**112.** The Act is amended in section 355 —

  - (a) by substituting for subsection (2), the following new subsection —  
“**(2)** Notwithstanding subsection (1), the Revenue Service may accept a self-assessment of duties and taxes by a declarant.”; and
  - (b) by substituting for subsection (4), the following new subsection —  
“**(4)** The amount of duties and taxes payable to the Revenue Service shall be expressed in Botswana Pula.”.
- Amendment of section 357 of the Act

**113.** The Act is amended by substituting for section 357, the following new section —

“Re-assessment of duties by Revenue Service  
**357.** (1) The Revenue Service may, at any time make a re-assessment of duties and taxes on goods.  
(2) The Revenue Service shall make a re-assessment of duties and taxes on goods when it makes a customs value, tariff classification, origin determination or re-determination of the goods if the amount of duty paid or payable on such goods is affected by —

  - (a) a decision in any administrative settlement or compromise settlement proceedings;
  - (b) an independent dispute resolution;
  - (c) an amendment to the Customs Tariff Schedule; or
  - (d) a court order.”.
- Amendment of section 358 of the Act

**114.** The Act is amended by substituting for section 358, the following new section —

“Time limit for assessment and re-assessment of duties and taxes  
**358.** (1) An assessment or re-assessment of duties and taxes shall be made within a period of five years from the date the customs debt was incurred.

(2) Notwithstanding subsection (1), an assessment or re-assessment of duties and taxes on goods may be made after the expiry of five years from the date the customs debt was incurred —

- (a) if the assessment or re-assessment is made to give effect to —
  - (i) a decision made in any administrative settlement or compromise settlement proceedings,
  - (ii) an independent dispute resolution,
  - (iii) an amendment to the Customs Tariff Schedule,
  - (iv) a court order, or
  - (v) a rectification of an underpayment or non-payment of duties and taxes that occurred as a result of fraud, misrepresentation, false declaration or non-disclosure of material facts; or
- (b) if the Revenue Service and the declarant agree to the assessment or re-assessment before the expiry of the specified period.”.

**115.** The Act is amended under PART XVII by inserting immediately after section 358 the following new sub-part —

“ AA- Establishment of Fund

Establishment  
of Fund

358A. (1) The Minister may by Order, establish a Fund for the purposes of this Act into which all moneys collected under this Act (other than moneys collected in any other country of the common customs area) shall be paid and out of which all moneys which may be paid out under this Act shall be paid.

(2) In addition to any moneys which may be paid out of the fund under the provisions of this Act there may be paid out of such Fund any moneys which may be due under the terms of any agreement made or deemed to be made in accordance with the provisions of section 24A.”.

Insertion of  
section 358A  
in the Act

**116.** The Act is amended in section 361 by inserting the following new subsections —

“(2) A debtor or third party may make a request to the Commissioner General, to make part payment of the amount of the duties and taxes due as may be prescribed.

(3) The order of allocation of Customs debt shall be as may be prescribed.”.

Amendment  
of section 361  
of the Act

**117.** The Act is amended in section 364 by inserting, immediately after paragraph (f), the following new paragraph —

“(g) a third party who owes or is likely to owe or who holds money for a person liable, or who has authority from another person to pay money to the person liable.”.

Amendment  
of section 364  
of the Act

**B.998**

Insertion of section 371A in the Act

**118.** The Act is amended by inserting immediately after section 371, the following new section —

“Garnishee order 371A. (1) The Commissioner General may, where a person liable to pay duties and taxes under this Act fails to do so by the due date, by notice in writing, require any other person who —

- (a) owes or may owe money to the person liable;
- (b) holds or may subsequently hold money for or on account of the person liable; or
- (c) has authority from some other person to pay money to the person liable,

to pay the amount of duties and taxes to the Revenue Service on the date set out in the notice up to the amount of the duties and taxes due.

(2) The date specified in the notice shall not be a date before the amount specified in subsection (1) becomes due or is held by the person on behalf of the person owing duties or taxes.

(3) A copy of the notice issued under subsection (1) shall be served on the person liable.

(4) Where a person served with a notice under subsection (1) is unable to comply with the notice, he or she shall, before the payment date specified in the notice, inform the Commissioner General, in writing, of the reasons for the inability to comply.

(5) Where the Commissioner General is informed of a person’s inability to comply under subsection (4), the Commissioner General may, by notice in writing —

- (a) accept the reasons and cancel or amend the notice issued under subsection (1); or
- (b) reject the claim of inability to comply, giving reasons therefor.

(6) A person who makes a payment pursuant to a notice under subsection (1) shall be discharged in respect of the payment.”.

Amendment of section 372 of the Act

**119.** The Act is amended in section 372 by substituting for paragraph (h), the following new paragraph —

“(h)by forfeiture of the goods to the State.”.

Amendment of section 375 of the Act

**120.** The Act is amended by substituting for section 375, the following new section —

“Power to detain or seize goods 375. (1) The Revenue Service may detain, seize or forfeit goods or a means of transport to which this Act applies.

(2) The Revenue Service may detain or seize the information, accounts, documents or records, for investigation and enforcement purposes to which this Act applies.

- (3) The Revenue Service may detain goods, a means of transport, a device containing information, accounts, documents or records —
- (a) where a person has not complied with the customs formalities required for the customs procedure;
  - (b) where the Revenue Service suspects non-compliance with this Act, or any other relevant legislation, relating to the goods;
  - (c) relating to restricted goods pending compliance with specific conditions or formalities restricting the import or exports of the goods by a person; or
  - (d) for investigation purposes.
- (4) The Revenue Service may seize goods, a means of transport, a device containing information, accounts, documents or records —
- (a) where a person has not complied with the customs formalities required for the customs procedure;
  - (b) where a person contravenes any provisions of this Act or any other relevant legislation, relating to the goods;
  - (c) relating to restricted goods, where a person fails to comply with specific conditions or formalities restricting the import or export of the goods;
  - (d) relating to prohibited goods; or
  - (e) relating to goods detained by the Revenue Service, where a person fails to comply with specific conditions or formalities.
- (5) The Revenue Service may impose forfeiture of goods, a means of transport, a device containing information, accounts, documents or records —
- (a) in accordance with the provisions of this Act; or
  - (b) relating to prohibited goods.
- (6) Notwithstanding subsections (1) and (2), the Revenue Service shall exclude the following goods from detention —
- (a) imported restricted goods that are declared for the customs warehousing procedure;
  - (b) imported restricted goods that are declared for the customs transit or transshipment procedure;
  - (c) restricted goods on board an aircraft or cross-border train arriving in Botswana from a place outside Botswana and remaining on board; and
  - (d) restricted goods on board an aircraft or cross-border train arriving in Botswana from a place outside Botswana as stores for the aircraft or train.”.

## B.1000

Amendment of section 378 of the Act

**121.** The Act is amended in section 378 by inserting, immediately after subsection (2), the following new subsection —

“(3) Where a voluntary disclosure is made under subsection (1) regarding a breach of any customs legislation, the Revenue Service shall consider the information and may mitigate or reduce any penalty under the Act.”

Amendment of section 380 of the Act

**122.** The Act is amended in section 380 by substituting for subsection (3), the following new subsection —

“(3) The Commissioner General shall consider the appeal lodged under subsection (1) and may amend, vary, or uphold the decision, or determine the appeal by compromise or administrative settlement and shall, by notice in writing, inform the person concerned of his or her decision.”

Amendment of section 385 of the Act

**123.** The Act is amended by substituting for section 385 the following new section —

“General offences

385. (1) Any person who —

(a) rescues any person apprehended for any offence under this Act, or prevents the apprehension of any person who has committed any such offence; or

(b) makes a statement which is incorrect in any material particular, whether orally or in a document or declaration, in connection with any matter dealt with in this Act,

commits an offence and is liable to a fine not exceeding P 5 000,000 or to imprisonment for a term not exceeding five years, or to both and forfeiture of any goods, means of transport, information, accounts, documents or records in relation to the offence.

(2) Any person who —

(a) has in his or her premises or in his or her custody or under his or her control, or purchases, sells, or otherwise disposes of any illicit goods knowing the same to be illicit goods;

(b) removes or assists in or permits the removal of goods in contravention of any provision of this Act;

(c) removes or breaks or interferes with any lock, meter, gauge, rod, seal, mark or fastening placed on or fitted to any warehouse, vessel, package, container or other article, place or plant, by an officer under any provision of this Act;

(d) damages, destroys or disposes of any goods to prevent the securing or seizure thereof under the provisions of this Act by any officer or other person authorised to secure or seize the same, or takes back any goods which are being detained or have been seized;

- (e) without lawful excuse (the proof of which shall lie upon him or her), brings into Botswana, produces or has in his possession any blank or incomplete invoice or any bill head or other similar document capable of being filled up and used as an invoice for goods from outside Botswana;
- (f) makes improper use of a licence, permit or other document issued in respect of goods to which this Act relates;
- (g) claims or receives any rebate, drawback, refund or payment or sets off any amount in terms of the provisions of this Act to which he knows he is not entitled under this Act;
- (h) being an officer or a person employed by the Revenue Service, demands or receives, except from or through the Revenue Service, any reward in respect of the performance or non-performance of his duty or employment under this Act or by any wilful act, neglect or default does or permits or agrees to do or permit anything in contravention or evasion of this Act;
- (i) contravenes or fails to comply with any provision of any agreement contemplated in this Act;
- (j) without lawful excuse (the onus of proof of which shall be upon him or her) uses, or has under his control or in his possession, any stamp or makes available to another person any stamp –
  - (i) which is used in the office under the authority of the Commissioner General; or
  - (ii) the imprint of which is identical to or resembles the imprint of a stamp referred to in paragraph (i) or of any stamp used by a governmental authority in a foreign country under any law of such country relating to customs or excise or to the import or export of goods; or
- (k) without lawful excuse (the onus of proof of which shall be upon him or her) manufactures or has in his possession or under his or her control any stamp the imprint of which depicts the name of a company, firm or other business entity in a foreign country, or any signs or letters which could be reasonably understood to be a reference to such company, firm or business entity,

**B.1002**

commits an offence and is liable to a fine not exceeding P 10, 000,000 or treble the value of the goods; in respect of which such offence was committed, whichever is the greater, or to imprisonment for a term not exceeding ten years, or to both and forfeiture of any goods, means of transport, information, accounts, documents or records in relation to the offence.

(3) Any person charged with a contravention of subsection (2) (a) shall, until the contrary is proved, be deemed to have known that the goods in question were illicit goods.

(4) Any person charged with a contravention of subsection (2) (g) shall, until the contrary is proved, be deemed to have known that he was not entitled to the rebate, drawback, refund or payment concerned.

(5) Any person who —

- (a) fails to advise the Revenue Service of the receipt of any amended prescribed invoice or any credit note or debit note or of any change in the circumstances or particulars of whatever nature as declared in any prescribed invoice or in any other document or of any refund of money or deferred or secret discount, commission or other credit or debit which relates to any goods and which would increase the duty on such goods or exclude them from any rebate or refund or other privilege under this Act;
- (b) issues two or more different prescribed invoices or supporting document in respect of the same goods or fails to issue an amended prescribed invoice or supporting document where any particulars declared in any prescribed invoice or certificate in respect of any goods have changed in any manner whatever;
- (c) allocates the same identification number, code, description, character or other mark required under this Act to goods of different classes or kinds or allocates more than one such identification number, code, description, character or other mark to goods of the same class or kind or who quotes or reproduces any such identification number, code, description, character or other mark in any invoice or document relating to goods to which such number, code, description, character or other mark has not been allocated; or
- (d) fails to enter or exit Botswana at a designated place of entry or exit,

commits an offence and liable to a fine not exceeding P 15 000 000 or treble the value of the goods to which such statement, declaration or document relates, whichever is the greater, or to imprisonment for a term not exceeding 15 years, or to both, and forfeiture of any goods, means of transport, information, accounts, documents or records in relation to the offence.

(6) For the purposes of this Act, 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 —

- (a) is not, except in so far as may be otherwise specified, exclusively related to goods of the denomination, description, class, grade or quantity declared in such invoice or document;
- (b) is influenced, adjusted or amended as a result of any separate transaction, arrangement, agreement or other consideration of any nature whatever particulars of which are not specified in such invoice or document; or
- (c) represents any average or adjustment or amendment, particulars of which are not disclosed in such invoice or document, of such values, prices, commissions, discounts, costs, charges, expenses, royalties, freight, duties, taxes, drawbacks, refunds, rebates, remissions or other information in respect of goods of the same or of different denominations, descriptions, classes, grades or quantities supplied by the same supplier.

(7) A person who contravenes any provision of this Act where a penalty is not provided for commits an offence and is liable to —

- (a) a fine not exceeding P500 000 or imprisonment for a term not exceeding two years or to both; and
- (b) forfeiture of any goods, means of transport, information, accounts, documents or records in relation to the offence.

(8) A person who attempts to contravene any provision of this Act where a penalty is not provided for commits an offence and is liable to —

**B.1004**

- (a) a fine not exceeding P100 000 or imprisonment for a term not exceeding one year or to both; and
  - (b) forfeiture of any goods, means of transport, information, accounts, documents or records in relation to the offence.”.
- (9) A person who deals or assists in dealing with, any goods contrary to the provisions of the Act commits an offence and is liable to —
- (a) a fine not exceeding P1 000 000 or treble the value of the goods in respect of which such offence was committed, whichever is the greater or imprisonment for a term not exceeding 10 years, or to both; and
  - (b) the goods and any means of transport in respect of which such offence was committed are liable to forfeiture.
- (10) A person who offers or promises to offer an incentive to a customs officer for purposes of influencing the actions of the customs officer commits an offence and is liable to a fine not exceeding P1 000 000 or imprisonment for a term not exceeding 10 years, or to both.
- (11) Any person who impersonates a customs officer commits an offence and is liable to a fine not exceeding P1 000 000 or to imprisonment for a term not exceeding 10 years, or to both.”.

Insertion of sections in the Act

**124.** The Act is amended by inserting the following new sections immediately after section 385 —

“Administrative 386. (1) If any person —  
sanctions

- (a) has contravened any provision of this Act or failed to comply with any such provision with which it was his or her duty to comply;
- (b) agrees to abide by the Commissioner General ‘s decision; and
- (c) deposits with the Commissioner General such sum as the latter may require of him or her but not exceeding the maximum fine which may be imposed upon a conviction for the contravention or failure in question or makes such arrangements or complies with such conditions with regard to securing the payment of such sum as the Commissioner General may require, the Commissioner General may, after such enquiry as he or she deems necessary, determine the matter summarily and may, without legal proceedings, order forfeiture by way of penalty of the whole or any part of the amount so deposited or secured.

(2) Anything done for the purposes of subsection (1) by an agent generally or specially authorised thereto by any person, shall be deemed to have been duly done by that person in terms of that subsection.

(3) The imposition of a penalty under subsection (1) shall not be regarded as a conviction in respect of a criminal offence, but no prosecution for the relevant offence shall thereafter be competent.

(4) Nothing in this section shall in any way affect liability to forfeiture of goods or payment of duty or other charges thereon.

(5) The Revenue Service may impose a penalty on a person who has contravened this Act regardless of whether the Revenue Service has been, or may be deprived of all or a portion of duties and taxes that may be payable in accordance with this Act.

Repayment  
and disposal  
of fines and  
penalties

387. (1) Any fine or penalty recovered under this Act shall be paid to the Revenue Service and shall be paid into the Fund, and the proceeds of sale of anything forfeited or seized and condemned under this Act shall also be paid into the said Fund.

(2) Notwithstanding subsection (1), the Revenue Service may at its discretion withhold a sum not exceeding one-third of any such fine, penalty or proceeds which it may then award to any person, including any officer, by whose means or information the fine or penalty or forfeiture was imposed or the seizure made.

Remission or  
mitigation of  
penalties and  
forfeiture

388. The Revenue Service may, on good cause shown, direct that any vehicle, container or other transport equipment, plant, material or goods detained or seized or forfeited under this Act be delivered to the owner thereof, subject to payment of any duty which may be payable in respect thereof and any charges which may have been incurred in connection with the detention or seizure or forfeiture, and to such conditions (including conditions providing for the payment of an amount not exceeding the value for duty purposes of such vehicle, container or other transport equipment, plant, material or goods, plus any unpaid duty thereon) as it deems fit, or may mitigate or remit any penalty incurred under this Act, on such conditions as it deems fit.

**B.1006**

Recovery of penalties by process of law

389.(1) Without derogation from any powers conferred upon the Revenue Service, any penalty, fine or forfeiture incurred under this Act may be recovered either by civil action or upon criminal prosecution in any court of competent jurisdiction, and in the case of a criminal prosecution the court passing sentence may also make an order regarding any unpaid duty or charge and impose civil penalties or enforce forfeiture.  
(2) Any civil proceedings under this section may be instituted in the name of the Revenue Service.”

Substitution of Schedules in the Act

**125.** The Act is amended by substituting for the Schedules in the Act, the following new Schedules —

**“SCHEDULES**

<b>SCHEDULE NO.</b>	<b>TITLE</b>
<b>1</b>	<b>AD VALOREM AND SPECIFIC CUSTOMS AND EXCISE DUTIES</b>
	<b>PART 1</b> Ordinary Custom Duty
	<b>PART 2A</b> Specific Excise Duties and Specific Customs Duties on Imported goods of the same kind
	<b>PART 2B</b> Ad Valorem Excise Duties and Ad valorem Customs Duties on imported goods of the same kind
	<b>PART 7</b> Additional Duties
	<b>PART 8</b> Ordinary Levy
<b>2</b>	<b>ANTI-DUMPING, COUNTERVAILING AND SAFEGUARD DUTIES ON IMPORTED GOODS</b>
	<b>PART 1</b> Anti – dumping duties on imported goods
	<b>PART 2</b> Countervailing Duties on imported goods
	<b>PART 3</b> Safeguard Duties on imported goods
<b>3</b>	<b>INDUSTRIAL REBATES ON CUSTOMS DUTIES</b>
	<b>PART 1</b> Goods used in the manufacture of other goods
	<b>PART 2</b> Goods used in the manufacture of other goods solely for export

	<b>GENERAL REBATES OF CUSTOMS DUTIES</b>
	<b>PART 1</b> Specific rebates of Customs Duties
	<b>PART 2</b> Temporary Rebates of Customs Duties
<b>4</b>	<b>PART 3</b> Goods Temporarily Admitted under Rebate of Customs Duties
	<b>PART 4</b> Goods temporarily admitted for specific purposes
	<b>PART 5</b> Goods temporarily admitted for subject to exportation in the same state
	<b>PART 6</b> Imported goods admitted under rebate of duty for use in the Customs Controlled Area (CCA) contemplated in section 21
	<b>SPECIFIC DRAWBACKS AND REFUNDS OF CUSTOMS DUTIES</b>
	<b>PART 1</b> Specific Drawbacks of Customs Duties
<b>5</b>	<b>PART 2</b> Refunds of Customs Duties on Goods Exported in the same condition as Imported
	<b>PART 3</b> Miscellaneous Refunds of Customs Duties
	<b>REFUNDS AND REBATES OF EXCISE DUTIES</b>
<b>6</b>	<b>PART 1</b> Rebates and Refunds of Specific Excise duties
	<b>PART 2</b> Rebates and Refunds of Ad Valorem Excise Duties
<b>8</b>	<b>LICENCES</b>
<b>9</b>	<b>SPECIFIC REBATES OF ADDITIONAL CUSTOMS DUTIES</b>