

Lesotho

## Customs and Excise Act, 1982

Act 10 of 1982

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# Lesotho

## Customs and Excise Act, 1982

### Act 10 of 1982

Published in Government Gazette

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*[This is the version of this document from 1 September 1969.]*

## ACT

**To provide for the levying of Customs, Excise and Sales Duties and surcharge, the prohibition and control of the importation, export or manufacture of certain goods and for matters incidental thereto and connected therewith.**

Enacted by Assembly

### 1. Short title and commencement

This Act may be cited as the Customs and Excise Act 1982 and shall be deemed to have come into force on the first day of September, 1969.

## Chapter 1 Preliminary

### 2. Interpretation

- (1) In this Act, unless the context otherwise requires, any reference to Customs and Excise or matters relating thereto shall be deemed to include a reference to Sales duty and surcharge or matters relating thereto;

"**agricultural distiller**" means any occupier of land who—

- (a) is licensed to keep a still on such land; and
- (b) is licensed to distil spirits on such land from grapes or other fresh fruit grown by him on such land;

"**common customs area**" means the combined areas of Botswana, Lesotho, South Africa and Swaziland;

"**container depot**" means any container depot contemplated in [section 6\(1\) \(j\)](#);

"**container operator**" means any person providing international transportation of containerized goods, and approved by the Director for operating container in Lesotho;

"**container terminal**" means any container terminal contemplated in [section 6\(1\) \(i\)](#);

"**customs duty**" means, subject to the provisions of subsection (3) any duty leviable under column (iv) or (v) of schedule No. 1 (except parts 3 & 4 thereof) or schedule No. 2 on goods imported into Lesotho;

"**customs tariff**" means schedule No. 1 (except part 3 thereof) in so far as it relates to imported goods;

"**Customs Union Agreement**" means the agreement dated 11th December, 1969, entered into between the Governments of the Republic of Botswana, the Kingdom of Lesotho, the Republic of South Africa and the Kingdom of Swaziland;

"**department**" means the department of Customs and Excise;

"**depot operator**" means the person having charge of any container depot;

"**Director**" means the person designated by the Minister to be the Director of Customs and Excise and includes an officer acting under the control or direction of the person so designated by the Minister;

"**duty**" means any duty leviable under this Act;

"**entry for home consumption**" includes entry under any item in Schedule No. 3, 4, 6 or 7;

"**excisable goods**" means any goods specified in part 2 of Schedule No. 1 which have been manufactured in Lesotho;

"**excise duty**" means any duty leviable under part 2 of Schedule No. 1 on any goods manufactured in Lesotho;

"**excise value**" means value as defined in [section 69](#);

"**exporter**" includes any person who, at the time of exportation—

- (a) owns any goods exported;
- (b) carries the risk of any goods exported;
- (c) represents that or acts as if he is the exporter or owner of any goods exported;
- (d) actually takes or attempts to take any goods from Lesotho;
- (e) is beneficially interested in any way whatever in any goods exported;
- (f) acts on behalf of any person referred to in paragraph (a), (b), (c), (d), or (e), and in relation to imported goods includes the manufacturer, supplier or shipper of such goods or any person inside or outside Lesotho representing or acting on behalf of such manufacturer, supplier or shipper;

"**fiscal duty**" means any duty leviable under column (iii), of schedule No. 1 (except Part 3 thereof) or of schedule No. 2 on goods imported into Lesotho;

"**goods**" includes all wares, articles, merchandise, animals, currency, matter or things;

"**home consumption**" means consumption or use in Lesotho;

"**illicit goods**" in relation to imported or excisable goods, sales duty goods or surcharge goods, means any such goods in respect of which any contravention under this Act has been committed, and includes any preparation or other product made wholly or in part from spirits or other materials which were illicit goods;

"**importer**" includes any person who, at the time of importation—

- (a) owns any goods imported;
- (b) carries the risk of any goods imported;
- (c) represents that or acts as if he is the importer or owner of any goods imported;
- (d) actually brings any goods into Lesotho;
- (e) is beneficially interested in any way whatever in any goods imported;
- (f) acts on behalf of any person referred to in paragraph (a), (b), (c), (d), or (e);



"**land**" includes off-loading from any vehicle;

"**L.C.L. container**" means any container containing goods consigned from one or more exporters to more than one importer;

"**manufacture**" includes in the discretion of the Minister, any process—

- (a) in the manufacture of any excisable goods or sale duty goods;
- (b) in the conversion of any goods into excisable goods or sales duty goods;
- (c) whereby the dutiable quantity or value of any excisable goods or sale duty goods is increased in any manner;
- (d) in the recovery of excisable goods or sales duty goods from excisable goods or any other goods; or
- (e) in the packing or measuring off of any excisable goods or sales duty goods;

"**Minister**" means the Minister charged with the administration of this Act;

"**officer**" means a person employed on any duty relating to customs and excise and sales duty and surcharge by order or with the concurrence of the Director, whether such order has been given or such concurrence has been expressed before or after the performance of the said duty;

"**ordinary duty**" means any duty specified in Part 1 or 2 of Schedule No. 1;

"**owner**" includes any person lawfully acting on behalf of the owner;

"**package**" means any container wrapping or outer cover and its contents, or any bundle or single piece in the case of unpacked goods;

"**pilot**" in relation to any aircraft, means any person having charge of such aircraft;

"**plant**" includes vessels, utensils, appliances and fittings;

"**prescribed**" means prescribed by this Act;

"**regulation**" means a regulation made by the Minister under this Act;

"**rule**" means a rule made by the Director under this Act;

"**sales duty**" means any duty leviable under Part 3 of Schedule No. 1 on any goods which have been manufactured in or imported into Lesotho;

"**sales duty goods**" means any goods specified in Part 3 of Schedule No. 1 which have been manufactured in or imported into Lesotho;

"**State warehouse**" means any premises provided by the state for the deposits of goods for the security thereof and of the duties due thereon, or pending compliance with the provisions of any law in respect of such goods;

"**still**" means any apparatus for, or capable of, distilling spirits and includes parts thereof;

"**still maker**" means a person who manufactures or imports stills for sale and includes a person who repairs stills for reward;

"**surcharge**" means any duty leviable under Part 4 of Schedule No. 1 on any goods which have been imported into Lesotho;

"**surcharge goods**" means any goods specified in Part 4 of Schedule No. 1 which have been imported into Lesotho;

"**this Act**" includes any regulation, proclamation, government notice or rule issued or made or agreement concluded or deemed to have been concluded thereunder or any taxation proposal contemplated in [section 58](#) (5) which is presented to the National Assembly;

"**vehicle**" means any aircraft, train, motor car, van truck, cart, barrow or other conveyance of any kind whatsoever, and includes the fittings, furnishings and equipment thereof, and also pack animals and the harness and tackle;

"**wine grower**" means any person who cultivates vines and who produces wine from grapes grown on such vines;

"**worts**" means any liquid substance containing saccharine matter before fermentation has commenced.

- (2) In this section, except in the definition of "**package**" and in section 6, 7, 18, 39 and 65 "container" means transport equipment—
  - (a) having an internal volume of not less than one cubic metre; and
  - (b) designed for the transport of goods by any means of carriage, without intermediate reloading, and in this Act, "containerized" has a corresponding meaning.
- (3) For the purposes of the 1969 Customs Union Agreement, customs duty includes any duty leviable under Part 4 of Schedule No. 1 on goods imported into Lesotho.

## **Chapter II**

### **Administration, general duties and powers of Director and officers, and application of Act**

#### **3. Director to administer Act**

- (1) The Director shall, subject to the control of the Minister, be charged with the administration of this Act, including the interpretation of the schedules thereto.
- (2) The officer shall perform his duties and exercise his powers under this Act with due regard to any lawful instructions issued by the Director.

#### **4. Delegation of duties and powers of Director**

- (1) Any duty imposed or power conferred on the Director may be performed or exercised by the Director personally or by an officer under a delegation from or under the control or direction of the Director.
- (2) Any decision made and any notice or communication signed or issued by any such officer may be withdrawn or amended by the Director 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 purpose of this subsection to have been made, signed or issued by the Director.

#### **5. General duties and powers of officers**

- (1) Subject to the laws governing the public service, officers employed in the department shall act under the control and direction of the Director.
- (2) No officer shall be directly financially interested in the manufacture or sale or importation or trade in imported or excisable goods or sales duty goods.
- (3) No officer shall disclose any information relating to any person, firm or business acquired in the performance of his duties except—
  - (a) for the purposes of this Act; or
  - (b) when required to do so as a witness in a court of law; or

- (c) to an accounting officer designated by the Minister for specific revenue purposes.
- (4) (a) An officer may, for the purpose of this Act—
- (i) without previous notice, at any time enter any premises whatsoever and make such examination and enquiry as he deems necessary;
  - (ii) while he is on the premises or at any other time require from any person the production then and there, or at a time and place fixed by the officer, of any book, document or thing which by this Act is required to be kept or exhibited or which relates to or which he has reasonable cause to suspect of relating to matters dealt with in this Act and which is or has been on the premises or in the possession or custody or under the control of any such person or his employee;
  - (iii) at any time and at any place require from any person who has or is believed to have the possession or custody or control of any book, document or thing relating to any matter dealt with in this Act, the production thereof then and there, or at a time and place fixed by the officer; and
  - (iv) examine and make extracts from and copies of any such book or document and may require from any person an explanation of any entry therein and may attach any such book, document or thing as in his opinion may afford evidence of an offence under this Act.
- (b) An officer may take with him on to any premises an assistant or a member of the police force.
- (5) Any person in connection with whose business any premises are occupied or used, and any person employed by him shall at any time furnish such facilities as may be required by the officer for entering the premises and for the exercise of his powers under this section.
- (6) (a) If an officer, after having declared his official capacity and his purpose and having demanded admission into any premises, is not immediately admitted he and any person assisting him may at any time, but at night only in the presence of a member of the police force, break open any door or window or break through any wall on the premises for the purpose of entry and search.
- (b) An officer or any person assisting him may at any time break up any ground or flooring on any premises for the purpose of search and if any room, place, safe, chest, box or package is locked and the keys thereof are not produced on demand, may open such room, place, safe, chest, box or package in any manner.
- (7) An officer may require any person to appear before him at any time and place fixed by the officer and may then and there question that person, either alone or in the presence of any other person, as he thinks fit, with respect to any matter dealt with in this Act.
- (8) An officer may question, either alone or in the presence of any other person, as he thinks fit, with respect to any matter dealt with in the Act, any person whom he finds on any premises entered in terms of this section or whom he has reasonable grounds for believing to be or to have been employed on any premises in respect of which any provision of this Act is applicable, or whom he has reasonable grounds for believing to be or to have been in possession, custody or control of anything, in respect of which any such provision is applicable.
- (9) (a) An officer may stop and board any vehicle and may search any such vehicle or any person found therein or thereon for goods upon such duty has not been paid, or in respect of which he has reasonable cause to believe that there has been a contravention of any provision of this Act, and may freely remain on such vehicle in pursuance of his duties,
- [L.N. 34 of 1983]*
- (b) If any room, place, safe, chest, box or package is locked and the keys thereof are not produced on demand, the officer may open such room, place, safe, chest, box or package in any manner.

- (10) An officer may stop any person whom he has reason to suspect of having dutiable goods or goods in respect of which a contravention under this Act has been committed, secreted about him or in his possession and he may search such person.
- (11) (a) Any person may, before being searched in terms of this section, require the officer concerned to take him before the Director, who may in his discretion discharge such person or direct that he be searched:
- Provided that the provisions of this paragraph shall apply only if such person is stopped within an airport control area and during the prescribed working hours of the Director.
- (b) A female shall only be searched by a female.
- (12) An officer may lock up, seal, mark, fasten or otherwise secure any warehouse, store, room, place, vessel, appliance, utensil, fitting, vehicle, or goods if he has reason to believe that any contravention under this Act has been or is likely to be committed in respect thereof or in connection therewith.

### **Chapter III**

#### **Importation, exportation and transit of goods**

#### **6. Appointment of places of entry authorized roads and routes, etc.**

- (1) The Minister may, subject to such conditions as he may specify, by rule appoint or prescribe—
- (a) places to be ports of entry for Lesotho, through which goods may be imported or exported or where goods may be landed for transit, where persons entering or leaving Lesotho may disembark or embark or where goods may be entered for customs and excise purposes;
  - (b) the roads or routes (including railways) over which persons may enter or leave Lesotho or imported goods or goods intended for export or transit carriage may enter or leave Lesotho or may be carried from any one point to any other point or the means of carriage of such goods;
  - (c) places as warehouse places where customs and excise warehouses may be established;
  - (d) places for such particular and limited purposes and for such periods as may be specified;
  - (e) places to be customs and excise airports at which aircraft entering Lesotho shall first land, from which aircraft leaving Lesotho shall finally depart, through which goods may be imported or exported or where goods may be landed for transit or where persons entering or leaving Lesotho may disembark or embark;
  - (f) places at appointed places of entry or at customs and excise airports for the landing or embarkation of persons and the landing, loading or examination of goods (including baggage);
  - (g) sheds as transit sheds into which goods, before due entry thereof, may be removed from an aircraft or vehicle;
  - (h) entrances and exits, general or special, to or from any customs and excise airport,
  - (i) container terminals where containers may be landed for transit, delivery to a container depot or, after their contents have been duly entered, delivered to importers, or where containers may be dispatched for export;
  - (j) places where container depots may be established for the storage, detention, unpacking or examination of containers or the contents of containers for the delivery to importers, of the contents of containers after such contents have been duly entered or for the packing of containers for export;

- (k) the hours during which any place, road, route, shed, entrance or exit appointed or prescribed under any paragraph of this subsection may be used for the purposes specified in such paragraph.
- (2) If any places, roads, routes, means of carriage, sheds, entrances, exits, or container terminals, as the case may be, have been appointed or prescribed by the Minister under any paragraph of subsection (1), only such places, roads, routes, means of carriage, sheds, entrances, exits or container terminals so appointed or prescribed may, subject to the provisions of subsection (3), be used or employed for the purposes for which they have been so appointed or prescribed under paragraph (k) of subsection (1) during which any place, road, route, shed, entrance, or exit referred to in the said paragraph (k) may be used, such place, road, route, shed, entrance or exit shall be used only during such hours.
- (3) The pilot of an aircraft arriving in Lesotho shall, unless the Director has granted him special permission to land elsewhere, make his first landing at a place appointed as a customs and excise airport in terms of this section and shall forthwith take his aircraft to the examination station at that airport.

Provided that the provisions of this subsection shall not apply if the pilot is forced by stress of weather, accident or other circumstances beyond his control to call or land at a place not so appointed and he reports to the officer in charge of the police post nearest to the place where he was so forced to call or land or to an officer at the first place of entry or customs and excise airport appointed in terms of this section at which he next arrives and complies with the regulations.

- (4)
  - (a) Subject to the provisions of this Act, any person on foot or in charge of a vehicle entering or leaving any customs and excise airport or entering or leaving Lesotho by road at a place where an officer is stationed, shall stop or bring such vehicle to a stop for the purpose of being searched or examined by such officer in his discretion and such person shall not proceed or cause such vehicle to proceed until permitted by such officer.
  - (b) If any such person fails to stop, or to bring such vehicle to a stop or proceeds or causes such vehicle to proceed without permission, the officer may take such action, including the use of force, as he may deem necessary to stop such person or vehicle and no person shall be entitled to any compensation for any loss or damage arising out of any *bona fide* action of an officer under this section.
- (5) The owner or occupier of a transit shed appointed in terms of this section shall, if required by the Director, provide accommodation to the satisfaction of the Director, for any officer whom the Director considers it necessary to station at such shed.

## 7. Report of arrival or departure of aircraft

- (1) The pilot of any aircraft arriving in Lesotho, whether with or without goods or passengers, shall within three hours after landing at any place appointed as a customs and excise airport in terms of section six or within such further time as the Director may allow—
  - (a) make due report in writing of the arrival, with as many duplicates or extracts as the Director may require;
  - (b) make and subscribe to a declaration as to the truth of the report before the officer and answer all such questions concerning the aircraft, the cargo and stores, and the crew, passengers and flight as may be put to him by the officer; and
  - (c) produce, if required, the official log books for the flight, the stowage plans and any other documents in his possession relating to the cargo, stores, crew, passengers, and flight.
- (2) The report referred to in subsection (1) shall contain such particulars as the Minister may prescribe by regulation and shall further include—
  - (a) a list of the passengers; and

- (b) a list of all containers on board consigned to such place, and such list shall specify—
    - (i) the container serial numbers and the name of every owner concerned;
    - (ii) the classes of the containers;
    - (iii) the destination of each such container;
  - (c) a manifest, in the prescribed form, of all goods consigned to such place, and a separate manifest of such goods packed in each container.
- (3) Subject to the provisions of [section 9](#), any goods which have not been recorded in any such manifest shall be declared to the Director and delivered to him.
  - (4) The pilot of any aircraft bound from any place within Lesotho to any place outside Lesotho shall appear before the Director and deliver to him a report outwards in the prescribed form together with a full account of the cargo laden and of all non-duty-paid imported goods and excisable goods and sales duty goods shipped as stores on board that aircraft and shall make and subscribe to a declaration as to the truth of each report and account and answer all such questions as may be put to him by the Director.
  - (5) The provisions which shall apply in connection with the departure of any foreign-going aircraft from any other place within Lesotho to any place within Lesotho shall be as prescribed by regulation.
  - (6)
    - (a) The pilot of a foreign-going aircraft shall not cause or permit the aircraft to depart from any appointed place of entry or any place appointed as a customs and excise airport without first obtaining a certificate of clearance or transit for the intended flight from the Director, and the pilot shall not after departure call or land at any place in Lesotho other than an appointed place of entry or a place appointed as a customs and excise airport, unless forced to do so by stress of weather, accident or other circumstances beyond his control.
    - (b) The provisions which shall apply where such pilot has been so forced to call or land at a place other than an appointed place of entry or a place appointed as a customs and excise airport shall be as prescribed by regulation.
  - (7) If an aircraft in respect of which a clearance has been issued at any place in terms of this section does not depart from that place within thirty-six hours of the time when the clearance was issued, or within such further time as the officer may allow, such clearance shall lapse and the pilot shall obtain fresh clearance before causing or permitting the aircraft to depart.
  - (8) If any report required in terms of this section is found to be in any way incomplete or incorrect, the Director may, if he is satisfied that there was no fraudulent intention, permit the pilot to amend his report.
  - (9) The pilot of an aircraft may, with the permission of the Director and subject to such conditions as he may impose, retain on board goods consigned to any airport for landing at any airport or land at any airport goods not consigned thereto.
  - (10) The Minister may, subject to such conditions as he may impose, exempt any aircraft or any class or kind of aircraft from all or any of the provisions of this section.

## 8. Boarding and searching of aircraft

- (1)
  - (a) The Director may board any aircraft arriving at any place or airport in Lesotho and freely stay on board for so long as he deems necessary for the proper performance of his duties.
  - (b) The Director shall have free access to and the right to rummage every part of such aircraft and to examine all goods on board, with power to fasten down hatchways and to mark any goods before landing and to lock up, seal, mark or otherwise secure any goods on board that aircraft, including the wireless apparatus thereof and he may also demand from the pilot of such aircraft the production of any document to which any provision of this Act relates.

- (c) The pilot of such aircraft shall according to his means, provide accommodation and board for the officer to the satisfaction of the Director.
- (2) If any lock, seal or mark placed upon any goods on board any aircraft by the Director in terms of the provisions of this section is wilfully opened, broken, obliterated or altered or if any goods which have been locked, sealed, marked or otherwise secured in terms of this section are removed, the pilot of such aircraft shall be guilty of an offence unless he proves that it was not possible for him to have prevented the act in question.

## 9. Sealing of goods on board aircraft

- (1) On arrival of any aircraft at any place in Lesotho—
  - (a) the pilot thereof shall declare on the prescribed form all sealable goods on board the aircraft which are unconsumed stores of such aircraft; and
  - (b) the pilot and every member of the crew thereof shall declare on the prescribed form all sealable goods which are his personal property or in his possession, and the Director may seal up all such sealable goods.
- (2) The Director may permit surplus stores to be entered for home consumption or for warehousing.
- (3) For the purpose of this section "sealable goods" means—
  - (a) tobacco, cigars, cigarettes and any other preparation of tobacco or substitutes therefor;
  - (b) any spirits or alcoholic beverages;
  - (c) opium, preparations of opium in any form and opium outfit;
  - (d) cocaine, preparations of cocaine and other habit-forming drugs;
  - (e) saccharin, sweetening substances containing saccharin, and substitutes for saccharin;
  - (f) articles brought or intended as gifts for or for sale to or exchange with any person;
  - (g) all non-duty paid imported goods and all excisable goods and sales duty goods shipped at a place in Lesotho as aircraft stores; and
  - (h) any other goods which may from time to time be declared by the Minister by notice in the *Gazette* to be sealable goods.

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- (4) The Director may, in addition to sealable goods, seal up any goods which are unconsumed stores of any aircraft or which are in possession of the pilot of such aircraft or of any member of the crew thereof or of any passenger on board thereof.

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- (5) While the aircraft in question remains at any place in Lesotho, no person shall, except in accordance with the regulations break or disturb any seal placed by the Director on any goods in terms of this section.
- (6) Except as provided in subsection (2), no stores of any nature may be landed without the permission of the Director and all goods acquired on an aircraft shall if landed, be declared to the Director for purposes of payment of any duty due thereon.



## 10. When goods deemed to be imported

- (1) For the purpose of this Act all goods consigned to or brought into Lesotho shall be deemed to have been imported into Lesotho—
  - (a) in the case of goods consigned to a place in Lesotho an aircraft, at the time when such aircraft on the flight in question first came within the control area of airport authority at that place, or at the time of the landing of such goods at the place of actual discharge thereof in Lesotho if such aircraft did not at that flight call at the place to which the goods were consigned or if such goods were discharged before arrival of such aircraft at the place to which the goods were consigned.
  - (b) in the case of goods not consigned to a place in Lesotho but brought thereto by and landed therein from an aircraft, at the time when such goods were so landed;
  - (c) subject to the provisions of subsection (2) in the case of goods brought to Lesotho overland, at the time when such goods entered Lesotho;
  - (d) in the case of goods brought to Lesotho by post, at the time of importation in terms of paragraph (a), (b) or (c) according to the means of carriage of such goods; and
  - (e) in the case of goods brought to Lesotho in any manner not specified in this section, at the time specified in the General Notes to Schedule No. 1 or, if no such time is specified in the said General Notes in respect of the goods in question, at the time such goods are considered by the Director to have entered Lesotho.
- (2) For the purposes of subsection (1), a place outside Lesotho appointed in terms of this Act as a place of entry for goods consigned to Lesotho, shall be deemed to be a place in Lesotho in respect of goods consigned to such place for removal to Lesotho overland.

## 11. No landing and shipping of goods without permission

- (1) Subject to the regulations no goods imported into Lesotho by aircraft shall, without the permission of the Director, be landed, removed or otherwise dealt with, and any goods landed with such permission before due entry thereof shall be placed in a transit shed or other place approved by the Director:

Provided that any goods intended for transit carriage may, without such permission, be landed by the pilot of an aircraft at any place of entry for direct removal from that place to any place outside Lesotho.

- (2) All goods landed from an aircraft before due entry of such goods and placed in transit shed or other approved place in accordance with the provisions of sub-section (1) shall be deemed to be still in the aircraft, and as long as such goods remain in such shed or place, the pilot shall remain responsible therefor in all respects and liable for the duty thereon as if the goods had not been removed from such aircraft.

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- (3) Subject to the regulations, no goods shall, without the permission of the Director, be loaded into aircraft for exportation from Lesotho.
- (4) No goods shall, without the permission of the Director, be laden at any place in Lesotho on an aircraft before all inward cargo for that place has been discharged.
- (5) Subject to the provisions of subsection (2) and the regulations and to any conditions which he may impose, the Director may permit the landing at any place without due entry of goods not consigned to that place from an aircraft which has sustained damage or is in distress.



## 12. Goods imported or exported overland

- (1)
  - (a) The person in charge of any vehicle (other than an aircraft or a railway train) whether or not conveying any goods, which arrives at any place in Lesotho shall come to the office of the officer nearest to the point at which he crossed the border or the office of the officer which is most conveniently situated in relation to that point before unloading any goods or in any manner disposing of such vehicle or goods, and make a full written report to such officer concerning the vehicle or goods, the journey and the destination of the goods and shall make and subscribe to a declaration as to the truth of the report.
  - (b) Such person shall fully and truthfully answer all questions put to him and produce any way-bills or other documents demanded of him by such officer.
  - (c) Upon or before arrival at a railway station of a train or vehicle with any goods thereon from beyond the borders of Lesotho, the station master or other person in control of the station or any other person designated by the railway authority concerned by arrangement with the Director, shall deliver to the Director, a copy of all advices and delivery notes received by him relating to the goods consigned to that station by that train or vehicle.
  - (d) Such station master or other person shall not permit any such goods to be removed from the railway premises without the written sanction of the Director.
  - (e) The Conductor, guard or other person in charge of a train or vehicle shall on demand by any officer furnish him with all information at his disposal in respect of goods on such train or vehicle.
- (2) No person shall remove a vehicle referred to in subsection (1) from the office referred to in that subsection until due entry has been made of such vehicle and the goods carried thereon or until permission for removal has been granted by the Director.
- (3)
  - (a) Every person arriving in Lesotho overland, on foot or otherwise shall, whether or not he has any goods in his possession, come to the office of the officer nearest to the point at which he crossed the border or the office of the officer which is most conveniently situated in relation to that point, and there report to the officer the circumstances in which he entered Lesotho.
  - (b) If he has any goods in his possession, he shall furnish the said officer with full particulars thereof, and shall fully and truthfully answer all questions put to him by such officer.
  - (c) Such person shall not in any manner dispose of any goods in his possession until they have been released by the officer.
- (4) The provisions of subsection (3) shall not apply to persons arriving in Lesotho by train or by air and who pass through or disembark at a place where an officer is stationed.
- (5)
  - (a) No person in charge of any vehicle (other than an aircraft) used in the exportation of goods overland shall remove any such vehicle or goods beyond the borders of Lesotho except with the permission of the Director and subject to such conditions as the Minister may specify.
  - (b) The Minister may in his discretion grant a general permission to any such person.

## 13. Goods imported or exported by post

- (1) For the purposes of entry and collection of duty or on goods imported into Lesotho by parcel post, any form or label completed by the sender in respect of the parcel in question and on which the particulars necessary for the assessment of duty are set forth, shall be deemed to be an entry made under the provisions of this Act, and the particulars on any such form or label shall, for the purposes of this Act, be taken as the declaration to be made by the importer under section thirty-nine:

Provided that the Minister may by regulation exclude from the provisions of this subsection any goods of a class or kind specified in such regulation or any such goods imported in circumstances so specified.

- (2) All goods imported by post other than parcel post shall be entered and declared to by the addressee and in the case of such goods exceeding one hundred maloti in value, such entry and declaration shall be made at a customs and excise office before an officer.
- (3) Notwithstanding anything contained in subsections (1) and (2), any goods imported by post, whether by parcel post or otherwise, which the addressee desires to enter for warehousing, or for removal or export in bond, or under any heading or item of schedule No. 1 which requires that a certificate be given or a condition be complied with, or under any item of Schedule No. 3, or under any item of schedule No. 2, 4, 5 or 7 specified by the Director in consultation with the Head of the Department of Posts shall be so entered at a customs and excise office before an officer.
- (4) In case of goods exported by post, any form or label affixed to or completed in respect of a parcel on which a description of the contents and their value are set forth, shall be deemed to be a bill of entry export as required by this Act.

#### **14. Persons entering or leaving Lesotho and smugglers**

- (1) Any person entering or leaving Lesotho shall, in such manner as the Director may determine, unreservedly declare all goods in his possession which he brought with him into Lesotho or proposes taking with him beyond the borders of Lesotho and shall, if required by an officer to do so, produce and open such goods for inspection by the said officer.
- (2) The Director may in all cases where a person is detected or is concerned in or is suspected by the Director of an attempt to import, export, land, ship or remove goods illegally or to evade the payment of duties on any goods, forthwith take the person concerned before a magistrate's court to be summarily or otherwise dealt with, or secure such person in a police station or other suitable place, until he can be taken before such court.

#### **15. Opening of packages in absence of owner**

The Director may in the absence of the owner of any package imported into or landed in or suspected by the Director to have been imported into or landed in Lesotho, open and examine such package at the owner's risk and expense:

Provided that wherever possible the Director shall first make all reasonable efforts to ascertain the whereabouts of such owner and afford the said owner the opportunity of himself appearing before the Director and opening the package in question.

#### **16. State warehouse**

- (1) Wherever any goods are taken to and secured in any State warehouse, the Director may require rent to be paid for such period as the goods remain therein, at the rates fixed by regulations.
- (2) Any officer who has the custody of any goods in any State warehouse may refuse delivery thereof from such warehouse until he has been furnished with proof to his satisfaction that—
  - (a) the person claiming the goods is lawfully entitled to such goods;
  - (b) all relevant provisions of this Act or any law relating to the importation or exportation or transit of goods have been complied with; and
  - (c) freight and other charges (including landing charges) and rent due in respect of the goods have been paid.

- (3) The State or any officer shall in no case be liable in respect of any loss or diminution of or damage to any goods in a State warehouse or in respect of any loss or damage sustained by reason of wrong delivery of such goods.
- (4) If a warrant or permission for removal of any goods from a State warehouse has been granted by the Director, and the person to whom such warrant or permission has been granted does not immediately remove the said goods from the warehouse, they may, notwithstanding any other provisions of this Act, in the discretion of the Director be dealt with as if they were goods in respect of which entry has not been made under the provisions of this Act.

## 17. Removal of goods in bond

- (1) Notwithstanding anything to the contrary in this Act contained—
  - (a) the importer or owner of any imported goods landed in Lesotho or the manufacturer or owner or purchaser of any excisable goods or sales duty goods manufactured in a customs and excise warehouse or the licensee of a customs and excise warehouse in which dutiable goods are manufactured or stored may remove such goods in bond to any place in Lesotho appointed as a place of entry under this Act or to any place outside Lesotho:
 

Provided that sales duty goods manufactured in Lesotho may only be so removed to any such place in Lesotho for re warehousing at that place;
  - (b) the pilot of an aircraft or person in charge of any vehicle from which any goods were landed at a place in Lesotho to which such goods were not consigned may remove such goods in bond to the place to which they were consigned provided evidence is produced to the Director before entry for removal of the identity of such goods and that the goods in question were consigned to the place to which they are proposed to be removed;
  - (c) the owner of or any person beneficially interested in any goods which are in transit through Lesotho from any other territory in Africa to any place outside Lesotho may remove such goods in bond from the place where they entered Lesotho to the place where they are destined to leave Lesotho;
  - (d) a container operator may remove any container in bond to the container depot or container terminal to which it was consigned, without furnishing the security provided for in subsection (6) of this section, and the manifest in terms of section 7 (2) (c) of the goods packed in such container shall be deemed to be due entry for removal in bond of that container; and
  - (e) the pilot of an aircraft of the Lesotho Airways may remove in bond any goods landed from an aircraft at a place in Lesotho and for which an air cargo transfer manifest has been completed, to their place of entry for Lesotho, without furnishing the security provided for in subsection (6), and such air cargo transfer manifest shall be deemed to be due entry for removal in bond of such goods.

*[L.N. 34 of 1983]*

- (2) In addition to any liability for duty incurred by any person under any other provisions of this Act, the person who removes any goods in bond in terms of subsection (1) shall, subject to the provisions of subsection (3), be liable for the duty on all goods which he so removes.
- (3) Subject to the provisions of subsection (4), any liability for duty in terms of subsection (2) shall cease when it is proved to the satisfaction of the Director by the person concerned—
  - (a) in the case of goods removed to a place in Lesotho, that such goods have been duly entered at that place; or
  - (b) in the case of goods which were destined for a place beyond the borders of Lesotho, that such goods have been duly taken out of Lesotho.

- (4) If the person concerned fails to submit any such proof as is referred to in subsection (3) within a period of thirty days from the date on which the goods in question were entered for removal in bond, he shall upon demand by the Director forthwith pay the duty due on such goods.
- (5) No goods shall be removed in bond in terms of this section from the place where they were landed in Lesotho or where they entered Lesotho until they have been entered for removal in bond and such entry shall be deemed to be due entry in respect of such goods at that place for the purposes of this Act.

*[L.N. 34 of 1983]*

- (6) No entry for removal in bond shall be tendered by or may be accepted from a person who has not furnished such security as the Director may require and the Director may at any time require that the form, nature or amount of such security shall be altered in such manner as he may determine.
- (7) The removal in bond of goods shall be subject to the regulations and such conditions as the Director may impose in respect of such goods or any class or kind of such goods or goods removed in circumstances specified by him and the Director may refuse to accept bills of entry for the removal in bond of goods from a remover who has persistently failed to comply with such regulations or conditions or who has committed an offence referred to in section eighty-one.
- (8) Goods removed in bond shall not be delivered or removed from the control of the department at the place of destination in Lesotho except upon due entry according to the first account taken of such goods on landing or on entry for removal in bond thereof or according to the contents of the packages containing such goods as reflected on the invoice issued by the supplier in respect of such goods, and payment of any duty due, including subject to the provisions of subsection (19) of [section 76](#), any duty due on any deficiency.
- (9) The Director may refuse the removal in bond of goods in respect of which a provision of this Act has not been complied with or which are liable to forfeiture.
- (10) The State or any officer shall in no case be liable for any loss of or damage of whatever nature to any goods removed in bond or for any loss or damage sustained by reason of wrong removal or delivery.
- (11) Notwithstanding the provisions of this section, the Director may, subject to such conditions as he may impose, in respect of goods in transit through Lesotho from any other territory in Africa to any destination outside Lesotho, or any class or kind of such goods or any such goods removed in bond in circumstances specified by him, allow such goods to be entered for removal in bond at a place other than the place where the goods entered Lesotho.
- (12) The Minister may determine the roads and routes and the means of carriage of any goods removed in bond or any class or kind of such goods or any such goods carried in circumstances specified by him.
- (13) No person shall, without the permission of the Director divert any goods removed in bond to a destination other than the destination declared on entry for removal in bond or deliver such goods or cause such goods to be delivered in Lesotho except into the control of the department at the place of destination.

*[L.N. 34 of 1983]*

- (14) The Director may specify the particulars to be reflected on the entry for removal in bond and the documents to be produced by the remover upon entry for removal in bond in respect of any goods removed in bond, or any class or kind of such goods or any such goods removed in circumstances or to a destination specified by him.

## Chapter IV

### Customs and excise warehouses: Storage and manufacture of goods in customs and excise warehouses

#### 18. Customs and excise warehouses

- (1) The Director may license at any place appointed for that purpose under the provisions of this Act warehouses (to be known as customs and excise warehouses) approved by him for the storage of such dutiable imported or such dutiable locally produced goods or for the manufacture of such dutiable goods from such imported or such locally-produced materials as he may approve in respect of each such warehouse.
- (2) Such warehouses may be licensed either for the storage of dutiable goods (to be known as customs and excise storage warehouses) or for the manufacture of dutiable goods (to be known as customs and excise manufacturing warehouses), but the Director may license a storage and a manufacturing warehouse on the same premises provided they are separated in a manner approved by him.
- (3) The Director may, in addition to any lock used by the licensee, cause any customs and excise warehouse to be locked with a State lock for such period as he deems fit and no person shall remove or break such lock or enter such warehouse or remove any goods therefrom without the permission of the Director while it is so locked.
- (4)
  - (a) The Director may at any time take stock of the goods in any customs and excise warehouse and duty shall, subject to the provisions of subsection (6) of section nineteen, forthwith be paid upon any deficiency.
  - (b) If the stock is found to be greater than the quantity which should be in such warehouse; the excess shall, subject to the provision of [section 76](#), be debited to stock and the duty thereon paid on entry for more consumption.
- (5) The State or any officer shall in no case be liable for any loss of or damage of whatever nature to any goods in a customs and excise warehouse or for any loss or damage sustained by reason of wrong delivery of such goods.
- (6) In addition to any liability for duty incurred by any person under any other provision of this Act, the licensee of a customs and excise warehouse shall, subject to the provisions of subsection (7), be liable for the duty on all goods stored or manufactured in such warehouse from the time of receipt into such warehouse of such goods or the time of manufacture in such warehouse of such goods, as the case may be.
- (7) Subject to the provisions of subsection (8), any liability for duty in terms of subsection (6) shall cease when it is proved to the satisfaction of the Director by the licensee concerned that the goods in question have been duly entered in terms of subsection (4) of section nineteen and have been delivered or exported in terms of such entry.
- (8) If the licensee concerned fails to submit any such proof as is referred to in subsection (7) in respect of any goods in the warehouse in question within the period specified in the regulations for which goods of that class or kind may be stored or kept in a customs and excise warehouse or if the licensee commits an offence under this Act in respect of any goods stored or kept in such warehouse he shall upon demand by the Director forthwith pay the duty due on such goods.

#### 19. Goods in customs and excise warehouses

- (1)
  - (a) Any dutiable imported or dutiable locally produced goods and any beverages produced from excisable spirits in pursuance of any permission granted under the provisions of [section 30\(2\)](#), being goods or beverages of a class or kind approved by the Director in respect of each warehouse, may be entered for storage in a customs and excise warehouse with deferment or

- payment of duty and no such goods or beverages shall be removed to or placed in a customs and excise warehouse until they have been so entered.
- (b) Such entry shall be deemed to be due entry in respect of such goods at the place of importation or manufacture for the purposes of this Act.
- (2) (a) Upon the entry and landing of imported goods for storage in or the transfer of dutiable locally-produced goods to a customs and excise warehouse or the transfer of dutiable manufactured goods from a customs and excise manufacturing warehouse to a customs and excise storage warehouse, the Director shall take and record a particular account of such goods.
- (b) Subject to the provisions of subsection (19) of [section 76](#) and of subsection (5) no allowance for loss or diminution of any nature which occurs while such goods are being transported to or kept in any such warehouse or transported from one warehouse to another or removed in bond shall be allowed.
- (3) Goods on which no duty is payable and of a class or kind approved by the Director in respect of each warehouse, may, subject to such conditions and to the keeping of such records as the Director may in each case determine, without entry, be taken into a customs and excise warehouse for the purpose of being used in the manufacture of or in conjunction with dutiable goods.
- (4) No goods which have been stored or manufactured in a customs and excise warehouse shall be taken or delivered from such warehouse except in accordance with the regulations and upon due entry for one or other of the following purposes—
- (a) home consumption and payment of any duty due thereon;
- (b) rewarehousing in another customs and excise warehouse;
- (c) removal in bond (as provided in [section 17](#)) to any warehousing place appointed under the provisions of this Act for rewarehousing in another customs and excise warehouse or entry for home consumption or entry for export from customs and excise warehouse;
- (d) export from customs and excise warehouse (including supply as stores for foreign going aircraft).
- (5) No person shall, without the permission of the Director, divert any goods entered for removal from or delivery to a customs and excise warehouse, except goods entered for payment of the duty due thereon, to a destination other than destination declared on entry of such goods or deliver or cause such goods to be delivered in Lesotho except in accordance with the provisions of this Act.
- (6) The duty on any deficiency in a customs and excise warehouse shall be paid forthwith on demand after detection of such deficiency:
- Provided that in the case of goods manufactured in any customs and excise manufacturing warehouse or in the case of goods in the process of manufacture and removed from one customs and excise manufacturing warehouse to another such warehouse, the Director may, subject to the provisions of [section 34\(2\)](#), allow working, pumping, handling, processing and similar losses and losses due to natural causes, between the time when liability for duty first arises and the time of removal of such goods from the warehouse in which the goods are so manufactured or in which such process of manufacture is completed, to the extent specified in Schedule No. 4, 6 or 7, if he is satisfied that no part of such loss was wilfully or negligently caused.
- (7) Goods packed for retail sale shall not be entered for storage in a storage warehouse unless they are packed in outer containers normally used in the wholesale trade in respect of such goods.
- (8) If the licensee of any customs and excise warehouse persistently fails to comply with the provisions of this Act or commits any offence referred to in [section 81](#), the Minister may revoke the licence in respect of such warehouse or suspend it for such period as he may determine.

## 20. Special customs and excise warehouse

- (1) The Minister may, subject to such conditions as he may in each case impose, license at any place in Lesotho special customs and excise warehouses for such special purposes and for such period as he may specify, provided such security as he may require, is furnished.
- (2) Unless the Minister otherwise indicates when licensing a special customs and excise warehouse for the storage or manufacture of goods, the provisions of this Act in respect of customs and excise storage or manufacturing warehouses or the storage or manufacturing warehouses or such warehouses, shall apply to such special warehouse and to the storage or manufacture of goods therein, as the case may be.

## 21. Samples of goods in a customs and excise warehouse

The Director may, in accordance with the rules, permit samples of goods in a customs and excise warehouse to be taken by the owner of such goods and may permit payment of duty thereon to be deferred until the goods from which such samples have been taken are entered for delivery from that warehouse for any purpose.

*[L.N. 34 of 1983]*

## 22. Storage or manufacture of prohibited goods

The Minister may allow the storage or manufacture in a customs and excise warehouse of goods the importation, manufacture or disposal of which is prohibited or restricted under any law, provided such goods are stored or manufactured in such warehouse for export or supply as stores for foreign-going aircraft only.

## 23. Aircraft stores consumed in Lesotho

If any goods shipped as stores for any foreign going aircraft from a customs and excise warehouse under the provision of subsection (4) of section nineteen or any goods shipped as stores for such aircraft outside Lesotho (except any such goods which are used for the operation of such aircraft and are, save as provided in the regulations, not for consumption by or for sale or disposal to the pilot or members of the crew or passengers of or visitors to such aircraft) are consumed, sold or disposed of on such aircraft at any place in Lesotho when the aircraft is not airborne or on such aircraft on a flight between any places in Lesotho, the pilot of such aircraft shall be liable for the duty on such goods so consumed, sold or disposed of and shall, upon demand by the Director forthwith pay the duty due on such goods:

Provided that the Minister may by notice in the *Gazette* exempt any class or kind of stores or aircraft or any store to which circumstances specified in such notice apply from any provision of this section.

## 24. Sorting, packing, etc. in customs and excise storage warehouses

Subject to the provisions of this Act, the Director may permit the licensee of a customs and excise storage warehouse or the owner of any goods in such warehouse to sort, separate, pack or repack any goods in such warehouse and to make such alterations therein or such arrangements as may be necessary for the preservation of those goods or for the sale, exportation or other lawful disposal thereof.

*[L.N. 34 of 1983]*

## 25. Transfer of ownership if warehoused goods

The owner of any dutiable goods in a customs and excise warehouse may transfer his ownership to any other person but the Director may refuse to recognize any such transfer of ownership unless the Director is notified thereof in the manner prescribed by the Director by notice in the *Gazette* which may vary in respect of different classes or kinds of goods or goods in respect of which circumstances specified by him apply.



## 26. Special provisions in respect of customs and excise manufacturing warehouses

- (1) Subject to the provisions of this Act, goods liable to excise duty or sales duty may not be manufactured except in terms of this section and except in a customs and excise manufacturing warehouse licensed under this Act:

Provided that spirits distilled by agricultural distillers shall be excluded from the requirement of manufacture in a customs and excise manufacturing warehouse and that excisable goods or sales duty goods may with the permission of the Minister be manufactured in a special customs and excise warehouse licensed under this Act.

- (2) Subject to the provisions of this Act, the Minister may, on such conditions as he may impose, permit the manufacture under the provisions of this chapter of any goods in any customs and excise manufacturing warehouse if any of the goods used in such manufacture are liable to duty or if the goods so manufactured are dutiable.
- (3) Any dutiable goods brought into and intended for use in a customs and excise manufacturing warehouse in the manufacture of goods liable to excise duty or sales duty shall be entered for home consumption and duty due thereon shall be paid prior to such use.

*[L.N. 34 of 1983]*

- (4) No manufacturing of goods shall take place in a customs and excise manufacturing warehouse until all premises and plant intended for use in connection with such manufacturing and the purpose for which they are to be used have been approved by and registered with the Director.
- (5) Plans of the premises and plant to be used in connection with such manufacturing and of the location of the plant on such premises and particulars of any identifying numbers or marks on any plant shall be submitted to the Director before the commencement of manufacturing and no alteration to such premises or plant shall be made without the prior permission of the Director.
- (6) All operations in customs and excise manufacturing warehouse are subject to the right of supervision by officers.
- (7) (a) Every licensee of a customs and excise manufacturing warehouse shall if required by the Director, provide office accommodation and board and lodging, to the satisfaction of the Director, for any officer stationed at or visiting such warehouse for the purpose of this Act.
- (b) A person so providing board and lodging for an officer shall be entitled to fair remuneration therefor.
- (8) The Director may give instructions in writing to any licensee specifying in what part of the warehouse—
- (a) any process in the manufacture is to be carried on; and
- (b) any material for use in manufacture and manufactured goods respectively, are to be kept.
- (9) No licensee shall, without the written permission of the Director in a customs and excise manufacturing warehouse, carry on any business except that for which the warehouse is licensed and the premises and plant are registered.
- (10) No person shall, except with the written permission of the Director—
- (a) use any premises or plant required to be registered in terms of the provisions of this chapter for any purpose other than that detailed in such registration;
- (b) effect any alteration to any structure on such premises or to any such plant;
- (c) bring into or have in such premises, any plant other than that detailed in such registration or remove any plant from such premises;



- (d) place below the surface of the ground any pipe or tube for conveying any material or product in a warehouse unless such pipe or tube is enclosed in casing capable of being easily opened so that the pipe or tube is exposed to view.
- (11) The Director may by notice in the *Gazette* prescribe the days on which and the hours during which all or any of the operations in a customs and excise manufacturing warehouse (including the removal of goods) shall be carried out.
- (12) No distilling operation shall be commenced until the whole or any part of the distilling system or plant, as the Director may require, has been provided, at the expense of the licensee, with fittings and requirements to permit of the Insertion or affixing of customs and excise meters, gauges, rods, locks and seals according to the regulations and to the satisfaction of the Director, for the purpose of securing such system or plant, and until such system or plant has been duly secured by an officer.
- (13) If any meter, rod, lock or fitting is tampered with or damaged, or if any pipe, lock, fastening or fitting connected with a still or vessel is pierced or damaged, the licensee shall forthwith repair or renew the article in question to the satisfaction of an officer, or an officer may effect the repair or renewal at the expense of the licensee.
- (14) If any such tampering, damage or piercing has been directly or indirectly caused by the wilful act, or by the neglect or with the connivance of the licensee or his employee, such licensee, in addition to liability for the cost of the repair or renewal, shall be guilty of an offence.
- (15) The burden of showing that any such tampering, damage or piercing was not caused as aforesaid shall rest upon the licensee.
- (16) The Minister may, subject to such conditions as he may impose, exempt the manufacture of any class or kind of goods from any provisions of this section.

## **27. Ascertaining quantity of spirits by measuring the mass or volume**

- (1) The quantity of spirits in any container may be calculated by measuring the mass or volume.
- (2) In ascertaining the quantity of spirits by measuring the mass the tables prescribed in the regulations shall be used, and the quantity ascertained in accordance with the said tables shall be deemed to be true quantity of such spirits for the purposes of this Act.

## **28. Classification of spirits**

No spirits distilled in Lesotho shall, for the purposes of this Act, be classed as being spirits of the product of the vine until such spirits have been so certified by the Director, and any spirits not so certified shall be deemed to be spirits other than of the product of the vine.

## **29. Control of the use of spirits for certain purposes**

- (1) No person shall use spirits distilled from the product of the vine, in the manufacture of alcoholic beverages unless such spirits have been certified by the Director to be suitable for use as aforesaid:  

Provided that if the Director declines to certify any spirits as suitable for such use as aforesaid, the manufacturer may redistill such spirits or treat the same by any method approved by the Director, and thereafter in his discretion the Director may certify the spirits as suitable for use in the manufacture of alcoholic beverages.
- (2) The blending of brandy, and the production from spirits of any other beverage or any other non-excisable goods shall be subject to such supervision by an officer as the Director may in each case consider necessary.
- (3) The provisions of subsection (1) shall not apply to an agricultural distiller or a wine-grower who manufactures alcoholic beverages under the provision of this Act for his private use.

### 30. Entry of spirits for use in manufacture

- (1) Spirits which have not been entered for home consumption shall not be used in the production of beverages or other non-excisable goods.
- (2) The Director may, on such conditions as he may in each case impose, permit the use of spirits which have been entered for home consumption in the production of beverages on premises which have been licensed as a customs and excise storage warehouse and may, without prejudice to the provisions of [section 105](#), permit payment of the duty on any such spirits used in the production of beverages on any such premises to be deferred until such beverages are delivered from any such warehouse.
- (3)
  - (a) No person shall, without the permission of the Director, redistill spirits which have been entered for home consumption.
  - (b) Any such permission may be granted subject to such conditions as the Director may in each case impose.
- (4) Beverages or other non-excisable goods produced in contravention of the provisions of subsection (1) and any spirits redistilled in contravention of subsection (3), shall be liable to forfeiture.

### 31. Ascertaining strength of spirits

The strength of any spirits or spirituous preparations shall, for duty purposes, be ascertained in the manner prescribed by the Minister.

### 32. Requirements in respect of stills

Subject to the provisions of [section 63](#) no person shall distill spirits in a still which does not comply with the requirements prescribed in the regulations as to capacity and construction:

Provided that the Minister may in his discretion exempt from all or any of the said requirements, for such period and on such conditions as he thinks fit, any still in use at the commencement of this Act or any still used for any purpose other than the manufacture of portable spirits.

### 33. Special provisions regarding spirits manufactured by agricultural distillers

- (1) The manufacture of spirits by an agricultural distiller shall be subject to such supervision by an officer as the Director may in each case consider necessary.
- (2) An allowance may be made for natural waste and evaporation on all spirits of his own distillation stored by an agricultural distiller on his farm to the extent specified in Schedule No. 6 if the Director is satisfied that no part of such loss was wilfully or negligently caused.
- (3) No agricultural distiller shall use his still for distilling spirits from any material other than produce grown by him and which is of a kind prescribed by regulation in respect of the class of agricultural distiller to which he belongs.
- (4) Subject to the provisions of this Act and of any other law relating to liquor, the provisions of subsection (4) of section nineteen shall *mutatis mutandis* apply in respect of spirits manufactured from grapes by any class of agricultural distiller specified by the Minister by regulation, and for the purpose of such application any reference in the said subsection to a customs and excise warehouse shall be deemed to be a reference to the land on which such spirits are manufactured.
- (5) Spirits manufactured by an agricultural distiller from any prescribed fruit other than grapes shall be solely for his private use on the land where such fruit was produced and such spirits were manufactured.

#### 34. Special provisions regarding wine

- (1)
  - (a) The Director may, subject to such conditions as he may impose in each case, license the premises of a wine-grower, wine-growers' co-operative agricultural society, or a person who holds a licence under any law to deal in wine in wholesale quantities, as a special customs and excise warehouse for the purpose of manufacturing wine.
  - (b) Special warehouses licensed under this subsection shall, for the purposes of this Chapter be deemed to be customs and excise manufacturing warehouses.
- (2) Where less than fifty per cent by volume of wine manufactured in any customs and excise warehouse is manufactured from wine or grapes originating in a district within 400 kilometres of such warehouse, the Minister may by regulation prescribe a fixed allowance in respect of working and processing losses and losses due to natural causes which shall be granted in lieu of the allowance in respect, of such losses provided for in subsection (5) of section nineteen.

#### 35. Special provisions regarding cigarette and cigarette tobacco

- (1) The Minister may by regulation prescribe the sizes and types of containers which may be used by a manufacturer for the packing of cigarettes and cigarette tobacco.
- (2) No manufacturer may remove any cigarettes or allow any cigarettes to be removed from the customs and excise manufacturing warehouse in question unless they have been packed in the prescribed manner and a stamp impression determined by the Minister has been made on their containers:

Provided that the Minister may allow cigarettes so packed to be removed from such warehouse in such circumstances as he may deem fit, without such stamp impression having been made on such containers.
- (3) No cigarettes or cigarette tobacco shall be sold or disposed of or removed from the customs and excise manufacturing warehouse in question in partly or completely manufactured condition except in accordance with the provisions of this Act.
- (4) No person shall—
  - (a) counterfeit or make any facsimile of any dye or impression stamp determined under subsection (2);
  - (b) be in possession of, use or offer for sale or for use—
    - (i) any dye or impression stamp counterfeited in contravention of paragraph (a); or
    - (ii) any facsimile of any dye or impression stamp made in contravention of that paragraph.

#### 36. Specific provisions regarding beer

- (1) If the relative density before fermentation of any worts to be used in the manufacture of beer in Lesotho, in the collecting or fermenting vessels in a customs and excise manufacturing warehouse exceeds by more than two per cent the relative density which should, according to the manufacturing records of the manufacturer be the relative density of such worts, such manufacturer shall be guilty of an offence.
- (2) Bate's saccharometer and table shall be used to ascertain the relative density of worts, and 1° of relative density shall be taken to be equal to one thousandth part of the relative density of distilled water at 15,6° celsius.
- (3) When fermentation has commenced in any worts so that the original relative density cannot be ascertained by the prescribed saccharometer, such relative density shall be determined in accordance with the regulations.

- (4) Every manufacturer shall, in respect of beer manufactured by him in Lesotho, register with the Director the names whereunder such beer will be sold or disposed of for home consumption together with the number of the sub-item of tariff item 104.10 of Part 2 of Schedule No. 1 which will apply in respect of beer so sold or disposed of under every such name and no beer shall be so sold or disposed of except under a name so registered.
- (5) No beer shall be sold or disposed of by any manufacturer for home consumption except in a container which indicates the name of such beer, and any invoice or other document relating to such sale or disposal of such beer shall indicate the name thereof.
- (6) Any description on any container of beer bearing an indication of a name registered with the Director shall be deemed to be a declaration for the purpose of assessment of duty.
- (7) The Director may exempt beer of any class or kind from any or all of the provisions of sub-section (4) and (5).
- (8)
  - (a) If the relative density before fermentation of any beer in any container bearing an indication of a name registered with the Director under this section, is ascertained to be higher or lower than the relative density before fermentation specified in the sub-item of tariff item 104.10 so registered in relation to beer of such name, the manufacturer shall be liable for duty on the full quantity of the brew or blend of brews of beer from which such container was filled at the rate of duty applicable to beer of the same relative density before fermentation as that ascertained in respect of the contents of such container or to beer of the same relative density before fermentation as that registered in relation to the name on such container, whichever is the higher rate of duty.
  - (b) If the Director is unable to establish such full quantity from the records of the manufacturer, he may determine a quantity which shall be deemed to be such full quantity.
  - (c) Any beer of any brew or blend of brews of beer referred to in paragraph (a) and not delivered from the stocks of such manufacturer shall be liable to forfeiture.

### **37. Special provisions in the manufacture of sales duty goods and the collection of sales duty**

- (1) Every manufacturer of sales duty goods, every owner of sales duty goods manufactured for him partly or wholly from materials owned by such owner, and every manufacturer of and dealer in pearls, precious and semi-precious stones, precious metals, rolled precious metals or articles containing or manufactured of such pearls, precious and semi-precious stones, precious metals or rolled precious metals (excluding imitation jewellery), shall license his premises as a special customs and excise warehouse for sales duty purposes in terms of the provisions of this Act, and no such manufacturer, owner or dealer shall manufacture or deal in or with sales duty goods unless he has so licensed his premises:

Provided that the Minister may in his discretion and to the extent he deems fit, exempt, on the conditions imposed by him in each case, any such manufacturer, owner or dealer from the requirements of this Act.

- (2) Notwithstanding anything to the contrary in this Act contained—
  - (a) where the value added by any process in the manufacture of sales duty goods is, in the opinion of the Minister, low in relation to the manufacturer's selling price of such goods, or where any process in the manufacture of sales duty goods presents in his opinion exceptional difficulties in the collection of sales duty in respect of such goods, the provisions of sub-section (1) shall apply, and due entry of such goods shall be effected, at such stage in the manufacture of the said goods as he may in his discretion determine, and the processes which shall be deemed to be included for the purpose of calculating the value for sales duty purposes of such goods shall be as determined by him;

- (b) the Minister may, subject to such conditions as he may impose in each case—
  - (i) where the production and disposal of any sales duty goods are performed by different persons, or under other circumstances rendering it expedient in his opinion to do so, issue one licence under the provisions of this Act in respect of the premises of two or more persons concerned, and thereupon each such person shall be jointly and severally liable for the sales duty on all the sales duty goods concerned, any one paying, the other or others to be absolved pro tanto;
  - (ii) include in a special customs and excise warehouse licence issued under this Act in respect of the premises of any manufacturer of sales duty goods, any warehouse, depot, agency, branch or other storage place approved by the Minister and in which any such goods owned by such manufacturer, are stored, and thereupon such goods so stored shall, for the purposes of this Act, be deemed to be in the licensed special customs and excise warehouse of such manufacturer, and the licensee concerned shall be liable as such in all respect for compliance with the requirements of this Act and for the sales duty on such goods so stored;
  - (iii) in such circumstances as he may deem expedient, license the premises of any dealer in sales duty goods as a special customs and excise warehouse under the provisions of this Act, and thereupon such dealer shall comply with the requirements of this Act relating to the collection of sales duty on such sales duty goods as the Minister may determine, and be liable for sales duty on such goods;
  - (iv) make such temporary or permanent adjustment to the sales duty value of any sales duty goods as he may deem reasonable in circumstances which are in his opinion exceptional.
- (3) Sales duty goods manufactured in Lesotho by any natural person for his own use and not for sale or disposal and in circumstances which in the opinion of the Minister do not constitute a business venture, may, subject to such conditions as he may impose in each case, be exempted by the Minister from the payment of sales duty thereon.
- (4) Sales duty goods manufactured in Lesotho by any other person, or any class or kind of such goods, may, subject to such conditions as the Minister may impose, be exempted by the Minister from the payment of sales duty thereon if—
  - (a) the average value for sales duty purposes of such goods or such class or kind of such goods has during such period or periods as the Minister may determine, not exceed such amount as the Minister may determine; or
  - (b) the value for sales duty purposes of such goods or such class or kind of such goods is in the opinion of the Minister not likely to exceed the amount referred to in paragraph (a) during any calendar year; or
  - (c) such circumstances as may be prescribed by regulation apply.

### **38. Duties applicable to goods manufactured in a customs and excise warehouse**

- (1) In respect of any goods manufactured in a customs and excise warehouse there shall be paid, subject to the provisions of [section 76](#) on entry for home consumption thereof, duty at the undermentioned rates, namely—
  - (a) if such manufactured goods are not liable to excise duty, the fiscal and customs rate of duty applicable in terms of Schedules Nos. 1 and 2 on any imported goods used in the manufacture of such manufactured goods and the excise rate of duty applicable in terms of Schedule No. 1 on any excisable goods used in the manufacture of such manufactured goods; and
  - (b) if such manufactured goods are liable to excise duty, the excise rate of duty applicable in terms of Schedule No. 1 on such manufactured goods.

- (2) Notwithstanding the provisions of subsection (1), the Director may, on such conditions as he may in each case impose, for the purposes of preserving any goods in a customs and excise storage warehouse or of reconditioning such goods which, as a result of contamination or deterioration or for any other reason, have become unsaleable or not readily saleable or for the purpose of fulfilling special orders, permit such goods to be reconditioned or to be mixed or blended in such warehouse with other goods, and in that event duty shall be paid, in lieu of the duties prescribed in subsection (1), according to the first account taken of any such goods or the total quantity of such reconditioned mixed or blended goods, whichever quantity is the greater, as follows, namely—
- (a) if such reconditioned, mixed or blended goods are not liable to excise duty, at the fiscal and customs rate of duty applicable in terms of Schedule No. 1 and 2, on any imported goods contained in such reconditioned, mixed or blended goods, and at the excise rate of duty applicable in terms of Schedule No. 1 on any excisable goods contained in such reconditioned, mixed or blended goods; and
  - (b) if such reconditioned, mixed or blended goods are liable to excise duty, at the excise rate of duty applicable in terms of schedule No. 1, on the total quantity of such reconditioned, mixed or blended goods, and in addition thereto, duty in an amount equal to the amount by which the customs duty at the rate applicable in terms of schedule Nos. 1 and 2, on any imported goods contained in such reconditioned mixed or blended goods, exceeds the excise duty at the rate applicable in terms of this paragraph on such proportion of such reconditioned, mixed or blended goods as is represented by such imported goods contained therein:

Provided that such reconditioned, mixed or blended goods shall in either case, qualify for any rebate of duty specified in respect of such goods in any applicable item of schedule No. 3, 4 or 6.

- (3) Where the Director has permitted any goods to be reconditioned or to be mixed or blended in a customs and excise storage warehouse with other goods, such warehouse shall, without being licensed as a customs and excise manufacturing warehouse and without approval of the premises or plant thereon, be regarded for the purpose of this Act as a licensed customs and excise manufacturing warehouse.
- (4) (a) Notwithstanding anything to the contrary in this chapter contained, the Director may, on such conditions as he may in each case impose, permit the mixing or blending of mineral oil products which have been entered for home consumption and have passed out of customs and excise control but have not been delivered from the stocks of the importer or the manufacturer, for the purposes of rendering such goods saleable or more readily saleable or of fulfilling special orders.
- (b) The provisions of subsection (2) in so far as they relate to the duty payable and the rebate of duty shall *mutatis mutandis* apply in respect of mineral oil products mixed or blended under this subsection.
- (c) Any duty paid in respect of any goods so used for mixing or blending shall be deemed to have been paid in respect of any duty payable in accordance with the provisions of paragraph (b) in respect of the mineral oil products obtained by such mixing or blending.
- (d) Nothing in this section contained shall be construed as authorising a refund of any amount by which any duty already paid or assessed in respect of any goods so used for mixing or blending exceeds the duty payable under this subsection.
- (e) Any such mineral oil products used in such mixing or blending shall be deemed to consist entirely of imported goods unless it is proved to the satisfaction of the Director that it consists entirely of excisable goods or it is proved to his satisfaction that it contains such small proportion of imported goods that he considers it negligible, in which event such mineral oil products shall be deemed to consist entirely of excisable goods.
- (5) For the purpose of subsection (4) "importer" or "manufacturer" includes any person who, by virtue of an agreement with a person who imports or manufactures mineral oil products, undertakes

the distribution or sale in Lesotho, in wholesale quantities of mineral oil products imported or manufactured by the importer or manufacturer.

*[L.N. 34 of 1983]*

- (6) If the Director is satisfied that any goods to which this Act relates have become mixed by an act or omission which by the exercise of reasonable care could not have been avoided, he may apply the provisions of subsection (2), in so far as that subsection relates to the duty payable and any rebate of duty, as if such goods were mixed in a customs and excise storage warehouse with his permission.
- (7) Notwithstanding anything to the contrary in this Act contained, the Director may, subject to such conditions as he may in each case impose, regard the mixing of mineral oil products of different classes or kinds as a result of transport by pipeline (except a pipeline used in connection with the loading or discharge of vehicles) or the mixing of imported and locally manufactured mineral oil products of the same class or kind in the ordinary course of transport or storage or distribution in Lesotho as not constituting manufacture of a new product, provided the quantities of the constituent products entered before they became so mixed are separately accounted for to his satisfaction.
- (8) There shall be paid on entry for home consumption, in addition to any duty payable in terms of this section and subject to the provisions of section 26(3) and 76, sales duty at the rate applicable in terms of schedule No. 1 on any sales duty goods used or incorporated in the manufacture, reconditioning, mixing or blending of any goods to which this section relates and on any such manufactured, reconditioned, mixed or blended goods, which are liable to sales duty in terms of the aforementioned schedule.

## Chapter V

### Clearance and origin of goods: Liability for and payment of duties

#### 39. Entry of goods and time of entry

- (1) (a) Every importer of goods shall within seven days of the date on which such goods are, in terms of section 10, deemed to have been imported or within such further time as the Director may allow, make due entry of those goods, in the form prescribed, and declare to the truth of such entry:
 

Provided that, subject to the permission of the Director—

    - (i) containers temporarily imported;
    - (ii) human remains;
    - (iii) goods which in the opinion of the Director are of no commercial value;

*[L.N. 34 of 1983]*

    - (iv) goods imported under an international carnet; and
    - (v) goods of a value for duty purposes not exceeding one hundred maloti, and on which no duty is payable in terms of schedule No. 1, need not be so entered.
  - (b) The Director at any place appointed under the provisions of this Act for the entry of goods shall accept entries for goods in respect of which it is proved to the satisfaction of the Director that such goods have been loaded on a vehicle for discharge at that place, notwithstanding the fact that such vehicle has not yet arrived at that place.
- (2) Every importer shall within seven days of the granting of a delivery order by the Director in respect of any goods entered in terms of sub-section (1), or, where the goods in question arrive after granting of the order, within seven days of the arrival of such goods, present such delivery order to the authority in possession of such goods for delivery thereof.



- (3) Every exporter exporting any goods shall before such exportation takes place deliver to an officer a bill of entry in the prescribed form, but the Director may, if no export duty is payable on and no obligation or condition is to be fulfilled or complied with under any law in respect of such goods, allow such a bill of entry to be delivered at such time as he deems reasonable.
- (4) (a) The Minister may by regulation permit any excisable goods, sales duty goods and any class or kind of imported goods, which he may specify by regulation, to be removed from a customs and excise warehouse on the issuing by the owner of such goods of a prescribed certificate or an invoice or other document, prescribed or approved by the Minister, and the payment of duty on such goods at a time and in a manner specified by regulation, and such certificate, invoice or other document shall for the purposes of [section 19\(4\)](#) and subject to the provisions of [section 40\(3\)](#), be deemed to be a due entry from the time of removal of those goods from the customs and excise warehouse.
- (b) No such goods may be removed from a customs and excise warehouse or appropriated for use by the owner prior to or without the issuing of such certificate, invoice or other document.

#### 40. Importer and exporter to produce documents and pay duties

- (1) (a) The person entering any imported goods for any purpose in terms of the provisions of this Act shall deliver to the Director a bill of entry in the prescribed form, setting forth the full particulars as indicated on the form and as required by the Director, and according to the purpose (to be specified on such bill of entry) for which the goods are being entered, and shall make and subscribe to a declaration in the prescribed form, as to the correctness of the particulars and purpose shown on such bill of entry.
- (b) At the same time the said person shall deliver such duplicates of the bill of entry as may be prescribed or as may be required by the Director and shall pay all duties due on the goods.
- (c) The said person shall further produce the transport document or such other document in lieu thereof as may be approved by the Minister, invoices as prescribed, shipper's statement of expenses incurred by him, copy of the confirmation of sale or other contract of purchase and sale, importer's written clearing instructions and such other documents relating to such goods as the Director may require in each case and answer all such questions relating to such goods as may be put to him by the Director, and furnish in such manner as the Minister may determine such information regarding the tariff classification of such goods as the Minister may require.
- (d) The Director may, subject to such conditions as he may determine, allow the said person to produce in lieu of any document required to be produced in terms of paragraph (c), a document purporting to be a copy of any such document and obtained by means of microfilming or any other process, and which shall, subject to compliance with such conditions, for all purposes have all the effects of the original document concerned.
- (e) The said person shall also, in respect of any class or kind of goods as may be specified by the Minister by rule or any. goods to which circumstances so specified apply, produce to the Director for retention by him, such a sample as may be so specified and a true copy of any invoice or other document relating to such goods or of any blueprint, illustration, drawing, plan or illustrated and descriptive literature so specified in respect of such goods and relating to such goods.
- (2) (a) If any goods intended for export are liable to any export duty under this Act, the amount thereof shall be stated in the bill of entry relating to such goods and shall be payable upon presentation of such entry to the Director.
- (b) No such bill of entry shall be valid, nor shall any person export such goods, until the duty has been paid to the Director.
- (3) (a) Any person who removes goods from a customs and excise warehouse by means of the issuing of a certificate, invoice or other document referred to in [section 39](#) (4) shall present



to the Director a validating bill of entry in the prescribed form at the time and in the manner specified by regulation in respect of any such certificate, invoice or other document, and shall pay at the prescribed time to the Director the duty due on the goods to which such certificate, invoice or other document relates.

- (b) The said person shall present to an officer such validating bill of entry setting forth the full particulars indicated thereon, and the declaration shall be duly signed by the prescribed person and there shall be as many duplicates and such supporting documents as may be prescribed or as may be required by the Director.
- (4) The Minister may by notice in the *Gazette* specify the manner in which bills of entry for goods of any such class or kind as may be specified in such notice, or goods imported or exported in such manner or such circumstances as may be so specified, shall be delivered.

#### 41. Validity of entries

- (1) No entry shall be valid unless—
  - (a) in the case of imported or exported goods, the description and particulars of goods and the marks and particulars of the packages declared in that entry correspond with the description and particulars of the goods and the marks and particulars of the packages as reported in terms of section 7 or 12 or in any certificate, permit or other document, by which the importation or exportation of those goods is authorised;
  - (b) the goods have been properly described in the entry by the denomination and with the characters, tariff heading and item numbers and circumstances according to which they are charged with duty or are admitted under any provision of this Act or are permitted to be imported or exported;
  - (c) the true value of the goods on which duty is leviable or which is required to be declared under the provisions of this Act and the true territory of origin, territory of export and means of carriage have been declared;
  - (d) in the case of goods purchased by or sold, consigned or disposed of to any person in Lesotho, a correct and sufficient invoice thereof, in the prescribed form, has been produced to the Director;
  - (e) the correct duty due has been paid.
- (2) Goods taken or delivered or removed by virtue of an entry which is not valid out of any aircraft, vehicle, transit shed, container terminal, container depot, customs and excise warehouse or other place where they have been deposited with the sanction of the Director, shall be deemed to be goods landed or taken without due entry thereof:

Provided that if such goods are included in any entry embracing more than one package, and it is shown that the invalidity arose without wilful default or negligence of anyone connected with the goods, and that such invalidity does not exist as to all the packages in that entry then only the packages not validly entered shall be deemed to have been landed or taken without due entry.

- (3) (a) The Minister may, subject to the provisions of [section 77](#) and [78](#) and on such conditions as he may impose and on payment of such fees as he may prescribe by regulation, allow the importer or exporter or manufacturer to adjust any bill of entry which is invalid or incorrect or has been passed in error, by means of a voucher of correction or by substitution of a correct bill of entry and cancellation of the original bill of entry:

Provided that acceptance of such voucher or correct bill of entry shall not indemnify such importer or exporter or manufacturer against any fine or penalty provided for in this Act.

- (b) No application for such substitution shall be considered by the Minister unless it is received by the Director, supported by the necessary documents and other evidence to prove that such substitution is justified, within a period of three months from the date on which the duty to which the application relates was paid.

## 42. Particulars on invoices

- (1) The exporter of any goods imported into or exported from Lesotho or the owner of any excisable goods or sales duty goods manufactured in any customs and excise warehouse shall render a true, correct and sufficient invoice, certificate of value and certificate of origin of such goods in such form and declaring such particulars of such goods as may be prescribed in the regulations and as may be necessary to make a valid entry of such goods and shall furnish such additional information in connection with such invoice, certificate, particulars or goods as the Director may, for the purposes of this Act, require at any time:

Provided that different requirements may be prescribed in the regulations in respect of invoices and certificates relating to goods of different classes or kinds or goods to which different circumstances specified in the regulations apply.

- (2) Every exporter or manufacturer shall allocate to any goods of a class or kind specified in the regulations for the purposes of this subsection and exported to or from or manufactured in Lesotho after a date specified by the Minister by notice in the *Gazette*, a distinctive and permanent identification number, code, description, character or other mark in such a manner and in accordance with such method as may be prescribed in the regulations and from the day immediately after such date such number, code, description, character or other mark shall be quoted or reproduced in all prescribed invoices relating to such goods and in all other documents relating to such goods as may be specified in the regulations.
- (3) All particulars in any prescribed invoice and certificate in respect of imported goods shall relate to the goods in the condition in which they are imported into Lesotho and for the purposes of [section 107\(2\)](#) no change in such conditions shall be deemed to have taken place between the time of importation and the time of any examination or analysis decided upon by the Director unless the importer is able to satisfy the Director of any such change and the extent thereof:

Provided that the Director may in his discretion refuse to act upon the result of any such examination or analysis if the particulars in such invoice are thereby proved to be incorrect.

- (4) (a) All particulars necessary to make a valid entry and all particulars in respect of the normal price or of any commission, discount, cost, charge, expense, royalty, freight, duty, tax, drawback, refund, rebate, remission or other information whatever which relates to and has a bearing on such price, shall be declared by the exporter in any prescribed invoice or certificate in respect of imported goods and such particulars shall, except where the Director otherwise determines, relate to the final amount of such normal price or commission, discount, cost, charge, expense, royalty, freight, duty, tax, drawback, refund, rebate or remission and to the final particulars or information regarding such goods.
- (b) Any particulars referred to in paragraph (a) and declared in any prescribed invoice or certificate in respect of any imported goods shall be subject to any credit or debit note passed by the exporter or to any refund made or becoming due to the exporter or any amount paid or becoming due to the exporter (directly or indirectly, in money or in kind or in any other manner) or to any change of any nature whatever in such particulars in respect of such goods after the date of issue of such invoice or certificate and the exporter shall whenever any such note is passed, or refund is made or becomes due or amount is paid or becomes due or change takes place forthwith issue an amended invoice or certificate to the importer who shall produce such amended invoice or certificate to the Director within one month of receipt thereof and report the circumstances to him.
- (c) If any particulars referred to in paragraph (a) of any imported goods are not declared in the prescribed invoice or certificate in respect thereof or if any change in the particulars declared in any prescribed invoice or certificate relating to any imported goods which occurs after the date of issue of any such invoice or certificate is not forthwith reported to the Director by the importer of such goods or if the Director has reason to believe that an offence referred to in [section 87](#) (f) or (g) has been committed in respect of any imported goods the Director may determine a normal price, origin, date of purchase, quantity, description or any

characteristics of such goods according to the best information available to him which shall, subject to the right of appeal to the Minister, be deemed to be the normal price, origin, date or purchase, quantity, description or the characteristics of such goods.

- (d) The right of appeal referred to in paragraph (c) shall be exercised within a period of three months from the date of the determination concerned.

#### **43. Entry by bill of sight**

- (1) If any importer makes and subscribes to a declaration that he cannot for want of full information make due entry of any goods, the Director may accept an entry by bill of sight for those goods by the best description which can be given, and may grant a warrant in respect thereof so that the same may be landed and brought to a place indicated by the Director at the risk and expense of the importer for the purpose of being seen and examined by him there in the presence of the Director.
- (2) (a) The importer shall make due entry of those goods within three days of the date on which they were brought to the place of examination which shall be regarded as a special state warehouse for the purpose of securing the duties thereon until the goods are duly entered and removed or delivered in accordance with this Act.
- (b) In default of due entry such goods may after three months of the date of receipt thereof into the said place of examination be disposed of in the manner described in [section 44](#).
- (3) No goods entered by bill of sight in terms of this section shall be removed without due entry after sight, and the penalties prescribed in this Act in respect of the incorrect or false entry of goods are also applicable in respect of the said due entry after sight.

#### **44. Disposal of goods on failure to make due entry**

- (1) If entry of any imported goods has not been made under the provisions of [section 39](#) the Director may, on expiry of the period prescribed in sub-section (1) of the said section, require the person who brought the goods into Lesotho to remove them to the State Warehouse or other place indicated by the Director or may himself so remove them.
- (2) The Director may at any time after the expiry of such prescribed period call upon the importer to make due entry of the goods within a time specified and if such importer fails to do so the goods shall be liable to forfeiture.
- (3) If after the expiration of three months from the date of removal to the State warehouse or other place indicated by the Director or, where no such removal has taken place, from the date of expiry of the period prescribed in subsection (1) of [section 39](#), any goods remain unentered, the Director may cause them to be sold, and if so sold the proceeds thereof shall be applied in discharge of any duty, expenses incurred by the department, charges due to the department, the Railway Administration, a container operator or a depot operator, and freight, and the overplus, if any, shall, unless the Director is satisfied that such goods were imported in contravention of any law, upon application be paid to the owner of the said goods: Provided that—
- (a) if the goods cannot be sold for a sum sufficient to cover the duty, expenses, charges and freight as aforesaid the Director may accept the sum offered and apply it in discharge of the said debits in the order mentioned or direct that the goods in question be destroyed or appropriated to the State; or
- (b) If the goods cannot be sold at a price regarded by the Director as reasonable, they may in his discretion be appropriated to the State; and
- (c) No payment of overplus in respect of goods sold shall be made to the owner of the goods, unless the application for such payment is supported by proof of ownership of the goods and is received by the Director within two years from the date of sale of the goods.

- (4) Notwithstanding anything to the contrary in this Act contained—
- (a) if any goods referred to in subsection (3) are of a perishable or dangerous nature, or if the Director considers that, unless the goods are sold at once, the proceeds would not be sufficient to cover the duties and charges due or charges which may become due in respect of those goods, he may forthwith direct the sale thereof and apply the proceeds as provided in sub-section (3);
  - (b) if any goods are sold in terms of this section subject to compliance by the purchaser with any condition, and the purchaser fails to comply with such conditions within a period of three months from the date of sale of such goods, such sale shall be null and void and the net proceeds of sale may be refunded to the purchaser and the Director may direct that the goods in question be destroyed or appropriated to the State or be dealt with in such manner as he may deem fit.

#### 45. Liability for duty

- (1) Liability for duty on any goods to which [section 10](#) relates shall commence from the time when such goods are in terms of that section deemed to have been imported into Lesotho:
- Provided that, subject to the provisions of subsection (7), any such liability shall cease if it is proved to the satisfaction of the Director that such goods (excluding, save in so far as the regulations otherwise provide, goods which are missing from any individual package and in respect of which any customs duty or sales duty or surcharge, each taken separately, does not exceed twenty-five maloti) were not landed at any place in Lesotho.
- (2) Any excisable goods or sales duty goods shall, for the purposes of this Act, be deemed to have been manufactured at that stage in the manufacturing process when the said goods have acquired the essential characteristics of and are in the opinion of the Director capable of use as such excisable goods or sales duty goods, and liability for duty shall commence at the said stage.
- (3) The pilot of an aircraft or carrier of goods by means of any other vehicle shall be liable for the duty on all goods which are removed from that aircraft or vehicle at a place in Lesotho to which they are not consigned, and such liability shall continue until the goods have been duly entered or otherwise accounted for to the satisfaction of the Director.
- (4) The pilot or carrier concerned shall be liable for the duty on all goods deemed in terms of [section 10](#) to have been imported, except goods in respect of which an air consignment note or other document was issued on loading of such goods onto the aircraft or vehicle by means of which they were imported stating that the said goods were accepted for conveyance at the risk of the owner thereof in all respects and not only as regards risk in respect of damage to such goods, provided such goods have not been landed and placed in a transit shed appointed or prescribed under [section 6\(1\)](#).
- (5) The liability of the pilot or other carrier for duty in terms of subsection (4) shall cease—
- (a) upon lawful delivery of the goods, after due entry thereof has been made, to the importer or his agent; or
  - (b) if due entry of the goods has not been made, upon delivery thereof to the State warehouse or other place indicated for the purposes of this section by the Director; or
  - (c) upon delivery of the goods, if containerized, to a container operator; or
  - (d) in respect of such goods for which an air cargo transfer manifest has been completed, upon delivery thereof to Lesotho Airways.
- (6) The liability of a container operator for duty in terms of subsection (8) (a) shall cease—
- (a) in respect of goods which are containerized, upon lawful delivery thereof, after due entry thereof has been made, to the importer or his agent; or

- (b) in respect of goods containerized in L.C.L. containers, upon delivery thereof to a depot operator; or
  - (c) in respect of any of such goods of which due entry has not been made, upon delivery thereof to the State warehouse or other place indicated for the purposes of this section by the Director.
- (7) The liability of a depot operator for duty in terms of subsection (8) (b) shall cease—
- (a) in respect of goods containerized in L.C.L. containers, upon lawful delivery thereof, after due entry thereof has been made, to the importer or his agent; or
  - (b) in respect of any such goods of which due entry has not been made, upon delivery thereof to the State warehouse or other place indicated for the purposes of this section by the Director.
- (8) In all cases where the pilot or other carrier is not liable for duty on any imported goods or where the liability of the said pilot or other carrier has ceased in respect of such goods in terms of this section, liability for duty thereon shall, subject to the provisions of Chapter VII, rest—
- (a) in the case of contemplated in subsection 5 (c), on the container operator concerned;
  - (b) in the case contemplated in subsection 6 (b) on the depot operator concerned; and
  - (c) in any other case, on the importer, or the owner of such goods.
- (9) Notwithstanding anything to the contrary in this section contained, no importer shall be granted a refund of customs duty; sales duty; surcharge paid in respect of any goods missing from any individual imported package, if any such customs duty, sales or surcharge each taken separately, does not exceed twentyfive maloti.
- (10) The manufacturer, owner or purchaser of any excisable or sales duty goods shall, subject to the provisions of Chapter VII, be liable for the duty on such goods and his liability shall continue until such goods have been duly entered and the duty due thereon paid.
- (11) For the purposes of subsection (5) an entry by bill of sight shall be deemed to be due entry.
- (12) Any duty for which any person is liable in terms of this section shall be payable upon demand by the Director.

#### **46. Determination of duty applicable**

- (1) Notwithstanding anything to the contrary in this Act contained, all goods consigned or imported into Lesotho or stored or manufactured in a customs and excise warehouse or removed in bond shall upon being entered for home consumption or upon payment of duty for any reason whatever, be liable to such duties (including antidumping duties and countervailing duties) specified in schedule No. 2 and new or increased duties referred to in subsection (1) of section (58) and duties imposed under the provisions of section (52) as may at the time of such entry or payment be leviable upon such goods.
- (2) For the purposes of this section, the time of entry for home consumption of goods imported by post (and not entered at a customs and excise office before an officer) shall be deemed to be the time when such goods are assessed for duty.

#### **47. Origin of goods**

- (1) For the purpose of this Act (excluding chapters VI and IX), goods shall not be regarded as having been produced or manufactured in any particular territory unless—
  - (a) at least twenty-five per cent (or such other percentage as may be determined under subsection (2), (3) or (4)) of the production cost of those goods, determined in accordance with the regulations, is represented by materials produced and labour performed in that territory;

- (b) the last process in the production or manufacture of those goods has taken place in that territory; and
  - (c) such other processes as the Minister may, by regulation prescribe in respect of any class or kind of goods, have taken place in the production or manufacture of goods of such class or kind in that territory.
- (2) The Minister may from time to time by regulation increase the percentage prescribed in subsection (1), in regard to any class or kind of imported goods to which that subsection applies.
  - (3) The Minister may, under an agreement with the government of any territory, increase or reduce for the purposes of section 51 the percentage prescribed in subsection (1) of this section in so far as that territory is concerned, in regard to any class or kind of goods to which that subsection applies.
  - (4) The Minister may—
    - (a) in respect of any excisable or other goods produced or manufactured in Lesotho or any class or kind of such goods or any such goods in respect of which circumstances specified by rule apply, increase or reduce by rule the percentage prescribed in sub-section (1);
    - (b) exclude by notice in the *Gazette* any goods or class or kind of goods referred to in paragraph (a) from the provisions of subsection (1);
    - (c) prescribe by notice in the *Gazette* that any goods or class or kind of goods referred to in paragraph (a) shall not be regarded as having been produced or manufactured in Lesotho unless such processes in connection with the production or manufacture as may be specified in such notice have taken place in Lesotho.
  - (5) On any question arising whether goods shall be regarded as having been produced or manufactured in a particular territory, in terms of this section, the decision of the Minister shall be final.

#### 48. Payment of duty and rate of duty applicable

- (1) Subject to the provisions of this Act, and in accordance with the obligations imposed under the Customs Union Agreement, duty shall be paid for the benefit of the Consolidated Fund on all imported goods and all excisable goods and all sales duty goods and on all surcharge goods in accordance with the provisions of schedule No. 1 as in force in the Republic of South Africa at the time of entry for home consumption of such goods:
 

Provided that the Director may in his discretion condone any underpayment of such duty where the amount of such underpayment in the case of—

  - (a) goods imported by post is less than fifty lisente;
  - (b) goods imported in any other manner is less than five maloti; or
  - (c) excisable goods is less than two maloti.
- (2) The fiscal duty specified in column III in any tariff heading or sub heading in Part I of schedule No. 1 shall apply to any goods to which such heading relates irrespective of the territory in which such goods were produced or manufactured.
- (3) In addition to any fiscal duty which may be payable under subsection two customs duty at the most favoured nation rate specified in column V in any tariff heading or sub-heading in Part I of schedule No. 1 shall apply to any goods to which such heading or sub-heading relates if such goods were produced or manufactured in any territory—
  - (a) with the government of which an agreement has been concluded under [section 50](#) or [section 51](#) of this Act and the agreement makes provisions for the application of the most favoured-nation rate of duty in respect of the importation of the goods in question; or



- (b) the government of which has acceded to the agreement approved by section 2 of the Geneva General Agreement on Tariffs and Trade ([Proclamation No. 73 of 1948](#)) if in respect of that territory the last mentioned agreement applies as between the government concerned and the government of Lesotho.
- (4) In addition to any fiscal duty which may be payable under subsection (2), customs duty at the general rate specified in column IV in any tariff heading of subheading in Part I of schedule No. 1 shall apply to any goods to which such heading or sub heading relates if the most-favoured nation rate of duty does not apply to such goods in terms of subsection (3).
- (5) Any export duty which may become payable in terms of subsection (5) of [section 49](#) shall be paid for the benefit of the Consolidated Fund, at the time of entry for export, on such goods as may be specified in Part 5 of schedule No. 1 in terms of the provisions of the said section.
- (6) Any duty payable in terms of [section 52](#) and any anti dumping duty payable in terms of [section 54](#) shall be paid for the benefit of the Consolidated Fund in accordance with the provisions of the said sections.
- (7) Wherever the tariff heading or sub heading under which any goods are classified in Part I of schedule No. 1 is expressly quoted in any tariff item or sales duty item or surcharge item or item of Part 2, 3, 4, 5 or 6 of the said schedule or in any item in schedule No. 2 in which such goods are specified, the goods so specified in the said tariff item or sales duty item or surcharge item or item of the said Part 2, 3, 4, 5 or 6 or in the said item of schedule No. 2 shall be deemed not to include goods which are not classified under the said tariff heading or sub heading.
- (8) (a) The interpretation of Part I of schedule No. 1 shall be subject to the Explanatory Notes to the Nomenclature issued by the Customs Co-operation Council, Brussels, from time to time:
- Provided that where the application of any part of such Notes or any addendum thereto or explanation thereof is optional, the application of such part addendum or explanation shall be in the discretion of the Minister.
- (b) The Director shall obtain and keep in his office two copies of such Explanatory Notes and shall effect thereto any amendment of which he is notified by the said council from time to time and shall record the date of effecting each such amendment and any such amendment shall, for the purposes of this Act, be effective from the date so recorded.
- (c) Whenever in any legal proceeding any question arises as to the contents of such Explanatory Notes or as to the date upon which any amendment thereto was effected, a copy of such Explanatory Notes as amended in terms of this sub-section shall be accepted as sufficient evidence of the contents thereof and of the effective date of any amendment thereto.
- (9) (a) (i) The Minister may determine the tariff headings, tariff subheadings or items of any Schedule under which any imported goods or goods manufactured in Lesotho shall be classified.
- (ii) The acceptance by any officer of a bill of entry or the release of any goods as entered shall be deemed not to be any such determination.
- (b) Any determination so made shall, subject to appeal to the court, be deemed to be correct for the purposes of this Act, and any amount due in terms of any such determination shall remain payable as long as such determination remains in force.
- (c) The Minister may within 90 days from the date of any such determination publish it by notice in the *Gazette*.
- (d) The Minister may whenever he deems it expedient amend any such determination or withdraw it and make a new determination with effect from—
- (i) the date of first entry of the goods in question;
- (ii) the date of the notice referred to in paragraph (c);

- (iii) the date of the determination made under paragraph (a);
  - (iv) the date of such new determination; or
  - (v) the date of such amendment.
- (e) An appeal against any such determination shall lie to the division of the High Court of Lesotho having jurisdiction to hear appeals in the area wherein the determination was made, or the goods in question were entered for home consumption.
- (f) Such appeals shall be prosecuted within a period of 90 days from the date of the determination.
- (10) Save where—
- (a) a determination has been made under subsection (9) (a) or (d); or
  - (b) any false declaration is made for the purposes of subsection (9), there shall be no liability for any underpayment in duty on any goods, where such underpayment is due to the acceptance of a bill of entry bearing an incorrect tariff heading, tariff subheading or item of any Schedule, after a period of two years from the date of entry of such goods.

#### 49. Amendment of Schedule No. 1

- (1) The Minister may from time to time amend General Notes to schedule No. 1 and Part I of Schedule No 1 and Part 2 of the said schedule in so far as it relates to imported goods—
- (a) in order to give effect to any agreement approved by section 2 of the Geneva General Agreement on Tariffs and Trade ([Proclamation No. 73 of 1948](#)), or to any agreement concluded under section [50](#) or [51](#)
  - (b) in order to give effect to any amendment to the Explanatory Notes to the Nomenclature referred to in [section 48\(8\)](#) or to the Nomenclature set out in the annex to the Convention on Nomenclature for the classification of goods in Customs Tariffs signed in Brussels in 1950;
  - (c) by deleting any reference therein to any territory the government of which has cancelled without the consent of the Government of Lesotho or the Government of the Republic of South Africa, Botswana or Swaziland any preferential customs tariff applicable at the commencement of this law to any goods produced or manufactured in Lesotho or the Republic of South Africa, Botswana or Swaziland on their importation into such territory;
  - (d) whenever any similar amendment has been made by the government of the Republic of South Africa, Botswana or Swaziland.
- (2) The Minister may from time to time amend Part 2, Part 3 and Part 4 of Schedule No. 1, whenever he deems it expedient in public interest to do so:
- Provided that the Minister may, whenever he deems it expedient in the public interest to do so, reduce any duty specified in the said parts with retrospective effect from such date and to such extent as may be determined by him.
- (3) The Minister may whenever he deems it expedient in the public interest to do so, impose an export duty, on such basis as he may determine, in respect of any goods intended for export or any class or kind of such goods or any goods intended for export and any export duty so imposed shall be set out in the form of a schedule which shall be deemed to be incorporated in schedule No. 1 as Part 5 thereof and to constitute an amendment of schedule No. 1.
- (4) Whenever the Minister is satisfied that any amendment made under this section has an effect which was not foreseen or intended, he may adjust such amendment, to the extent he deems fit, with effect from the date of such amendment and any adjustment effected under this subsection shall be deemed to be an amendment under this section.



- (5) Any amendment made under this section before the date upon which the National Assembly meets for the first time for the dispatch of business in any session during which the Minister introduces the Appropriation Bill shall, unless the Parliament otherwise provides, lapse thirty days after the end of the session of the National Assembly during which the Minister introduced such bill, but without detracting from the validity of such amendment before it has so lapsed.
- (6) Whenever in any legal proceeding any question arises as to whether the Minister in fact moved as described in subsection (4), or as to the date upon which he so moved, a copy of the minutes of proceedings of the National Assembly that the Minister so moved and certified by the Speaker to the National Assembly to be a true copy shall be accepted as sufficient evidence that he so moved and of the date upon which it took place.
- (7) Any amendment made under this section may be made with retrospective effect.

## 50. Agreements in respect of rates of duty lower than the general rates of duty

The person or authority who exercises executive power may conclude an agreement with the government of any territory whereby, in consideration of equivalent privileges in respect of the importation of goods produced or manufactured in Lesotho, rates of duty lower than the general rates of duty specified in rates Part I of schedule No. 1 are on importation into Lesotho extended to specific goods produced or manufactured in that territory.

## 51. Agreement with African territories

- (1) The person or authority who exercises the executive power may conclude an agreement with the government of any territory in Africa in which it is provided that, notwithstanding anything to the contrary in this Act contained—
  - (a) goods produced or manufactured in or imported into Lesotho 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 Lesotho free of duty or at special rates of duty;  
*[L.N. 34 of 1983]*
  - (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 other 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;
  - (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.  
*[L.N. 34 of 1983]*
- (2) Payments made by the government of any territory to the government of Lesotho in terms of any agreement concluded under the provisions of subsection (1) shall accrue to Consolidated Fund, and payments by the government of Lesotho to the government of any territory in terms of any such agreement shall be made as a drawback of revenue as a charge to the Consolidated Revenue Fund.
- (3) For the purposes of this Act, any agreement which purports to have been concluded in terms of any law relating to Customs and which was being observed by Lesotho immediately prior to the coming into operation of this Act as being in force between Lesotho and any territory in Africa, shall be deemed to have been concluded in terms of and to be and at all relevant times to have been within the powers conferred by this section.

## 52. Discrimination by other countries

- (1) If the Minister is satisfied that the government of any territory has—
  - (a) imposed directly or indirectly on any goods wholly or partly produced or manufactured in Lesotho any duty, charge or restriction which is not imposed upon like goods produced or manufactured in any third territory; or
  - (b) has discriminated against the commerce of Lesotho in such a manner as to place it at a disadvantage in comparison with the commerce of any third territory, he may in his discretion, if he considers that the public interest will be served thereby, impose—
    - (i) on all goods or any class or kind of goods imported from the territory whose government has so acted; and
    - (ii) on all goods or any class or kind of goods whensoever imported, wholly or partly produced or manufactured in such territory, additional duties not exceeding the value for duty purposes of such goods, and from a date to be specified there shall be paid on such goods, upon entry for home consumption thereof, the additional duties at the rates imposed in addition to any other duties payable on such goods under the provisions of this Act.
- (2) Any additional duty imposed in terms of subsection (1) shall be set out in the form of a schedule which shall be deemed to be incorporated in Schedule NO 1 as Part 6 thereof and to constitute an amendment of Schedule NO 1.
- (3) The provisions of subsection (6) and (7) of [section 49](#) shall *mutatis mutandis* apply in respect of any amendment made under the provisions of this section.

## 53. Special provisions regarding importation of cigarettes

- (1) The Minister may by regulation prescribe the sizes and types of containers in which cigarettes may be imported into Lesotho.
- (2) No person shall import any cigarettes unless they have been packed in the prescribed manner and a stamp impression determined by the Minister has been made on their containers:

Provided that the Minister may allow cigarettes so packed to be imported, in such quantities and in such circumstances as he may deem fit, without such stamp impression having been made on such containers.
- (3) No imported cigarettes shall be sold or disposed of or removed from the Customs and Excise warehouse concerned except in accordance with the provisions of this Act.

## Chapter VI Anti-dumping and countervailing duties

### 54. Anti-dumping duties and countervailing duties

- (1) Subject to the provisions of this Chapter and of the regulations, the goods specified in Schedule No. 2 shall, upon entry for home consumption be liable, in addition to any other duty payable in terms of the provisions of this Act, to the appropriate anti-dumping or countervailing duties provided for in respect of such goods in that Schedule at the time of such entry, if they are imported from a supplier, or originate in a territory, specified in that Schedule in respect of those goods.
- (2) An anti-dumping duty as well as a countervailing duty shall not be imposed under this chapter on the same imported goods on account of the same circumstances.

- (3) (a) Wherever any anti-dumping or countervailing duty is imposed on any goods under the provisions of this chapter, the owner of any such goods stored in a Customs and Excise warehouse shall produce the invoice and other documents relating to such goods to the Officer not later than the time of entry of all or any part of such goods for removal from such warehouse.
- (b) The provisions of paragraph (a) shall not apply in the case of such goods entered for export from a customs and excise warehouse.
- (4) An anti-dumping or countervailing duty imposed under the provisions of this Chapter shall not apply to any goods entered under the provisions of any item specified in Schedule No. 3 or 4 unless such item is specified in Schedule No. 2 in respect of such goods.
- (5) Notwithstanding the provisions of section 55 or 56, the Minister may, subject to such conditions as he may impose in each case, exempt from payment of any anti-dumping or countervailing duty, any goods which are imported in such circumstances or in such quantities that the importation of such goods does not, in his opinion, constitute regular importation of such goods for trade purposes.

## 55. Imposition of anti-dumping duties

- (1) The Minister may from time to time amend Schedule No. 2 whenever he is satisfied—
  - (a) that any goods have been or are being or are likely to be imported into Lesotho in circumstances in which they shall in terms of subsection (2) be deemed to have been dumped;
  - (b) that the effect of such importation will be—
    - (i) to cause or threaten material injury to an established industry in Lesotho or materially retard the establishment of an industry in Lesotho; or
    - (ii) to cause or threaten material injury to an established industry in another territory which is the territory of origin of any identical or comparable goods imported into Lesotho; or
  - (c) that it would be in the public interest to impose such anti-dumping duty in respect of the goods referred to in paragraph (a) as will in his opinion meet the dumping contemplated in subsection (2):  
 Provided that such duty shall not exceed the margin of dumping referred to in subsection (5).
  - (d) The Minister may, in respect of any class or kind of imported goods on which a provisional charge has been imposed under [section 57](#), so amend schedule NO 2 with effect from a date not more than three months prior to the date with effect from that which provisional charge has been imposed.
- (2) Imported goods shall for the purposes of subsection (1) (a) be deemed to have been dumped if—
  - (a) their export price to Lesotho is less than the price at which identical or comparable goods are being sold in the ordinary course of trade in any market in the territory of origin, if it is also the territory of export, of the said imported goods or, subject to the provisions of subsection (3), in the territory of export, if it is not the territory of origin, of the said imported goods, for consumption there; or
  - (b) where it appears to the Minister that identical or comparable goods are not being sold in any such territory in such circumstances that their price there can be determined as contemplated in paragraph (a), the export price to Lesotho of the said imported goods is less than either—
    - (i) the highest comparable price for identical or comparable goods when exported from any such territory to any third territory in the ordinary course of trade; or

- (ii) the cost of production of identical or comparable goods in the territory of origin of the said imported goods, plus such amount in respect of administration, selling and other costs and profit as may appear to the Minister to be reasonable; or
- (c) they are being or are likely to be sold or offered for sale at a place in Lesotho in the ordinary course of trade in wholesale quantities for an amount which is less than the price at which identical or comparable goods are being sold in the ordinary course of trade in any territory referred to in paragraph (a) for consumption there, plus freight, insurance and all charges to that place, including landing, transportation and delivery charges and any duty (other than an anti-dumping duty imposed under the provisions of this Chapter) payable under this Act:

Provided that any imported goods shall not be deemed to have been dumped by reason only of the fact that they are exempt from any duties or taxes imposed on identical or comparable goods that are being sold in the ordinary course of trade in the territory of origin or of export of the said imported goods for consumption there, or that in respect of the said imported goods any duties or taxes so imposed are refunded.

- (3) If, where the territory of export of any imported goods is a territory other than their territory of origin, the identical or comparable goods mentioned in subsection (2), (a), (b) (i) or (c) are merely transported through that territory of export or are not produced or manufactured in that territory or there is no comparable price for them in that territory, the comparison of prices contemplated in that subsection shall be made only with reference to the territory of origin concerned.
- (4) The comparison of the relevant prices contemplated in subsection (2) shall be made at the same level of trade, and in respect of sales made at as nearly as possible the same time.
- (5) The margin of any dumping deemed to have taken place in terms of subsection (2) shall be the difference in prices contemplated in that subsection.
- (6) In this section—
  - (a) "territory of export", in relation to imported goods, means the territory from which they were exported to Lesotho, whether or not it is also the territory of origin in relation to those goods;
  - (b) "territory of origin", in relation to imported goods, means the territory in which they were produced or manufactured, whether or not it is also the territory of export in relation to those goods.
- (7) The provisions of [section 49\(5\)](#), (6) and (7) shall *mutatis mutandis* apply in respect of any amendments made under the provisions of subsection (1) of this section.

[L.N. 34 of 1983]

## 56. Imposition of countervailing duties

- (1) The Minister may from time to time further amend Schedule No. 2 whenever he is satisfied—
  - (a) that a bounty or subsidy has been or will be granted, within the meaning of subsection (2), in respect of goods which have been or are being imported to Lesotho, in the territory in which they were produced or manufactured or from which they were exported;
  - (b) that the effect of the granting of such bounty or subsidy will be—
    - (i) to cause or threaten material injury to an established industry in Lesotho; or
    - (ii) to materially retard the establishment of an industry in Lesotho; and
  - (c) that it would be in the public interest to impose such countervailing duty as will in his opinion meet the granting of such bounty or subsidy:

Provided that such duty shall not exceed the amount, as determined by the Minister, of such bounty or subsidy:

Provided further that such duty shall not be imposed on any imported goods by reason only of the fact that they are exempt from any duties or taxes imposed on identical or comparable goods that are being sold in the ordinary course of trade in the territory in which they were produced or manufactured for consumption there, or that in respect of the said imported goods any duties or taxes so imposed are refunded.

- (2) For the purposes of subsection (1) (a), a bounty or subsidy shall be deemed to be granted if granted directly or indirectly, on the production, manufacture or exportation, of goods, (whether by way of grant, loan, tax relief or otherwise and whether related directly to the goods themselves to materials of the goods or to anything else), including the granting of any special subsidy on the transport of any particular goods.
- (3) The provisions of [section 49](#) (5), (6) and (7) shall *mutatis mutandis* apply in respect of any amendments made under the provisions of subsection (1) of this section.

#### **57. Provisional charge to anti-dumping duties**

- (1) Whenever, before any anti-dumping duty is imposed under [section 55](#), the Minister is satisfied that the requirements of [section 55\(1\)](#) (a), (b) and (c) are satisfied in respect of any class or kind of imported goods, he may, impose a provisional charge to anti-dumping duty on imported goods of that class or kind for a period not exceeding three months as from the date of imposition of such duty or, if requested thereto by the importer or exporter concerned before the expiry of the said period, for a further period not exceeding three months.
- (2) Such provisional charge shall be paid on goods subject thereto, at the time of entry for home consumption thereof, as security for any anti-dumping duty which may be retrospectively imposed on such goods under [section 55](#) by reference to the provisional charge.
- (3) If any anti-dumping duty is retrospectively imposed on such goods under [section 55](#) by reference to such provisional charge, the amount of that charge paid may be set off against the amount of the retrospective anti-dumping duty payable, and if no such duty is imposed the amount of such charge paid shall be refunded.

### **Chapter VII Amendment of duties**

#### **58. Time when new or increased duties become payable**

- (1) Whenever the Minister presents to the Legislature a taxation proposal imposing a new duty or increasing the rate of duty already payable, upon any goods specified in the said proposals, such new duty or increased rate of duty shall, subject to the provisions of subsection (2), from the time when the proposal was presented, be payable on all such goods as have not at the said time been entered for home consumption.
- (2) Whenever the Minister presents, under the provisions of subsection (1), a taxation proposal relating to imported and excisable goods of the same class or kind, any such goods which the Minister may in the said proposal specify for the purposes of this subsection, shall, though entered for home consumption prior to the time of such proposal and notwithstanding that they have passed out of customs and excise control, become liable to the new duty or the difference between the rate of duty at the time of such proposal and the increased rate provided for in the said proposal, if they have at the time of such proposal not been delivered from the stocks of an importer, manufacturer or such class of dealer as the Minister may in the said proposal specify.
- (3) For the purpose of this section any goods which are specified by the Minister in any taxation proposal for the purposes of subsection (2) and which, at the time of the said proposal are in

transit to an importer, manufacturer or a class of dealer so specified by the Minister, shall be deemed to form part of the stocks of such importer, manufacturer or dealer, as the case may be, notwithstanding any terms to the contrary of any contract relating to the sale or delivery of such goods.

- (4) Whenever the Minister has specified any goods in any taxation proposal for the purposes of subsection (2), every importer or manufacturer or dealer specified in the said proposal shall, in respect of any goods so specified—
- (a) forthwith take stock of all such goods which have not been delivered from his stocks at the time when the proposal was presented, and make a clear and accurate record of such imported and excisable goods separately;
  - (b) within seven days of the date on which the proposal was presented, deliver to the Director a sworn statement giving separately the description and quantities of the said imported and excisable goods, which were in his stocks at the said time, and any other information which the Director may require of him; and
  - (c) upon or before the last working day of the month following the month in which the proposal was presented, pay to the Director the amount of duty payable by him under subsection (2) in respect of the goods in question.
- (5) If the Minister specifies in any taxation proposal for the purposes of subsection (2) that any goods so specified shall be liable to the duties so specified if they have not been delivered from the stocks of a wholesale dealer at the time of the said proposal, the provisions of subsection (4) shall apply to the stocks of such wholesale dealer and of any retail dealer conducting his business on the same premises:

Provided that the Director may, upon production by such wholesale dealer of such evidence as he may require, exclude from the stocks or the liability for duty of that wholesale dealer for the purposes of subsection (2)—

- (a) stocks of a class or kind which are sold by such retail dealer only; and
- (b) such proportion of the total duty payable by such wholesale dealer as is represented by the proportion of retail sales to total sales of the goods concerned during the period of three months immediately preceding the date of such proposal, such proportion to be calculated on the basis of quantities of each commodity concerned.

*[L.N. 34 of 1983]*

- (6) For the purposes of this section—
- (a) "dealer" means any person who deals in any goods to which this Act relates and includes a club, cooperative society of any nature or any statutory body;
  - (b) "retail dealer" means, subject to the provisions of paragraph (c), any dealer who deals in or holds a licence under any law to deal in retail quantities;
  - (c) "wholesale dealer" means any dealer who deals in or holds a licence under any law to deal in wholesale quantities and the business and stocks of wholesale dealer shall be deemed to include the business and stocks of any retail dealer who conducts business on the same premises on which the wholesale dealer conducts his business as such; and
  - (d) "deliver" includes any form of delivery except *traditio brevi manu* and *constitutim possessorium*.
- (7) Whenever in any legal proceedings any question arises as to whether the Minister has in fact presented a taxation proposal as described in this section, or as to the time when such proposal was presented or the particulars contained in such proposal, a copy of a document, containing such proposal and certified by the Speaker to the National Assembly to be a true copy, shall be accepted as sufficient evidence that such proposal was presented and of the time when it was presented and of the particulars contained therein.

**59. Contract price may be varied to the extent of alteration in duty**

- (1) Whenever any duty is imposed or increased, directly or indirectly by amendment in any manner of any schedule to this Act, on any goods and such goods, in pursuance of a contract made before such duty or increased duty become payable, are thereafter delivered to and accepted by the purchaser, the seller of the goods may, in the absence of agreement to the contrary, recover as an addition to the contract price a sum equal to any amount paid by him by reason of the said duty or increase.
- (2) Whenever any duty is withdrawn or decreased, directly or indirectly, by amendment in any manner of any Schedule to this Act, on any goods, and such goods in pursuance of a contract made before the withdrawal or decrease became effective are thereafter delivered to the purchaser, the purchaser of the goods may, in the absence of agreement to the contrary, if the seller has in respect of those goods had the benefit of the withdrawal or decrease, deduct from the contract price a sum equal to the said duty or decrease.
- (3) The provisions of this section shall also apply to a contract for the hiring of any goods or the use of any goods in rendering a service at a contract price, and the expression "seller" and "purchaser" shall correspondingly be construed as including the person by whom and the person to whom the goods are hired or the service rendered.

## Chapter VIII Licensing

**60. Licence fees according to Schedule No. 8**

- (1) No person shall perform any act or be in possession of or use anything in respect of which a licence is required under this Act unless he has obtained the appropriate licence prescribed in Schedule No. 8 which shall not be issued unless the prescribed licence fee has been paid.
- (2) The Director may, subject to an appeal to the Minister, whose decision shall be final —
  - (a) refuse any application for a new licence or a renewal of any licence; or
  - (b) cancel any licence if the holder of such licence has persistently contravened or failed to comply with the provisions of this Act or has committed an offence referred to in section [81](#), [84](#), [85](#), [86](#) or [87](#).

**61. Customs and excise warehouse licences**

- (1) Before a customs and excise warehouse is licensed the person applying for such licence shall furnish such security as the Minister may require.
- (2) The Minister may at any time require that the form, nature or amount of such security shall be altered or renewed in such manner as he may determine.
- (3) The Minister may by endorsement permit a licence to be transferred from one customs and excise warehouse to another customs and excise warehouse, but no customs and excise warehouse licence shall be transferable from one person to another.
- (4) Not more than one licence shall be issued in respect of any customs and excise warehouse.

**62. Agricultural distillers**

- (1) No licence shall be issued under this law to any / person as an Agricultural Distiller unless the purposes for which such person intends to produce spirits have been approved by the Director.
- (2) In approving such purposes the Director may impose such conditions as he deems fit.



- (3) The purposes for which the holder of an agricultural distiller's licence is authorised to produce spirits in terms of this section and any conditions imposed by the Director in terms of subsection (2) shall be set forth on such licence.
- (4) (a) Any licence issued under this Law to any person as Agricultural distiller shall lapse upon the death of the licensee or upon conviction of the licensee of any offence under this Act or any law relating to the illicit manufacture, conveyance, supply or possession of intoxicating liquor.
  - (b) For the purposes of this subsection the imposition of a penalty by the Director under the provisions of [section 92](#) shall be deemed to be a conviction under this Act.
- (5) The provisions of subsection (4) of this section and of [section 63\(3\)](#) shall not apply in the case of an agricultural distiller who produces annually a quantity of spirits which exceeds a quantity determined by the Director and who produces such spirits for a purpose approved by the Director.

### 63. Stills to be licensed

- (1) No person shall own or have in his possession or under his control any still except under a licence prescribed in Schedule No. 8 and subject to the regulations:
 

Provided that the Minister may, subject to such conditions as he may impose, exempt from all or any of the provisions of this subsection—

  - (a) any licensed still-maker in so far as any still manufactured or imported by him for sale and in his possession is concerned; or
  - (b) any person in so far as any still is concerned which he has proved to the satisfaction of the Minister is in his possession solely for any such purpose as the Minister may subject to the regulations authorise.
- (2) The provisions of sub section (3) and (4) of [section 62](#) shall *mutatis mutandis* apply in respect of any licence issued in respect of a still under this Act to any person to whom a licence under this Act has been or had at any time been issued as an agricultural distiller:
 

Provided that the provisions of this subsection shall not apply in respect of any such licence in respect of a still which is held by any such agricultural distiller as is referred to in subsection (5) of [section 62](#).
- (3) (a) If any agricultural distiller has voluntarily abandoned any still to the department, no licence to own a still to be used by him in the capacity of an agricultural distiller shall thereafter be granted to him unless a new licence as an agricultural distiller has, after such abandonment, been issued to him under this Act.
  - (b) Any still abandoned under this subsection shall be destroyed by the Director.

### 64. Special warehouse for the manufacture of wine

Unless the permission of the Director has been obtained to manufacture wine in a customs and excise manufacturing warehouse, no person shall manufacture wine except in a special customs and excise warehouse licensed under this Act.

### 65. Container depot licences

- (1) No person shall store or unpack, or pack for export, such containers as the Director may specify, except at a container depot licensed in terms of subsection (2).
- (2) The Minister may, subject to such conditions as he may in each case impose, license, for such period as he may in each case determine, at any place appointed for that purpose under the provisions of this Act, container depots approved by him for the storing, unpacking or packing of containers contemplated in subsection (1), provided such security as he may require is furnished.



- (3) The Minister may at any time require that the form, nature or amount of such security shall be altered or renewed in such manner as he may determine.
- (4) The Director may require any container contemplated in subsection (1) to be detained in any container depot licensed in terms of subsection (2), for its examination or that of its contents.

#### 66. Clearing agent licences

- (1) No person shall, for the purposes of [section 39](#), for reward make entry of or deliver a bill of entry relating to, any goods on behalf of any importer or exporter of goods, as the case may be, unless licensed as a clearing agent in terms of subsection (2).
- (2) The Director may, subject to such conditions as he may in each case impose, license any person applying therefor and approved by him, as a clearing agent for making entry of or delivering a bill of entry relating to, goods on behalf of an importer or exporter of goods as the case may be.
- (3) Before any such person is so licensed as a clearing agent, he shall furnish such security as the Director may require.
- (4) The Director may at any time require that the form, nature or amount of such security shall be altered or renewed in such manner as he may determine.

### Chapter IX Value

#### 67. Value for fiscal and customs duty purposes

- (1) Subject to the provisions of this Act, the value for fiscal and customs duty purposes of any imported goods shall be the normal price thereof.
- (2) For the purposes of this section, such abnormal costs in effecting shipment as are proved to the satisfaction of the Director to have been incurred as the result of an act of God, a State of war, strikes, lock-outs, riots or civil commotions shall not be deemed to form part of the normal price of goods.
- (3) If the value of any imported goods of a single denomination according to the provisions of this section is—
  - (a) in excess of one loti, such value shall, for the purposes of assessing the amount of duty payable, be calculated to the nearest loti, an amount of fifty lisente being regarded as less than one half of one loti;
  - (b) less than one loti, such value shall be calculated as one loti.
- (4)
  - (a) If in the opinion of the Director the normal price of any imported goods cannot be calculated in terms of [section 68\(1\)](#) or if no charge is made in respect of such goods, the Director may determine a price which shall, subject to a right of appeal to the Minister, be deemed to be the value for customs duty purposes of those goods.
  - (b) Any such appeal shall be lodged with the Minister in the manner prescribed by regulation within a period of three months after the date on which a price has been so determined.
- (5) Unless the context otherwise indicates, any reference in this Act to value for duty purposes, in relation to imported goods, shall be deemed to be a reference to value for fiscal and Customs duty purposes as defined in this section.

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- (6)
  - (a) Notwithstanding the provisions of subsections (1) and (4), the value for fiscal and Customs duty purposes of any imported goods specified in section B of Part 2 of Schedule No. 1 (other

than pearls, precious and semiprecious metals or articles containing or manufactured of such pearls, precious and semi-precious stones, precious metals or rolled precious metals, entered under schedule No. 4) shall be the normal price thereof plus 15 per cent of such price, plus any non-rebated fiscal and Customs duty payable in terms of part I of Schedule No. 1 on such goods, but excluding the fiscal and Customs duty specified in the said Section B of part 2 of Schedule No. 1 on such goods.

- (b) The provisions of subsection (3) or (4) of [section 70](#) shall *mutatis mutandis* apply to the calculation or determination of the value for fiscal and Customs duty purposes of any such imported pearls, precious and semiprecious stones, precious metals, rolled precious metals or articles containing or manufactured of such pearls, precious and semi-precious stones, precious metals or rolled precious metals.

## 68. Normal price

- (1) Subject to the provisions of this Act, the normal price of any imported goods shall be calculated on the basis of a sale thereof, at the time of entry for home consumption in the open market in Lesotho, by, any person to any other person, both such persons being independent of each other, where—
  - (a) the price is the sole consideration;
  - (b) the price is not influenced by any commercial, financial or other relationship, whether by contract or otherwise, between the seller or any person associated in business with him, and the buyer or any person associated in business with him, other than the relationship created by the sale itself;
  - (c) no part of the proceeds of any subsequent resale, other disposal or use of the goods will accrue, either directly or indirectly, to the seller or any person associated in business with him;
  - (d) the sale is a sale of the quantity of the goods; and
  - (e) the price includes all costs, charges and expenses incidental to the sale and to delivery of the goods to the place of final dispatch in the territory of export but does not include any other costs, charges and expenses incidental to the delivery thereof to Lesotho.
- (2) For the purposes of subsection (1) (b) or (c) or (5) (b) two persons shall be deemed to be associated in business with each other if, whether directly or indirectly, either of them has any interest in the business or property of the other or both of them have a common interest in any business or property or any third person has an interest in the business or property of both of them.
- (3) The costs, charges and expenses referred to in subsection (1) (e) include—
  - (a) cost of carriage;
  - (b) handling and loading charges;
  - (c) commission;
  - (d) brokerage;
  - (e) any duty or tax applicable in the territory of exportation except that from which the goods have been or will be relieved by way of refund, drawback, rebate or remission;
  - (f) any expenditure incurred in respect of preparing exportation documents; and
  - (g) the cost of packing and packaging.
- (4) When the imported goods concerned—
  - (a) are manufactured in accordance with any patented invention or are goods to which any protected design has been applied; or

- (b) are imported under a foreign trade mark; or
  - (c) are imported for sale, other disposal or use under a foreign trade mark, the normal price shall be determined on the basis that it includes the value of the right to use the patent, design or trade mark in respect of the goods.
- (5) For the purposes of subsection (4) a trade mark shall be deemed to be a foreign trade mark if it is the mark of—
- (a) any person by whom the imported goods concerned have been grown, produced, manufactured, offered for sale or otherwise dealt with outside Lesotho; or—
  - (b) any person associated in business with any person referred to in paragraph (a); or
  - (c) any person whose rights in the mark are restricted by an agreement with any person referred to in paragraph (a) or (b).

## 69. Value for excise duty purposes

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

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

- (2) Whenever any such goods are sold or otherwise disposed of in Lesotho under such conditions that the value thereof cannot be calculated in terms of subsection (1), the Director may determine a value which shall subject to the right of appeal to the Minister, be regarded as the value of such goods determined in terms of subsection (1).
- (3) The Director may, in respect of any such goods or any class or kind of such goods—
- (a) specify, for the purpose of subsection (1), the quantity which shall be deemed to be the usual wholesale quantity;
  - (b) specify, for the purposes of subsection (1), the packing which shall be deemed to be the usual packing ready for sale in the retail trade;
  - (c) determine, for the purposes of subsection (1), the cost of packing or packages or any other expenses incidental to placing the goods on rail,

and his decision shall, subject to the right of appeal to the Minister, be final.

- (4) (a) Notwithstanding the provisions of subsection (1) and (2), the value for excise duty purposes of any goods manufactured in Lesotho and specified in section B of part 2 of Schedule No. 1 (other than pearls, precious and semiprecious stones, precious metals or rolled precious metals, or articles containing or manufactured of such pearls, precious and semi-precious stones, precious metals or rolled precious metals), shall be the value for excise duty purposes

of such goods calculated or determined in terms of subsection (1) or (2), plus any non-rebated excise duty payable in terms of section A of part 2 of Schedule No. 1 on such goods.

- (b) The provisions of subsection (3) or (4) of [section 70](#) shall *mutatis mutandis* apply to the calculation or determination of the value for excise duty purposes of any such pearls, precious and semi-precious stones, precious metals, rolled precious metals or articles containing or manufactured of such pearls, precious and semi-precious stones, precious metals or rolled precious metals.

## 70. Value for sales duty purposes

- (1) (a) The value for sales duty purposes of any imported goods, other than goods entered in terms of item 709.01 of Schedule NO. 7, shall be the normal price thereof, plus fifteen per cent of such price, plus any nonrebated fiscal and customs duty payable in terms of Part 1 and Part 2 of Schedule NO. 1 on such goods, but excluding the sales duty on such goods.
- (b) The provisions of sections [67](#), [68](#) and [71](#) shall *mutatis mutandis* apply to the calculation or determination of the value for sales duty purposes of any imported goods.

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- (2) The value for sales duty purposes of any goods manufactured in Lesotho, other than goods entered in terms of sales duty item 144.00, except under tariff heading 71.16 thereof, of Schedule NO. 1, shall be the value for excise duty purposes of such goods, calculated or determined in terms of [section 69](#) as if they were excisable goods, plus any non-rebated excise duty on such goods not included in the price of such goods but excluding the sales duty on such goods.
- (3) The value for sales duty purposes of any imported goods entered in terms of item 709.01 of Schedule NO 7 and any goods manufactured in Lesotho and entered in terms of sales duty item 144.00, except under tariff heading 71.16 thereof, of Schedule NO 1, shall be—
- (a) in a sale between a manufacturer as seller and an independent wholesale dealer or an independent bulk buyer or a buyer purchasing at a preferential price or other reseller as purchaser, the highest price (excluding sales duty) at which the manufacturer sells such goods at factory to an independent retail dealer, without any deduction except a cash discount not exceeding two and a half per cent, if any, plus the cost of packing and packages and all other expenses incidental to placing the goods on rail for delivery to the purchaser;
- (b) in a sale between a manufacturer and end consumer or between a wholesale dealer or retail dealer or other resellers as seller and an independent retail dealer or end consumer as purchaser, the highest price (excluding sales duty) at which such goods are sold by any such seller to an end consumer without any deduction except thirty-three and a third per cent, plus the cost of packing packages and all other expenses incidental to placing the goods on rail for delivery to the purchaser.
- (4) (a) Whenever any imported goods entered in terms of item 709.01 of Schedule NO. 7 or any goods manufactured in Lesotho and entered in terms of sales duty item 144.00, except under tariff heading 71.16 thereof, of schedule NO. 1, are sold in such circumstances that the value thereof for sales duty purposes cannot be calculated in terms of subsection (3), the Director may determine a value which shall, subject to a right of appeal to the Minister, be deemed to be the value for sales duty purposes of such goods.
- (b) Any such appeal shall be lodged with the Minister in the manner prescribed by regulation within a period of three months after the date on which a value has been so determined.

## 71. Value of certain specified goods

- (1) The value for duty purposes of any goods imported into Lesotho ex customs warehouses or ex bonded warehouses within the district of Maputo shall be calculated or determined in accordance

with this chapter as if such goods were imported directly into Lesotho from the territory whence they were exported to Maputo.

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

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

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

## **72. Discretion of Director regarding determination of value for duty purposes**

- (1) Whenever it is necessary for the purposes of this Act for the Director to determine a value for duty purposes, he may, subject to this Act, in his discretion consult the Explanatory Notes to the Brussels Definition of Value and the Convention Recommendation, Opinions, Notes and Studies, issued by the for duty Customs Co-operation Council, Brussels from time to time.
- (2) The Director shall obtain and keep in his office two copies of such Explanatory Notes, Convention Recommendations, Opinions, Notes and Studies, and shall effect thereto any amendment thereof of which he is notified by the said Council from time to time.

## **73. Value of goods exported**

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

## **74. Conversion of prices**

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

## **75. Value of goods not liable to ad valorem duty**

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

## Chapter X

### Rebates, refunds and drawbacks of duty

#### 76. Specific rebates, draw-backs and refunds of duty

- (1) Subject to the provisions of this Act and to any conditions which the Director may impose—
  - (a) any imported goods described in Schedule NO. 3 shall be admitted under rebate of any fiscal and customs duties applicable in respect of such goods at the time of entry for home consumption thereof, to the extent and for the purpose or use stated in the item of Schedule NO. 3 in which they are specified;
  - (b) any imported goods described in Schedule NO. 4 shall be admitted under rebate of any fiscal and customs duties applicable in respect of such goods at the time of entry for home consumption thereof, to the extent and for the purpose or use stated in the item of Schedule NO. 4 in which such goods are specified;
  - (c) a drawback or a refund of the fiscal and ordinary customs duty, anti-dumping duty, countervailing duty and surcharge actually paid on entry for home consumption on any imported goods described in Schedule NO. 5 shall be paid to the person who paid such duties or any person indicated in the notes to the said Schedule, subject to compliance with the provisions of the item of the said Schedule in which those goods are specified;
  - (d) in respect of any excisable goods described in Schedule NO. 6, a rebate of the excise duty specified in Part 2 of Schedule NO. 1 in respect of such goods at the time of entry for home consumption thereof or a refund of the excise duty actually paid at the time of entry for home consumption shall be granted to the extent and in the circumstances stated in the item of Schedule NO. 6 in which such goods are specified, subject to compliance with the provisions of the said item and any refund under this paragraph may be paid to the person who paid the duty or any person indicated in the notes to the said Schedule No. 6;
  - (e) in respect of any sales duty goods described in Schedule NO. 7, a rebate of the sales duty specified in Part 3 of Schedule NO. 1 in respect of such goods at the time of entry for home consumption thereof or a refund of the sales duty paid at the time of entry for home consumption shall be granted to the extent and in circumstances stated in the item of Schedule NO. 7 in which such goods are specified, subject to compliance with the provisions of the said item, and any refund under this paragraph may be paid to the person who paid the duty or any person indicated in the notes to the said Schedule NO. 7.
- (2) A rebate of duty in respect of any goods described in Schedule NO. 3 shall be allowed—
  - (a) only in respect of goods entered for use in the production or manufacture of goods in the industry and for the purpose specified in the item of the said Schedule in which those goods are specified;
  - (b) only in respect of goods entered for use in—
    - (i) a factory in the area approved by the Minister; or
    - (ii) a mine or works approved by the Minister;
  - (c) only in respect of goods entered for use in such industry, in a factory mine or works which complies with such requirements in respect of number of operatives employed, number of machines in continuous use, quantity of material used or quantity of goods produced or manufactured as the Director may impose in consultation with the Ministry of Commerce and Industries.
- (3) The Minister may exempt any goods described in Schedule NO. 3 and entered for use in a particular industry, from the provisions of paragraph (b) of subsection (2) and for the purposes of sub-

paragraph (1) of the said paragraph, may limit the application of his approval of an area to the manufacture of one or more specified articles or substances.

- (4) Notwithstanding the provisions of section 55 or 56, a rebate of any anti-dumping duty or countervailing duty specified in Schedule NO. 2 in respect of any goods entered under the provisions of any item specified in Schedule NO. 3 or 4 may be granted if it is expressly stated in such item of Schedule NO. 3 or 4 that the extent of the rebate includes such anti-dumping duty or countervailing duty.
- (5) (a) Notwithstanding anything to the contrary in this Act contained, any kerosene, distillate fuel or residual fuel oil which may be entered under rebate of duty under any item of Schedule NO. 4 or 6, shall be so entered by the supplier thereof.
- (b) Any kerosene, distillate fuel or residual fuel oil so entered shall, if supplied to a reseller or user thereof, be so supplied in such manner and on such condition as may be prescribed by regulation.
- (c) Any reseller so supplied who supplies such kerosene, distillate fuel or residual fuel oil to any user, shall so supply it in such manner and on such conditions as may be prescribed by regulation.
- (d) If a supplier mentioned in paragraph (a) supplies any kerosene, distillate fuel or residual fuel oil entered as stated in paragraph (a) to any reseller or user contrary to the manner or conditions prescribed thereof by regulation, he shall be liable for such duty thereon as may at the time of such entry, or, if the duty concerned has after such entry been increased, of the payment of such duty, be leviable thereupon, as if no rebate of duty applied thereto.

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- (e) If any reseller mentioned in paragraph (c) supplies any kerosene, distillate fuel or residual fuel oil to any user contrary to the manner or conditions prescribed therefor by regulation, he shall be liable for the duty thereon to the extent of the rebate allowed to the supplier mentioned in paragraph (a) at the time of entry:

Provided that if the duty in question has after such entry under rebate been increased, the extent of such rebate shall be deemed to be—

- (i) the difference between the duty actually paid on entry for home consumption and such increased duty; or
- (ii) such increased duty if no duty was paid on entry for home consumption.
- (6) (a) (i) In addition to any liability for duty incurred by any person under any other provision of this Act, the person who enters any goods for use by him under rebate of duty or any person on whose behalf any goods are so entered, shall, subject to the provisions of subsection 7 and 19 of this section and [section 46](#) be liable for the duty on all goods so entered which have not been used or which have been disposed of otherwise than in accordance with the provisions of this section and of the item under which they were so entered, as if such rebate of duty did not apply to such goods and such person shall pay such duty on demand by the Director:

Provided that the Director may, if such goods were used in accordance with any other item relating to rebate of duty, accept duty on such goods as if they were entered under such other item:

Provided further that the Director may, in his discretion, permit any duty paid on entry of such goods under rebate to be deducted from any duty for which any person becomes liable in terms of this paragraph.

- (ii) The Director may at any time take stock of goods entered for home consumption and stored on any premises registered by virtue of subsection (11), and duty shall, subject



to the provision of subparagraph (i), be paid forthwith on demand upon any deficiency detected.

(iii) If the stock is found to be greater than the quantity which should be on such premises, the excess shall be debited to stock.

(b) Any person to whom any kerosene, distillate fuel or residual fuel oil has been supplied from stocks which have been entered under rebate of duty at a price which has been reduced to the extent of such rebate for a purpose stated in the item under which such kerosene, distillate fuel or residual fuel oil was so entered, and who applies such kerosene, distillate fuel or residual fuel or any portion thereof to any other purpose shall be guilty of an offence and shall, notwithstanding the provisions of paragraph (a), (i) be liable for the duty to the extent of the rebate allowed on entry for home consumption of such kerosene, distillate fuel or residual fuel oil on the full quantity of the kerosene, distillate fuel or residual fuel oil so supplied to him or on such portion thereof as the Director may in his discretion determine:

Provided that if the duty in question has after such entry under rebate been increased, the extent of such rebate shall be deemed to be—

(a) the difference between the duty actually paid on entry for home consumption and such increased duty; or

(b) such increased duty if no duty was paid on entry for home consumption.

(7) (a) The Director may, on such conditions as he may impose, permit any person who has entered any goods under rebate of duty under this section to use or dispose of any such goods otherwise than in accordance with the provisions of this section and of the item under which such goods were so entered, to use or dispose of any such goods in accordance with the provisions of any other item to which this section relates, and such person shall thereupon be liable for duty on such goods as if such rebate of duty did not apply or as if they were entered under such other item to which this section relates, as the case may be, and such person shall pay such duty on demand by the Director:

Provided that, in respect of any such goods specified and to any conditions which he may impose in are specified in any item of Schedule NO. 3, 4, 6 or 7 the Director may, subject to the provisions of or the notes applicable to the item in which such goods are in each case, exempt any such goods from the whole or any portion of the duty payable thereon under this subsection on the ground of the period or the extent of use in accordance with the provisions of the item under which such goods were entered, or on any other ground which he considers reasonable;

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(b) Any duty paid on any such goods on first entry thereof under rebate of duty shall be deemed to have been paid in respect of any duty payable in accordance with the provisions of paragraph (a) in respect of such goods.

(8) No drawback or refund shall be paid in respect of any goods specified in any item of Schedule NO. 5, 6 or 7 if such goods have been used or disposed of otherwise than in accordance with the provisions of this section and the item in question or if such provisions have not been complied with in respect of such goods:

Provided that the Minister may, in respect of any class or kind of goods specified in any item of Part 1 of Schedule NO. 5 and used in the manufacture of any goods marketed in Lesotho, pay any drawback to the extent stated in such item, where goods of comparable class, kind, quantity and quality and manufactured or produced in Lesotho have been used in the manufacture of any goods exported.

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(9) Wherever the tariff heading or subheading or the tariff item or sub item or the sales duty item or sub item under which any goods are classified in Schedule NO 1 is expressly quoted in any item of



Schedule NO 3, 4, 5, 6 or 7 in which such goods are specified, the goods so specified in the said item of schedule No. 3, 4, 5, 6 or 7 shall be deemed not to include goods which are not classified under the said tariff heading or subheading or tariff item or sub item or sales duty item or sub item.

- (10) Any goods entered for use under rebate of duty under this section shall, for the purposes of this Act, be deemed to be entered for home consumption, but no entry in respect of goods described in Schedule NO 3, 4 or 7 shall be valid unless the number of the tariff heading and subheading or sales duty item and sub-item under which such goods are classified in Schedule NO 1 and the number of the item of Schedule NO 3, 4 or 7 in which the said goods are specified are both declared on such entry and the industry in which and the purpose for which such goods are to be used, as specified in the said item, are declared on such entry:

Provided that the Minister may exempt entries in respect of any class or kind of goods from any or all of the requirements of this subsection.

- (11) No goods may be entered or acquired under rebate of duty under this section or the regulations until the person so entering or acquiring them has furnished such security as the Director may require and has complied with such other conditions (including registration with the Director of his premises and plant) as may be prescribed by the Minister by regulation in respect of any goods specified in any item of Schedule NO. 3, 4, 6 or 7.
- (12) The Minister may, in respect of Schedule NO 5, 6 or 7, for the purposes of calculating the amount of duty refundable on any imported or excisable goods or sales duty goods used in the manufacture of any goods exported or marketed in Lesotho, determine the quantity of such exported goods or such goods marketed in Lesotho which shall be deemed to have been produced from a given quantity of such imported or excisable goods or sales duty goods or the quantity of such imported or excisable goods or sales duty goods which shall be deemed to have been used in the production of a given quantity of such exported goods or such goods marketed in Lesotho.
- (13) No goods manufactured from excisable goods under rebate of duty specified in any item of Schedule NO 6 shall be used in the place of such excisable goods in the manufacture of any other goods if a rebate of duty to a lesser extent has been specified in any item of the said Schedule in respect of such excisable goods when used in the manufacture of such other goods.
- (14) If the Director is of the opinion that any goods, not being a spirituous beverages, manufactured from spirits under rebate of excise duty in terms of any formula approved by him under any item of Schedule NO 6, are used as a beverage, he may forthwith revoke his approval of such formula.
- (15) No refund or drawback of duty shall be paid by the Director under the provisions of this section unless an application therefore, duly completed and supported by the necessary documents and other evidence to prove that such refund or drawback is due under this section is received by the department—
- (a) in the case of goods exported—
- (i) where the goods were exported by post, within a period of six months from the date on which such goods were posted; or
- (ii) where the goods were exported in any other manner, within a period of six months from the date of entry of such goods for export; and
- (b) In all other cases, within a period of one month from the date when such refund first becomes due:
- Provided that the Director may, in such circumstances as he may consider exceptional, pay a refund or drawback after expiration of the relevant period.
- (16) (a) The Minister may from time to time amend Schedule NO 3, 4, 5, 6 or 7 whenever he deems it expedient in the public interest to do so.
- (b) The Minister may, whenever he deems it expedient in the public interest to do so, amend any such Schedule with retrospective effect from such date as he may specify in that notice.

- (c) An amendment made under paragraph (a) which repeals any existing provision in Schedule NO 5 or which excludes any goods from any existing provision of that Schedule, shall not apply in respect of goods which were imported prior to the date of the amendment, and an amendment made under the said paragraph which embodies any additional provision in that Schedule or applies any existing provision of that Schedule in respect of additional goods, shall not, except in so far as the Director so directs and subject to such conditions as he may determine, apply in respect of goods which were imported prior to the date of the said amendment.
- (17) The provisions of subsection (5), (6) and (7) of [section 49](#) shall *mutatis mutandis* apply in respect of any amendment made under the provisions of subsection (15).
- (18) The Director may refuse to accept an entry under rebate or an application for drawback or refund under any item of Schedule No. 3, 4, 5, 6 or 7 from any person who has persistently contravened or failed to comply with the provisions of this Act or who has committed an offence referred to in [section 81](#), [84](#), [85](#), [86](#) or [87](#) and he may cancel any registration under the provisions of this Act of such person or suspend any such registration for such period as he may deem fit.
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- (19) Subject to the provisions of the proviso to [section 19](#) (6) and items 412.07, 412.08, 412.09, 531.00, 532.00, 608.01, 608.02, 608.03, 608.04, 707.01, 707.02, and 707.03 of Schedule Nos 4, 5, 6 and 7, no rebate or refund of duty in respect of any loss or deficiency of any nature of any goods shall be allowed, but the Director may allow the deduction from the dutiable quantity equal to the percentage stated below in each case, namely—
- (a) in the case of wine spirits (ethyl alcohol) manufactured in Lesotho, 1,5 per cent of the quantity so manufactured;
  - (b) in the case of spirits (ethyl alcohol) other than wine spirits manufactured in Lesotho. 1,5 per cent of the quantity so manufactured and entered for use in making spirituous beverages;
  - (c) in the case of wine manufactured in Lesotho, 0,5 per cent of the quantity so manufactured on which duty is paid; in the case of any fermented apple, pear or orange beverage manufactured in Lesotho, 0,5 per cent of the quantity so manufactured on which duty is paid;
  - (d) in the case of imported crude petroleum naphtha for use in the refining of petroleum products, or imported or excisable petrol or aviation spirits, 0,25 per cent of any quantity entered for storage in any customs and excise storage warehouse;
  - (e) in the case of imported petroleum naphtha entered for use as fuel in the manufacture of ammonia, such percentage, but not exceeding 0,25, of any quantity so entered as may in the opinion of the Director represent a loss by evaporation; and
  - (f) in the case of imported or excisable petrol, aviation spirit, kerosene, distillate fuels or residual fuel oils, such percentage of any quantity removed in bond from one place in Lesotho to another place in Lesotho, as the Minister may determine, or where no such percentage has been so determined, a percentage equal to the full net loss incurred while the goods in question are so removed.
- (20) No person shall without the permission of the Director divert any goods entered under rebate of duty under any item of Schedule NO 3, 4, 6 or 7 or for export for the purpose of claiming a drawback or refund of duty under any item in Schedule NO 5, 6 or 7 to a destination other than the destination declared on such entry or deliver such goods or cause such goods to be delivered in Lesotho otherwise than in accordance with the provisions of this Act and, in the case of goods entered under rebate of duty, otherwise than to the person who entered the goods or on whose behalf the goods were entered.
- (21) If any goods to which this section relates are used or disposed of, or dealt with or in, contrary to the provisions of this Act, the whole consignment entered or transferred for use in terms of the

provisions of this section of which such goods form part or formed part, or any goods manufactured therefrom, shall be liable to forfeiture.

- (22) Except with the permission of the Director, which shall only be granted in circumstances which he considers to be exceptional and subject to such conditions as he may impose in each case, any goods entered under any item of schedule NO 3, 4, 6 or 7 for manufacturing purposes or such other purpose as may be specified in the regulations shall be used for the purpose specified in such item at the time of such entry, or such other purpose, within five years from the date of such entry.

## 77. General refunds in respect of imported goods, excisable goods or sales duty goods

- (1) No refund of any duty or other charge in respect of imported or excisable goods or sales duty goods, other than a refund provided for under section 76 or 78, shall be paid or granted except in accordance with the provisions of this section and the regulations.
- (2) The Director shall, subject to the provisions of subsection (4), consider any application for a refund or payment from any applicant who contends that he has paid any duty or other charge for which he was not liable or that he is entitled to any payment under this Act by reason of—
- (a) an error in determining an assessment or calculating the amount thereof;
  - (b) the duty having been assessed on a value higher than the value for duty purposes;
  - (c) a determination under [section 48](#) (9) or incorrect tariff classification;
  - (d) the goods concerned having been damaged, destroyed or irrecoverable lost by circumstances beyond his control prior to the release thereof for home consumption, provided he satisfied the Director that any compensation received in respect of such damage, destruction or loss does not include the duty on the goods;
  - (e) all or part of such goods having been shortlanded, shortshipped or shortpacked; or
  - (f) the adjustment of any bill of entry in terms of [section 41](#)(3).
- (3) Except with the permission of the Director, any application for a refund under this section shall not relate to more than one bill of entry or other document in respect of which the alleged overpayment was made.
- (4) No application for a refund or payment in terms of this section shall be considered by the Director unless it is received by him, duly completed and supported by the necessary documents and other evidence to prove that such refund or payment is due under this section, within a period of two years from the date on which the duty or charge to which the application relates was paid:
- Provided that the Director may, in such circumstances as he may consider exceptional consider any such application after expiration of such period.
- (5) If, after considering any application for a refund or payment in terms of this section, the Director is satisfied that the applicant is entitled to any such refund or payment, the Director may pay to the applicant the amount due to him:

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Provided that no refund shall be made under this section if, in the case of goods imported by post, the amount thereof is less than fifty lisente or, in the case of goods imported in any other manner less than five maloti or, in the case of excisable goods or sales duty goods manufactured in Lesotho, less than two maloti, unless the Director is satisfied that exceptional circumstances exist which warrant such refund.

- (6) Any duty refunded or rebated under the provisions of this Act shall, subject to the provisions of [section 45](#)(1), forthwith be repaid to the Director by the person to whom such refund has been paid or such rebate has been allowed if such person is compensated in respect of such duty by any other person.

**78. Overpayments in respect of excisable goods and sales duty goods**

- (1) (a) Any amount due to a licensee of a customs and excise warehouse who, in terms of the regulations, is permitted to pay excise duty or sales duty monthly or quarterly, in respect of such duty paid by him for which he was not liable or which is refundable to him in terms of any item of Schedule NO 6 or 7 may, at any time within a period of two years from the date on which such amount first become due, be set off against any amount for which such licensee subsequently becomes liable in respect of excise duty or sales duty, provided the accounts or bills of entry submitted by such licensee in respect of the payment of any amount against which any amount so due to him has been set off are accompanied by a full statement by such licensee, supported by a certificate by an officer, giving full particulars of the excise duty or sales duty so paid and a full account of the circumstances under which the payment thereof took place and by such documentary evidence as the Director may in each case require;
- (b) if the set-off of any amount is not allowed by the Director in terms of paragraph (a) such amount shall be debited to the account of such licensee.

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- (2) With the permission of the Director and subject to such conditions as he may impose, any amount of sales duty paid by the licensee of a special customs and excise warehouse licensed in terms of this Act in respect of sales duty goods sold by him to any person whose premises are not so licensed and who has exported such goods or supplied them to any other person entitled to acquire such goods under rebate of sales duty, may be set off against any amount for which such licensee subsequently becomes liable in respect of sales duty, provided proof to the satisfaction of the Director of such export or supply under rebate of duty and the identity of the sales duty goods so exported or supplied is submitted by such licensee, together with such documentary proof as the Director may in each case require regarding the sale of such goods by such licensee.

## **Chapter XI Penal provisions**

**79. Offences not expressly mentioned**

- (1) Any person who contravenes any provision of this Act or who fails to comply with any such provision with which it is his duty to comply, shall, even where such contravention or failure is not elsewhere declared an offence, be guilty of an offence.
- (2) Any person guilty of an offence under this Act shall, where no punishment is expressly provided for such offence be liable on conviction to a fine not exceeding four hundred maloti or treble the value of the goods in respect of which such offence was committed, whichever is the greater, or to imprisonment for a period not exceeding six months, or to both such fine and such imprisonment.
- (3) A person who is convicted of an offence referred to in subsection (2) within a period of three years after he was convicted of any offence referred to in that subsection shall be liable to a fine not exceeding six hundred maloti or treble the value of the goods in respect of which such offence was committed, whichever is the greater, or to imprisonment for a period not exceeding nine months, or to both such fine and such imprisonment.

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## 80. Less serious offences and their punishment

- (1) Any person who—
  - (a) supplies the means or materials for, or assists in establishing, repairing, maintaining or working any still being made or imported, used, set up or in the possession or custody of any person without lawful authority;
  - (b) is found without lawful excuse in any place where distillation is illegally carried on;
  - (c) refuses or fails to comply with the lawful requirements of an officer or refuses or fails to answer to the best of his power any question which an officer in the exercise of his functions has put to him;
  - (d) falsely holds himself out to be an officer;
  - (e) resists or hinders an officer in the exercise of his powers or the performance of his functions under this Act; or
  - (f) rescues any persons apprehended for any offence under this Act, or prevents the apprehension of any person who has committed any such offence, shall be guilty of an offence and liable on conviction to a fine not exceeding four hundred maloti or to imprisonment for a period not exceeding six months, or to both such fine and such imprisonment.
- (2) A person who is convicted of an offence referred to in subsection (1) within a period of three years after he was convicted of any offence referred to in that subsection shall be liable to a fine not exceeding six hundred maloti or to imprisonment for a period not exceeding nine months, or to both such fine and such imprisonment.

## 81. Serious offences and their punishment

- (1) Any person who—
  - (a) has upon his premises or in his custody or under his control, or purchases, sells or otherwise disposes of any illicit goods knowing the same to be illicit goods;
  - (b) not being a licensed dealer or manufacturer, without lawful authority has in his possession or custody or under his control any partly manufactured excisable goods or excisable goods or sales duty goods upon which duty has not been paid;
  - (c) removes or assists in or permits the removal of goods in contravention of any provisions of this Act;
  - (d) deodorises, classifies or, prior to sale, reduces the strength of methylated spirits to a strength below a strength of 91,4 per cent absolute alcohol by volume, or prepares or sells or offers for sale or consumption, as a beverage, any preparation containing methylated spirits or spirits recovered from methylated spirits;  
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  - (e) 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 provisions of this Act;
  - (f) 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;
  - (g) without lawful excuse (the proof of which shall lie upon him), brings into Lesotho or has in his possession any signed blank or incomplete invoice or any billhead or other similar document capable of being filled up and used as an invoice for goods from outside Lesotho;

- (h) makes improper use of a licence, permit or other document issued in respect of goods to which this Act relates;
  - (i) claims any rebate, drawback, refund or payment to which he knows he is not entitled under this Act or fails forthwith to repay to the Director any duty which has been refunded or rebated under the provision of this Act and in respect of which he has been compensated by any other person;
  - (j) not being authorised to do so, gives or promises to give, directly or indirectly, any reward to an officer or any person employed by the Government, in respect of the performance or non-performance by any such officer or person of his duty or employment under this Act or agrees with or proposes to any such officer or person to do or permit anything in contravention or evasion of this Act;
  - (k) being an officer or a person employed by the Government, demands or receives, except from or through the Government, 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 permit or agrees to do anything in contravention or evasion of this Act;
  - (l) attempts to commit or assist in committing any offence mentioned in this section;
  - (m) from any goods made from or containing excisable goods extracts or recovers such excisable goods in contravention of the provisions of this Act; or
  - (n) contravenes the provisions of section 17(13), 19(5), 35(4), 60(1), 63(1), or 76(20) shall be guilty of an offence and liable on conviction to a fine not exceeding one thousand maloti or treble the value of the goods in respect of which such offence was committed, whichever is the greater, or to imprisonment for a period not exceeding twelve months, or to both such fine and such imprisonment.
- (2) When any person is charged with a contravention of paragraph (a) of subsection (1) he shall, until the contrary is proved, be presumed to have known that the goods in question were illicit goods.

## 82. Non-declaration of goods

Any person who fails to declare any dutiable goods or goods the importation or exportation of which is prohibited or restricted under any law upon his person or in his possession, or makes any statement for customs or excise purposes as to any dutiable goods or prohibited or restricted goods upon his person or in his possession from which any dutiable goods or prohibited or restricted goods are omitted, shall, if any such goods are discovered to be or to have been upon his person or in his possession at the time of failure, or of the statement, be guilty of an offence and liable on conviction to a fine not exceeding two thousand maloti or treble the value of the goods in question, whichever is the greater, or to imprisonment for a period not exceeding two years, or to both such a fine and such imprisonment, and the goods in question and other goods contained in the same package as well as the package itself shall be liable to forfeiture.

## 83. Irregular export or carriage of munitions

If any goods referred to in [section 114](#) (5) are, in contravention of any proclamation issued in terms thereof, exported from Lesotho, or carried in transit through Lesotho to any place the exporter, owner or consignor thereof shall be guilty of an offence and liable on conviction to a fine not exceeding two thousand maloti or to imprisonment for a period not exceeding two years, or to both such fine and such imprisonment, and such goods shall be liable to forfeiture.

## 84. Irregular dealing with or in goods

Any person who—

- (a) deals or assists in dealing with any goods contrary to the provisions of this Act; or
- (b) knowingly has in his possession any goods liable to forfeiture under this Act; or



- (c) makes or attempts to make any arrangement with a supplier, manufacturer, exporter or seller of goods imported or to be imported into or manufactured or to be manufactured in Lesotho or with any agent of any such supplier, manufacturer, exporter or seller, regarding any matter to which this Act relates, with the object of defeating or evading the provisions of this Act, shall be guilty of an offence and liable on conviction to a fine not exceeding two thousand maloti or treble the value of the goods in respect of which such offence was committed, whichever is the greater, or to imprisonment for a period not exceeding two years, or to both such fine and such imprisonment, and the goods in respect of which such offence was committed shall be liable to forfeiture.

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## **85. False documents and declarations**

- (1) Any person who makes a false statement in connection with any matter dealt with in this Act, or who makes use for the purposes of this Act of a declaration or document containing any such statement shall unless he proves that he was ignorant of the falsity of such statement and that such ignorance was not due to negligence on his part, be guilty of an offence and liable on conviction to a fine not exceeding two thousand maloti or treble the value of the goods to which such statement, declaration or document relates, whichever is the greater, or to imprisonment for a period not exceeding two years, or to both such fine and such imprisonment, and the goods in respect of which such false statement was made or such false declaration or document was used shall be liable to forfeiture.
- (2) For the purposes of subsection (1), any invoice or other document relating to any denomination, description, class, grade or quantity of goods shall be deemed to contain a false statement if the price charged by the exporter or any value, price, commission, discount, cost, charge, expense, royalty, freight, duty, tax, drawback, refund, rebate, remission or other information whatever declared therein which has a bearing on value for the purposes of any duty or on classification in terms of any Schedule to this Act or on anti-dumping duty or countervailing duty or on extent or 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;
- (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, grade or quantities supplied by the same supplier.

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## **86. Beer of higher or lower gravity than indicated by label on container**

Any manufacturer of beer in whose customs and excise warehouse or on whose delivery vehicle beer packed for sale is found of a relative density before fermentation higher or lower than such relative density specified in sub-item of tariff item 104.10 registered in terms of subsection (4) of [section 36](#) in relation to beer of the name indicated on the container of the beer so found shall be guilty of an offence and liable on conviction to a fine not exceeding two thousand maloti or treble the value of the goods in respect of which such offence was committed, whichever is the greater, or to imprisonment for a period not exceeding two years, or to both such fine and such imprisonment, and the goods in respect of which such offence was committed shall be liable to forfeiture.

## 87. Certain specified offences

Any person who—

- (a) fails to advise the Director 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 or 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) fails to declare in or omits from any prescribed invoice any particulars (including value and origin) in respect of the goods to which such invoice relates and would increase the duty on such goods or exclude them from any rebate or refund or other privilege under this Act;
- (c) applies any money or credit received by or due to him as a commission in such a manner as to avoid or evade any duty or obligation or to obtain any rebate or refund or other privilege in respect of any goods under this Act;
- (d) issues two or more different prescribed invoices or certificates in respect of the same goods or fails to issue an amended prescribed invoice or certificate where any particulars declared in any prescribed invoices or certificate in respect of any goods have changed in any manner whatever;
- (e) makes or attempts to make or assists in making or attempting to make any arrangement of whatever nature with any person inside or outside Lesotho in connection with any goods imported or to be imported into Lesotho with the object of or having the effect of defeating or evading the provisions of any agreement entered into between Lesotho and any exporting territory which provides for the restriction of or control over the exportation to Lesotho of any goods in any manner or any restriction of or control over exportation of any goods to Lesotho imposed by any exporting territory in any manner by arrangement with or at the instance or suggestion of or with the approval of Lesotho;
- (f) produces to the Director, for the purpose of [Section 40 \(1\) \(e\)](#) any sample which is not a sample of the goods of which it purports to be a sample or who so produces any copy or any invoice or other document or of any blueprint, illustration, drawing, plan or illustrated and descriptive literature which does not relate to the goods to which it purports to relate or which is incorrect or incomplete or misleading in any respect;
- (g) allocates the same identification number, code, description, character or other mark referred to in [section 42 \(2\)](#) 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
- (h) contravenes or fails to comply with the provisions of [Section 102](#) or of any regulation made in terms of [section 74](#) or [102](#), shall be guilty of an offence and liable on conviction to a fine not exceeding two thousand maloti or treble the value of the goods in respect of which such offence was committed whichever is the greater, or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment, and the goods in respect of which such offence was committed shall be liable to forfeiture.

## 88. Goods irregularly dealt with liable to forfeiture

- (1) Any goods imported, exported, manufactured, warehoused, removed or otherwise dealt with contrary to the provisions of this Act or in respect of which any offence under this Act has been committed (including the containers of any such goods) or any plant used contrary to the provisions of this Act in the manufacture of any goods shall be liable to forfeiture wheresoever and in possession of whomsoever found:



Provided that forfeiture shall not affect liability to any other penalty or punishment which has been incurred under this Act or any other law, or entitle any person to a refund or any duty or charge paid in respect of such goods.

- (2) (a) Any vehicle used in the removal or carriage of any goods liable to forfeiture under this Act shall be likewise liable to forfeiture unless it is shown that such vehicle was so used without the consent or knowledge of the owner of that vehicle or other person lawfully in possession or charge thereof.
- (b) Any vehicle in which goods liable to forfeiture under this Act are used as fuel or in any other manner shall likewise be liable to forfeiture unless it is shown that such goods were so used without the consent or knowledge of the owner of such vehicle or other person lawfully in possession or charge thereof.

## 89. Seizure

- (1) Any vehicle, plant, material or goods liable to forfeiture under this Act, or which he has reasonable cause to believe are liable to forfeiture under this Act, may be detained by any officer, magistrate, or member of the police force and the Director may, in his descretion seize such vehicle, plan material or goods.
- (2) (a) If the commission of an offence which renders am imported or manufactured goods liable to forfeiture under this Act, is detected after such goods have been released to the importer thereof or have been taken or delivered from any premises (whether a special customs and excise warehouse or customs and excise manufacturing warehouse, licensed under this Act, or not) and if such goods cannot readily be found, the Director may, notwithstanding anything to the contrary in this Act contained, demand from the importer or the person who committed the offence in question payment of an amount equal to the value for duty purposes of such goods plus any unpaid duty thereon.
- (b) If the amount demanded is not paid within a period of fourteen days after the demand for payment was made it may be recovered in terms of the provisions of this Act as if it were a forfeiture incurred under this Act.
- (c) The provisions of this Act, shall, insofar as they can be applied, apply *mutatis mutandis* in respect of any amount paid to the Director or recovered in terms of this subsection, as if such amount were the goods in question and as if such amount had been seized under subsection (1).

## 90. Notice of claim by owner in respect of seized goods

- (1) Any vehicle, plant, material or goods which have been seized under this Act, shall be deemed to be condemned and forfeited and may be disposed of in terms of [section 91](#) unless the person from whom such vehicle, plant, material or goods have been seized or the owner thereof or his authorized agent gives notice in writing, within one month after the date of the seizure to the person seizing or to the Director that he claims or intends to claim that vehicle, plant, materials or goods.
- (2) If no such notice is given, no legal proceedings whatever shall thereafter be instituted against the State, the Minister, the Director or any officer, based merely upon the seizure of such vehicle, plant, material or goods.
- (3) When a notice in writing has been given in terms of subsection (1), the person giving such notice shall, within ninety days of the date of such notice, but, except with the consent of the Director, not earlier than one month from the date thereof, institute proceedings in a court of competent jurisdiction for release of the said vehicle, plant, material or goods.

## 91. Disposal of seized goods

- (a) Whatever is seized as being liable to forfeiture under this Act, shall forthwith be delivered to the Director at the customs and excise office nearest to the place where it was seized or it may be secured by the Director by sealing, marking, locking, fastening or otherwise securing or impounding it on the premises where it is found or by removing it to a place of security determined by the Director.
- (b) The Director shall, after condemnation thereof, cause the thing in question to be sold by public auction or in any other manner which the Director may deem suitable:

Provided that the Director may direct that, in lieu of being sold any such thing shall be destroyed or shall be appropriated to the State:

Provided further that if any such thing is of a perishable or dangerous nature the Director may direct the sale or destruction thereof before condemnation.

## 92. Admission of guilt

- (1) (a) If any person—
- (i) has, in the opinion of the Director, contravened any provision of this Act or failed to comply with any such provision with which it was his duty to comply; and
  - (ii) agrees to abide by the Director's decision; and
  - (iii) deposits with the Director such sum as the Director may require of him 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 Director may require;

The Director may, after such enquiry as he 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.

- (b) Anything done for the purposes of paragraph (a) by an agent generally or specially authorized thereto by any person, shall be deemed to have been duly done by that person in terms of that paragraph.
- (2) There shall be a right of appeal to the Minister from any determination or order of the Director under subsection (1), whereby a penalty exceeding five hundred maloti is imposed, provided such right is exercised within a period of three months from the date of such determination or order, and the Minister's decision on any such appeal shall be final.
- (3) Subject to the provisions of subsection (4) of [section 62](#) 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.

## 93. Payment and disposal of fines and penalties

Any fine or penalty recovered under this Act shall be paid to the Director and shall be paid by him into the consolidated Fund, and the proceeds of sale of anything forfeited or seized and condemned under this Act shall also be paid into the said Fund:

Provided that the Director may in his discretion withhold a sum not exceeding one-third of any such fine, penalty or proceeds which he 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.

#### **94. Remission or mitigation of penalties and forfeiture**

The Director may direct that any vehicle, 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 may have been incurred in connection with the detention or seizure or forfeiture, and to such conditions (including conditions providing for the payment of any amount equal to the value for duty purposes of such vehicle, plant, material or goods plus any unpaid duty thereon) as he deems fit, or may mitigate or remit any penalty incurred under this Act, on such conditions as he deems fit:

Provided that if the owner accepts such conditions, he shall not thereafter be entitled to institute or maintain any action for damages on account of the detention, seizure or forfeiture.

#### **95. Recovery of penalties by process of law**

- (a) Without derogation from any powers conferred upon the Director 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 may impose civil penalties or enforce forfeiture.
- (b) Any civil proceedings under this section may be instituted in the name of the Director.

#### **96. Jurisdiction of the courts**

- (1) Notwithstanding anything to the contrary in any law contained, a subordinate court of the First Class or higher shall have jurisdiction to impose any punishment provided for in this Act.
- (2) Any court mentioned in subsection (1) shall have jurisdiction to try any person for an offence under this Act whenever the thing in respect of which such offence was committed was found within or was conveyed from, to or through the area of jurisdiction of that court.

#### **97. Notice of action and period for bringing action**

- (1) No legal proceedings shall be instituted against the State, the Minister, the Director or an officer for anything done in pursuance of this Act until one month after delivery of a notice in writing setting forth clearly and explicitly the cause of action, the name and place of abode of the person who is to institute proceedings and the name and address of his attorney or agent, if any.
- (2) Subject to the provisions of [section 90](#) the period of extinctive prescription in respect of legal proceedings against the State, the Minister, the Director or an officer on a cause of action arising out of the provisions of this Act shall be one year and shall begin to run on the date when the right of action first arose.

*[L.N. 34 of 1983]*

## **Chapter XII General**

#### **98. Container operator or pilot may appoint agent**

Notwithstanding anything to the contrary in this Act contained, a container operator or the pilot of an aircraft, instead of himself performing any act, including the answering of questions required by or under any provisions of this Act to be performed by him, may at his own risk, appoint an agent to perform any such act, and any such act performed by such agent shall in all respect and for all purposes be deemed to be the act of a container operator or pilot, as the case may be.

Provided that the personal attendance of a container operator or pilot may be demanded by the Director.

## 99. Liability of principal for acts of agent

Every importer, exporter, container operator, pilot, manufacturer, licensee, remover of goods in bond or other principal shall, for the purposes of this Act, be responsible for any act done by an agent acting on his behalf, whether within or outside Lesotho.

## 100. Liability of agents for obligations imposed on principal

- (1) An agent appointed by any pilot, or container operator, and any person who represents himself to any officer as the agent of any pilot or container operator, and is accepted as such by that officer, shall be liable for the fulfilment, in respect of the matter in question, of all obligations, including the payment of duty and charges, imposed on such pilot or container operator by this Act and to any penalties or forfeitures which may be incurred in respect of that matter.
- (2)
  - (a) An agent appointed by any importer, exporter, manufacturer, licensee, remover of goods in bond or other principal and any person who represents himself to any officer as the agent of any importer, exporter, manufacturer, licensee, remover of goods in bond or other principal, and is accepted as such by that officer, shall be liable for the fulfilment, in respect of the matter in question, of all obligations, including the payment of duty and charges, imposed on such importer, exporter, manufacturer, licensee, remover of goods in bond or other principal by this Act and to any penalties which may be incurred in respect of that matter.
  - (b) No importer, exporter, manufacturer, licensee, remover of goods in bond or other principal shall, by virtue of the provisions of paragraph (a) be relieved from liability for the fulfilment of any obligation imposed on him by this Act and to any penalty which may be incurred in respect thereof.
- (3) Every clearing and forwarding agent and every agent acting for the pilot of an aircraft and any other class of agent which the Minister may by regulation specify shall, before transacting any business with the department, and any class of carrier of goods to which this Act relates which the Minister may by regulation specify shall before conveying any such goods, give such security as he may from time to time require for the due observance of the provisions of this Act:

Provided that the Minister may call for special or additional security in respect of any particular transaction or conveyance of goods from any agent or carrier.

- (4)
  - (a) An agent (including a representative or associate of the principal) representing or acting for or on behalf of any exporter, manufacturer, supplier, shipper or other principal outside Lesotho, who exports goods to Lesotho, shall be liable, in respect of any goods ordered through him or obtained by an importer by means of his services, for the fulfilment of all obligations imposed upon such exporter, manufacturer, supplier, shipper or other principal by this Act, and to any penalties or forfeitures which may be incurred by such exporter, manufacturer, supplier, shipper or other principal under this Act:

Provided that any such agent shall cease to be so liable if he proves to the satisfaction of the Director that—

- (i) he was not a party to the non-fulfilment, by any such exporter, manufacturer, supplier, shipper or other principal, of any such obligation; and
  - (ii) when he became aware of such non-fulfilment, he forthwith notified the Director thereof; and
  - (iii) all reasonable steps were taken by him to prevent such non-fulfilment.
- (b) Every agent of a class referred to in paragraph (a) and specified in the regulations for the purposes of this paragraph shall register himself with the Director and furnish such security as the Minister may from time to time require for the due observance of the provisions of this Act:

Provided that the Minister may accept such security from any association of such agents approved by him which undertakes to give security on behalf of its members.

- (c) No agent referred to in paragraph (b) shall transact any business on behalf of any such exporter, manufacturer, supplier, shipper or other principal after a date specified by the Minister by notice in the *Gazette* unless he has complied with the provisions of paragraph (b).
- (d) The registration and operations of any agent referred to in paragraph (b) shall be subject to such conditions as the Director may impose by rule and the Director may cancel the registration of any agent who has persistently contravened or failed to comply with the provisions of this Act or who has committed an offence referred to in section [81](#), [84](#), [85](#), [86](#) or [87](#).
- (5) Any liability in terms of subsection (1), (2) or 4(a) shall cease after the expiration of a period of two years from the date on which it was incurred in terms of any such subsection.

### **101. Agent may be called upon to produce written authority**

If any person makes an application to an officer to transact any business on behalf of another person or if any person represents himself to an officer as the agent of another person, such officer may require the person so applying or representing himself to produce a written authority in the form approved by the Director, from the person on whose behalf such application is made or on whose behalf the person so representing himself is alleged to be acting, and in default of the production of such authority, the officer may refuse to transact such business.

### **102. Business accounts, documents, etc. to be available for inspection**

- (1) (a) Any person carrying on any business in Lesotho shall keep within Lesotho in one of the official languages such books, accounts and documents relating to his transactions as the Minister may prescribe in the regulations and such books, accounts and documents shall be kept in such form and manner and shall be retained for such period as the Minister may so prescribe.
- (b) Different provisions may be so prescribed in respect of different classes or kinds of books, accounts and documents and different classes of persons.
- (2) The Director may, subject to such conditions as he may determine, allow any person referred to in subsection (1) to retain in lieu of any terms of that subsection, a reproduction of any such book, account or document obtained by means of microfilming or any other process.
- (3) Any person referred to in subsection (1) shall upon demand by the Director produce to him such books, accounts or documents referred to in subsection (1) as he may require and such person shall render such returns or submit such particulars in connection with his transactions to the Director as he may from time to time require.
- (4) The Director may, subject to such conditions as he may determine, allow any such person to produce in lieu of any such book, account or document required to be produced in terms of subsection (3), a copy thereof obtained by means of a reproduction referred to in subsection (2), and such copy shall, subject to compliance with such conditions, for all purposes have all the effects of the original book, account or document concerned.
- (5) The Minister may by regulation prescribe—
  - (a) the books, accounts, documents, transactions or operations in respect of which a chartered accountant's certificate shall be produced to the Director by such class of persons referred to in subsection (1) as he may so prescribe; and
  - (b) the nature and form of such certificate and the intervals at which such certificate shall be produced.

### 103. Sellers of goods to produce proof of payment of duty

- (1) Any person selling, offering for sale or dealing in imported or excisable goods or sales duty goods or any person removing the same, or any person having such goods entered in his books or mentioned in any document referred to in [section 102](#) shall, when requested by an officer, produce proof as to the person from whom the goods were obtained and, if he is the importer or manufacturer or owner, as to the place where the duty due thereon was paid, the date of payment, the particulars of the entry for home consumption and the marks and numbers of the cases, packages, bales and other articles concerned, which marks and numbers shall correspond to the documents produced in proof of the payment of the duty.
- (2) In any prosecution or proceedings under this Act, any statement in any record, letter or any other document kept, retained, received or dispatched by or on behalf of any person to the effect that any goods of a particular price, value, (including any commission, discount, cost, charge, expense, royalty, freight, tax, drawback, refund, rebate, remission or other information which relates to such goods and has a bearing on such price or value) or quantity, quality, nature, strength or other characteristics have been manufactured, imported, ordered, supplied, purchased, sold, dealt with or in or held in stock by him at any time, shall be admissible in evidence against him as an admission that he has at that time manufactured, imported, ordered, supplied, purchased, sold, dealt with or in or held in stock goods of that price, value, quantity, quality, nature, strength, or other characteristic.
- (3) If in any prosecution or proceedings the question arises whether any goods have been sold or used or disposed of or are or were in the possession of any person in such a manner as not to render them subject to duty, it shall be presumed that such goods have not been sold or used or disposed of or are not or were not in the possession of such person in the said manner unless the contrary is proved.
- (4) If in any prosecution under this Act or in any dispute in which the State, the Minister or the Director or any officer is a party, the question arises whether the proper duty has been paid or whether any goods or plant have been lawfully imported, exported, manufactured, removed or otherwise dealt with or in, it shall be presumed that such duty has not been paid or that such goods or plant have not been lawfully imported, exported, manufactured, removed or otherwise dealt with or in, unless the contrary is proved.
- (5) If in any prosecution under this Act or in any dispute in which the State, the Minister, or the Director or any officer is a party, it is alleged by or on behalf of the State or the Minister or the Director or such officer that any goods or plant have been or have not been imported, exported, manufactured in Lesotho, removed or otherwise dealt with or in, it shall be presumed that such goods or plant have been or (as the case may be) have not been imported, exported, manufactured in Lesotho, removed or otherwise dealt with or in, unless the contrary is proved.

### 104. Liability of company, partnership etc.

For the purpose of this Act any reference to a person shall be deemed to include a reference to a company, co-operative society, firm, partnership, statutory body or club and in the event of a contravention of or non-compliance with this Act or the incurring of any liability under this Act by any company, co-operative society, firm, partnership, statutory body or club any person having the management of any premises or business in or in connection with which the contravention or non-compliance took place, or the liability was incurred may be charged with the relevant offence and shall be liable to any penalties provided therefor and shall be liable in respect of any liability so incurred.

### 105. Deferment of payment of duty

The Director may in his discretion and subject to such conditions (including the payment of interest at reasonable rates on the amount due) as he may consider necessary, permit any duty payable under the

provisions of this Act, or any penalty imposed by him, to be paid by instalments of such amounts and at such time as he may determine.

## 106. Samples

- (1) An officer may on entry of any imported goods or during the manufacture of any excisable goods or sales duty goods or at any time after such entry or manufacture, take, without payment, from any person in possession of such imported goods or of any manufactured or partly manufactured excisable goods or sales duty goods samples of such imported, manufactured or partly manufactured goods or of materials intended for the manufacture of excisable goods or sales duty goods or of goods used under the provisions of Chapter X, for examination or for ascertaining the duties payable thereon or for such other purpose as the Director deems necessary, and those samples shall be dealt with and accounted for in such manner as the Director may direct.
- (2) For the purpose of determining the duty leviable in respect of any goods comprising a single consignment, or in any vessel, tank or other container of goods, the nature or characteristics of all the goods in that consignment, vessel, tank or other container shall be deemed to correspond to the nature or characteristics of any sample taken by the officer from such consignment, vessel, tank or other container.

## 107. Expenses of landing, examination, weighing, analysis, etc.

- (1)
  - (a) All handling of and dealing with goods for the purposes of this Act shall be performed by or at the expense and risk of the importer, exporter, manufacturer or owner of the goods, whoever has control of such goods, except in the case of goods examined at a customs and excise warehouse, where such handling of and dealing with goods shall be performed at the expense and risk of the owner thereof.
  - (b) Any goods remaining in the custody or under the control of the Department after expiry of a period of 28 days from the date of due entry thereof, may be removed by the Director to the state warehouse or other place indicated by the Director, and may thereupon be disposed of in terms of [section 44](#) (3).
- (2)
  - (a) Subject to the provisions of this Act, the Director shall not, except on such conditions as may be determined by him allow goods to pass from his control until he has satisfied himself that the provisions of this Act or any law relating to the importation or exportation or transit carriage through Lesotho of goods have been complied with in respect of such goods and the State or the Director or any officer shall in no case be liable in respect of any claim arising out of the detention of goods pending the decision of the Director, or for the costs of such detention.  
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  - (b) Whenever the Director considers it necessary for the purposes of paragraph (a) of this subsection or [section 106](#) (1) that any goods should be analysed he may direct that such goods be analysed by a person designated by him and that the analysis be done in accordance with a method determined by him.
- (3) The cost of analysis of any goods for the purposes of subsection (2) (a) shall be borne by the importer, exporter, manufacturer or owner of such goods except where the Director considers the analysis necessary for the purposes of subsection (2) (a) and the result of analysis confirms the correctness of the declaration or bill of entry made or presented by such importer, exporter, owner or manufacturer in respect of such goods:

Provided that the cost of analysis shall in no case be borne by the State where it is carried out in connection with any application for refund of duty or substitution of any entry or where the result of analysis shows that the goods in question were incorrectly or insufficiently described on the relative prescribed invoice.



### 108. Control in respect of manufacturers of certain goods or materials and persons who carry out processes in connection with such goods or material

- (1) The manufacturer of any goods or material used or capable of being used in the manufacture of any goods to which this Act applies and any person who carries out any preliminary, intermediate or supplementary process in connection with such goods or materials or any goods to which this Act applies shall, in accordance with the directions of the Director—
  - (a) register with the Director any such formula, factory, machinery, instruments, appliance or apparatus used in connection with the manufacture of such goods or materials or the carrying out of any such process as the Director may require;
  - (b) comply with such conditions relating to such manufacture or the carrying out of any such process as the Director may impose in each case;
  - (c) keep such records as the Director may require as to—
    - (i) the nature, characteristics, source, origin and quantities of the ingredients of such goods or materials and of such other particulars of the ingredients of such goods or materials as the Director may specify;
    - (ii) the processes carried out in respect of such goods or materials;
    - (iii) the persons on whose behalf such processes were carried out; and
    - (iv) the purchasers of such goods or materials;
  - (d) render such returns or furnish such certificates in respect of such goods or materials, as the Director may require; and  
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  - (e) produce such documents in support of any records kept in terms of paragraph (c) or returns or certificates rendered or furnished in terms of paragraph (d), as the Director may require.
- (2) For the purpose of subsection (1) -any preliminary, intermediate or supplementary process in connection with any goods or materials in that subsection mentioned, shall include any such process relating to the ordering, purchasing, selling or disposal of, and the entering into any contract for the manufacture of, any such goods or materials.

### 109. Embargo on goods

If at any time an officer has reason to believe that the correct duties have not been paid on any goods or that there has been or may be in respect of any goods, plant, vehicle or thing a contravention of any provision of this Act or of any law relating to the importation or exportation of goods, he may place an embargo on those goods, plant, vehicle or thing, wheresoever or in possession of whomsoever found, and no person shall remove such goods, plant, vehicle or thing from the place indicated by the officer, or in any way deal therewith, except with the permission of the officer, until the embargo has been withdrawn.

*[L.N. 34 of 1983]*

### 110. Destruction of goods and detention of vehicles

- (1) If in the opinion of the Director it is necessary for the safeguarding of public health or for the safety of the public or the State, he may at any time and at the expense and risk of the importer, exporter, owner or pilot concerned, according as the Director may determine—
  - (a) cause any goods under customs and excise control forthwith to be destroyed or otherwise disposed of; or



- (b) delay the departure of any vehicle from any place in Lesotho for a period not exceeding forty-eight hours.
- (2) No person shall be entitled to any compensation for loss arising out of any *bona fide* action of the Director under subsection (1).

### 111. Instruments and tables

- (1) Except as elsewhere provided in this Act, the Minister may by regulation prescribe the instruments, meters, gauges, and other appliances and the tables, formulae and other methods of calculation to be used in ascertaining the mass, quantity, strength, relative density, temperature, pressure or any other characteristic of any goods for the purposes of this Act.

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- (2) For calculating the full quantity of any goods which have been manufactured or used under the provisions of this Act, the Minister may by regulation prescribe tables indicating the quantity of goods which shall be deemed to have been manufactured from any given quantity of any goods or the quantity of goods which shall be deemed to have been used in the manufacture of any given quantity of any goods manufactured therefrom.

### 112. Production of certificate of officer on registration of certain motor vehicles

Any motor vehicle registering authority in Lesotho shall not register any motor vehicle which has previously been registered in any territory outside Lesotho unless a certificate Issued by an officer is produced stating that the requirements of this Act in respect of the importation of such vehicle have been complied with.

### 113. Wreck

- (1) For the purposes of this section "wreck" includes any portion of an aircraft which has been wrecked or abandoned or of the cargo, stores or equipment thereof or any other article thereon.
- (2) Any person who has in his possession any wreck, shall without delay give notice thereof to the Director and shall (unless he is the owner of such wreck or the duly authorised agent of the owner) if required, forthwith deliver that wreck or permit it to be delivered to the Director, and unless it is necessary for the preservation or safe keeping thereof, no person shall without the permission of the Director remove or alter in quantity or quality any such wreck.
- (3) Wreck found in or brought into Lesotho may at any time after it has come under the control of the Director, be disposed of by him in the manner set forth in [section 44](#) but shall otherwise be subject to the provisions of this Act.
- (4) The Minister may by regulation prescribe the circumstances under which and the conditions subject to which a licence may be issued by the Director to any person entitling him to search or search for any wreck, but no such licence shall give the holder thereof the exclusive right of searching for or salvaging any particular wreck.

### 114. Prohibition and restrictions

- (1) The importation of the following goods is hereby prohibited, namely—
  - (a) carbide of calcium which, when treated with water yields less than 250 litres of gas from one kilogram, the gas being measured at 15° Celsius under a pressure of 101, 325 kilopascal;
  - (b) cigarettes with a mass of more than 2 kilograms per thousand cigarettes;
  - (c) coins which are base or counterfeit;

- (d) dangerous weapons of the following kinds, namely—
    - (i) swords, cutlasses, bayonets, daggers and knives with cutting edges of 10 centimetres or more in length (excluding such knives ordinarily used for domestic or industrial purposes, in agriculture or in the meat trade);
    - (ii) spears and assegais;
    - (iii) loaded or spiked sticks and knucle dusters; and
    - (iv) any other article which the Minister of Defence and Internal Security may by notice in the *Gazette* declare to be dangerous weapon, unless imported under permit issued by his authority;
  - (e) goods to which a trade description or a trade mark is applied in contravention of any law in force in Lesotho;
  - (f) goods which are indecent or obscene or on any ground whatsoever objectionable, unless imported for research purposes by an educational institution under a permit issued by the Minister;  
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  - (g) unlawful reproductions of any works if such reproductions are prohibited from importation under any law relating to copyright;
  - (h) prison-made and penitentiary-made goods;
  - (i) second hand or used articles of the following classes, namely—
    - (i) cloaks, jackets, jumpers, jerkins, waistcoats and trousers intended for sale in Lesotho;
    - (ii) boots and shoes, intended for sale in Lesotho; boots and shoes not intended for sale in Lesotho, unless imported under permit issued by the Minister in respect of such boots and shoes which are defective and are for inspection and destruction;
  - (j)
    - (i) all kinds of army, navy air force uniform clothing and appointments, as originally manufactured or as subsequently altered;
    - (ii) boots of a type usually issued to army, navy and air force personnel;
    - (iii) blankets and groundsheets of a type usually issued to army, navy and air force personnel as originally manufactured or as subsequently altered, and military and naval kit bags and haversacks of a type usually so issued;
    - (iv) any other articles which the Minister may by regulation declare to be articles which fall within the category of war stores, unless imported under permit issued by the Minister. Any goods imported in contravention of this subsection shall be liable to forfeiture;
  - (k) goods the importation of which is in terms of any provision of this Act or of any other law required to be authorized by a permit, certificate or other authority unless imported under such a permit, certificate or other authority which in terms purports to have been issued by virtue of such provision.
- (2) Goods which purport to have been imported under a permit, certificate or other authority referred to in subsection (1) shall be deemed to have been imported in contravention of the provisions of that subsection unless the permit, certificate or other authority in question is produced to the Director at the time of entry of such goods.
- (3) (a) In the event of any question arising as to whether any goods are indecent or obscene or objectionable, the decision of the Minister shall be final.

- (b) If any printed, engraved, lithographic or photographic matter is according to the decision of the Minister indecent, obscene or objectionable, and is contained in any publication which in the opinion of the Minister is one of a series, the Minister may publish the name of such publication by notice in the *Gazette*, and thereupon every issue of that publication shall, until such notice is withdrawn by the Minister by notice in the *Gazette*, for the purpose of this section be deemed to be indecent, obscene or objectionable, as the case may be.
- (c) For the purposes of this section and notwithstanding the provisions of any other law, goods referred to herein shall be deemed to be indecent, obscene or objectionable if any part of it,
- (i) is indecent or obscene or is offensive or harmful to public morals;
  - (ii) is blasphemous or is offensive to the religious convictions or feeling of any section of the inhabitants of Lesotho;
  - (iii) brings any section of the inhabitants of Lesotho into ridicule or contempt;
  - (iv) is harmful to the relations between any section of the inhabitants of Lesotho;
  - (v) is prejudicial to the safety of the State, the general welfare or the peace and good order;
  - (vi) propagates ideas or principles which are aimed at changing the democratic fabric of society in Lesotho or which, if generality accepted would introduce a political system under which the democratic principles relating to human rights might be endangered;
  - (vii) discloses with reference to any judicial proceedings—
    - (aa) any matter which is indecent or obscene or is offensive or harmful to public morals or any indecent or obscene medical, surgical or physiological details the disclosure of which is likely to be offensive or harmful to public morals;
    - (bb) for the dissolution or a declaration of nullity of a marriage or for judicial separation or for restitution of conjugal rights, any particulars other than—
      - (i) the names, addresses and occupations of the parties and witnesses;
      - (ii) a concise statement of the allegations, defences and counter allegations in support of which evidence has been given;
      - (iii) submission on any point of law arising in the course of the proceedings, and the decision of the court thereon;
      - (iv) the judgement and the verdict of the court and any observations made by the judge in giving judgement.
- (4) The Minister may by notice in the *Gazette* suspend the operation of any provision of subsection (1), whenever he is satisfied that such suspension would be in the public interest.
- (5) The Minister may, by notice in the *Gazette*, prohibit the exportation or the transit carriage through Lesotho to any place, of munitions or any other goods which he considers capable of being converted into or used in the manufacture of munitions.
- (6) For the purposes of sub section (5), exportation or transit carriage to a place includes dispatch to that place either directly or indirectly and either permanently or for a temporary purpose, and any goods specified in Government notice issued under sub section (5) which are brought to a place so specified shall be deemed to have been exported or carried to that place in contravention of such notice by the person who dispatched such goods, and the person who dispatched any such goods, shall be presumed to have exported or carried those goods to such place unless he proves that he did not know and had no reason to believe that the said goods would be brought to that place, and that he could not have prevented it.

- (7) The Minister may by regulation prohibit or restrict the transit carriage through Lesotho of any goods referred to in subsection (1) or of any other goods in respect of which he considers any such prohibition or restriction necessary in the public interest.
- (8) If any person imports or exports or attempts to import or export any goods in contravention of any law other than this Act, such goods, together with any other goods contained in the same package as well as the package itself shall, unless the law in question provides for their disposal, be liable to forfeiture wheresoever and in possession of whomsoever found.

*[L.N. 34 of 1983]*

- (9) No person shall manufacture any cigarettes the mass of the tobacco of which exceeds two kilograms per thousand cigarettes.
- (10) The exportation of goods the exportation of which is in terms of any provision of this Act or of any other law required to be authorised by a permit, certificates or other authority, is hereby prohibited unless exported under such a permit, certificate or other authority which in terms purports to have been issued by virtue of such provisions, and such permit, certificate or other authority is produced to the officer before exportation of such goods.

### **115. Duty constitutes a debt to the State**

- (1) (a) The correct amount of duty payable in respect of any goods imported into or exported from Lesotho or any goods manufactured in Lesotho and any interest payable under this Act and any fine, penalty, or forfeiture incurred under this Act shall, from time to time when it should have been paid, constitute a debt to the State by the person concerned, and any goods in a customs and excise warehouse or in the custody of the department (including goods in a rebate storeroom) and belonging to that person, and any goods afterwards imported or exported by the person by whom the debt is due, and any goods in respect of which an excise or sales duty is prescribed (whether or not such duty has been paid) and any materials for the manufacture of such goods in the possession or under the control of such person or on any premises in the possession or under the control of such person and any vehicles in the possession or under the control of such person in which fuel, being illicit goods, has been used may be detained in accordance with the provisions of sub section (2) and shall be subject to a lien until such debt is paid.

*[L.N. 34 of 1983]*

- (b) Any plant and stills for the manufacture of any goods in respect of which an excise or sales duty is prescribed which is in the possession or under the control of such person or on any premises in the possession or under the control of such person shall be subject to a lien from the time when the liability for the duty payable as contemplated in paragraph (a) in respect of any goods so manufactured commences until the debt in question is paid, as if such plant and stills are detained in accordance with the provisions of sub section (2):

Provided that the Director may allow any such plant or still to be used under such conditions as he may impose in each case.

- (c) The claims of the State shall have priority over the claims of all persons upon anything subject to a lien contemplated in paragraph (a) or (b) and may be enforced by sale or other proceedings if the debt is not paid within three months after the date on which it became due.
  - (d) Any refund of duty or a deposit or any other amount due to such person in respect of any matter whatsoever, may be set off against such debt.
- (2) The Director or an officer may detain anything referred to in sub section (1) (a) by sealing, marking, locking, fastening or otherwise securing or impounding it on the premises where it is found or by removing it to a place of security determined by the Director:

Provided that the Director may allow any such thing to be used under such conditions as he may impose in each case.

- (3) No person shall remove—
  - (a) any plant or stills, subject to a lien in terms of sub section (1) (b), from the place indicated by the Director;
  - (b) anything detained under subsection (2) from the premises referred to in that subsection or from the place of security to which it may have been removed under that subsection.
- (4) Any reference to goods in this section shall be deemed to include a reference to the containers of such goods.

### **116. Entries, oaths etc. made outside Lesotho**

Any entry, writing, oath or declaration required to be made under this Act shall, if made outside Lesotho or before an officer of Lesotho, be binding and of full force and effect in Lesotho.

### **117. Manufacture of excisable goods solely for use by the manufacturer thereof**

- (1) Notwithstanding anything to the contrary in this Act contained, the Director may, in respect of any excisable goods (except ethyl alcohol) manufactured by natural persons (except under item 604.00 of Schedule NO.6) for their own use and not for sale or disposal in any manner—
  - (a) If he considers that such manufacturing results, or is likely to result, in loss of revenue or is likely to be, detrimental to any industry in Lesotho to such extent as to warrant any action described in this paragraph—
    - (i) by rule prohibit the sale to any such person of any plant, apparatus, appliance, instrument, or material used or capable of use in or designed for the manufacture of such excisable goods or impose such conditions in respect of the advertising or sale of such plant, apparatus, appliance, instrument or material as he deems fit;
    - (ii) for the purposes of calculating the duty payable on such excisable goods manufactured by any such person, estimate the quantity thereof so manufactured or the strength or other characteristic of any such quantity in any manner he may deem fit; or
    - (iii) in respect of any quantity of such excisable goods in respect of which duty will in his opinion become payable, accept duty (or any portion thereof), calculated according to any basis which he deems reasonable, from any person who sells or disposes of any material for use in the manufacture of such excisable goods to the manufacturer thereof.
  - (b)
    - (i) If he considers that such manufacturing does not result or is not likely to result in loss of revenue or is not likely to be detrimental to any industry in Lesotho to the extent stated in paragraph (a); or
    - (ii) if in the manufacture of such excisable goods used parts or material on which any duty had been paid previously was used to such extent as he deems reasonable exempt such excisable goods from the whole or any portion of the duty thereon, subject to such conditions as he may in each case impose.
- (2) Any estimate made by the Director for the purposes of sub paragraph (ii) of paragraph (a) of sub section (i) or any decision given by him as to the basis of calculating the duty to be accepted in terms of sub-paragraph (iii) of that paragraph or as to the amount of any duty payable in terms of this section, shall be final.

- (3) The manufacturer of any goods exempted from the whole or any portion of the duty in terms of this section, shall be liable for payment of the whole or such portion of the duty as the Director may determine if they are sold or disposed of by such manufacturer.
- (4) The Minister may, subject to such conditions as he may in each case impose, exempt any goods to which this section relates from any provision of chapter IV, V or VIII of this Act.

### **118. Adjustment of duty in certain circumstances**

When any new duty is put into operation or any existing duty is applied to any goods not previously subject thereto. or any new or amended rebate of duty or refund or drawback of duty is applied, or in interpreting any provision of this Act or under other circumstances which he may deem exceptional, the Director may effect such adjustments to the calculation of any duty payable or paid, as he may deem reasonable, with due regard to the date of any decision in respect of any determination under this Act in relation to classification of any goods in terms of any Schedule to this Act, determination of value or of any other relevant determination or interpretation, provided proof is submitted to the satisfaction of the Director that any duty involved in any such adjustment has not been recovered from the consumer or any other person.

### **119. Statistics**

Such statistics of the import and export trade of Lesotho and excisable goods manufactured in Lesotho and of sales duty goods manufactured in and imported into Lesotho as the Minister may determine, shall be compiled and tabulated by the Director and published at such times and in such manner as the Minister may direct.

### **120. Delegation of powers**

The Minister may, subject to such conditions as he may impose and for such period as he may specify in each case, delegate any of his powers under this Act (except any power relating to the amendment of any Schedule or the making of any regulation) to the Director.

### **121. Substitution of Schedule**

Whenever any Schedule to this Act or any part or item thereof, is substituted and the new Schedule or part or item provides that the Minister or the Director may impose or prescribe any condition or approve of any matter or thing in relation to any class of goods, any condition imposed or prescribed or approval given by the Minister or the Director under the Schedule or part or item in relation to such class of goods before substitution shall be deemed to have been imposed, prescribed or given under the new Schedule or part or item.

### **122. Non-publication of notices: South African Schedules to apply**

- (1) Notwithstanding section 16(a) of the Interpretation Act 1977 and anything contained in sections [49](#), [56](#) and [76\(16\)](#) of this Act, amendment made to schedules Nos. 1 to 7 shall not require publication in the *Gazette*.
- (2) Subject to subsection (3), Schedules Nos. 1 to 7 of the South African Customs and Excise Act as in force in South Africa shall have full force in Lesotho, and any amendments thereto in South Africa shall have effect in Lesotho as from the date such amendments are made.
- (3) Whenever any amendment in South Africa relates to the "mostfavoured nation" column of schedule No. 1 to the South Africa Customs Act, such amendment shall be deemed to relate to the "fiscal duty" column of schedule 1 to this Act.
- (4) The Director shall, at all times, maintain at the Customs office, Maseru, an up-to-date copy of schedule 1 to 7 of this Act and shall make such copy available for the information of the public.

## 123. Regulations and rules

- (1) The Minister may make regulations
  - (a) prescribing the powers, duties and hours of attendance of officers;
  - (b) determining the special services for which charges shall be payable on account of the attendance or of supervision by officers, the rate of such charges and the conditions attaching to such special services (including the payment of transport charges);
  - (c) as to the reporting inwards and outwards of aircraft (including such reporting of aircraft landing at places not appointed as places of entry or customs and excise airports under this Act), the entry or departure of vehicles overland, the landing, loading, removal, detention, release, examination, conveyance and handling of cargo (including transit cargo), the control of persons (including their baggage and goods) entering or leaving Lesotho, the placing into or removal from any State Warehouse of goods and the removal in bond of goods.
  - (d) as to the control of the storage or manufacture of goods in customs and excise warehouses (including the suitability of any buildings, plant and method of manufacture for the purposes of this Act, the hours of conducting any or all operations in any such warehouse, the supervision by officers of any such operations, the securing or marking of such plant, the inspection of such warehouses and the removal of goods from such warehouses), the testing of the output of stills, the conditions on which stills may be made, possessed, imported, disposed of or used and the fresh fruit which may be used by an agricultural distiller for the distillation of spirits;
  - (e) as to the importation, exportation, transit of goods, the entry of goods, the payment of duties and other charges and fees, the costs which shall, for the purposes of [section 47](#) be included in or excluded from the production cost of goods in general or of goods of any class or kind, and the movement of goods to and from any territory with the government of which an agreement has been concluded under [section 51](#);
  - (f) prescribing the form of and the particulars to be inserted on invoices or certificates in respect of any goods to which this Act applies and which are imported into or manufactured in Lesotho:
  - (g) as to the collection of duty by means of stamps, the method of applying stamps or stamp impressions to containers, the cancellation of stamps, the use of franking or counting machines, inks, dyes and other appliances and materials, the accounting of stamp labels and stamp duties and the disposal of stamp labels;
  - (h) as to the collection of excise duties and sales duties, the time, manner and terms of payment and calculation thereof;
  - (i) as to the collection of duties which become payable under subsection (2) of [section 58](#);
  - (j) as to the circumstances under which licences may be granted and the manner of issuing and renewing licences;
  - (k) governing the entry of goods under any item of Schedule No. 3, 4,5, 6 or 7 and prescribing the conditions on which such goods may be so entered or such goods may be transferred from one manufacturer or owner to another or such goods may be used, and as to the registration of manufacturer or owners so entering goods (including requirements as to the suitability of buildings, premises, storerooms and methods of manufacture for the purposes of this Act to be complied with by such manufacturer or owners), the records to be kept by such manufacturers or owners and the form of the application for registration and particulars to be furnished by such manufacturers or owners;
  - (l) prescribing the returns and price lists to be rendered by importers or manufacturers or owners of any class or kind of goods;



- (m) prescribing the form of any licence, bill of entry, certificate and any other document, register, stock-book or return which he considers necessary for the effective administration of this Act;
  - (n) as to all matters which by this Act are required or permitted to be prescribed by regulation;
  - (o) as to such other matters as are necessary or useful to be prescribed for the purposes of this Act.
- (2) The Director may make rules in respect of any matter in connection with which it is expressly indicated that such matter is to be dealt with in accordance with rules made by him.
- (3) The regulations and rules made under this section may provide penalties for any contravention thereof or failure to comply therewith not exceeding the penalties mentioned in subsection (2) of [section 79](#).

#### **124. Repeals**

Order NO. 14 of 1970 is hereby repealed.

Provided that any notice, regulation, rule, declaration, direction, approval, authority, return, licence, permit, certificate, bond, or document issued, renewed, promulgated, made, given or granted, or any thing done or suffered or deemed to have been done, under any provision of the Order repealed by this section, shall be deemed to have been issued, renewed, promulgated, made, given, granted or done under the corresponding provision of this Act.