

The Customs and Excise Act, 1971

Date of commencement (subject to section 1(2)) 1st March, 1969.

Date of Assent: 3rd November, 1971.

Arrangement of Sections

Part I

Preliminary

1. Short title and commencement.
2. Interpretation.

PART II

Administration, General Duties And Powers Of Commissioner And Officers, And Application Of Act

3. Commissioner to administer Act.
4. General duties and powers of officers.

Part Iii

Import, Export And Transit Of Goods

5. Appointment of places of entry, authorized roads and routes, etc.
6. Report of arrival or departure of aircraft.
7. Boarding and searching of aircraft.
8. Sealing of goods on board aircraft.
9. When goods deemed to be imported.
10. No landing and despatch of goods without permission.
11. Goods imported or exported overland.
12. Goods imported or exported by post.
13. Persons entering or leaving Swaziland and smugglers.
14. Opening of package in absence of importer or exporter.
15. Government warehouse.
16. Removal of goods in bond.
- 16*bis*. Exportation of goods from duty warehouse.

PART IV

Duty Warehouse—Storage And Manufacture Of Goods In Duty Warehouse

17. Duty warehouse.
18. Goods in duty warehouse.
19. Special duty warehouse.
20. Sample goods in a duty warehouse.
21. Storage or manufacture of prohibited goods.
22. Aircraft stores consumed in the common customs area.
23. Sorting, packing etc. in duty storage warehouse.
24. Transfer of ownership of warehoused goods.
25. Special provisions in respect of duty manufacturing warehouse.
26. Ascertaining quantity of spirits by weighing.
27. Classification of spirits.
28. Control of the use of spirits for certain purposes.
29. Entry of spirits for use in manufacture.
30. Ascertaining strength of spirits.
31. Requirements in respect of still.
32. Special provisions regarding spirits manufactured by agricultural distiller.
33. Special provisions regarding wine.
34. Special provisions regarding beer.
35. Special provisions in respect of manufacture of sales duty goods or goods specified in Section B of Part 2 of Schedule No. 1 and collection of sales duty or excise duty specified in Section B of Part 2 of Schedule No. 1.
36. Duties applicable to goods manufactured in a duty warehouse.

PART V

Clearance And Origin Of Goods — Liability For And And Payment Of Duties

362

- 37. Entry of goods and time of entry.
- 38. Importer and exporter to produce documents and pay duties.
- 38*bis* Sale in transit
- 39. Validity of entries.
- 40. Particulars on invoices.
- 41. Entry by bill of sight.
- 42. Disposal of goods on failure to make due entry.
- 43. Liability for duty.
- 43*bis* Joint and several liability for duty or certain amounts.
- 44. Determination of duty applicable.
- 45. Origin of goods.
- 46. Payment of duty and rate of duty applicable.
- 46*bis*. Prohibition of dealing with goods not entered for home consumption.
- 47. Application of Schedules and amendments thereto.
- 47*bis*. Ordinary levy.
- 48. Additional duties under customs union agreement.
- 49. Agreement in respect of rates of duty lower than the general rates.
- 50. Agreement in respect of rates of duty lower than the most favoured nation rates.
- 51. Agreement with any territory.
- 52. Agreement lapses if not approved by the House of Assembly.
- 53. Discrimination by other countries.
- 54. Provisions with regard to stamp duties.

PART VI

Anti-Dumping Duties

- 55. Anti-dumping duties provided for in Schedule No. 2.
- 56. Anti-dumping duties not normally applicable to goods entered under Schedule No. 3 or 4.
- 57. Exclusion of certain goods from payment of anti-dumping duty.
- 57*bis*.

PART VII

Effect Of Amendment Of Duties

- 58. Time when new or increased duties become payable.
- 59. Contract price may be varied to extent of alteration in duty.

PART VIII

Licensing

- 60. License fees according to Schedule No. 8.
- 61. Duty warehouse License.
- 62. Agricultural distiller.
- 63. Still to be licensed.
- 64. Special warehouse for the manufacture of wine.
- 64*bis* Container depot Licenses.

PART IX

Value

363

- 65. Value for customs duty purposes.
- 66. Transaction value.
- 67. Free on board price.
- 68. Repealed A.19/1978.).
- 69. Value for excise duty purposes.
- 70. Value for sales duty purposes.
- 71. Value of certain specified goods.
- 72. Value of goods exported.
- 73. Rates of exchange for conversion of values.
- 74. Value of goods not liable to *ad valorem* duty.
- 74*bis*.

PART X

Rebates, Refunds And Drawbacks Of Duty

- 75. Specific rebate, drawback and refunds of duty.
- 75. General refund in respect of imported or excisable goods.

76bis. Recovery of certain amounts not duly payable.
77. Overpayment in respect of excisable goods and sales duty goods.

PART XI

Penal Provisions

78. Offences not expressly mentioned.
79. Less serious offences and their punishment.
80. Serious offences and their punishment.
81. Non-declaration of goods.
82. (Repealed A.5/1991.)
83. Irregular dealing with or in goods.
84. False document and declaration.
85. Beer of higher or lower density than indicated by label or container.
86. Certain specified offences.
87. Goods irregularly dealt with liable to forfeiture.
88. Seizure.
89. Notice of claim by owner in respect of seized goods.
90. Disposal of seized goods.
91. Admission of guilt.
92. Payment and disposal of fines and penalties.
93. Remission or mitigation of penalties and forfeiture.
94. Recovery of penalties by process of law.
95. Jurisdiction of courts.
96. Notice of action and period of bringing action.
96bis. Approval of container operators.

PART XII

General

97. Pilot may appoint agent.
98. Liability of principal for acts of agent.
99. Liability of agent for obligations of principal.
364
100. Agent may be called upon to produce written authority.
101. Business accounts, documents, etc., to be available for inspection.
102. Seller of goods to produce proof of payment of duty.
103. Liability of company, partnership, etc.
104. Deferment of payment of duty.
105. Samples.
106. Expenses of landing, examination, weighing, analysis, etc.
107. Control in respect of manufacture of certain goods or materials and persons who carry out processes in connexion therewith.
108. Embargo on goods.
109. Destruction of goods and detention of vehicles.
110. Instruments and tables.
111. Production of certificate of officer on registration of certain motor vehicles.
112. Wreck.
113. Prohibition and restrictions.
114. Duty constitutes a debt to the Government.
115. Entries, oaths, etc. made outside Swaziland of full force and effect.
116. Manufacture of excisable goods solely for use by the manufacturer thereof.
117. (Repealed Q.5/1991.)
118. Statistics.
119. Transitional provisions applicable when Schedule amended.
120. Regulations and rules.
121. Repeal.

An Act to provide for the levying of customs, excise and sales duties and a surcharge, the prohibition and control of the import, export or manufacture of certain goods and for incidental matters. (Amended A.5/1991.)

PART I

Preliminary

Short title and commencement.

1. (1) This Act may be cited as the Customs and Excise Act, 1971, and, subject to subsection (2) shall, except as may

otherwise be provided, be deemed to have come into force on 1st March, 1969. (Amended A.11/1988.)
(2) Sections 25(2), (14), (15), (16), 26 to 33 inclusive, 62 to 64 inclusive, and 79(1)(a) and (b) shall only come into force on a date fixed by the Minister by notice in the Gazette.

Interpretation.

2. (1) In this Act unless the context otherwise requires —

“Act” includes a regulation or rule made, or agreement concluded or deemed to have been concluded, under it;

“African beer” shall have the meaning assigned to it by the Liquor Licenses Act, No. 30 of 1964;

“agricultural distiller” means any owner or occupier of a farm who is —

(a) licensed to keep a still on such farm; and

(b) licensed to distil spirits on such farm from grapes or other prescribed fresh fruit grown by him on such farm;

“airport control area” means such area of an airport as is controlled in accordance with the law relating to airports or this Act;

“beer” shall have the meaning assigned to “malt liquor” by the Liquor Licenses Act, No. 30 of 1964, but shall not include African beer;

365

“Commissioner” means the Commissioner of Customs and Excise appointed under section 3; (Added A.11/1988.)

“common customs area” means the combined area of Swaziland and countries with the governments of which customs union agreements have been concluded under section 51; (Amended A.5/1991.)

“container” except in the definition of “package” means transport equipment —

(a) having an internal volume of not less than one cubic meter; and

(b) designed for the transport of goods by any means of carriage, without intermediate reloading, and

“containerised” has a corresponding meaning;

“container depot” means any container depot contemplated in section 3(1)(k); (Added A.10/1978.)

“container operator” means any person providing international transportation of containerized goods, and approved by the Commissioner under section 96bis, for operating containers in Swaziland; (Added A.10/1978; amended A.11/1988.)

“container terminal” means any container terminal contemplated in section 5(1)(j); (Added A.10/1978.)

“controller”, in relation to any area or any matter, means the officer designated by the Commissioner to be the Controller of Customs, Excise and Sales Duty in respect of that area or matter, and includes an officer acting under the control and direction of any officer so designated by the Commissioner;

“crew” includes every person (except the pilot) employed in any capacity on board any aircraft;

“customs duty” means, subject to the provisions of subsection (2), any duty leviable under Schedule No. 1 (except parts 3 and 4 thereof) or No. 2 on goods imported into Swaziland; (Amended K.O-I-C. 17/1976; A.5/1991.)

“customs tariff” means Schedule No. 1 (except Part 3 thereof) insofar as it relates to imported goods;

“customs union agreement” means the agreement concluded on 11th December, 1969 between the governments of Botswana, Lesotho, Swaziland and the Republic relating to customs, excise and sales duty and any agreement between those governments amending or explaining it;

“department” means the Department of Customs and Excise within the Ministry of Finance; (Amended A.5/1991.)

“depot operator” means any person having charge of any container depot; (Added A.10/1978.)

“duty” means any duty leviable under this Act;

“duty airport” means any airport established as such under section 5 by the Commissioner;

“duty manufacturing warehouse” means a duty warehouse licensed for the manufacture of dutiable goods;

“duty storage warehouse” means a duty warehouse licensed for the storage of dutiable goods;

“duty warehouse” means a licensed warehouse established on a place appointed by the Commissioner under section 5 for the establishment of a warehouse for customs, excise and sales duty purposes;

“entry for home consumption” includes any 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 Swaziland;

“excise duty” means, subject to subsection (2), any duty leviable under Part 2 of Schedule No. 1 on any goods manufactured in Swaziland; (Amended A.5/1991.)

“excise value” means value as defined in section 69;

366

“exporter”, in relation to imported goods, includes the manufacturer, supplier or shipper of such goods or any person inside or outside Swaziland 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 Schedule No. 2 on goods imported into Swaziland; (Added K.O-I-C 17/1976.)

“General Agreement on Tariffs and Trade” means the General Agreement on Tariffs and Trade concluded at Geneva on the 30th October, 1947, and includes any amendment thereof;

“General Agreement on Tariffs and Trade Act” means the Geneva General Agreement of Tariffs and Trade Act, No. 75 of 1948;

“goods” includes all wares, articles, merchandise, animals, currency, matters or things;

“government warehouse” means any premises provided by the Government for the deposit of goods for the security thereof and of the duties due thereon or pending compliance with any law in respect of such goods;

“home consumption” means consumption or use in Swaziland;

“illicit goods”, in relation to imported, excisable or sales duty 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 Swaziland;
- (e) is beneficially interested in any way whatever in any goods imported; or
- (f) acts on behalf of any person referred to in paragraph (a), (b), (c), (d) or (e);

“L.C.L. container” means any container containing goods consigned from one or more exporters to more than one importer; (Added A.10/1978.)

“land” includes off-loading from any vehicle;

“locally” means in any part of the common customs area;

“magistrates’ court” means a court established under the Magistrate’s Courts Act No. 66 of 1938;

“manufacture”, when used as a noun, includes, as the Commissioner may determine, any process —

- (a) in the manufacture or assembly of any excisable goods or sales 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 imported goods specified in section B of Part 2 of Schedule No. 1, excisable goods or sales 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 imported goods specified in section B of Part 2 of Schedule No. 1, excisable goods or sales duty goods,

and, when used as a verb, has a corresponding meaning, and “manufacturer” has a corresponding meaning; (Amended A.7/1981; A.5/1991.)

“Minister” means the Minister responsible for Finance; (Amended A.4/1979.)

“officer” means a person employed on any duty relating to customs, fiscal excise or sales duty by order or with the concurrence of the Commissioner whether such order has been given or such concurrence has been expressed before or after the performance of the said duty; (Amended K.O-I-C. 17/1976.)

367

“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;

“place of entry” means a place of entry appointed or prescribed under section 5;

“plant” includes vessels, utensils, appliances and fittings;

“Republic” means the Republic of South Africa and includes any area in respect of which the Government of South Africa is a contracting party to the General Agreement on Tariffs and Trade;

“rule” means a rule made by the Commissioner 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 Swaziland;

“sales duty goods” means any goods specified in Part 3 of Schedule No. 1 which have been manufactured in or imported into Swaziland;

“Schedule” means any Schedule referred to in section 47 as amended from time to time under this Act, and includes the General Notes to any such Schedule;

“Secretary” (Repealed A.11/1988.)

“spirits” includes, subject to section 27, all descriptions of brandy, whisky, liqueur, rum, cane spirit, vodka, mixed spirit, rectified spirit, spirit aperitif, spirit cocktail or gin;

“still” means any apparatus for, or capable of, distilling spirits and includes any part thereof;
“still maker” means a person who manufactures or imports stills for sale and includes a person who repairs stills for reward;
“territory” means a country and includes a group of countries associated in a customs or economic union;
“transit shed” means a shed appointed or prescribed under section 5(g);
“vehicle” means any aircraft, train, motor car, van, truck, cart, barrow, boat, vessel, or other conveyance of any kind whatsoever, and includes the fittings, furnishings and equipment thereof, and also pack animals and their harness and tackle;
“wine-grower” means a farmer who cultivates vines on land in his own occupation and who produces on such land wine from grapes grown on such vines or delivers grapes grown on such vines to a wine-growers’ cooperative agricultural society for the manufacture of wine;
“worts” means a liquid substance containing saccharin matter before fermentation has commenced.

(2) For the purposes of the Agreement concluded under section 51 with the Government of the Republic of Botswana, the Kingdom of Lesotho and the Republic of South Africa and published by Legal Notice No. 71 of 1969 on 12 December, 1969 —

(a) “customs duty” includes any duty leviable under Part 4 of Schedule No. 1 on goods imported into Swaziland and, except for the purposes or articles 13 and 14 of the said agreement, any duty leviable under Part 8 of Schedule No. 1 on goods imported;

(b) “excise duty” includes, except for the purposes of articles 13 and 14 of the said agreement, any duty leviable under Part 8 of Schedule No. 1 on goods manufactures in the common customs area.

(Added A.5/1991.)

PART II

368

ADMINISTRATION, GENERAL DUTIES AND POWERS OF COMMISSIONER AND OFFICERS, AND APPLICATION OF ACT

Commissioner to administer Act.

3. (1) The Commissioner shall, subject to the direction of the Minister, be charged with the administration of this Act, including the interpretation of the Schedules and may designate an officer to be the controller in relation to any area or matter.

(2) The controller shall perform his duties and exercise his powers under this Act with due regard to any instructions issued by the Commissioner.

(3) Any duty imposed or power conferred on the Commissioner may be performed or exercised by the Commissioner personally or by an officer under a delegation from or under his control or direction.

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

General duties and powers of officers.

4. (1) Subject to the laws governing the public service, officers employed in the department shall act under the control and direction of the Commissioner.

(2) No officer shall be directly or indirectly financially interested in the manufacture or sale or importation of or trade in imported, 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, —

(a) for the purposes of this Act; or

(b) when requiring to do so as a witness in a court of law; or

(c) to the Commissioner of Taxes or any officer in the Office of that Commissioner and designated by that Commissioner, for the purposes of any law with the administration of which he is charged. (Amended A.5/1991.)

(4) For the purposes of this Act any officer may —

(a) without previous notice, at any time enter any premises whatsoever and make such examination and enquiry as he deems necessary;

(b) 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 relates 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;

(c) 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

(d) 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 any matter dealt with in this Act. (Amended A.5/1991.)

(5) An officer may take an assistant or a member of the police force with him on to any premises.

(6) Any person in connexion with whose business any premises are occupied or used, and any person employed by him shall furnish such facilities as may be required at any time by an officer for entering such premises and for the exercise

of his powers under this section.

369

(7) 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.

(8) 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. (Amended A.5/1991.)

(9) An officer may require any person to appear before him at any time and place stipulated by the officer and may then and there question such 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.

(10) An officer may question any person (either alone or in the presence of another, as he thinks fit) in respect of any matter dealt with in this Act if he —

(a) finds such person on premises entered in terms of this section; or

(b) has reasonable grounds for believing such person to be, or to have been employed on premises, or in possession, custody, or control of anything in respect of which this Act is applicable.

(11) An officer may stop and board any vehicle and may search any such vehicle or any person found therein or thereon for goods upon which duty has not been paid, or in respect of which he has reasonable cause to believe that there has

been a contravention of this Act, and may in pursuance of his duties remain on such vehicle unhindered.

(12) Any officer may stop any person whom he has reason to suspect of having secreted about him or in his possession dutiable goods or goods in respect of which this Act has been contravened and he may search such person.

(13) Any person may, before being searched in terms of this section, require the officer concerned to take him before the controller who may in his discretion discharge that person or direct that he be searched:

Provided that this subsection shall only apply if such person is stopped within an airport control area and during the prescribed working hours of the controller.

(14) A female shall only be searched by a female.

(15) If in pursuance of his duties under subsection (8) or (11) the officer finds any room, cabin, place, safe, chest, box or package to be locked and the keys thereof are not produced on demand he may open it in any manner.

(16) Any officer may lock up, seal, mark or fasten or otherwise secure any warehouse, store, room, cabin, place, vessel, appliance, utensil, fitting, vehicle or goods if he has reason to believe that this Act has been or is likely to be contravened in respect thereof or in connexion therewith.

PART III Import, Export And Transit Of Goods

Appointment of places of entry, authorized roads and routes, etc.

5. (1) Subject to such conditions as he may specify, the Commissioner may by rule appoint or prescribe —

(a) any place to be a place of entry for Swaziland, through which goods may be imported or exported or where goods may be landed for transit, where any person entering or leaving Swaziland may disembark or embark or where goods may be entered for customs, excise and sales duty purposes;

(b) any road or route, including a railway, over which any person may enter or leave Swaziland or imported goods or goods intended for export or transit carriage may enter or leave Swaziland or may be carried from any one point to any other point or the means of carriage of such goods;

(c) any place as a place where a customs, excise and sales duty warehouse may be established;

(d) any place for such particular and limited purpose and for such period as may be specified;

370

(e) any place to be a customs, excise and sales duty airport at which aircraft entering Swaziland shall first land, from which aircraft leaving Swaziland shall finally depart, through which goods may be imported or

exported or where goods may be landed for transit or where any person entering or leaving Swaziland may disembark or embark;

(f) any place at any appointed place of entry or at any customs, excise and sales duty airport for the landing or embarkation of persons and the landing, loading or examination of goods, including baggage;

(g) any shed as transit shed into which goods before due entry thereof may be removed from any vehicle;

(h) any entrance and exit, general or special, to or from any duty airport; and

(i) the hours during which a place, road, route, shed, entrance or exit appointed or prescribed under this subsection may be used for the purposes specified in this subsection;

(j) container terminals where containers may be landed for transit, coastwise carriage, delivery to a container depot or, after their contents have been duly entered, delivery to importers, or where containers may be shipped for export; (Added A.10/1978.)

(k) 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. (Added A.10/1978.)(bis) Any place outside Swaziland may be deemed by the Commissioner to be a place of entry for Swaziland through which goods may be imported or exported, or where goods may be landed for transit or where goods may be entered for customs and excise purposes. (Added A.11/1988.)

(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 secretary under and 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 subsection (3), be used or employed for the purposes for which they have been so appointed or prescribed under such paragraph, and, if any

hours have been prescribed under subsection (1)(i) during which any places, road, route, shed, entrances or exit may be used, such place, road, route, shed, entrances or exit shall be used only during such hours. (Added A.10/1978.)

(3) The pilot of an aircraft arriving in Swaziland shall, unless the Commissioner has granted him special permission to land elsewhere, make his first landing at a duty airport and shall forthwith take his aircraft to the examination station at that airport: (Amended A.5/1991.)

Provided that this subsection shall not apply if —

(a) the pilot is forced by stress of weather, accident or other circumstances beyond his control to land at a place not so appointed;

(b) he reports to the controller nearest the place where he was forced to land or to the controller at the first place of entry or duty airport at which he next arrives; and

(c) he complies with the regulations.

(4) Subject to this Act, any person on foot or in charge of a vehicle entering or leaving a duty airport or entering or leaving Swaziland 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 should he so require, and such person shall not proceed or cause his vehicle to proceed until permitted by such officer.

(5) 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 any force which may be reasonably 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.

(6) The owner or occupier of any transit shed shall, if so required by the Commissioner, provide accommodation to the satisfaction of the Commissioner to any officer whom the Commissioner considers necessary to station at such shed.

371

Report of arrival or departure of aircraft.

6. (1) The pilot of any aircraft arriving in Swaziland, whether with or without goods or passengers, shall within three hours after landing at any place appointed as a customs, excise and sales duty airport under section 5 or within such further time as the Commissioner may allow —

(a) make a written report of its arrival with as many duplicates or extracts thereof as the controller may require;

(b) make and subscribe to a declaration as to the truth of the report before the controller 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 controller; 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.

(Amended A.7/1981; A.5/1991)

(2) The report referred to in subsection (1) shall contain such particulars as the Minister may prescribe by regulation and shall include —

(a) a list of the passengers;

(b) a list of all containers on board consigned to such airport and such list shall specify —

- (i) the container serial number 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 airport and a separate manifest of such goods packed in each container; and
 - (d) such other information as the secretary may require.
- (Amended A.10/1978.)
- (3) Subject to section 8 any goods which have not been recorded in such manifest shall be declared to the controller and delivered to him.
- (4) The pilot of any aircraft bound from any place within Swaziland to any place outside Swaziland shall appear before the controller and deliver to him a “report outwards” in the prescribed form together with a full account of the cargo laden on board such aircraft and shall make and subscribe to a declaration as to the truth of such report and account and answer all questions as may be put to him by the controller. (Amended A.10/1978; A.5/1991.)
- (5) (Repealed A.10/1978.)
- (6) The pilot of an aircraft destined for a place outside Swaziland shall not cause or permit the aircraft to depart from any place of entry or duty airport without first obtaining from the controller a certificate of clearance or transire for the intended flight and the pilot shall not after departure land at any place in Swaziland other than a place of entry or a duty airport unless forced to do so by stress of weather, accident or other circumstances beyond his control. (Amended A.5/1991.)
- (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 such place within thirty-six hours of the time when such clearance was issued, or within such further time as the controller 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 by this section is found to be in any way incomplete or incorrect, the controller may, if he is satisfied that there was no fraudulent intention, permit the pilot to amend it.
- (9) The pilot of an aircraft may, with the permission of the Commissioner and subject to such conditions as he may impose, retain on board goods consigned to any airport for landing at any other airport or land such goods at any airport to which they were not consigned.
- (10) The Commissioner 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.

372

Boarding and searching of aircraft.

7. (1) The controller may board any aircraft arriving at any airport in Swaziland and stay on board unhindered for as long as he deems necessary for the proper performance of his duties.
- (2) The controller shall have free access to and the right to rummage in every part of such aircraft, to examine all goods on board, to mark any goods before landing, and to lock up, seal, mark or otherwise secure any goods on board such aircraft, including its radio and other apparatus and may demand from the pilot thereof the production of any document to which this Act relates.
- (3) If any lock, seal or mark placed upon goods on board any aircraft by the controller under this section is wilfully opened, broken, obliterated or altered, or if any goods which have been locked, sealed, marked or otherwise secured under this section are removed without the consent of the controller, 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.

Sealing of goods on board aircraft.

8. (1) For the purposes of this section “sealable goods” means —
- (a) tobacco, cigars, cigarettes and any other preparations of tobacco or substitutes therefor;
 - (b) any spirits or alcoholic beverages;
 - (c) opium, preparations of opium in any form and opium outfits;
 - (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 or for sale or exchange;
 - (g) all non-duty-paid imported goods and all excisable goods and sales duty goods taken on board as aircraft stores at a place in Swaziland; and
 - (h) any other goods which may from time to time be declared by the Commissioner by rule to be sealable goods.
- (2) On arrival of any aircraft at any place in Swaziland directly from a place outside the common customs area the pilot thereof shall, on the prescribed form, declare all sealable goods on board the aircraft which are unconsumed stores of such aircraft, and every member of its crew shall, on the prescribed form, declare all sealable goods which are his personal property or in his possession, and the controller may seal up all such sealable goods.

- (3) The controller may permit surplus stores to be entered for home consumption or for warehousing.
- (4) The controller may, by direction of the Commissioner, in addition to sealable goods, seal up any goods which are unconsumed stores of any aircraft or which are in the possession of the pilot of such aircraft, any member of its crew, or any of its passengers.
- (5) Except in accordance with the rules no person shall break or disturb any seal placed by the controller on any goods in terms of this section while such aircraft remains in Swaziland.
- (6) Except as provided in subsection (3) no stores may be landed without the permission of the controller and all goods acquired on an aircraft shall, if landed, be declared to the controller for the purposes of payment of any duty due thereon.

When goods deemed to be imported.

9. (1) For the purposes of this Act goods consigned to or brought into Swaziland shall be deemed to have been imported into Swaziland —

(a) in the case of goods consigned to a place in Swaziland in an aircraft, at a time when such aircraft, on the flight in question, first came within the control area of the airport authority at such place, or at the time of the landing of such goods at the place of their actual discharge in Swaziland if such aircraft did not on such 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 they were consigned;

373

(b) in the case of goods not consigned to a place in Swaziland but brought thereto by, and landed therein from, an aircraft at the time when the goods were so landed;

(c) subject to subsection (2) in the case of goods brought to Swaziland overland, at the time when the goods entered Swaziland;

(d) in the case of goods brought to Swaziland 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 Swaziland in a manner not specified in this section, at the time specified in the General Notes to Schedule No. 1 or, if no time is specified in the General Notes in respect of the goods in question, at the time such goods are considered by the Commissioner to have entered Swaziland.

(Amended A.5/1991.)

(2) For the purposes of subsection (1) a place outside Swaziland deemed by the Commissioner under section 5(1bis) to be a place of entry for goods consigned to Swaziland shall be deemed to be a place in Swaziland in respect of goods consigned to such place for removal to Swaziland overland. (Amended A.11/1988.)

No landing or despatch of goods without permission.

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

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 such place to any place outside the common customs area. (Amended A.10.1978; A.5/1991.)

(2) All goods landed from an aircraft before due entry thereof and which are placed in a transit shed or other place approved by the controller under subsection (1) shall be deemed to have remained on board the aircraft, and as long as they

are in such shed or place, the pilot shall be responsible therefor in all respects and liable for the duty thereon as if they had not been removed from such aircrafts.

(3) Subject to any regulations, no goods shall, without the permission of the controller, be loaded into an aircraft for export from Swaziland.

(4) No goods or ballast shall, without the permission of the controller, be loaded on an aircraft at any place in Swaziland before all inward cargo for such place has been discharged.

(5) Subject to subsection (2), any regulations and any conditions which he may impose, the controller may permit the landing at any place without due entry of goods not consigned to such place from an aircraft which has sustained damage

or is in distress.

Goods imported or exported overland.

11. (1) Upon or before arrival at a railway station of any train with any goods thereon from beyond the borders of Swaziland, 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 Commissioner, shall deliver to the controller a copy of all advice and delivery notes received by him relating to the goods consigned to that station by that train. (Amended A.5/1991.)

(2) 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 controller.

(3) The conductor, guard or other person in charge of a train shall on demand by any officer furnish him with all information at his disposal in respect of any goods on such train.

(4) The person in charge of any vehicle (other than an aircraft or a railway train) whether or not conveying goods, which arrives by land at any place in Swaziland, shall come to the office of the controller nearest to the point at which he crossed the border or the office of the controller 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 controller

374
concerning such vehicle or goods, the journey and the destination of the goods, and shall make and subscribe to a declaration as to the truth of such report. (Amended A.5/1991.)

(5) 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 controller.

(6) No person shall remove a vehicle referred to in subsection (4) from the office referred to in that subsection until due entry has been made of the vehicle and the goods carried thereon or until permission for removal has been granted by the controller.

(7) Every person arriving in Swaziland overland in any manner whatsoever shall, whether or not he has any goods in his possession, come to the office of the controller nearest to the point at which he crossed the border or the office of the controller which is most conveniently situated in relation to such point, and there report to the controller the circumstances in which he entered Swaziland. (Amended A.5/1991.)

(8) If such person has any goods in his possession he shall furnish such controller with full particulars thereof, and fully and truthfully answer all questions put to him by such controller.

(9) Such person shall not dispose of any goods in his possession in any manner until they have been released by the controller.

(10) Subsections (7), (8) and (9) shall not apply to persons arriving in Swaziland by train or by air who pass through or disembark at a place where a controller is stationed.

(11) Except with the permission of the controller and subject to such conditions as the Commissioner may specify, no person in charge of any vehicle (other than an aircraft) used to export goods overland shall remove such vehicle or goods beyond the borders of Swaziland. (Amended A.5/1991.)

(12) The Commissioner may grant such person a general permission.

Goods imported or exported by post.

12. (1) For the purposes of entry and collection of duty on goods imported into Swaziland by post, any form or label completed by the sender in respect of the postal item 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 37: 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. (Amended A.11/1988.)

(2) (Repealed A.11/1988.)

(3) (a) Notwithstanding anything contained in subsection (1), any goods imported by post 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 Commissioner after consultation with the Managing Director of the Posts and Telecommunications Corporation shall be so entered at a customs, excise and sales duty office before a Controller.

(b) Notwithstanding anything contained in subsection (1), any goods imported by such class of addressee, or any goods imported by post and of such class or kind, as may be specified by the Commissioner after consultation with the Managing Director of the Posts and Telecommunications Corporation, shall be entered at a customs and excise office before a Controller.

(Amended A.11/1988; A.5/1991.)

(4) In the case of goods exported by post, any form or label affixed to or completed in respect of a postal item, 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. (Amended A.11/1988.)

(5) Notwithstanding anything contained in subsection (1) or in any other law but subject to the provisions of subsection (3), any person importing goods by post shall submit the invoice in respect of such goods to the postmaster concerned, and no person shall receive, remove, take, deliver or in any manner deal with or in such goods unless the correct

duty has been paid to that postmaster. (Added A.11/1988.)

375

(6) Any postmaster may at any time detain any imported postal item under his control and cause such postal item to be removed to the Controller, who may examine such postal item, and if he finds that the goods therein do not agree in all

respects with the particulars relating to the value, description or quantity appearing on the form or label referred to in subsection (1) or the invoice concerned, such goods shall notwithstanding anything to the contrary in any other law be liable

to forfeiture. (Added A.11/1988.)

Persons entering or leaving Swaziland and smugglers.

13. (1) Any person entering or leaving Swaziland shall, in such manner as the Commissioner may determine, unreservedly declare all goods in his possession which he brought with him into Swaziland or proposes taking with him beyond the borders of Swaziland and shall furnish an officer with full particulars thereof, answer fully and truthfully all questions put to him by such officer and, if required by such officer to do so, produce and open such goods for examination

by the said officer and shall pay the duties assessed by such officer to the Controller. (Amended A.11/1988.)

(1bis) Any declaration made under subsection (1) shall for the purposes of this Act be deemed to be an entry for home consumption or export, as the case may be. (Added A.11/1988.)

(2) The controller may in all cases where a person is detected or is concerned in or is suspected by the controller of an attempt to import, export, land or remove goods illegally or to evade the payment of duty on any goods, forthwith take the person concerned before a magistrates' court to be dealt with, or may detain such person in a police station or other suitable place, until he can be taken before such court.

Opening of package in absence of importer or exporter.

14. The controller may, in the absence of the importer or exporter of any package imported into or landed in or exported from or suspected by the controller to have been imported into or landed in or exported from Swaziland, open and examine such package at the importer's or exporter's risk and expense:

Provided that wherever possible the controller shall first make all reasonable efforts to ascertain the whereabouts of such importer or exporter and afford the said importer or exporter the opportunity of himself appearing before the controller

and opening the package in question. (Amended A.5/1991.)

Government warehouse.

15. (1) If any goods are taken to and secured in any Government warehouse the Commissioner may require such rent as may be prescribed under section 120(1) to be paid for such period as the goods remain therein.

(2) Any officer who has the custody of any goods in any Government 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 them;

(b) all relevant provisions of this Act or any law relating to the import, export or transit of goods have been complied with; and

(c) freight and other charges, including landing charges, and rent due in respect of such goods have been paid.

(3) The Government or any officer shall not be liable in respect of any loss or diminution of or damage to any goods in a Government warehouse or in respect of loss or damage sustained by reason of wrong delivery of such goods.

(Amended

A.7/1981.)

(4) If a warrant or permission for the removal of any goods from a Government warehouse has been granted by the controller, and the person to whom such warrant or permission has been granted does not immediately remove such goods from the warehouse they may, notwithstanding any other provisions of this Act, in the discretion of the Commissioner be dealt with as if they were goods in respect of which entry has not been made under this Act.

Removal of goods in bond.

16. (1) Notwithstanding any other provision in this Act —

376

(a) the importer or owner of any imported goods landed in Swaziland or the manufacturer, owner, seller or purchaser of any excisable goods or sales duty goods manufactured in a duty warehouse or the licensee of a duty warehouse in which dutiable goods are manufactured or stored may remove such goods in bond to any place of entry or warehousing place or to any place outside Swaziland:

Provided that such goods manufactured or stored in a duty warehouse may only be so removed to any such warehousing place in Swaziland or any place in a country in the common customs area approved by the government of that country for re-warehousing at that place in another duty warehouse; (Amended A.5/1991.)

(b) the pilot of an aircraft or person in charge of a vehicle from which any goods were landed at a place in Swaziland to which such goods were not consigned may remove them in bond to the place to which they were consigned:

Provided that evidence of the identity of such goods and that such goods were consigned to the place to which they are proposed to be removed is produced to the controller before entry for removal;

(c) the owner of, or a person beneficially interested in, any goods which are in transit through Swaziland from

another territory in Africa other than one within the common customs area to a place outside Swaziland which is not within the common customs area may remove such goods in bond from the place where they entered Swaziland to the place from which they are destined to leave Swaziland;

(d) a container operator may remove any container in bond to the container depot or inland container terminal to which it was consigned, without furnishing the security provided for in subsection (6), and the manifest in terms of section 6(2)(c) of the goods packed in such container shall be deemed to be due entry for removal in bond of that container; (Added A.10/1978.)

(e) the pilot of an aircraft may remove in bond any goods landed from an aircraft at a place in Swaziland and for which an air cargo transfer manifest has been Completed, to their place of entry for Swaziland, 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. (Added A.10/1978.)

(2) In addition to liability for duty incurred by a person under any other provision of this Act, the person who removes any goods in bond in terms of subsection (1) shall, subject to subsection (3), be liable for the duty on all goods which he so removes.

(3) Subject to subsection (4) liability for duty in terms of subsection (2) shall cease when it is proved to the satisfaction of the Commissioner by the person concerned, in the case of goods —

(a) removed to a place in the common customs area, that such goods have been duly entered at that place; or

(b) which were destined for a place beyond the borders of the common customs area, that such goods have been duly taken out of that area.

(Amended A.5/1991.)

(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 secretary

forthwith pay the duty due on such goods. (Amended a.10/1978.)

(5) No goods shall be removed in bond under this section from the place where they were landed in Swaziland or where they entered Swaziland 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.

(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 Commissioner may require and the Commissioner 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 any regulations and such conditions as the Commissioner 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 Commissioner 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 regulation, or conditions or who has committed an offence referred to in section 80.

377

(8) Goods removed in bond shall not be delivered or removed from the control of the department at the place of destination in Swaziland 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 section 75(19), any duty

due on any deficiency.

(9) The Commissioner may refuse the removal in bond of goods in respect of which this Act has not been complied with or which are liable to forfeiture.

(10) The Government or any officer shall not be liable for any loss 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, unless it is shown that such loss or damage was caused by the recklessness or wilful misconduct of such officer.

(11) Notwithstanding this section the Commissioner may, subject to such conditions as he may impose in respect of goods in transit through Swaziland from any other territory in Africa to any destination outside Swaziland, or any class or kind of such goods or any such goods removed in bond in circumstances specified by him, allow them to be entered for removal

in bond at a place other than the place where they entered Swaziland.

(12) The Commissioner may determine the roads and routes and the means of carriage of any goods or any class or kind of goods removed in bond or any such goods carried in circumstances specified by him.

(13) No person shall, without the permission of the Commissioner, 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 them to be delivered in

Swaziland except into the control of the department at the place of destination.

(14) The Commissioner 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 or any class or kind of goods removed in bond or any such goods removed in circumstances or to a destination specified by him.

Exportation of goods from duty warehouse.

16bis (1) Notwithstanding any liability for duty incurred thereby by any person in terms of any other provision of this Act, any person who exports any goods from a duty warehouse to any place outside the common customs area shall, subject to the provisions of subsection (2), be liable for the duty on all goods which he so exports.

(2) Subject to subsection (3), any liability for duty in terms of subsection (1) shall cease when it is proved to the satisfaction of the Commissioner by the exporter that the said goods have been duly taken out of the common customs area.

(3) If the exporter fails to submit any such proof as is referred to in subsection (2) within a period of 30 days from the date on which the goods concerned were entered for export, he shall upon demand by the Commissioner forthwith pay the duty due on those goods.

(4) No goods shall be exported in terms of this section until they have been entered for export.

(5) No such entry for export shall be tendered by or may be accepted from a person who has not furnished such security as the Commissioner may require, and the Commissioner may at any time require that the form, nature or amount of

that security be altered in such manner as he may determine.

(6) The said exportation of goods shall be subject to the regulations and such conditions as the Commissioner may impose in respect of the goods concerned or any class or kind of those goods or those goods exported in circumstances specified by him, and the Commissioner may refuse to accept bills of entry for the said exportation of goods from an exporter who has persistently failed to comply with the said regulations or conditions or who has committed an offence referred to in section 80.

(7) The Commissioner may refuse the said exportation of goods in respect of which a provision of this Act has not been complied with or which are liable to forfeiture.

(8) The Commissioner may determine the roads and routes and the means of carriage of any goods so exported or any class or kind of those goods or any such goods carried in circumstances specified by him.

(9) No person shall, without the permission of the Commissioner, divert any goods so exported to a destination other than the destination declared on entry for exportation.

378

(10) The Commissioner may specify the documents to be produced by the exporter upon entry for exportation in respect of any goods so exported or any class or kind of those goods or any such goods exported in circumstances or to a destination specified by him.

(Added A.5/1991.)

PART IV

DUTY WAREHOUSE — STORAGE AND MANUFACTURE OF GOODS IN DUTY WAREHOUSE

Duty warehouse.

17. (1) The Commissioner may license duty warehouses established at any place appointed for that purpose under this Act, and 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 or such imported and such locally produced materials as he may approve in respect of each such warehouse.

(2) Such duty warehouses may be licensed either for the storage of dutiable goods or for the manufacture of dutiable goods, but the Commissioner may license a duty storage warehouse and a duty manufacturing warehouse on the same premises provided they are separated in a manner approved by him.

(3) The controller may, in addition to any lock used by a licensee, cause any duty warehouse to be locked with a Government 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 while it is so locked without the permission of the controller.

(4) The controller may at any time take stock of the goods in any duty warehouse and duty shall, subject to section 18(8), forthwith be paid upon any deficiency.

(5) If the stock is found to be greater than the quantity which should be in such duty warehouse, the excess shall, subject to section 75(19) be debited to stock and the duty thereon paid on entry for home consumption.

(6) The Government or any officer shall in no case be liable for any loss or damage of whatever nature to any goods in a duty warehouse or for any loss or damage sustained by reason of any wrong delivery of such goods unless it is shown that such loss or damage was caused by the recklessness or wilful misconduct of such officer.

(7) In addition to any liability for duty incurred by any person under this Act, the licensee of a duty warehouse shall,

subject to subsection (8), be liable for the duty on all goods stored or manufactured in such warehouse from the time of their

receipt into such warehouse or the time of their manufacture in such warehouse, as the case may be.

(8) Subject to subsection (9), any liability for duty under subsection (7) shall cease when it is proved to the satisfaction of the Commissioner by the licensee concerned that the goods in question have been duly entered under section

18(6) and have been delivered or exported in terms of such entry.

(9) If the licensee concerned fails to submit any proof required by subsection (8) in respect of goods in the duty warehouse in question within the period specified in any regulations for which goods of that class or kind may be stored or kept in a duty 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 Commissioner forthwith pay the duty due on such goods.

Goods in duty warehouse.

18. (1) Any dutiable imported or dutiable locally produced goods and any beverages produced from excisable spirits in pursuance of any permission granted under section 29(2) being goods or beverages of a class or kind approved by the Commissioner in respect of each duty warehouse, may be entered for storage in a duty warehouse with deferment of payment of duty and no such goods or beverages shall be removed to or placed in a duty warehouse until they have been so entered.

(2) Such entry shall, for the purpose of this Act, be deemed to be due entry in respect of such goods at the place of importation or manufacture.

(3) (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

379 manufacturing warehouse to a customs and excise storage warehouse, the licensee of any such warehouse in which such goods are stored or to which such goods are so transferred shall take and record an accurate account of such goods, which shall include, subject to any deduction that may be allowed under section 75(18), the debiting to stock of any excess found on receipt of such goods at such warehouse.

(b) The said licensee shall immediately upon the receipt of such goods report to the Controller any such excess so found.

(Amended A.2/1985.)

(4) Subject to section 75(19) and subsection (8) no allowance for loss or diminution of any nature which occurs while goods are being transported to or kept in such warehouse or transported from one warehouse to another or removed in

bond shall be allowed.

(5) Goods on which no duty is payable and of a class or kind approved by the Commissioner in respect of each warehouse may, subject to such conditions and to the keeping of such records as the Commissioner may in each case determine, without entry be taken into a duty warehouse for the purpose of being used in the manufacture of or in conjunction with dutiable goods.

(6) No goods which have been stored or manufactured in a duty warehouse shall be taken to or delivered from it except in accordance with any regulation and upon due entry for one or other of the following purposes:

(a) home consumption and payment of any duty due on them;

(b) re-warehousing in another duty warehouse or removal in bond as provided in section 16; (Amended A.5/1991.)

(c) (Repealed A.5/1991.)

(d) export from a duty warehouse, including the supply as stores for aircraft destined for a place outside the common customs area.

(7) No person shall, without the permission of the Commissioner, divert any goods entered for removal from or delivery to a duty warehouse, except goods entered for payment of the duty due thereon, to a destination other than the destination declared on entry of such goods or deliver or cause such goods to be delivered in Swaziland except in accordance with this Act.

(8) The duty on any deficiency in a duty warehouse shall be paid forthwith on demand after detection of such deficiency:

Provided that in the case of goods manufactured in any duty manufacturing warehouse or in the case of goods in the process of manufacture and removal from one duty manufacturing warehouse to another such warehouse, the Commissioner

may, subject to section 33(3), allow working, pumping, handling, processing and similar losses and losses due to natural causes, between the time when the 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 that 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.

(9) 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.

(10) (Repealed A.2/1985.)

Special duty warehouse.

19. (1) The Commissioner may, subject to such conditions as he may in each case impose, license at any place in Swaziland special duty 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 Commissioner otherwise indicates when licensing a special duty warehouse for the storage or manufacture of goods, the provisions of this Act in respect of duty storage warehouses or duty manufacturing warehouses or

the storage or manufacture of goods in such warehouses shall apply to such special warehouse and to the storage or manufacture of goods therein, as the case may be.

380

Sample of goods in duty warehouse.

20. The controller may, in accordance with the rules, permit samples of goods in a duty 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 such warehouse for any purpose.

Storage or manufacture of prohibited goods.

21. The Commissioner may allow the storage or manufacture in a duty warehouse of goods the import, manufacture or disposal of which is prohibited or restricted under any law, provided such goods are stored or manufactured in such warehouse only for export or supply as stores for aircraft destined for places outside the common customs area.

Aircraft stores consumed in the common customs area.

22. If any goods taken from a duty warehouse under section 18(6) as stores aboard an aircraft destined for a place outside the common customs area, or goods shipped as stores for such aircraft outside Swaziland, are consumed, sold or disposed of

on such aircraft at any place in the common customs area when the aircraft is not airborne or on the aircraft on a flight between any places in the common customs area, the pilot of such aircraft shall be liable for the duty on the goods so consumed, sold or disposed of and shall, upon demand by the Commissioner forthwith pay the duty due on such goods: Provided that the Commissioner may by rule exempt any class or kind of stores or aircraft to which the circumstances specified in such rule apply from any provision of this section.

(Amended A.5/1991.)

Sorting, packing, etc. in duty storage warehouse.

23. Subject to this Act, the Commissioner may permit the licensee of a duty storage warehouse or the owner of any goods in such warehouse to sort, separate, pack or re-pack any goods in such warehouse and to make such alterations therein or such arrangements as may be necessary for the preservation of such goods or for the sale, export or other lawful disposal thereof.

Transfer of ownership of warehoused goods.

24. (1) Except with prior permission of the Commissioner —

(a) the owner of any dutiable goods in a customs and excise warehouse may not enter into any agreement whereby —

(i) his ownership of such goods is transferred to any other person;

(ii) such goods are pledged or otherwise hypothecated in favour of any other person;

(b) any person in whose favour goods referred to in paragraph (a) have been pledged or hypothecated may not enter into any agreement whereby any rights obtained by him by virtue of such pledge or hypothecation are ceded to any other person.

(2) Any agreement entered into contrary to subsection (1) shall for the purposes of this Act be deemed to be null and void.

(Amended A.11/1988.)

Special provisions in respect of duty manufacturing warehouse.

25. (1) Subject to this Act, goods liable to excise duty or sales duty may not be manufactured except under this section and except in a duty manufacturing warehouse licensed under this Act.

(2) Notwithstanding subsection (1) spirits distilled by agricultural distillers shall be excluded from the requirement of manufacture in a duty manufacturing warehouse.

(3) Notwithstanding subsection (1) excisable or sales duty goods may with the permission of the Commissioner be manufactured in a special duty warehouse licensed under section 19.

(4) Subject to this Act, the Commissioner may, on such conditions as he may impose, permit the manufacture under this Part of any goods in any duty manufacturing warehouse if any of the goods used in the manufacture are liable to duty or

if the goods so manufactured are dutiable.

(5) Any dutiable goods brought into and intended for use in a duty manufacturing warehouse in the manufacture of goods liable to excise duty or sales duty shall be entered for home consumption and any duty due thereon shall be paid prior to such use.

(6) No goods shall be manufactured in a duty manufacturing warehouse until all the premises and plant intended for use in connexion with such manufacture and the purpose for which they are to be used have been approved by and registered with the Commissioner.

(7) Plans of the premises and plant to be used in connexion with such manufacture 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 controller before the commencement of manufacture and no alteration to such premises or plant shall be made without the prior permission of the Commissioner.

(8) All operations in duty manufacturing warehouses shall be subject to supervision by officers.

(9) Every licensee of a duty manufacturing warehouse shall, if required by the Commissioner, provide office accommodation and board and lodging to the satisfaction of the Commissioner, for any officer stationed at or visiting such warehouse for the purposes of this Act and any person providing such board and lodging shall be entitled to fair remuneration therefor.

(10) The controller may give written instructions to any licensee specifying in what part of the warehouse any process in the manufacture shall be carried on and any material for use in manufacture and manufactured goods, respectively, shall be kept.

(11) No licensee shall, without the written permission of the Commissioner, in a duty manufacturing warehouse carry on any business except that for which the warehouse is licensed and the premises and plant are registered.

(12) No person shall, except with the written permission of the Commissioner —

(a) use premises or plant required to be registered in terms of this Part 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; or

(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.

(13) The Commissioner may by rule prescribe the days on which, and the hours during which, any or all of the operations in a duty manufacturing warehouse (including the removal of goods) shall be carried out.

(14) No distilling operation shall be commenced until the whole or any part of the distilling system or plant, as the Commissioner may require, has at the expense of the licensee been provided with fittings and requirements to permit of the

insertion or affixing of customs, excise and sales duty meters, gauges, rods, locks and seals according to any regulations and

to the satisfaction of the Commissioner for the purpose of securing such system or plant, and until such system or plant has been duly secured by a controller.

(15) If a meter, rod, lock or fitting is tampered with or damaged, or if a pipe, cock, fastening or fitting connected with a still or vessel is pierced or damaged, the licensee shall forthwith repair or renew it to the satisfaction of the controller, or any officer may effect the repair or renewal at the expense of the licensee.

(16) 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 and the burden of proving that any such tampering, damage or piercing was not so caused shall rest upon the licensee.

(17) The Commissioner may, subject to such conditions as he may impose, exempt the manufacture of any class or kind of goods from any provision of this section.

Ascertaining quantity of spirits by weighing.

26. (1) The quantity of spirits in any container maybe calculated by weighing or gauging.

(2) In ascertaining the quantity of spirits by weighing, the tables prescribed in the regulations shall be used and the

quantity ascertained in accordance with the said tables shall be deemed to be the true quantity of spirits for the purposes of this Act.

Classification of spirits.

27. No spirits distilled in Swaziland 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 controller, and spirits not so certified shall be deemed to be spirits other than of the product of the vine.

Control of the use of spirits for certain purposes.

28. (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 Minister to be suitable for such use:

Provided that if the Minister declines to certify spirits as suitable for such use the manufacturer may re-distil such spirits or treat them by any method approved by the Minister who may in his discretion certify such 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 Commissioner may in each case consider necessary.

(3) Subsection (1) shall not apply to an agricultural distiller or a wine grower who manufactures alcoholic beverages under this Act for his private use.

Entry of spirits for use in manufacture.

29. (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 Commissioner 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 in a duty storage warehouse and may, without prejudice

to section 104, permit payment of the duty on any such spirits used in the production of beverages in any such warehouse to

be deferred until the beverages are delivered from such warehouse.

(3) No person shall, without the permission of the Commissioner, re-distil spirits which have been entered for home consumption, and any such permission may be granted subject to such conditions as he may impose.

(4) Beverages or other non-excisable goods produced in contravention of subsection (1) and any spirits re-distilled in contravention of subsection (3) shall be liable to forfeiture.

Ascertaining strength of spirits.

30. The strength of any spirits or spirituous preparations shall, for duty purposes, be ascertained in the manner prescribed by the Commissioner. (Amended A.7/1981.)

Requirements in respect of still.

31. Subject to section 63, no person shall distil spirits in a still which does not comply with the regulations as to capacity and construction:

Provided that the Commissioner may exempt any still used for any purpose other than the manufacture of potable spirits from any such requirements for such period and on such conditions as he thinks fit.

383

Special provisions regarding spirits manufactured by agricultural distiller.

32. (1) The manufacture of spirits by an agricultural distiller shall be subject to such supervision by an officer as the Commissioner 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 Commissioner is satisfied that no part of the

loss was wilfully or negligently caused.

(3) No agricultural distiller shall use his still for distilling spirits from any material other than produce grown on the farm of which he is the owner or occupier and which is of a kind prescribed by regulation in respect of the class of agricultural distiller to which he belongs.

(4) Subject to this Act and any other law relating to liquor, section 18(6) 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 that purpose a reference in section 18(6) to a duty warehouse shall be deemed to be a reference to the farm on which spirits are manufactured.

(5) Spirits manufactured by an agricultural distiller from any prescribed fruits other than grapes shall be solely for his private use on the farm where such fruit was produced and such spirits were manufactured.

(6) Notwithstanding subsection (5), the Commissioner may allow spirits so manufactured to be used or disposed of in such circumstances and at such places as he may deem fit and subject to such conditions as he may impose in each case. (Added A.5/1991.)

Special provisions regarding wine.

33. (1) The Commissioner 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 License under any law to deal in wine

in wholesale quantities, as a special duty warehouse for the purpose of manufacturing wine.

(2) Special warehouses licensed under this subsection shall, for the purposes of this Part, be deemed to be duty manufacturing warehouses.

(3) Where wine is manufactured in a duty 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 those losses under section 18(8).

Special provisions regarding beer.

34. (1) If the relative density before fermentation of any worts to be used in the manufacture of beer in Swaziland in the collecting or fermenting vessels in a duty 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. (Amended A.5/1991.)

(2) Bates' saccharometer and tables 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. (Amended A.5/1991.)

(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 any regulations. (Amended A.5/1991.)

(4) A manufacturer shall, in respect of beer manufactured by him in Swaziland, register with the Commissioner the name under which 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 sold or disposed of except under a name so registered. (Amended A.7/1981.)

(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 its name. (Amended A.7/1981.)

384

(6) Any description on any container of beer bearing an indication of a name registered with the Commissioner shall be deemed to be a declaration for the purpose of assessment of duty.

(7) The Commissioner may exempt beer of any class or kind from any provision of subsections (4) and (5).

(8) If the relative density before fermentation of any beer in any container bearing an indication of a name registered with the Commissioner 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 is 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. (Amended A.5/1991.)

(9) If the Commissioner is unable to establish the full quantity from the records of the manufacturer, he may determine a quantity which shall be deemed to be such full quantity.

(10) Any beer of any brew or blend of brews of beer referred to in subsection (9) and not delivered from the stocks of such manufacturer shall be liable to forfeiture.

Special provisions in respect of manufacture of sales duty goods or goods specified in Section B of Part 2 of Schedule No. 1

and collection of sales duty or excise duty specified in Section B of Part 2 of Schedule No. 1.

35. (1) Every manufacturer of sales duty goods or excisable goods specified in Section B of Part 2 of Schedule No. 1, every owner of sales duty goods or excisable goods specified in Section B of Part 2 of Schedule No. 1 manufactured for him

partly or wholly from materials owned by such owner, and every dealer of a class designated by the Commissioner, in pearls, precious and semi-precious stones, precious metals, metals clad with precious metals or articles containing or manufactured of such pearls, precious and semi-precious stones, precious metals or metals clad with precious metals (excluding imitation jewellery), shall License his premises as a special duty warehouse for sales duty purposes or for purposes of excise duty specified in Section B of Part 2 of Schedule No. 1 in terms of this Act. (Amended A.5/1991.)

(2) A manufacturer, owner or dealer referred to in subsection (1) shall not manufacture or deal in or with sales duty goods or excisable good specified in Section B of Part 2 of Schedule No. 1 unless he has Licensed his premises as specified

in the said subsection:

Provided that the Commissioner may to the extent he deems fit, and on conditions he may impose, exempt any manufacturer or owner from the requirements of this Act. (Amended A.5/1991.)

(3) Notwithstanding anything to the contrary in this Act —

(a) where the value added by any process in the manufacture of sales duty goods or excisable good specified in Section B of Part 2 of Schedule No. 1 is, in the opinion of the Commissioner, low in relation to the manufacture selling price of such goods, or where any process in the manufacture of sales duty goods or excisable goods specified in Section B of Part 2 of the said Schedule presents in his opinion exceptional difficulties in the collection of sales duty or excise duty specified in Section B of Part 2 of the said Schedule in respect of such goods, the provisions of subsections (1) and (2) shall apply, and due entry of such goods shall be effected at such stage in the manufacture of the said goods as he may determine, and the processes which shall be deemed to be included for the purposes of calculating the value for sales duty purposes or for purposes of excise duty specified in Section B of Part 2 of the said Schedule of such goods shall be as determined by him;

(b) the Commissioner may, subject to such conditions as he may impose —

(i) where the production and disposal of any sales duty goods or excisable goods specified in Section B of Part 2 of Schedule No. 1 are performed by different persons, or under circumstances rendering it expedient in his opinion to do so, issue one License under 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 or excise duty specified in Section B of Part 2 of the said Schedule on all the sales duty goods or excisable goods specified in Section B of Part 2 of the said Schedule anyone paying, the other or others to be absolved *pro tanto*;

385

(ii) include in a special duty warehouse License issued under this Act in respect of the premises of any manufacturer of sales duty goods or excisable goods specified in Section B of Part 2 of Schedule No. 1, any warehouse, depot, agency, branch or other storage place approved by the Commissioner and in which any such goods owned by such manufacturer are stored, and thereupon such goods shall, for the purposes of Act, be deemed to be in the Licensed special duty warehouse of such manufacturer, and the licensee concerned shall be liable for compliance with the requirements of this Act including liability for the sales duty or excise duty specified in Section B of Part 2 of the said Schedule on such goods so stored;

(iii) and in such circumstances as he may deem expedient, license the premises of any dealer in sales duty goods or excisable goods specified in Section B of Part 2 of Schedule No. 1 as a special duty 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 or excise duty specified in Section B of Part 2 of the said Schedule on such sales duty goods or excisable goods specified in Section B of Part 2 of the said Schedule as the Commissioner may determine, and such dealer shall be liable for the sales duty or excise duty specified in Section B of Part 2 of the said Schedule on such goods; and

(iv) make such temporary or permanent adjustment to the sales duty value of any sales duty goods or excise duty value of excisable goods specified in Section B of Part 2 of Schedule No. 1 as he may deem reasonable in circumstances which are in his opinion exceptional.

(4) Sales duty goods or excisable goods specified in Section B of Part 2 of Schedule No. 1 manufactured in Swaziland by a natural person for his own use and not for sale or disposal and in circumstances which in the opinion of the Commissioner do not constitute a business venture, may, subject to such conditions as he may impose be exempted from payment of sales duty or excise duty specified in Section B or Part 2 of the said Schedule.

(5) Sales duty goods or excisable goods specified in Section B of Part 2 of Schedule No. 1 manufactured in Swaziland 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 Commissioner from the payment of sales duty or excise duty specified in Section B of Part 2 of

the said Schedule if—

(a) the average value for sales duty purposes or for purposes of excise duty specified in Section B of Part 2 of the said Schedule of such goods or such class or kind of goods has during such period as the Minister may determine, not exceeded a certain amount determined by the Minister; or

(b) the value for sales duty purposes or for purposes of excise duty specified in Section B of Part 2 of the said Schedule of such goods or such class or kind of goods is in the opinion of the Commissioner not likely to exceed the amount referred to in paragraph (a) during one calendar year; or

(c) such circumstances as the Commissioner may specify apply.

(Amended A.11/1988.)

Duties applicable to goods manufactured in a duty warehouse.

36. (1) For the purposes of this section “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 Swaziland

in wholesale quantities of mineral oil products imported or manufactured by the importer or manufacturer.

(2) In respect of any goods manufactured in a duty warehouse there shall be paid, subject to section 75, on their entry for home consumption duty at the under-mentioned rates —

(a) if the manufactured goods are not liable to excise duty, the fiscal and customs rates 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 (Amended K.O-I-C. 17/1976.)

(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.

386

(3) Notwithstanding subsection (2), but subject to subsections (5), (6), (7), (8) and (9), the Commissioner may, on such conditions as he may impose, for the purpose of preserving any goods in a duty storage warehouse or reconditioning such goods which have, as a result of contamination or deterioration or for any other reason, become unsaleable or not readily saleable or for the purpose of fulfilling special orders, permit such goods to be reconditioned or 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 (2), 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— (Amended A.5/1991.)

(a) if such reconditioned, mixed or blended goods are not liable to excise duty, at the fiscal and customs rates of duty applicable in terms of Schedules Nos. 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 (Amended K.O-I-C. 17/1976.)

(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 duty in an amount equal to the amount by which the customs duty at the rate applicable in terms of Schedules 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.

(Amended A.5/1991.)

(4) If the Commissioner has permitted any goods to be reconditioned or to be mixed or blended in a storage warehouse with other goods, such warehouse shall, without being licensed as a duty manufacturing warehouse and without approval of its premises or plant thereon, be regarded for the purposes of this Act as a licensed duty manufacturing warehouse:

Provided that no rebate for any loss or deficiency in respect of petrol and distillate fuel so reconditioned, mixed or blended exceeding the rebate specified in section 75(19)(e) and (f) shall be allowed on such goods. (Added A.5/1991.)

(5) Notwithstanding anything to the contrary in this Part, the Commissioner may, on such conditions as he may impose, and in such circumstances and at such places as he may specify, permit the mixing or blending of any mineral oil products with one another or with other goods whether or not such products or goods are in a duty storage warehouse or have passed out of customs and excise control for any purpose, including that of rendering such goods saleable or more readily saleable or of fulfilling special orders. (Amended A.5/1991.)

(6) Subsection (3) insofar as it relates 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.

(7) 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 subsection (6) in respect of the mineral oil products obtained by such mixing or blending.

(8) This section shall not be construed as authorizing 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.

(9) Any mineral oil product used in mixing or blending shall be deemed to consist entirely of imported goods unless it is proved to the satisfaction of the Commissioner that it consists entirely of excisable goods or it is proved to his satisfaction that it contains such a small proportion of imported goods that he considers it negligible, in which event such mineral oil product shall be deemed to consist entirely of excisable goods.

(10) If the Commissioner 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

(3), 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. (Amended A.7/1981.)

387

(11) Notwithstanding this Act the Commissioner 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 connexion with the loading or discharge of vehicles, or the mixing of imported and locally manufactured mineral oil produce of the same class or kind in the ordinary course of transport or storage or distribution in Swaziland 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.

(12) 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 sections 25(5) and 75, sales duty or surcharge 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 or surcharge in terms of the aforementioned Schedule. (Amended A.5/1991.)

Part V Clearance And Origin Of Goods — Liability For And Payment Of Duties

Entry of goods and time of entry.

37. (1) Every importer of goods shall within seven days of the date on which such goods are, in terms of section 9, deemed to have been imported or within such further time as the Commissioner may allow, make due entry of those goods,

in the form prescribed, and declare to the truth of such entry: (Amended A.5/1991.)

Provided that, with the permission of the controller the following goods need not be so entered, namely:

- (i) containers temporarily imported;
- (ii) human remains;
- (iii) goods which, in the opinion of the secretary, are of no commercial value;
- (iv) goods imported under international carnet; and
- (v) goods of a value for duty purposes not exceeding two hundred emalangeni and on which no duty is payable in terms of Schedule No. 1.

(Added A.10/1978; amended A.5/1991.)

(2) The controller at any place appointed under this Act for the entry of goods shall accept entries for goods in respect of which it is proved to his satisfaction 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.

(3) Every such importer shall within seven days of the granting of a delivery order by the controller in respect of any goods entered under subsection (1) or, where such goods arrive after the granting of the order, within seven days of the

arrival of the goods, present such delivery order to the authority in possession of such goods for delivery thereof.

(4) (a) An exporter of any goods shall, before such goods are exported from Swaziland, deliver to the Controller a bill of entry in the prescribed form:

But the Commissioner may —

- (i) 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; or
- (ii) in the case of goods to be exported overland by means of a vehicle (excluding an aircraft and a railway train) which are loaded for export at a place other than a place appointed under section 5, where goods may be entered for customs and excise purposes, allow such a bill of entry to be delivered at such time as he deems reasonable.

(b) For the purpose of paragraph (a), in respect to the delivery of a bill of entry, the goods referred to therein shall be deemed to have been exported from Swaziland —

(i) in the case of goods to be exported by container, at the time when such goods are delivered to the depot operator or container operator, as the case may be; (Amended A.5/1991.)

388

(ii) in the case of goods to be exported in an aircraft, at the time when such goods are delivered to the pilot of the aircraft or are brought within the control area of the airport authority concerned, as the case may be;

(iii) in the case of goods to be exported in a railway train, at the time when such goods are delivered to the railway operator; or

(iv) in the case of goods to be exported overland in a vehicle other than an aircraft or a railway train, subject to

paragraph (a), at the time when such goods are loaded on the vehicle.
(Amended A.11/1988.)

(5) The Minister may by regulation permit any excisable goods, sales duty goods and any class or kind of imported goods which he may specify in such regulation to be removed from a duty warehouse on the owner of such goods issuing a prescribed certificate or an invoice or other document prescribed or approved by the Commissioner, 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 18(6) and subject to section 38(7) and (8), be deemed to be a due entry from the time of removal of those goods from such warehouse.

(6) No such goods may be removed from a duty warehouse or appropriated for use by the owner prior to or without the issuing of such certificate, invoice or other document.

Importer and exporter to produce documents and pay duties.

38. (1) The person entering any imported goods for any purpose in terms of this Act shall deliver to the Controller a bill of entry in the prescribed form, setting forth the full particulars as indicated on the form and as required by the Controller, 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 purposes shown on such bill

of entry. (Amended A.7/1981.)

(2) At the same time, such person shall deliver such duplicates of the bill of entry as may be prescribed or as may be required by the controller and shall pay all duties due on such goods:

Provided that the Commissioner may, on such conditions, including conditions relating to security, as he may determine, allow the deferment of payment of duties due in respect of such bills of entry and for such periods as he may specify. (Added A.5/1991.)

(3) The said person shall further produce the transport document or such other document in lieu thereof as may be approved by the Commissioner, 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 Controller may require in each case and answer all such questions relating to such goods as may be put to him by the Controller, and furnish in such manner as the Commissioner may determine such information regarding the tariff classification of such goods as the Commissioner may require. (Amended A.4/1979; A.7/1981.)

(3bis) The Commissioner may, subject to such conditions as he may determine, allow the said person to produce in lieu of any document required to be produced under subsection (3), 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. (Added A.7/1981.)

(4) Such person shall also in respect of such class or kind of goods as may be specified by the Commissioner by rule or any goods to which circumstances so specified apply, produce to the controller for retention by him such 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 or relating to such goods.

(5) If 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 controller.

(6) No such bill of entry shall be valid, nor shall any person export such goods, until duty has been paid to the controller.

(7) Any person who removes goods from a duty warehouse by means of the issuing of a certificate, invoice or other document referred to in section 37(5) shall present to the Commissioner a validating bill of entry in the prescribed form at

389
the time and in the manner specified by regulation in respect of any such certificate, invoice or other document and shall

pay
the duty due on the goods to which such certificate, invoice or other document relates, to the Commissioner at the prescribed time.

(8) Such person shall present to the controller 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 controller.

(8bis) The Commissioner may specify the documents to be produced by the exporter upon entry for exportation in respect of any goods exported or any class or kind of goods exported or any goods exported in circumstances or to a destination specified by him. (Added A.5/1991.)

(9) The Commissioner may by rule specify the manner in which bills of entry for goods of any such class or kind as

may be specified in such rule, or goods imported or exported in such manner or such circumstances as may be so specified, shall be delivered.

Sale in transit.

38bis. Notwithstanding anything to the contrary in this Act, the importer of any goods purchased from any Customs Union consignee after shipment of such goods but before the date of entry thereof, shall produce to the Controller the invoice relating to such purchase, and the price actually paid or payable for such goods by virtue of such purchase shall for the purposes of section 65(1) be the transaction value of such goods. (Added A.11/1988.)

Validity of entries.

39. (1) No entry shall be valid unless —

(a) in the case of imported or exported goods, the description and particulars of the goods and the marks and particulars of the packages declared in that entry correspond with the description and particulars of the goods and marks and particulars of the packages as reported in terms of section 6 or 11 or in any certificate, permit or other document by which the import or export of those goods is authorized;

(b) the goods have been properly described in the entry by the denomination and with the characters, tariff headings and item numbers and circumstances according to which they are charged with duty or are admitted under 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 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, a correct and sufficient invoice thereof, as prescribed, has been produced to the Controller; and (Amended A.4/1979.)

(e) the correct duty due has been paid:

Provided that no bill of entry shall be invalid by reason of any deferment referred to in the proviso to section 38(2). (Added A.5/1991)

(2) Goods taken or delivered or removed by virtue of an entry which is not valid out of any ship, 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 controller, shall be deemed to be goods landed or taken without due entry thereof: (Amended A.10/1978.)

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 package not validly entered shall be deemed to have been landed or taken without due entry.

(3) Subject to the provisions of sections 76 and 77 and on such conditions as the Commissioner may impose and on payment of such fees as the Minister may prescribe —

(i) an importer or exporter or manufacturer of good shall on discovering that a bill of entry presented by him does not comply in every respect with section 38, or is invalid in terms of subsection (1), forthwith adjust 390

that bill of entry by means of a voucher of correction or in such other manner as the Commissioner may prescribe; or

(ii) if a bill of entry has been passed in error by reason of duty having been paid on goods intended for storage or manufacture in a customs and excise warehouse under section 18 or for purposes or use under rebate of duty under section 75, the Commissioner may allow the importer, exporter or manufacturer to adjust that bill of entry by substitution of a fresh bill of entry and cancellation of the original bill of entry, provided such goods, where a rebate of duty is being claimed, qualified in all respects at the time the duty was paid for that rebate:

Provided that acceptance of such voucher or fresh bill of entry shall not indemnify such importer or exporter or manufacturer against any fine or penalty provided for in this Act. (Amended A.2/1985; A.11/1988.)

(4) The provisions of subsection (3)(ii) shall apply *mutatis mutandis* in respect of a bill of entry in which goods have according to the tariff heading, tariff sub-heading, item or circumstances according to which such goods are charged with duty, been described in error as goods, other than goods intended for —

(a) storage or manufacture in a customs and excise warehouse under section 18; or

(b) purposes or use under rebate of duty under section 75, in consequence of the fact that —

(i) a determination of any such tariff heading, sub-heading or item is, under section 46(12)(d), amended with retrospective effect as from a date before or on the date on which the goods described in such bill of entry have been entered for home consumption; or

(ii) any such determination is, under section 46(12)(d), withdrawn with such retrospective effect, and a new determination is thereunder made with effect from such withdrawal; or

(iii) any Schedule is amended with such retrospective effect, and in which such goods, if such amendment or new determination had been in operation on the date on which such goods were so

entered, would have been described as goods intended for the said storage or manufacture or the said purposes or use.

(Amended A.10/1978; A.11/1988.)

(5) No application for any substitution under subsection (3)(ii) or in that subsection as read with subsection (4) shall be considered by the Commissioner unless it is received by the Controller, supported by the necessary document and other evidence to prove that such substitution is justified, within a period of six months — (Amended A.5/1991.)

(a) from the date of entry for home consumption as provided in section 44(2), of the goods to which the application relates; or (Amended A.5/1991.)

(b) in the case of any amendment of a determination referred to in subsection (4)(b)(i) or a new determination referred to in subsection (4)(b)(ii), from the date on which such amendment is effected or such new determination is made or, if such amendment or new determination is published by notice in the Gazette, the date on which such amendment or new determination is so published; or

(c) in the case of an amendment referred to in subsection (4)(b)(iii), from the date on which such amendment is published by notice in the Gazette.

(Added A.11/1988; amended A.5/1991.)

Particulars on invoices.

40. (1) The exporter of any goods imported into or exported from Swaziland 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 Commissioner 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 any regulations apply.

391

(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 Swaziland 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 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 such 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 Swaziland and for the purposes of section 106(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 Controller or the Commissioner unless the importer is able to satisfy the Commissioner of any such change and

the extent thereof:

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

(4) (a) All particulars necessary to make a valid entry and all particulars in respect of the transaction value or of any commission, discount, cost, charge, expense, royalty, freight, duty, tax, drawback, refund, rebate, remission or other information whatever which relates to and has a bearing on such value shall be declared by the exporter in any prescribed invoice in respect of any imported goods and such particulars shall, except where the Commissioner otherwise determines, relate to the final amount of such transaction value or commission, discount, cost, charge, expense, royalty, freight, duty, tax, drawback, refund, rebate or remission and to the final particulars or information regarding such goods. (Amended A.2/1985.)

(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 by 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 Controller 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 Controller by the importer of such goods or if the Commissioner has reason to believe that an offence referred to in section 86(f) or (g) has been committed in respect of any imported goods the Commissioner may determine a transaction value, origin, date of purchase, quantity, description or the characteristics of such goods according to the best information available to him, which shall, subject to a right of appeal to the Minister, be deemed to be the transaction value,

origin, date of purchase, quantity, description or the characteristics of such goods. (Amended A.2/1985.)

(d) The right of appeal referred to in paragraph (c) of this subsection shall be exercised within a period of three months from the date of the determination concerned. (Amended A.4/1979; A.2/1985.)

Entry by bill of sight.

41. (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 controller 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 they may be landed and brought to a place indicated by the controller at the risk and expense of the importer for the purpose of being seen and examined by him there in the presence of the controller.

(2) The importer shall make due entry of such goods within three days of the date on which they were brought to the place of examination which shall be regarded as a special Government warehouse for the purpose of securing the duties thereon until such goods are duly entered and removed or delivered in accordance with this Act.

392

(3) In default of due entry the goods may after three months from the date of receipt thereof at the place of examination be disposed of in the manner described in section 42.

(4) No goods entered by bill of sight under 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 shall also be applicable in respect of such due entry after sight.

Disposal of goods on failure to make due entry.

42. (1) If entry of any imported goods has not been made under section 37 the controller may, on expiry of the period prescribed in subsection (1) thereof require the person who brought such goods into Swaziland to remove them to the Government warehouse or other place indicated by the controller or may himself so remove them.

(2) (a) The Commissioner 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 the importer fails to do so the goods shall be liable to forfeiture.

(b) If such goods are seized under section 88(1) and sold in terms of section 90 the proceeds thereof shall be disposed of as provided in such section (3).

(Amended A.2/1985.)

(3) If after the expiry of three months from the date of removal to the Government warehouse or other place indicated by the controller or, where no removal has taken place, from the date of expiry of the period prescribed in section

37(1), any goods remain unentered, the secretary 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, charges due to the Swaziland Railway Board, charges due to the freight, and the surplus, if any, shall upon application be paid to the owner of

such goods, unless the secretary is satisfied that such goods were imported in contravention of any law: (Amended A.10/1978.)

Provided that —

(a) if the goods cannot be sold for a sum sufficient to cover such duty, expenses, charges and freight, the Commissioner may accept the sum offered and apply it in discharge of such debits in the order mentioned or direct that such goods be destroyed or appropriated to the Government; or

(b) if the goods cannot be sold at a price regarded by the Commissioner as reasonable, they may in his discretion be appropriated to the Government; and

(c) no payment of surplus 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 Commissioner within two years from the date of sale of the goods.

(4) Notwithstanding this Act if any goods —

(a) referred to in subsection (3) are of a perishable or dangerous nature or if the Commissioner 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 such goods, he may forthwith direct their sale and apply the proceeds as provided in subsection (3); or

(b) are sold in terms of this section subject to compliance by the purchaser with any condition, and the purchaser fails to comply with such condition within a period of three months from the date of sale thereof,

such sale shall be null and void and the nett proceeds thereof may be refunded to the purchaser and the Commissioner may direct that the goods be destroyed or appropriated to the Government or be dealt with in such manner as he may deem fit.

Liability for duty.

43. (1) Liability for duty on any goods to which section 9 relates shall commence from the time when such goods are in terms of that section deemed to have been imported into Swaziland:

Provided that, subject to subsection (7), any such liability shall cease if it is proved to the satisfaction of the Commissioner that such goods (excluding, save insofar as any regulation otherwise provides, goods which are missing from

393

an individual package and in respect of which customs duty or sales duty, each taken separately, does not exceed twentyfive

rand) were not landed at any place in Swaziland.

(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 such goods have acquired the essential characteristics of and are in the opinion of the Commissioner capable of use as excisable goods or sales duty goods, and liability for duty shall commence at such stage.

(3) The pilot of an aircraft or the carrier of goods by means of any other vehicle shall be liable for the duty on all goods which are removed from such aircraft or vehicle at a place in Swaziland to which they are not consigned, and such liability shall continue until such goods have been duly entered or otherwise accounted for to the satisfaction of the Commissioner.

(4) The pilot or carrier concerned shall be liable for the duty on all goods deemed in terms of section 9 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 5(1). (Amended A.7/1981.)

(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 to the importer or his agent after due entry thereof has been made; or

(b) if due entry of the goods has not been made, upon delivery thereof to the Government warehouse or other place indicated for the purposes of this section by the controller; or

(c) in respect of such goods which are containerized upon delivery thereof to a container operator; or (Added A.10/1978.)

(d) in respect of such goods for which an air cargo transfer manifest has been completed, upon delivery to the airline. (Added A.10/1978.)

(5bis) The liability of a container operator for duty in terms of subsection (6)(a) shall cease —

(a) in respect of goods containerised, 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 —

(i) L.C.L. containers; and

(ii) other containers delivered to a container operator as contemplated in subsection (5)(c) and specified in a list to be compiled by the container operator concerned,

upon delivery thereof to a depot operator;

(Added A.10/1978; amended A.11/1988.)

(5ter) The liability of a depot operator for duty in terms of subsection (6)(b) shall cease —

(a) in respect of goods containerised in L.C.L. containers and the other containers referred to in subsection (5bis)(b)(ii), upon lawful delivery thereof, after due entry thereof has been made to the importer or his agent; or (Amended A.11/1988.)

(b) in respect of any goods of which due entry has not been made, upon delivery thereof to the Government warehouse or other place indicated for the purposes of this section by the controller.

(Added A.10/1978.)

(6) In all cases where the pilot or other carrier is not liable for the 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 Part VII, rest —

(a) in the case contemplated in subsection (5)(c), on the container operator concerned;

(b) in the case contemplated in subsection (5bis)(b), on the depot operator concerned;

(c) in any other case on the importer or owner of such goods.

(Amended A.10/1978.)

394

(7) If the pilot or other carrier is not liable for the duty on any imported goods or if, in terms of this section, his liability has ceased in respect of such goods, liability for duty thereon shall subject to Part VII, rest on the importer or the owner of such goods.

(8) Notwithstanding this section, no importer shall be granted a refund of customs duty or sales duty paid in respect of goods missing from any individual imported package, if any such customs duty or sales duty, each taken separately, does not exceed twenty-five rand.

(9) The manufacturer, owner, seller or purchaser of any excisable goods or sales duty goods shall, subject to the provisions of Part 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. (Amended A.1/1981; A.11/1988)

(9bis) Notwithstanding any provision to the contrary in this Act, any person who owns, purchases, removes, receives, takes, delivers or deals with or in any imported or excisable goods which should have been duly entered, in terms of any agreement for home consumption in any territory, under section 51 with a government of whom such an agreement has been

concluded, shall be liable for the duty on such goods brought into Swaziland from such territory, and if the question arises whether such goods have been duly entered for home consumption it shall be presumed, unless the contrary is proved, that such goods have not been so entered, and such goods shall be subject to the provisions of this Act as if they were goods which have, contrary to the provisions of section 46bis(1) not been duly entered for home consumption in Swaziland.

(Added A.11/1988.)

(10) Any duty for which any person is liable in terms of this section shall on demand by the Commissioner become payable.

Joint and several liability for duty or certain amounts.

43bis. Subject to the provisions of sections 35(3)(b)(i) and 99(2)(b), whenever in terms of this Act liability for duty or any amount demanded under section 88(2)(a) devolves on two or more persons, each person shall, unless he satisfies the Commissioner that his relevant liability has ceased in terms of this Act, be jointly and severally liable for such duty or amount, any one paying, the other or others to be absolved *pro tanto*. (Added A.5/1991.)

Determination of duty applicable.

44. (1) (a) Notwithstanding anything to the contrary contained in this Act, all goods consigned to or imported into Swaziland or stored or manufactured in a customs and excise warehouse or removed in bond shall upon being entered for home consumption be liable to such duties (including anti-dumping and countervailing duties specified in Schedule No. 2 and new or increased duties referred to in section 58(2) and duties imposed under section 53) as may at the time of such entry be leviable upon such goods.

(b) Notwithstanding paragraph (a) and subject to section 39, any goods imported into or manufactured in Swaziland, which are liable to duty and which were removed, taken or delivered without entry for home consumption having been made in respect of such goods, shall be liable to such duties as may be leviable upon such goods at the time of such removal, taking delivery or at the time of assessment by an officer, whichever yields the greater amount of duty. (Amended A.11/1988.)

(2) For the purposes of this section, the time of entry for home consumption of —

(i) goods imported by post (and not entered at a custom and excise office) shall be deemed to be the time when such goods are assessed for duty; and

(ii) goods imported otherwise shall be deemed to be the time when the bill of entry concerned is delivered to the Controller in terms of section 38(1) and at a place indicated by the Controller, irrespective of whether the bill of entry is returned to the Controller in order to be adjusted as required by the Controller, provided it is redelivered, so adjusted, to the Controller within five days after the day on which it was so returned to the Controller.

(Amended A.2/1985.)

395

Origin of goods.

45. (1) For the purposes of this Act, excluding Parts 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 subsections (2), (3) or (4)) of the production cost of such goods, determined in accordance with any regulation, is represented by materials produced and labour performed in such territory;

(b) the last process in the production or manufacture of such goods has taken place in such territory; and

(c) such other process as the Minister may prescribe in respect of any class or kind of goods, has taken place in the production or manufacture of goods of such class or kind in such territory.

(2) The Minister may by regulation increase the percentage prescribed in subsection (1), in regard to any class or kind of imported goods, or any class or kind of such goods from a particular territory, to which such subsection applies.

(Amended A.5/1991.)

(3) The Government may by agreement with the government of any territory increase or reduce for the purposes of section 51 the percentage prescribed in subsection (1) in so far as such territory is concerned in regard to any class or kind of goods to which that subsection applies.

(4) The Commissioner may —

(a) in respect of any excisable or other goods produced or manufactured in Swaziland 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 subsection (1);

(b) by rule exclude from the provisions of subsection (1) any goods or class or kind of goods referred to in paragraph (a);

(c) prescribe by rule 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 Swaziland unless such process in connexion with the production or manufacture as may be specified in such rule has taken place in Swaziland.

(5) On any question arising whether in terms of this section goods shall be regarded as having been produced or manufactured in a particular territory, the decision of the Minister shall be final.

Payment of duty and rate of duty applicable.

46. (1) (Repealed A.5/1991.)

(2) Duty levied in terms of this Act shall be paid into such account as the Minister for Finance may designate for the purposes of this section and shall be accounted for in terms of the customs union agreement:

Provided that the Commissioner may in his discretion condone any under-payment of such duty where the amount of such under-payment in the case of —

(a) goods imported by post is less than fifty cents;

(b) goods imported in any other manner is less than five emalangeni; or

(c) excisable goods is less than two emalangeni.

(Added A.7/1981.)

(3) The fiscal duty specified in Column III in any tariff heading or subheading in Part I of Schedule No. 1 shall apply to any goods to which such heading or subheading relates irrespective of the territory in which such goods were produced or manufactured. (Amended K.O-I-C. 17/1976.)

(4) In addition to any fiscal duty which may be payable under subsection (2), customs duty at the most-favoured-nation-rate specified in Column V in any tariff heading or sub-heading in Part 1 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 —(Amended A.5/1991.)

396

(a) with the government of which an agreement has been concluded under section 51 and the agreement makes provision 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 General Agreement on Tariffs and Trade Act if in respect of such territory such agreement applies as between the government concerned and the Government of the Kingdom of Swaziland.

(Amended K.O-I-C 17/1976.)

(5) 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 or sub-heading in Part 1 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

(4). (Amended K.O-I-C. 17/1976; A.5/1991.)

(6) Any export duty which may become payable in terms of section 47 shall be paid into the Consolidated Fund, at the time of entry of export, on such goods as may be specified in Part 6 of Schedule No. 1 in terms of the provisions of the said section. (Amended A.7/1981; A.5/1991.)

(7) Any duty payable under section 53, any anti-dumping duty payable under section 55 and any countervailing duty payable under section 57 shall be paid into the account referred to in subsection (2). (Amended A.2/1985.)

(8) Wherever the tariff heading or sub-heading under which any goods are classified in Part 1 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 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 or 6 or in the said item of Schedule No. 2, shall be deemed not to include goods which are not classified under such tariff heading or sub-heading. (Amended A.5/1991.)

(9) The interpretation of Part 1 of Schedule No. 1 shall be subject to the Explanatory Notes to the Harmonised System and to the Customs Co-operation Council Nomenclature issued by the Customs Co-operation Council, Brussels,

from time to time. (Amended A.5/1991.)

(10) The Commissioner shall obtain and keep in his office two copies of such Explanatory Notes and shall incorporate in them any amendment of which he is notified by such Council and shall record the date of affecting each such

amendment, and any such amendment shall for the purposes of this Act have effect from such date.

(11) If in any legal proceedings 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 the Explanatory Notes as amended under subsection (10) shall be accepted as sufficient evidence of the contents thereof and of the effective date of any such amendment.

(12) (a) (i) The Commissioner may in writing determine the tariff headings, tariff sub-headings or items of any Schedule under which any imported goods or goods manufactured in Swaziland shall be classified. (Amended A.5/1991.)

(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 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 Commissioner may within 90 days from the date of any such determination publish it by notice in the Gazette.

(d) The Commissioner 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.

397

(e) An appeal against any such determination shall lie to the Supreme Court. Such appeal shall be prosecuted within a period of 90 days from the date of the determination.

(Added A.7/1981.)

(13) Save where —

(a) a determination has been made under subsection (12)(a) or (d); or

(b) any false declaration is made for the purposes of subsection (12),

there shall be no liability for any under-payment in duty on any goods, where such under-payment is due to the acceptance of a bill of entry bearing an incorrect tariff heading, tariff sub-heading or item of any Schedule, after a period of two years from the date of entry of such goods. (Added A.7/1981.)

(14) Notwithstanding the provisions of subsection (13), any determination made under subsection (12)(a) following upon an inspection of the books or documents of any importer or manufacturer, shall be deemed to have come into operation

in respect of the goods in question entered for customs and excise purposes, two years prior to the date on which the inspection commenced. (Added A.11/1988.)

Prohibition of dealing with goods not entered for home consumption

46bis. (1) Subject to this Act, no person shall remove, receive, take, deliver or deal with or in any imported or excisable goods intended for home consumption unless such goods have been duly entered for home consumption.

(2) If an officer discovers any imported or excisable goods which are alleged to have been duly entered, in terms of any agreement, for home consumption in any territory with a government of which Swaziland has concluded such an agreement in terms of section 51 and he has reasonable cause to believe that such goods have not been so entered, he may detain such goods, and such goods shall thereupon be presumed, unless the contrary is proved, not to have been so entered and shall be to this Act as if they were goods which have, contrary to subsection (1), not been duly entered for home consumption in Swaziland.

(Added A.11/1988.)

Application of Schedules and amendments thereto.

47. (1) Notwithstanding the date of commencement of this Act the Schedules to the Customs and Excise Act, No. 91 of 1964 of the Republic as amended from time to time, published in English prior to the commencement of this Act shall *mutatis mutandis* be deemed to be the correspondingly numbered Schedules to this Act, and the provisions thereof shall be deemed to have come into force respectively on the dates on which they came into force in the Republic, and any assessment

or payment made prior to the commencement of this Act shall be deemed to have been lawfully made if it would have been

authorized by this Act had this Act been in force on the date it was made.

(2) Without prejudice to the generality of subsection (1) a reference to the Republic in any such Schedule shall be construed as a reference to Swaziland and a reference therein to a provision of the Customs and Excise Act, No. 91 of 1964

of the Republic shall *mutatis mutandis* be construed as a reference to a corresponding provision of this Act.

(3) The Minister may amend the Schedules in their application to Swaziland by notice in the Gazette and may, if he deems fit, effect such amendments by incorporating therein by reference any printed matter published or issued anywhere, whether in Swaziland or elsewhere.

(4) The power conferred by subsection (3) shall include the right to impose new, increased, or additional duties and any notice referred to in that subsection may provide for any amendment effected thereby to come into force with retrospective effect to a date specified in such notice.

(5) The Commissioner shall keep at his office a copy of the said Schedules and shall cause a copy thereof to be kept at every place of entry and duty airport and at the office of the clerk of the House of Assembly and at such other place as the

Minister may direct, and shall ensure that all amendments thereto made in accordance with this Act are forthwith incorporated in each such copy and that the date of the coming into force of each such amendment and the authority therefor

is at the same time recorded on all such copies.

398

(6) If the Minister has effected an amendment by reference to any printed matter then in addition to such printed matter being incorporated in the Schedules kept under subsection (5) a copy of all notices published under subsection (3) and of all such printed matter shall also be kept at the office of the Commissioner and at every place of entry, duty airport, office of the clerk of the House of Assembly and other place referred to in subsection (5).

(7) The documents required to be kept in terms of subsections (5) and (6) shall be open for inspection by any member of the public during normal business hours, at the office of the Commissioner and at each place of entry or duty airport.

(8) Any failure to comply with subsections (5), (6) or (7) shall not affect the validity of any Schedule or any amendment thereto.

Ordinary levy.

47bis. Notwithstanding anything to the contrary contained in this Act —

(1) any amount leviable under any item of Part 8 of Schedule No. 1 shall be called an ordinary levy;

(2) any such ordinary levy shall be paid into the Consolidated Fund of Swaziland and shall, for the purposes of section 46(2) be deemed to be a duty paid in accordance with the provisions of Schedule No. 1; and

(3) any ordinary levy paid in respect of any goods intended for consumption in any territory, other than Swaziland, which forms part of the common customs area shall be paid by the Commissioner to the government of such territory at such times as he may determine.

(Added A.5/1991.)

Additional duties under customs union agreement.

48. (1) Notwithstanding anything in this Act the Minister may by notice in the Gazette, after consultation with the Minister for Commerce, Industry and Tourism, amend the Schedules so as to levy a new, increased or additional duty on any

goods — (Amended A.5/1991.)

(a) imported into Swaziland for the purpose of protecting new industries in Swaziland as provided for by Article 6 of the customs union agreement;

(b) intended for export or any class or kind or such goods or any goods intended for export in circumstances specified in such notice.

(2) Section 47 shall *mutatis mutandis* apply to such notice and to any amendments effected thereby.

Agreement in respect of rates of duty lower than the general rates.

49. Subject to the customs union agreement the Government may conclude an agreement with the government or governing body of any territory whereby rates of duty lower than the general rates of duty specified in Part I of Schedule No. 1 are on import into Swaziland extended to goods produced or manufactured in that territory, whether or not such agreement is in consideration of equivalent privileges in respect of the import into that territory of goods produced or manufactured in Swaziland.

Agreement in respect of rates of duty lower than the most favoured nation rates.

50. Subject to the customs union agreement the Government may conclude an agreement with the government of any commonwealth country or of any territory which is under the protection of the Government of the United Kingdom of Great

Britain and Northern Ireland or which is under the trusteeship of any commonwealth country, whereby in consideration of

equivalent privileges in respect of goods imported into that country or territory from Swaziland, rates of duty lower than the most favoured nation rates of duty specified in Part I of Schedule No. 1 are extended to specific goods produced or manufactured in and imported from that country or territory.

399

Agreement with any territory.

51. (1) The Government may conclude an agreement with the government of any territory in which it is provided that notwithstanding anything to the contrary in this Act —

(a) goods produced or manufactured in or imported into Swaziland 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 Swaziland free of duty or at special rates of duty;

(b) such arrangements (including arrangements providing for the prohibition or quantitative or other limitation or restriction of the import of any goods as may be agreed upon between the parties to the agreement shall apply in respect of the admission of any goods into the territory of one of the parties from the territory of the other party and in respect of the entry and the collection of duty on goods on import 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.

(2) Payments made by the government of any territory to the Government in terms of any agreement concluded under subsection (1) shall accrue to the Consolidated Fund and payments by the Government to the government of any territory in terms of an agreement shall be paid out of an account referred to in section 46(2).

(3) For the purposes of this Act, the customs union agreement and any other agreement which purports to have been concluded in terms of any law relating to customs and excise and which was being observed by Swaziland immediately prior to the commencement of this Act as being in force between Swaziland and any territory, 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.

Agreement lapses if not approved by House of Assembly.

52. (1) Any agreement concluded under this Part shall be laid on the Table of the House of Assembly at the next meeting of Parliament following the date of the conclusion of such agreement and shall, unless that House otherwise provides before the end of such meeting be of full force and effect with effect from the date of its conclusion:

Provided that no resolution of that House shall detract from the validity of anything done under such agreement up to the day following the date of such resolution.

(2) Whenever in any legal proceedings any question arises as to whether during any meeting of Parliament an agreement was tabled as required by subsection (1), or as to the date upon which Parliament met for the first time for the despatch of business in such meeting after the date of conclusion of such agreement, or as to the date upon which such meeting ended, or as to any resolution of the House of Assembly thereon, a copy of the minutes of the proceedings of the House of Assembly, indicating any such fact and specifying any such date and certified by the clerk of such House to be a true copy of such minutes, shall be accepted as sufficient evidence of such fact and date.

Discrimination by other countries.

53. (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 Swaziland any duty, charge or restriction which is not imposed upon like goods produced or manufactured in any third territory; or

(b) discriminated against the commerce of Swaziland in such a way as to place it at a disadvantage in comparison with the commerce of a third territory;

he may after consultation with the Minister for Commerce, Industry and Tourism if he considers that the public interest will

be served thereby, by notice in the Gazette impose — (Amended A.5/1991.)

(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 whencesoever imported, wholly or partly produced or manufactured in such territory;

400

additional duties not exceeding the value for duty purposes of such goods, and from a date to be specified in the notice there shall be paid on such goods, upon entry for home consumption thereof, the additional duties at the rates imposed in such notice, in addition to any other duties payable on such goods under 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 7 thereof and to constitute an amendment of Schedule No. 1.

(Amended A.5/1991.)

(3) Section 47 shall *mutatis mutandis* apply to an amendment made under this section.

Provisions with regard to stamp duties.

54. (1) Any duty in respect of which it is indicated in any tariff item in Part 2 of Schedule No. 1 that such duty is a stamp duty shall be paid by means of stamp label affixed to the container of the goods to which such duty relates or be determined by means of a stamp impression made on the container of such goods:

Provided that the Commissioner may, in such circumstances and for such period as he may determine, accept the duty due on such goods in cash.

(2) The Minister may by regulation prescribe the size and type of container which may be used by a manufacturer for the packing of goods liable to stamp duty and the manner in which such stamp label or impression shall be affixed to or made on such container and no such goods shall be sold or disposed of or removed from the duty manufacturing warehouse

in question in partly or completely manufactured condition except in accordance' with this Act.

(3) A manufacturer, including a manufacturer outside Swaziland may, subject to such conditions as the Commissioner may impose, be allowed to exchange stamp labels which —

(a) have been unavoidably damaged, in the case of a manufacturer —

(i) in Swaziland, in his duty warehouse; or

(ii) outside Swaziland, in his factory premises; or

(b) are lawfully in his possession but are no longer required by him; or

(c) are faulty;

for stamp labels of an equal value; or he may be granted a refund of the duty represented by any stamp label referred to in paragraph (a), (b) or (c).

(4) In Swaziland stamp labels may only be sold to a manufacturer licensed under this Act to manufacture goods liable to stamp duty or to any person authorized by the Commissioner to purchase such stamp labels and such manufacturer

or person shall not sell or dispose of such stamp labels to any other person except with the permission of the Commissioner.

(5) Stamp labels sold to a person outside Swaziland shall not be imported except for delivery to the Commissioner.

(6) The Minister may in respect of any goods liable to stamp duty or any class or kind of such goods make such regulations as he deems necessary in regard to the cancellation of stamp labels or impressions.

(7) Any manufacturer, dealer or other person who fails to cancel any stamp label or impression which, in terms of any such regulation it is his duty to cancel, shall be guilty of an offence.

(8) No person shall —

(a) counterfeit or make any facsimile of any stamp label, die or impression stamp prescribed under this Act; or

(b) be in possession of, use or offer for sale or for use —

(i) any stamp label, die or impression stamp counterfeited in contravention of paragraph (a); or

(ii) any facsimile of any stamp label, die or impression stamp made in contravention of such

paragraph; or

(c) use or offer for sale or for use any used stamp label.

(9) A manufacturer who is required under this Act to use any prescribed stamp label, die, impression stamp, ink or any other material, or any stamping, counting or franking machine for any specified purpose or in any specified manner, shall not use any stamp label, die, impression stamp, ink or other material, or any stamping, counting or franking machine not so prescribed for such purpose, or use any such prescribed goods in any manner other than the prescribed manner.

401

(10) Subject to the proviso to subsection (1), no manufacturer or importer shall remove any goods which are liable to stamp duty or permit them to be so removed from his premises unless the containers of such goods have been stamped in accordance with the regulations and no dealer or other person shall sell or expose for sale or have in his possession any such

goods in respect of which any regulation relating to the stamping of the containers of such goods has not been complied with.

Part VI Anti-Dumping Duties

Anti-dumping duties provided for in Schedule No. 2.

55. (1) Subject to this section and any regulations, the goods specified in Schedule No. 2 shall, upon entry for home consumption or in the case of goods subject to sales anti-dumping duty at such time as the Minister may prescribe, be liable,

in addition to any other duty payable under this Act, to the appropriate anti-dumping duties provided for in respect of such goods in that Schedule at the time of such entry or at the time so prescribed, if they are imported from or originate in a territory specified in that Schedule in respect of those goods.

(2) The Minister may by notice in the Gazette amend Schedule No. 2 if he is satisfied, in respect of goods which are of a class or kind produced or manufactured in Swaziland, that the circumstances set forth in subsection (4) exist, that

detriment may from one or more of those circumstances result to an industry within Swaziland and that it would be in the public interest to impose the appropriate anti-dumping duty specified in subsection (4) in respect of such goods: Provided that the Minister may limit the amount of anti-dumping duty mentioned in subsection (4) to a percentage of the value for duty purposes of such goods or alternatively to a specific rate per unit of quantity, volume or weight, which percentage or alternative specific rate shall be determined by him.

(3) If the Minister is satisfied in terms of subsection (2) that it would be in the public interest to impose a freight anti-dumping duty on any goods, he may for that purpose determine (by amending Schedule No. 2 by notice in the Gazette)

the minimum rate of freight which shall be applicable to that class or kind of goods when conveyed from any particular territory or place to any place of discharge in Swaziland or to any place in Africa at which goods are discharged for removal

overland into Swaziland:

Provided that the minimum rate of freight so determined shall in no case exceed the normal rate of freight as certified in terms of subsection (4)(c).

(4) The anti-dumping duties which may be imposed and the circumstances in which they may be imposed in terms of subsection (2) shall be the following —

(a) “*ordinary anti-dumping duty*”, which may be imposed when goods have been or are being or are likely to be exported to Swaziland at a free on board price (as defined in section 67 excluding the proviso thereto) which is less than their domestic value (as defined in section 66) and which shall be the amount by which such domestic value exceeds such free on board price or, in the case of goods in respect of which no charge is made, a price which the Commissioner may in his discretion determine;

(b) “*bounty anti-dumping duty*”, which may be imposed when goods have been or are being or are likely to be exported to Swaziland and a bounty has been or will be granted in respect thereof in the territory in which they were produced or manufactured or from which they were exported, and which shall be the amount of such bounty, whether such bounty is by way of a bonus, rebate, subsidy or otherwise, and whether it is granted by a government or other authority or person;

(c) “*freight anti-dumping duty*”, which may be imposed when goods have been or are being or are likely to be conveyed to Swaziland from a particular territory or place of despatch at a rate of freight less than the rate certified by the Minister, as being the normal rate chargeable on that class or kind of goods from that territory or place and which shall be the amount by which the minimum rate of freight determined by the Minister in terms of subsection (3) exceeds the rate of freight actually paid;

(d) “*exchange anti-dumping duty*”, which may be imposed when goods have been or are being or are likely to be imported into Swaziland from a territory the currency of which is depreciated in relation to the currency

402
of Swaziland or when the currency of the territory of origin of such goods which have been or are being or are likely to be imported into Swaziland is likewise depreciated, and which shall be the amount by which their free on board price (as defined in section 67) of such goods is less than their price expressed in the currency of the territory of origin or export of the goods and converted into the currency of Swaziland at a rate which the Minister may determine and notify by means of an amendment of Schedule No. 2; or

(e) “*sales anti-dumping duty*”, which may be imposed when goods are being or are likely to be sold or offered for sale at a place in Swaziland in the ordinary course of trade in wholesale quantities for an amount which is less than their domestic value (as defined in section 66) 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 this Part) payable under this Act, and which shall be the amount by which such domestic value of the goods, plus the expenses and charges set forth in this paragraph, exceeds the wholesale selling price in Swaziland.

(5) Section 47 shall, *mutatis mutandis*, apply to any notice and amendment under this section.

(6) The anti-dumping duties mentioned in subsection (5)(a), (b), (c) and (d) shall be paid by the importer of the goods at the time of their entry for home consumption and the anti-dumping duty mentioned in subsection (5)(e) shall be paid by the person in Swaziland who sells the goods in the prescribed manner and time.

(7) If anti-dumping duty is imposed on any goods under this section, the owner of any such goods stored in a duty warehouse shall produce the invoice and other documents relating to such goods to the controller not later than the time of entry of all or any part of such goods for removal from such warehouse except in respect of such goods entered for export from a duty warehouse.

Anti-dumping duties not normally applicable to goods entered under Schedule No. 3 or 4.

56. (1) An anti-dumping duty imposed under section 55 shall not apply to any goods entered under any item specified in Schedule No. 3 or 4 unless such item is specified in Schedule No. 2 in respect of such goods.

(1bis) The Minister may, in respect of any class or kind of imported goods on which a provisional charge has been imposed under section 57bis amend Schedule No. 2 —

(a) with effect from the date from which that provisional charge has been imposed;
(b) with effect from a date not more than three months prior to the date with effect from which that provisional charge has been imposed if he is satisfied that —
(i) such goods have been repeatedly dumped, as contemplated in subsection (2), and have caused material injury to an established industry in Swaziland; or
(ii) the importer should have been aware that the exporter is so dumping and that such dumping would cause such injury and the Minister is of the opinion that the dumping operates to such an extent in such quantities and for such short period that in order to prevent such dumping, he deems it necessary so to amend Schedule No. 2.

(Added A.4/1979.)

(2) (b) (iii) the highest comparable price for identical or comparable goods when exported from any other territory to Swaziland in the ordinary course of trade; Amended A.11/1988)

(7) The provisions of section 47 shall *mutatis mutandis* apply in respect of any amendment made under subsection (1) or (i)bis) of this section. (Repealed A.11/1988; added A.5/1991.)

Exclusion of certain goods from payment of anti-dumping duty.

57. Notwithstanding section 55, the Commissioner may, subject to such conditions as he may impose in each case, exempt from payment of any anti-dumping duty, genuine trade samples, replacement parts proved to his satisfaction to have

been imported in such circumstances that locally manufactured parts of the same class or kind cannot reasonably be used and that such imported parts are not intended for trade purposes, or any other goods which are imported in such

403
circumstances or in such quantities that the import of such goods does not, in his opinion, constitute regular import of such goods for trade purposes.

57bis (1) If the Minister is satisfied before any anti-dumping duty is imposed under section 56 that the requirements of section 56(1)(a), (b) and (c) are met in respect of any class or kind of imported goods, he may by notice in the Gazette impose a provisional charge in relation to anti-dumping duty on imported goods of that class or kind for a period not exceeding four months as from date of publication of such notice, or, if requested by the exporter concerned before the expiry of the said period, for a further period not exceeding two months. (Amended A.11/1988.)

PART VII Effect Of Amendment Of Duties

Time when new or increased duties become payable.

58. (1) For the purposes of this section —

“dealer” means any person who deals in any goods to which this Act relates and includes a club or co-operative society of any nature and any statutory body;

“deliver” includes any form of delivery except *traditio brevi manu* and *constitutum possessorium*.

“retail dealer” means, subject to the definition of “wholesale dealer”, any dealer who deals in or holds a License under any law to deal in retail quantities; and

“wholesale dealer” means any dealer who deals in or holds a License under any law to deal in wholesale quantities, and the business and stocks of a 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.

(2) If the Minister in any amendment to a Schedule imposes a new duty or increases the rate of duty already payable upon any goods specified in such amendment, such new duty or increased rate of duty shall, subject to subsection (3), be payable from the time such amendment is made on all such goods as have not, at the date of coming into force of such amendment, been entered for home consumption.

(3) If any amendment is made to a Schedule in terms of which a new duty or an increase in the rate of duty already payable upon any goods is imposed with retrospective effect, the Minister may in such amendment specify that for the purposes of this subsection any such goods specified in such amendment though entered for home consumption prior to the

time of such amendment and notwithstanding that such goods have passed out of customs, excise and sales duty control, shall become liable to the new duty or the difference between the rate of duty at the time of such amendment and the increased rate provided for in such amendment, if they have at the time of such amendment not been delivered from the stocks of an importer, manufacturer or such class of dealer as the Minister may specify in such amendment.

(4) For the purposes of this section any goods which are specified by the Minister in any amendment to a Schedule for the purposes of subsection (3) and which, at the time of the said amendment are in transit to an importer, manufacturer or

or
a class of dealer so specified, shall be deemed to form part of the stocks of the importer, manufacturer or dealer, as the case

may be, notwithstanding terms to the contrary in any contract relating to the sale or delivery of such goods.

(5) If the Minister has specified any goods in any amendment to a Schedule for the purposes of subsection (3), every importer, manufacturer or dealer specified in such amendment 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 amendment was published, and make a clear and accurate record of imported, excisable and sales duty goods separately;

(b) within ten days of the date on which such amendment was published, deliver to the controller a sworn statement giving separately the description and quantity of all such imported, excisable and sales duty goods which were in his stocks at that time, and any other information which the Commissioner may require from him; and

404

(c) on or before the last working day of the month following the month in which the amendment was published, pay to the controller the amount of duty payable by him under subsection (3) in respect of such goods.

(6) If the Minister specifies in any amendment to a Schedule for the purposes of subsection (3) 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 such amendment, 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 Commissioner may, on production by such wholesale dealer of such evidence as he may require, exclude from the stocks or the liability for duty of such wholesale dealer for the purposes of subsection (3) —

(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 such goods during the period of three months immediately preceding the date of such amendment, such proportion to be calculated on the basis of quantities of each commodity concerned.

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

59. (1) If any duty on any goods is imposed or increased, directly or indirectly, by an amendment in any manner of any Schedule, and such goods, in pursuance of a contract made before such duty or increased duty became payable, are thereafter delivered to and accepted by the purchaser, the seller of such 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 such duty or increase.

(2) If any duty on any goods is withdrawn or decreased directly or indirectly by an amendment in any manner of any Schedule, 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 such goods may, in the absence of agreement to the contrary, if the seller has in respect of such goods had the benefit of the withdrawal or decrease, deduct from the contract price a sum equal

to such duty or decrease.

(3) 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 be construed respectively as including the person by whom and the person to whom such goods are hired or the service is rendered.

PART VIII Licensing

License fees according to Schedule No. 8.

60. (1) No person shall perform any act or be in possession of or use anything in respect of which a License is required under this Act unless he has obtained the appropriate License prescribed in Schedule No. 8 which shall not be issued unless

the prescribed License fee has been paid.

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

(a) refuse any application for a new License; or

(b) refuse any application for a renewal of any License or cancel or suspend for a specified period any License if the applicant or the holder of such License, as the case may be —

(i) has contravened or failed to comply with the provisions of this Act; or

(ii) has been convicted of an offence under this Act or has incurred a penalty under section 91; or

(iii) has been convicted of an offence involving dishonesty.

(Amended A.2/1985.)

Duty warehouse License.

61. (1) Before a duty warehouse is licensed the person applying for such License shall furnish such security as the Commissioner may require.

405

- (2) The Commissioner 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 Commissioner may by endorsement permit a License to be transferred from one duty warehouse to another in the area controlled by the same controller and in the possession of the person to whom the License has been issued, but no duty warehouse License shall be transferable from one person to another.
- (4) Not more than one License shall be issued in respect of any duty warehouse.

Agricultural distiller.

62. (1) No person shall be granted a License under this Act as an agricultural distiller unless the Minister is satisfied that such person is capable of producing on his farm in respect of which the application for a License relates more than five leaguers of wine per annum calculated at a strength of 11,5 per cent absolute alcohol by volume.
- (2) No License issued under this Act to any person as an agricultural distiller may be transferred to any other person or from one farm to another.
- (3) Any License issued under this section to any person shall lapse upon his death or upon his conviction for an offence under this Act or any law relating to the illicit manufacture, conveyance, supply or possession of intoxicating liquor.
- (4) For the purposes of subsection (3) the imposition of a penalty by the Commissioner under section 91 shall be deemed to be a conviction under this Act.

Still to be licensed.

63. (1) No person shall own or have in his possession or under his control any still except under a License prescribed in Schedule No. 8 and subject to any regulation:
Provided that the Commissioner may, subject to any conditions he may impose, exempt from any provision in this subsection —
- (a) any licensed still maker in respect of any still manufactured or imported by him for sale and in his possession; or
- (b) any person in respect of any still which he has proved to the satisfaction of the Commissioner is in his possession solely as a curiosity or ornament or is used solely for such purpose as the Commissioner may, subject to any regulation, authorize.
- (2) Section 62(2), (3) and (4) shall *mutatis mutandis* apply to any License issued in respect of a still under this Act to any person to whom a License under this Act has been or had at any time been issued as an agricultural distiller.
- (3) If any agricultural distiller to whom a License in respect of a still has been issued under this Act voluntarily abandons such still to the department, the Commissioner may, out of moneys appropriated by Parliament for that purpose, pay to him as compensation such amount as the Commissioner considers to be the current market value of such still.
- (4) If any person has so abandoned a still no License 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 License as an agricultural distiller has, thereafter, been issued to him under this Act.
- (5) Any still abandoned under this section shall be destroyed by the Commissioner.

Special warehouse for the manufacture of wine.

64. Unless the permission of the Commissioner has been obtained to manufacture wine in a duty manufacturing warehouse, no person shall manufacture wine except in a special duty warehouse licensed under this Act.

Container depot Licenses.

- 64bis. (1) No person shall store or unpack or pack for export, such containers as the secretary may specify, except at a container depot licensed in terms of subsection (2).
- (2) The secretary 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 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 secretary may at any time require that the form, nature or amount of such security shall be altered or removed in such manner as he may determine.
- (4) The controller 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.
- (Added A.10.1978.)

PART IX Value

Value for customs duty purposes.

65. (1) Subject to this Act, the value for customs duty purposes of any imported goods shall, at the time of entry for home consumption, be the transaction value thereof, within the meaning of section 66.

(2) If such value of any imported goods of a single denomination is—

(a) in excess of one lilangeni, such value shall for the purpose of assessing the amount of duty payable, be calculated to the nearest lilangeni, an amount of 50 cents being regarded as less than one half of one lilangeni;

(b) less than one lilangeni, such value shall be calculated as one lilangeni.

(3) Unless the context otherwise indicates, any reference in this Act to customs value or to value for duty purposes, in relation to imported goods, shall be deemed to be a reference to value for customs duty purposes. (Amended A.7/1981.)

(4) (a) If in the opinion of the Commissioner the transaction value of any imported goods cannot be ascertained in terms of section 66 or has been incorrectly ascertained by the importer, the Commissioner may determine a value, which

shall, subject to a right of appeal to the Minister be deemed to be the value for customs duty purposes of the goods.

(b) The acceptance by any officer of a bill of entry or the release of any goods as entered shall not be deemed to be any such determination.

(c) Any determination so made shall be deemed to be correct for the purposes of this Act, and any amount due in terms of any such determination shall remain payable as long as such determination remains in force.

(5) The Commissioner may whenever he deems it expedient amend or withdraw any such determination and make a new determination with effect from —

(a) the date of first entry of the goods in question;

(b) the date of the determination made under subsection (4);

(c) the date of such new determination; or

(d) the date of such amendment.

(6) Save where —

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

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

there shall be no liability for any underpayment of customs duty on any goods, where such underpayment is due to the acceptance of a bill of entry bearing an incorrect customs value, after a period of two years from the date of entry of such goods.

(6bis) Notwithstanding the provisions of subsection (6), any determination made under subsection (4)(a) following upon an inspection of the books or documents of any importer shall be deemed to have come into operation in respect of the

goods in question and entered for customs purposes, two years prior to the date on which the inspection commenced.

(Amended A.11/1988.)

(7) (a) Notwithstanding subsections (1) and (4), the value for purposes of the duty specified in Section B of Part 2 of Schedule No. 1 shall, in respect of imported goods other than goods entered in terms of item 412.18 of Schedule No. 4,

407

be the transaction value thereof plus fifteen percent of such value, plus any non-rebated customs duty payable in terms of Part 1 and Section A of Part 2 of Schedule No. 1 on such goods, but excluding the duty specified in Section B of Part 2 of Schedule No. 1 on such goods. (Amended A.11/1988.)

(b) Subsection (1)(a) and (b) or (3) of section 69 shall *mutatis mutandis* apply to the ascertainment or determination of the value for the purposes of the duty specified in Section B of Part 2 of Schedule No. 1 in respect of any imported goods entered in terms of item 412.18 of Schedule No. 4. (Amended A.11/1988; A.5/1991.)

(8) For the purposes of sections 66 and 67, unless the context otherwise indicates —

(i) “buying commission”, in relation to imported goods, means any fee paid by an importer to his agent for representing him abroad in the purchase of and the payment for the goods;

(ii) “goods of the same class or kind”, in relation to imported goods, means goods produced by a particular industry or industry sector in the country from which the imported goods were exported, and falling within the same group or range of goods as the imported goods;

(iii) “identical goods”, in relation to imported goods, means goods produced in the same country and by the same or a different producer as the imported goods and which are the same in all respects, including physical characteristics, quality and reputation but excluding minor differences in appearance, as the imported goods, but does not include goods, incorporating or reflecting engineering, development work, art work, design work, plans or sketches undertaken in Swaziland;

(iv) “price actually paid or payable”, in relation to imported goods, means the total payment made or to be made, either directly or indirectly, by the buyer to or for the benefit of the seller for the goods, but does not include dividends or other payments passing from the buyer to the seller which do not directly relate to the goods;

(v) “similar goods”, in relation to imported goods, means goods produced in the same country and by the same or a different producer as the imported goods and which although not alike in all respects to the imported

goods have, with due regard to their quality and reputation and the existence of a trade mark, like characteristics and like component materials which enable them to be employed for the same purposes and to be commercially interchangeable, but does not include goods incorporating or reflecting engineering, development work, art work, design work, plans or sketches undertaken in Swaziland.

(Amended K.O-I-C. 17/1976; A.4/1979; A.7/1981; A.2/1985.)

Transaction value. (Amended A.5/1991.)

66. (1) Subject to this Act the transaction value of any imported goods shall be the price actually paid or payable for the goods when sold for export to Swaziland adjusted in terms of section 67, provided —

(a) there are no restrictions as to the disposal or use of the goods by the buyer other than restrictions which —

(i) are imposed or required by law;

(ii) limit the geographical area in which the goods may be resold; or

(iii) do not substantially effect the value of the goods;

(b) the sale or such price of the goods is not subject to any term or condition for which a value cannot be determined;

(c) no part of the proceeds of any disposal, use or subsequent resale of the goods by the buyer will accrue directly or indirectly to the seller, unless an appropriate adjustment can be made in terms of section 67;

(d) subject to subsection (3), the seller and the buyer are not related within the meaning of subsection (2)(a).

(2) (a) For the purposes of subsection (1)(d), two persons shall be deemed to be related only if —

(i) they are officers or directors of one another's businesses;

(ii) they are legally recognized partners in business;

(iii) the one is employed by the other;

(iv) any person directly or indirectly owns, controls or holds five per cent or more of the equity share capital of both of them;

408

(v) one of them directly or indirectly controls the other;

(vi) both of them are directly or indirectly controlled by a third person;

(vii) together they directly or indirectly control a third person; or

(viii) they are members of the same family;

(b) Persons who are associated in business with one another in that the one is the sole agent, sole distributor or sole concessionary, however described, of the other shall be deemed to be related only if they are so deemed in terms of paragraph (a).

(c) Every importer of goods which are not exempted by regulation shall, when making entry of the goods, declare, in the manner prescribed by regulation, whether or not he is related to the supplier of the goods within the meaning of this section.

(3) Notwithstanding subsection (1)(d), the fact that a buyer and a seller are related within the meaning of subsection (2)(a) shall not in itself be a ground for not accepting the transaction value, where —

(a) in the opinion of the Commissioner such relationship did not influence the price paid or payable; or

(b) the importer proves to the satisfaction of the Commissioner that the transaction value closely approximates to one of the following values, namely —

(i) the transaction value of identical or similar goods sold at comparable trade and quantity levels to unrelated buyers in Swaziland at or about the same time as the goods to be valued;

(ii) the value, ascertained in terms of subsection (7), of identical or similar goods imported into Swaziland at or about the same time as the goods to be valued;

(iii) the value, ascertained in terms of subsection (8), of identical or similar goods imported into the Republic at or about the same time as the goods to be valued.

(4) (a) If the transaction value of any imported goods cannot be ascertained in terms of subsection (1), it shall be the price actually paid or payable for identical goods in a sale for export to Swaziland at the same commercial level and in substantially the same quality and exported at or about the same time as the goods to be valued, adjusted, with reference to differences in any costs and charges referred to in section 67, on account of differences in distances and modes of transport to the port or place of export.

(b) Where no such sale is found, a sale of identical imported goods at either a different commercial or quantity level, or at a different commercial level and quantity level, adjusted to compensate for such differences, shall be used to ascertain the transaction value.

(c) If in the application of this subsection more than one transaction value is ascertained, the lowest such value shall be the transaction value of the goods to be valued.

(5) (a) If the transaction value of any imported goods cannot be ascertained in terms of subsection (4), it shall be the price actually paid or payable for similar goods in a sale for export to Swaziland at the same commercial level and in

substantially the same quantity and exported at or about the same time as the goods to be valued, adjusted, with reference to differences in any costs and charges referred to in section 67, on account of differences in distances and modes of transport to the port or place of export.

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

(6) If the transaction value of any imported goods cannot be ascertained in terms of subsection (5), it shall be ascertained in terms of subsection (7) or, when it cannot be ascertained in terms of subsection (7), it shall be ascertained in terms of subsection (8): Provided that at the request, in writing, of the importer concerned the order of application of subsections (7) and (8) shall be reversed.

(7) (a) If the imported goods or identical or similar imported goods are sold in Swaziland in the same condition as that in which they were when imported, the transaction value of the imported goods in terms of this subsection shall be based on the unit price at which the imported goods or identical or similar imported goods are sold in Swaziland in the greatest aggregate quantity, at or about the time of importation of the goods to be value, by the importers thereof to persons

not related to them, subject to deductions for —
409

(i) commissions usually paid or agreed to be paid or additions usually made for profit and general expenses, including the direct and indirect costs of marketing the goods relative to sales in Swaziland of imported goods of the same kind or class as the goods to be valued, irrespective of the country of exportation;

(ii) the cost of transportation and the cost of loading, unloading, handling, insurance and associated costs incidental to the transportation of the goods from the port or place of export in the country of exportation to the importer's premises in Swaziland; and

(iii) any duties or taxes paid or payable in Swaziland by reason of the importation of the goods or sale of the goods within Swaziland.

(b) If neither the imported goods nor identical nor similar imported goods are sold at or about the time of importation of the goods to be valued, the transaction value of the imported goods in terms of this subsection shall, subject to the provisions of paragraph (a), be based on the unit price at which the imported goods or identical or similar imported goods are sold in Swaziland in the same condition as that in which they were when imported, at the earliest date after the importation of the goods to be valued, but not later than 90 days after such importation.

(c) If neither the imported goods nor identical nor similar imported goods are sold in Swaziland in the same condition as that in which they were imported, then, if the importer so requests in writing, the transaction value of the imported goods in terms of this subsection shall be based on the unit price at which the imported, goods, after further processing, are sold in the greatest aggregate quantity to persons in Swaziland not related to the sellers of such goods, due allowance being made for the value added by such processing and the deductions referred to in paragraph (a).

(8) The transaction value of any imported goods in terms of this subsection shall be based on a computed value, computed by means of information supplied by the producer and consisting of the sum of —

(a) the cost or value of materials and manufacture or other processing in producing the goods;

(b) the cost of —

(i) packing, including that of the labour or materials concerned; and

(ii) containers which are dealt with as being for customs purposes one with the goods, in question;

(c) the value, apportioned to the imported goods as deemed appropriate by the Commissioner with due regard to any relevant request by the importer, of any of the following goods and services if supplied directly or indirectly by the importer free of charge or at reduced cost, for use in connection with the production and sale for export of the imported goods, in so far as such value has not been included in the price actually paid or payable, namely —

(i) materials, components, parts and similar articles forming part of the imported goods;

(ii) tools, dies, moulds and similar articles used in the production of the imported goods;

(iii) materials consumed in the production of the imported goods;

(iv) engineering, development work, art work, design work, plans and sketches undertaken elsewhere than in Swaziland and necessary for the production of the imported goods;

(d) the cost of transportation, loading, unloading, handling and insurance and associated costs, incidental to delivery of the imported goods at the port or place of export in the country of exportation and placing those goods on board ship or on any vehicle, at that port or place, ready for export to Swaziland; (Amended A.5/1991.)

(e) an amount for profit and general expenses equal to that generally applicable in sales of goods of the same class or kind as the imported goods, which are made by producers in the country of exportation.

(9) Where the transaction value of any imported goods cannot be ascertained in terms of the provisions of subsection (8), the Commissioner may determine such value on the basis of a previous determination or, where there is no

previous determination, by such application as he may deem reasonable of any manner of ascertaining the transaction value

in terms of subsection (1), (4), (5), (7) or (8), but no such determination shall be based on —

(a) the selling price in the Kingdom of goods produced in Swaziland;

(b) a system which provides for the acceptance for customs purposes of the higher of two alternative values;
410

(c) the selling price of goods on the domestic market of the country of origin or of exportation of the imported goods;

(d) the cost of production, other than computed values which have been determined for identical or similar goods in accordance with subsection (8);

(e) the price of the goods for export to a country other than Swaziland;

(f) a system of minimum customs values; or

(g) arbitrary or fictitious values.

(10) For the purpose of subsection 7(a)(ii) or (8)(d), goods which are exported to Swaziland from any country but pass in transit through another country shall, subject to any conditions which may be prescribed by regulation, be deemed to

have been exported direct from the first-mentioned country.

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

(a) placed on board ship or on any vehicle in the country of exportation, ready for export to Swaziland; or
(Amended A.5/1991.)

(b) placed on the vehicle which conveys them across the border of the country from which they are exported to Swaziland.

(Amended A. 7/1981; A.2/1985.)

Free on board price.

67. (1) In ascertaining the transaction value of any imported goods in terms of section 66(1), there shall be added to the price actually paid or payable for the goods —

(a) to the extent that they are incurred by the buyer but are not included in the price actually paid or payable —

(i) any commission other than a buying commission;

(ii) brokerage;

(iii) the cost of packing, including that of the labour and materials concerned;

(iv) the cost of containers which are dealt with as being for customs purposes one with the goods;

(b) the value, apportioned to the imported goods as deemed appropriate by the Commissioner, of any of the following goods and services if supplied directly or indirectly by the importer free of charge or at reduced cost, for use in connection with the production and sale for export of the imported goods, to the extent that such value has not been included in the price actually paid or payable, namely —

(i) materials, components, parts and similar articles forming part of the goods;

(ii) tools, dies, moulds and similar articles used in the production of the goods;

(iii) materials consumed in the production of the goods;

(iv) engineering, development work, art work, design work, plans and sketches undertaken elsewhere than in Swaziland and necessary for the production of the goods;

(c) royalties and License fees in respect of the imported goods, including payments for patents, trade marks and copyright and for the right to distribute or resell the goods, due by the buyer, directly or indirectly, as a condition of sale of the goods for export to Swaziland to the extent that such royalties and fees are not included in the price actually paid or payable, but excluding charges for the right to reproduce the imported goods in the Republic;

(d) the value of any part of the proceeds of any subsequent resale, disposal or use of the imported goods that accrues directly or indirectly to the seller; and

(e) to the extent that it is not included in the price actually paid or payable for the goods, the cost of transportation and the cost of loading, unloading, handling, insurance and associated costs incidental to delivery of the goods at the port or place of export in the country of exportation, ready for export to Swaziland.

411

(2) In ascertaining the transaction value of any imported goods in terms of section 66(1), there shall be deducted from the price actually paid or payable for the goods, to the extent that they are included therein, amounts equal to —

(a) the cost of transportation and the cost of loading, unloading, handling, insurance and associated costs incidental to the transportation of the goods from the port or place of export in the country of exportation to the port or place of importation in Swaziland;

(b) any of the following costs, charges or expenses if identified separately from the balance of the price actually

paid or payable for the goods, namely —

- (i) any expenditure incurred for the construction, erection, assembly or maintenance of, or technical assistance provided in respect of, the goods after they are imported;
- (ii) the cost of transport and insurance of the goods within Swaziland;
- (iii) any duties or taxes paid or payable by reason of the importation of the goods or sale of the goods in Swaziland;
- (iv) any duty or tax applicable in the country of exportation from which the goods have been or will be relieved by way of refund, drawback, rebate or remission;
- (v) buying commission;
- (vi) interest charged in respect of the price payable for the goods;
- (vii) any charge for the right to reproduce the imported goods in Swaziland.

(3) For the purposes of subsection (1)(e) or (2)(a), goods which are exported to Swaziland from any country but pass in transit through another country shall, subject to such conditions as may be prescribed by regulation, be deemed to have been exported direct from the first mentioned country.

(4) For the purposes of subsection (1)(e) or (2)(a), the port or place of export referred to therein shall be the place where the goods in question are —

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

(Repealed A.19/1978; re-instated A.2/1985.)

68. (Repealed A.19/1978.)

Value for excise duty purposes.

69. (1) (a) For the purpose of assessing the excise duty on any goods manufactured in Swaziland and specified in Section B of Part 2 of Schedule No. 1 (other than goods specified in items 122.10 to 122.40), the value thereof shall, subject

to this section, be taken as —

(i) 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 Swaziland, for purposes of trade in the principal markets of Swaziland 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 Swaziland under fully competitive conditions;

(ii) the cost of packing and packages and all other expenses incidental to placing the goods on rail for delivery to the purchaser; and

(iii) any non-rebated excise duty payable in terms of Section A of Part 2 of Schedule No. 1 on such goods, but excluding the non-rebated excise duty payable in terms of Section B of Part 2 of Schedule No. 1 on such goods:

Provided that the Commissioner may, where such goods are not sold to such merchant wholesalers in Swaziland or are so sold in quantities which he considers to be insignificant in relation to the total quantities of such goods sold in Swaziland, regard any other class or purchaser of such goods as such merchant wholesaler and may make such adjustment

412

to the price charged by the manufacturer to such class of 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.

(b) For the purpose of assessing the duty on any imported goods entered in terms of item 412.18 of Schedule No. 4 on removal from a duty warehouse and any goods manufactured in Swaziland and specified in items 122.10 to 122.40

of Section B of Part 2 of Schedule No. 1, the value thereof shall be, in a sale between —

(i) a manufacturer as seller and an independent bulk buyer or a buyer purchasing at a preferential price or other reseller as purchaser, the highest price (but excluding the excise duty payable in terms of Section B of Part 2 of Schedule No. 1) 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;

(ii) a manufacturer and consumer or between a wholesale dealer or retail dealer or other reseller as seller and an independent retail dealer or end consumer as purchaser, the highest price (but excluding the excise duty payable in terms of Section B of Part 2 of Schedule No. 1) 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 and packages and all other expenses incidental to placing the goods on rail for delivery to the purchaser.

(c) For the purposes of this subsection the Commissioner may specify —

- (i) the quantity which shall be deemed to be the usual wholesale quantity;
- (ii) the packing which shall be deemed to be the usual packing ready for sale in the retail trade;
- (iii) the cost of packing or packages or any other expenses incidental to placing the goods on rail.

(2) (a) For the purpose of assessing the excise duty on any goods specified in Section A of Part 2 of Schedule No. 1, the value thereof shall be the price paid or payable for such goods when sold for home consumption in the ordinary course of trade, in the usual trade packing, where applicable, to any buyers not deemed to be related as specified in section 66(2)(a), plus any non-rebated excise duty payable in terms of Section B of Part 2 of Schedule No. 1, but excluding the nonrebated

excise duty payable in terms of Section A of Part 2 of Schedule No. 1 on such goods.

(b) For the purpose of paragraph (a) “price paid or payable”, means the total payment made or to be made, either directly or indirectly, by the buyer to or for the benefit of the seller for the goods, but does not include dividends or other payments passing from the buyer to the seller which do not directly relate to the goods.

(3) If in the opinion of the Commissioner goods are sold or otherwise disposed of under such conditions that the value thereof cannot be ascertained in terms of subsection (1)(a), (1)(b) or (2), as the case may be, the Commissioner may determine a value, which shall, subject to the right of 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.

(4) The Commissioner may whenever he deems it expedient amend or withdraw any such determination and make a new determination with effect from —

- (a) the date of first entry of the goods in question;
- (b) the date of the determination made under subsection (3);
- (c) the date of such new determination; or
- (d) the date of such amendment.

(5) (a) An appeal against any such determination shall lie to the High Court of Swaziland as established under the High Court Act, 1954.

(b) Such appeal shall be prosecuted within a period of 90 days from the date of the determination.

(Amended A.5/1991.)

413

Value for sales duty purposes.

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

(2) The provisions of sections 65, 67 and 71 shall *mutatis mutandis* apply to the calculation or determination of the value for sales duty purposes of any imported goods.

(Amended A.10/1978; A.4/1979; A.2/1985.)

Value of certain specified goods.

71. (1) The value for duty purposes of any goods imported into Swaziland ex customs warehouses or ex bonded warehouses within the district of Maputo shall be calculated or determined in accordance with this Part as if such goods were imported directly into Swaziland from the territory whence they were exported to Maputo. (Amended A.10/1978.)

(2) If any motor vehicle is imported by an individual for his own use and not for resale, the Commissioner may, notwithstanding section 65(1) and (4) but with due regard to section 66, determine a value which shall, subject to a right of appeal to the Minister be deemed to be the value for duty purposes of such vehicle: (Amended A.11/1988.)

Provided that if any individual who was the owner of and has used the motor vehicle in any territory outside Swaziland imports such vehicle into Swaziland from a territory other than the territory in which it was produced or manufactured for his own use and not for sale, the Commissioner may determine the value for duty purposes of such vehicle

as if it were imported into Swaziland from the territory in which it was produced or manufactured:

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

Value of goods exported.

72. (1) For the purposes of this Act, the value of any goods exported from Swaziland shall be the price of those goods free on board at the place of despatch from Swaziland. which value shall be declared on the bill of entry export.

(2) If there is no such free on board price, the value determined by the Commissioner shall be regarded as the value for such purposes.

(3) If the value of any exported goods of a single denomination is, according to the provisions of this section —

- (i) in excess of one lilangeni and includes a fraction of a lilangeni, such value shall be calculated to the nearest lilangeni, an amount in excess of fifty cents being regarded as one lilangeni;

(ii) less than one lilangeni, such value shall be calculated as one lilangeni.

(Amended A.7/1981.)

Conversion of Prices.

73. 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 Swaziland. (Amended A.7/1981.)

Value of goods not liable to ad valorem duty.

74. (1) Subject to subsection (2) the customs value of any imported goods shall be declared by the importer on entry of such goods. (Amended A.2/1985.)

(2) The Minister may by regulation exempt from subsection (1) to the extent specified in such regulation any class or kind of such goods or any such goods to which circumstances so specified apply.

74bis. (1) The interpretation of section 65, 66 and 67 shall be subject to the agreement known as the Agreement on Implementation of Article VII of the General Agreement of Tariffs and Trade, concluded at the Advisory Opinions, 414

Commentaries, Explanatory Notes, Case Studies and Studies issued under the said Agreement (all of which are hereinafter in this section called the agreement).

(2) The Commissioner shall obtain and keep in his office two copies of the agreement and shall effect thereto any amendment of which he is notified by the Secretariat of the General Agreement on Tariffs and Trade.

(3) Whenever in any legal proceedings any question arises to the contents of the agreement, or as to the date upon which any amendment was effected thereto in terms of subsection (2) a copy of the agreement or if amended as contemplated in subsection (2) a copy of the agreement as amended, shall be accepted as sufficient evidence of the contents

thereof or of the effective date of any amendment thereto as the case may be.

(4) The provisions of subsection (1) shall not derogate from the interpretation which would but for that subsection be given to section 65, 66 and 67.

(Amended A.2/2985; A.11/1988.)

PART X Rebates, Refunds And Drawbacks Of Duty

Specific rebates, drawbacks and refunds of duty.

75. (1) Subject to this Act and to any conditions which the Commissioner may impose —

(a) any imported goods described in Schedule No. 3 shall be admitted under rebate of any fiscal and customs duty 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; (Amended K.O-I-C. 17/1976.)

(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, to the extent stated in, and subject to compliance with the provisions of, the item of Schedule No. 4 in which such goods are specified; (Amended K.O-I-C. 17/1976; A.5/1991.)

(c) a drawback or a refund of the 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, subject to paragraph (f)(i), be paid to the person who paid such duties or any person indicated in the notes to the said Schedule, subject to compliance with the provisions of the item of the said Schedule in which those goods are specified; (Amended K.O-I-C. 17/1976; A.5/1991.)

(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, subject to paragraph (f)(i), 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; (Amended A.5/1991.)

(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 the circumstances stated in the item of Schedule No. 7 in which such goods are specified subject to compliance with such 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 Schedule No. 7;

(f) (i) a refund of the ordinary customs duty, anti-dumping duty, countervailing duty or surcharge leviable on any distillate fuel shall be granted to the extent stated in items 533.01 of Schedule No. 5 in which such fuel is specified, subject to compliance with the provisions of the item, or a refund of the excise duty leviable on such fuel shall be granted to the extent stated in item 609.05.10 of

Schedule No. 6 in which such fuel is specified, subject to compliance with the provisions of the 415

said item and any refund under this paragraph may be paid to any user who has purchased and used such distillate fuel in accordance with the provisions of the said items of Schedule No. 5 or 6 or to any person indicated in the notes to the said Schedule No. 5 or 6:

Provided that no such refund shall be paid to any government, department, administration or any body, institution or authority mentioned in item 401.00 of Schedule No. 4 and item 601.00 of Schedule No. 6, including any university, college, school or other educational institution or any regional or local authority, except as provided in the notes to the said Schedule No.5 or 6;

(ii) notwithstanding subparagraph (i), the Commissioner may investigate any such purchase or use to establish whether such fuel has been duly entered or is deemed to have been duly entered in terms of this Act or has been so used and may refuse to allow or pay any such refund if he is not satisfied that such fuel has been so entered or used;

(iii) any such distillate fuel purchased shall be deemed to have been used in the order of the dates of such purchases;

(iv) the extent of the refund referred to in subparagraph (i) shall be the rate of such refund specified in such item of Schedule No. 5 or 6 in operation on the date of issue of the invoice concerned, referred to in subsection (4bis)(b)(ii);

(i) if the extent of such refund is amended and for any reason any liability to repay any refund of duty in respect of any quantity of fuel which the user may incur cannot be assessed or the amount of duty refundable to such user in terms of any item of Schedule No. 5 or 6 cannot be calculated on any quantity of such fuel purchased by such user before such amendment, the quantity of such fuel in respect of any refund which the user is liable to repay, or the quantity used in accordance with any such item for the calculation of the amount refundable to such user, shall be determined by the Commissioner according to the information at his disposal;

(Amended A.5/1991.)

(g) any refund referred to in subparagraph (f)(i) may be granted and paid to any person entitled to that refund in terms of this Act, by any official of any administration to which the moneys concerned have been rendered available by the Commissioner. (Added A.5/1991.)

(1bis) (a) Notwithstanding anything to the contrary in this Act, the Commissioner may subject to such conditions as he may impose, allow in respect of any refund referred to in subsection (1)(f)(i) any person to grant a provisional refund of duty to any registered user of distillate fuel who purchases such fuel from that person.

(b) Any provisional refund shall be granted in accordance with an estimate of intended use furnished by such user to the person concerned.

(c) The Commissioner may pay to such person or allow him to set off in terms of section 77 against duty for which he is liable, any amount which he granted to such registered user at such times and on furnishing of such particulars as the Commissioner may specify.

(d) Any amount paid in error by the Commissioner to such person shall be recoverable from such person as provided in section 76bis.

(e) The Commissioner may cancel the said registration of such person if such person claims or receives any amount or payment to which he is not entitled.

(f) Any provisional refund granted by such person to such user shall, subject to paragraphs (g), (h) and (i), be deemed to be a refund paid by the Commissioner in terms of subsection (1)(f)(i).

(g) (i) Any user who has been granted such a provisional refund shall, in relation to the actual use by him of the fuel concerned, furnish the Commissioner at such times as may be prescribed by regulation, with a declaration in such form

and supported by such documents as may be prescribed by regulation.

(ii) Such declaration shall be deemed to be an application for a refund referred to in subsection (4bis)(b)(i).

(h) (i) If the Commissioner is satisfied after considering the said declaration that the provisional refund granted to the user concerned either exceeds or falls short of any amount refundable in terms of item 533.01 of Schedule No. 5 or 416

item 609.05 of Schedule No. 6, such excess shall be paid by that user upon demand by the Commissioner and any shortfall shall be refunded by the Commissioner to him.

(ii) If the user fails to pay the amount demanded in terms of subparagraph (i) such amount shall be recoverable in terms of section 76bis.

Any user of fuel who has been granted a provisional refund and who fails to comply with paragraph (g) shall be deemed to have used such fuel for a purpose or use other than the purpose or use stated in the items of Schedule No. 5 or 6 referred to in paragraph (h), and the amount of such refund shall be deemed to be a refund not duly payable to such user and shall be recoverable in terms of section 76bis.

(Added A.5/1991.)

(2) A rebate of duty in respect of any goods described in Schedule No. 3 shall be allowed only in respect of goods entered for use in —

(a) the production or manufacture of goods in the industry and for the purpose specified in the item of the said Schedule in which such goods are specified;

(b) a factory, a mine or elsewhere in any other activity which the Commissioner may approve; and (Amended A.11/1988.)

(c) such industry in a factory, mine, works or activity which complies with such requirements in respect of quantity of material used or quantity of goods produced or manufactured as the Commissioner may impose.

(Amended A.2/1985; A.11/1988.)

(3) The Minister may exempt from subsection (2)(b) any goods described in Schedule No. 3 and entered for use in a particular industry, and for the purposes of a factory approved under subsection (21)(b), may limit the application of his approval to the manufacture of one or more specified articles or substances.

(4) Notwithstanding section 56 a rebate of any anti-dumping duty specified in Schedule No. 2 in respect of goods entered under any item in Schedule No. 3 or 4 may be granted if it is expressly stated in such item that the extent of the rebate includes anti-dumping duty.

(4bis) (a) No person shall be entitled to a refund of customs or excise duty on any distillate fuel in terms of the provisions of item 533.01 of Schedule No. 5 or item 609.05.10 of Schedule No. 6 unless he is registered as a user of such fuel with the Commissioner.

(b) (i) Any application for refund of such duty shall be in such form and shall declare such particulars and be supported by such documents and shall be for such quantities and for such periods as may be prescribed by regulation.

(ii) Any seller of such fuel shall furnish any such user with an invoice reflecting the particulars, and shall keep a copy of such invoice for such time, as may be prescribed by regulation.

(c) Any registered user shall complete and keep such books, accounts and documents and furnish at such times such particulars of the vehicle, machinery or other equipment in which such fuel is used or any other particulars as may be prescribed by regulation.

(d) (i) Notwithstanding anything to the contrary in this Act, any user of such fuel who has been granted such refund and who fails to forthwith furnish an officer at his request with the books, accounts and documents required by regulation to be completed and kept in respect of the use of any distillate fuel purchased by him shall be deemed to have used such distillate fuel for a purpose or use other than a purpose or use stated in the items of Schedule No. 5 or 6 referred to

in paragraph (a) and the use declared in the relevant application for refund.

(ii) A user referred to in subparagraph (i) shall pay on demand to the Commissioner the full amount of any refund granted to him in respect of such fuel or such portion thereof as the Commissioner may determine, during a period of

two years prior to the date of such request by such officer, failing which such amount or such portion shall be recoverable in

terms of this Act as if it were the duty concerned.

(e) The Commissioner may refuse to register any person mentioned in paragraph (a) or cancel his registration if such person fails to complete, keep or furnish such accounts, books or documents as may be prescribed by regulation, or claims or receives any refund or payment to which he is not entitled in terms of the said items of Schedule No.

5 or 6.

417

(Added A.7/1981; amended A.11/1988; A.5/1991.)

(5) (a) 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 subsections (6) and (8) of this section and section 45, 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 Commissioner:

Provided that the Commissioner 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 Commissioner may, in his discretion, permit any duty paid on entry of goods under rebate to the deduction from any duty from which any person becomes liable in terms of this subsection.

(b) The Controller may at any time take stock of goods entered for home consumption and stored on any premises registered by virtue of subsection (10), and duty shall, subject to the provisions of paragraph (a), be paid forthwith

on demand upon any deficiency detected. (Added A.7/1981.)

(c) If the stock is found to be greater than the quantity which should be on such premises, the excess shall be debited to stock. (Added A.7/1981.)

(6) Any person to whom any distillate fuel or residual fuel oil has been supplied from stocks which have been entered under rebate of duty for a purpose stated in the item under which such distillate fuel or residual fuel oil was so entered, and who applies such distillate fuel or residual fuel or any portion thereof for any other purpose, shall be guilty of an offence and shall, notwithstanding the provisions of subsection (5) be liable for the duty to the extent of the rebate allowed on entry for home consumption of such distillate fuel or residual fuel oil on the full quantity of the distillate fuel or

residual fuel oil so supplied to him or on such portion thereof as the Commissioner may determine: (Amended A.11/1988.) 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.

(Added A.4/1979; amended A.11/1988.)

(7) The Commissioner 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 this section and of the item under which such goods were so entered, or to use or dispose of any such goods in accordance with any other item to which this section relates, and such person shall thereupon be liable for duty on the 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 Commissioner:

Provided that in respect of any such goods which are specified in any item of Schedule No. 3, 4, 6 or 7, the Commissioner may subject to the provisions of or the Notes applicable to the item in which such goods are specified and to

any conditions which he may impose 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 item under which such goods were entered, or on any other ground which he considers reasonable.

(8) 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 subsection (7) in respect of such goods.

(9) 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 this section and the item in question or if any such item has not been complied with in respect of such goods:

Provided that the Commissioner 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 Swaziland, pay any drawbacks to the extent stated in

such item, where goods of comparable class, kind, quality and quantity and manufactured or produced in Swaziland have been used in the manufacture of any goods exported. (Amended A.4/1791.)

418

(9bis) Any person to whom a refund of customs or excise duty has been granted on any distillate fuel in terms of item 533.01 of Schedule No. 5 or item 609.05.10 of Schedule No. 6 as the case may be, and who has disposed of such fuel or has

applied such fuel or any portion thereof for any purpose or use otherwise than in accordance with the provisions of such items and the use declared in the relevant application for refund, shall pay on demand to the Commissioner the full amount of any refund granted to him in respect of such fuel or such portion thereof as the Commissioner may determine, during such period of two years as the Commissioner may determine, failing which such amount or such portion shall be recoverable in terms of this Act as if it were the duty concerned. (Added A.5/1991.)

(10) If the tariff heading or sub-heading 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 such item of Schedule No. 3, 4, 5, 6 or 7 shall be deemed not to include goods

which are not classified under such tariff heading or sub-heading, tariff item or sub-item, or sales duty item or sub-item.

(11) 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 any such goods described in Schedule No. 3, 4 or 7 shall be valid unless the number of the tariff heading and sub-heading 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 such 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 such item, are declared on such entry:

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

(12) (a) 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 Commissioner may require and has complied with such other conditions (including registration with the Commissioner of his premises and plant) as may be prescribed in respect of goods specified in any item of Schedule No. 3, 4, 6 or 7:

Provided the Commissioner may, subject to such conditions as he may in each case impose, exempt with or without retrospective effect, any such person from the provisions of this subsection.

(b) Application for such exemption for the purpose of applying for a refund of duty shall be made to the Commissioner within six months from any date specified in section 39(5)(a), (b) or (c), as the circumstances may require.

(c) For the purposes of the application of section 39(5) to any such exemption —

(i) any bill of entry passed in relation to goods in respect of which exemption is granted under paragraph (a) of this subsection, shall be deemed to have been passed in error by reason of duty having been paid on goods intended for purposes or use under rebate of duty under section 75;

(ii) the goods concerned shall be deemed to have qualified at the time duty was paid on such goods in all respects for rebate; and

(iii) the duty paid on the goods concerned, shall be deemed to have been paid on the date on which the exemption referred to in subparagraph (i) was granted.

(Amended A.5/1991.)

(13) Notwithstanding anything to the contrary in this Act, the Commissioner may, in respect of Schedule 5, 6 or 7, for the purpose of calculating the amount of duty refundable on any imported, excisable or sales duty goods used in the manufacture, reconditioning, mixing or blending of any goods exported or marketed in Swaziland, determine the quantity of

such exported goods or such goods marketed in Swaziland which shall be deemed to have been produced, reconditioned, mixed or blended from a given quantity of such imported, excisable or sales duty goods or the quantity of such imported, excisable or sales duty goods which shall be deemed to have been used in the production, reconditioning, mixing or blending of a given quantity of such exported goods or such goods marketed in Swaziland. (Amended A.5/1991.)

(14) 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 such Schedule in respect of such excisable goods when used in the manufacture of such other goods.

419

(15) If the Commissioner is of the opinion that any goods, not being a spirituous beverage, manufactured from spirits under rebate of excise duty in terms of a 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.

(16) No refund or drawback of duty shall be paid by the Commissioner under this section unless an application therefor, 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 in —

(a) the case of goods exported, where the goods were exported —

(i) by post within a period of six months from the date on which such goods were posted;

(ii) in any other manner within a period of six months from the date of entry of such goods for export; and

(b) (i) in respect of any refund referred to in subsection (1)(f), within a period of six months from the last date of any period of use of any distillate fuel to which the application for such refund relates:

Provided that no refund shall be paid if the quantity of distillate fuel to which the application for such refund relates is less than such refund relates is less than such quantity as may be prescribed; and

(ii) in all other cases, within a period of six months from the date on which such refund first becomes due.

(Amended A.2/1985; A.5/1991.)

(16bis) (a) Subject to the concurrence of the Minister, the Minister for Commerce, Industry and Tourism may at any time after a permit by virtue of which goods may, in terms of any item of Schedule 3,4 or 6, be entered under rebate of duty

has been refused, but not later than two years after duty was paid on those goods, issue a permit authorising entry of those goods under rebate of duty in accordance with the provisions of the item concerned if, with due regard to any facts which became known after such a permit has been refused, he is satisfied that he would have issued such a permit if those facts were then known.

(b) For the purposes of subsections 39(3), 39(4) and 39(5) —

(i) any bill of entry passed in relation to goods in respect of which a permit is issued under paragraph (a) shall be deemed to have been passed in error by reason of duty having been paid on goods intended for purposes or use under rebate of duty under this section;

(ii) the goods in respect of which such a permit is issued shall be deemed to have qualified at the time duty was paid on such goods in all respects for rebate; and

(iii) the duty paid on the goods concerned shall be deemed to have been paid on the date on which the permit referred to in paragraph (a) was issued. (Added A/11/1988; amended A.5/1991.)

(16ter) (a) Subject to the provisions of subsection (16bis), any authorised official, or the Commissioner, may in respect of goods which may, in terms of any item of Schedule No. 3, 4, 5 or 6, be entered under rebate of duty or be subject to a drawback or a refund of duty, issue, subject to such conditions as such authorised official or the Commissioner may specify, with or without retrospective effect, a permit or certificate authorising entry of those goods under rebate of duty, or authorising a drawback or a refund of duty in accordance with the provisions of the item concerned: Provided the Commissioner is satisfied in respect of the goods concerned, where the permit or certificate concerned is issued with retrospective effect, that the provisions of such item and such conditions have been complied with.

(b) Subsection (16bis)(b) shall apply *mutatis mutandis* in respect of any permit or certificate referred to in paragraph (a).

(c) Application for such permit or certificate shall be made to the authorised official referred to in paragraph (a) or the Commissioner within six months from any date specified in section 39(5)(a), (b) or (c), as the circumstances may require. (Added A.5/1991.)

(17) (a) The Minister may from time to time by notice in the Gazette amend Schedule No. 3, 4, 5, 6 or 7 and any such amendment may be of retrospective effect from such date as may be specified in such notice.

420

(b) An amendment made under paragraph (a) which —

(i) 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, excluding distillate fuels referred to in item 533.01 of Schedule No. 5 which were imported prior to the date of the relevant notice in the Gazette; and

(ii) embodies any additional provision in that Schedule applies any existing provision of that Schedule in respect of additional goods, shall not except in so far as the Commissioner 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 relevant notice in the Gazette. (Amended A.7/1981; A.5/1991.)

(18) The Commissioner may refuse to accept an entry under rebate or any 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 this Act or has committed an offence referred to in sections 80, 83, 84, 85 or 86 and he may cancel any registration under this Act of such person or suspend any such registration for such period as he deems fit.

(19) Subject to the proviso to section 18(8) and items 412.07, 412.08, 412.09, 531.00, 532.00, 608.01, 608.02, 608.03, 608.04, 615.01, 615.02, 615.03, 707.01, 707.02 and 707.03 of Schedules 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 Commissioner may allow the deduction from the dutiable quantity of the undermentioned goods of the quantity equal to the percentage stated below in each case, namely— (Amended A.5/1991.)

(a) wine spirits (ethyl alcohol) manufactured in Swaziland and entered for storage in a customs and excise storage warehouse, excluding spirits specified in paragraph (b)(bis), 1,5 per cent of the quantity so entered; (Amended A.11/1988.)

(b) spirits (ethyl alcohol), other than wine spirits, manufactured in Swaziland, 1,5 per cent of the quantity so manufactured and entered for use in making spirituous beverages;

(b)bis unpacked excisable spirits intended for export and which are removed in bond from a customs and excise manufacturing warehouse for temporary storage in a customs and excise warehouse approved for that purpose, the percentage, but not exceeding 1.25 per cent of the quantity so removed, as may in the opinion of the Commissioner represent a loss incurred while the spirits in question are so removed and stored as the Commissioner may determine; (Added A.11/1988.)

(c) wine manufactured in Swaziland, 0,5 per cent of the quantity so manufactured on which duty is paid;

(c)bis fermented apple, pear or orange beverage manufactured in Swaziland, 0.5 per cent of the quantity so

manufactured on which duty is paid; (Added A.4/1979.)

(d) imported crude petroleum naphtha for use in the refining of petroleum products, or imported or excisable petrol, a percentage equal to the full net loss incurred but not exceeding 0.25 of any quantity entered for storage and stored in a duty storage warehouse during such period as the Commissioner may determine; (Amended A.5/1991.)

(e) imported petroleum naphtha entered for use as fuel in the manufacture of ammonia such percentage, but not exceeding 0.25, for any quantity so entered as may in the opinion of the Commissioner represent a loss by evaporation; (Added A.10/1978; amended A.11/1988; A.5/1991.)

(f) distillate fuels entered for storage and stored in a duty storage warehouse, a percentage equal to the full net loss incurred but not exceeding 0.15 of any quantity so entered and stored in such warehouse during such period as the Commissioner may determine. (Added A.5/1991.)

(20) No person shall, without the permission of the Commissioner, divert any goods entered under rebate of duty under any item of Schedule No. 3, 4, 6 or 7 for export for the purpose of claiming a drawback or refund of duty under any item of 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 Swaziland otherwise than in accordance with 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 they were entered.

421

(21) If any goods to which this section relates are used or disposed of, or dealt with or in, contrary to this Act the whole consignment entered or transferred for use in terms 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 Commissioner 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 for such other purposes as may be specified in any regulation 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.

General refund in respect of imported or excisable goods.

76. (1) No refund of any duty or other charge in respect of imported goods, excisable goods, sales duty goods or surcharge goods, other than a refund provided for under section 75 or 77, shall be paid or granted except in accordance with

the provisions of this section and any regulations. (Amended A.5/1991.)

(2) The Commissioner shall, subject to 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 a value higher than the value for duty purposes;

(c) a determination under section 46 or incorrect tariff classification; (Amended A.1/1981.)

(d) the goods concerned having been damaged, destroyed or irrecoverably lost in circumstances beyond his control prior to the release thereof for home consumption; (Amended A.2/1985.)

(f) the substitution of any bill of entry in terms of section 39(3); (Amended A.2/2985.)

(g) the duty having been reduced or withdrawn as provided for in section 47(3) and (4). (Added A.5/1991.) (Amended A.10/1978.)

(3) Except with the permission of the Commissioner, 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 over-payment was made.

(4) An application for a refund or payment under this section shall not be considered by the Commissioner unless it is duly completed and supported by the necessary documents and other evidence to prove that such refund or payment is due

under this section, and is received by the Controller, within a period of two years —

(a) from the date of entry for home consumption as provided in section 44(2), of the goods to which the application relates; or (Amended A.5/1991.)

(a)bis from the date on which the charge to which the application relates was paid; or (Added A.5/1991.)

(b) in the case where a determination of a tariff heading, tariff subheading or item referred to in section 46(12)(a) or of a value referred to in section 65(4)(a) is, under section 46(12)(d), or section 65(5), as the case may be, amended with retrospective effect from a date before or on the date on which the duty to which the application relates was paid, or any such determination is, under the said section 46(12)(d) or section 65(5), as the case may be, withdrawn with such retrospective effect, and anew determination is thereunder made with effect from such withdrawal, from the date on which such amendment is effected or such new determination is made or, if such amendment or new determination is published by notice in the

Gazette, the date on which such amendment or new determination is so published; or

(c) in the case where any Schedule is amended with such retrospective effect, from the date on which such amendment is published by notice in the Gazette:

Provided that the Commissioner may, in such circumstances as he may consider exceptional, consider any such application after the expiry of such period.

(Amended A.11/1988.)

(5) If, after considering any application for a refund or payment in terms of this section, the Commissioner is satisfied that the applicant is entitled to any such refund or payment, he may pay him the amount due to him:

422

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 cents or, in the case of goods imported in any other manner, less than five rand or, in the case of excisable goods or sales duty goods manufactured in Swaziland, less than two rand, unless the Commissioner is satisfied that exceptional circumstances exist which warrant such refund.

(6) (Repealed A.2/1985.)

Recovery of certain amounts not duly payable.

76bis. (1) If the Commissioner, acting under the provisions of section 75 or 76, pays to any person by way of a refund or drawback any amount which was not duly payable to that person under those provisions or which was in excess of the amount due to that person by way of a refund or drawback under those provisions, that amount or the excess, as the case may be, shall be repaid by the person concerned to the Commissioner upon demand, failing which it shall be recoverable in

terms of this Act as if it were the duty or charge concerned or part of such duty or charge, as the case may be.

(2) Subsection (1) shall apply *mutatis mutandis* to any amount set off in terms of section 77(1).

(Added A.5/1991.)

Over-payment in respect of excisable goods and sales duty goods.

77. (1) Any amount due to a licensee of a duty 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 any provisional refund granted by him in terms of section 75(1bis) or which is refundable to him in terms of item 534.00 of Schedule No. 5

or any item of Schedule 6 or 7 may, at any time within a period of two years from the date on which such amount first becomes due, be set off against any amount for which such licensee subsequently becomes liable in respect of excise duty or sales duty:

Provided the accounts or bills of entry submitted by such licensee in respect of the payment of any amount against which any amount so due to him has been set off are accompanied by a full statement by such licensee, supported by a certificate by an officer, giving full particulars of the excise duty or sales duty so paid and a full account of the circumstances under which the payment thereof took place and by such documentary evidence as the Commissioner may in each case require.

(Amended A.2/1985; A.5/1991.)

(2) If the set-off of any amount is not allowed by the Commissioner in terms of subsection (1) such amount shall be re-debited to the account of such licensee.

(3) With the permission of the Commissioner and subject to such conditions as he may impose, any amount of sales duty or excise duty specified in Section B of Part 2 of Schedule No. 1 paid by the licensee of a duty warehouse licensed in terms of this Act in respect of sales duty goods or excisable goods specified in Section B of Part 2 of Schedule No. 1 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 or excise duty specified in Section B of Part 2 of Schedule No. 1, may be set off against any amount for which such licensee subsequently becomes liable in respect of sales duty or excise duty specified in Section B of Part 2 of Schedule No. 1:

Provided proof to the satisfaction of the Commissioner of such export or supply under rebate of duty and the identity of the sales duty goods or excisable goods specified in Section B of Part 2 of Schedule No. 1 so exported or supplied is submitted by such licensee, together with such documentary proof as the Commissioner may in each case require regarding

the sale of such goods by the licensee.

(Amended A.5/1991.)

PART XI Penal Provisions

423

Offences not expressly mentioned.

78. (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 the 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 one thousand emalangeni or treble the value of the goods in respect of which such offence was committed, whichever is the greater, or imprisonment not exceeding six months, or both. (Amended A.11/1988.)

(3) Any 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 one thousand five hundred emalangeni or treble the value of the goods in respect of which such offence was committed, whichever is the greater, or imprisonment not exceeding nine months, or both. (Amended A.11/1988.)

Less serious offences and their punishment.

79. (1) Any person who —

(a) supplies the means or materials for or assists in establishing, repairing, maintaining or working any still being made or made, 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 performance of his functions under this Act; or

(f) rescues any person 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 one thousand Emalangeni or imprisonment not

exceeding six months, or both. (Amended A.11/1988.)

(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 one thousand five hundred emalangeni or imprisonment not exceeding nine months, or both. (Amended A.11/1988.)

Serious offences and their punishment.

80. (1) A 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 them to be illicit goods;

(b) not being a licensed manufacturer or dealer, without lawful authority has in his possession or custody or under his control any partly manufactured, excisable goods or sales duty goods or any such goods upon which duty has not been paid;

(c) removes or assists in or permits the removal of goods in contravention of this Act;

(d) deodorizes, clarifies 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;

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

424

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

(g) contravenes section 54(8);

(h) without lawful excuse (the proof of which shall lie upon him), brings into Swaziland or has in his possession any blank or incomplete invoice or any bill head or other similar document capable of being filled up and used as an invoice for goods from outside Swaziland; (Amended A.11/1988.)

(i) claims or receives any rebate, drawback, refund or payment to which he knows he is not entitled under this Act; (Amended A.5/1991.)

(j) 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 controller any duty which has been refunded or rebated under this Act and in respect of which he has been compensated by any other person;

(k) not being authorized so to do, 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;

(l) 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 permits or agrees to do or permit anything in contravention or evasion of this Act;

(m) attempts to commit or assists in committing any offence mentioned in this section;

(n) from any goods made from or containing excisable goods extracts or recovers such excisable goods in contravention of this Act;

(o) contravenes the provisions of section 16(13), 16bis(9), 18(7), 33bis(4) 60(1), 63(1), 75(9bis), 75(20) or 114(2bis); or (Amended A.11/1998; A.5/1991.)

(p) fails to comply with any conditions determined under section 106(2); (Added A.11/1988.)

shall be guilty of an offence and liable on conviction to a fine not exceeding two thousand five hundred emalangeni or treble

the value of the goods in respect of which such offence was committed, whichever is the greater, or imprisonment not exceeding twelve months, or both. (Amended A.11/1988.)

(2) If any person is charged with a contravention of subsection (1)(a) he shall, until the contrary is proved, be presumed to have known that the goods in question were illicit goods.

(3) When any person is charged with a contravention of subsection (1)(i) he shall, until the contrary is proved, be presumed to have known that he was not entitled to the rebate, drawback, refund or payment concerned. (Added A.5/1991.)

Non-declaration of goods.

81. Any person who fails to declare any dutiable goods or goods the importation or exportation of which is prohibited or restricted under any law and which he has 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 the failure, or of the statement, be guilty of an offence and liable on

conviction to a fine of five thousand emalangeni or treble the value of the goods in question, whichever is the greater, or imprisonment for two years, or to both, and the goods in question and any other goods contained in the same package as well as the package itself shall be liable to forfeiture. (Amended A.4/1979; A.11/1988)

82. (Repealed A.5/1991.)

Irregular dealing with or in goods.

83. Any person who —

425

(a) deals or assists in dealing with any goods contrary to this Act;

(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 Swaziland or with any agent of any such supplier, manufacturer, exporter or seller, regarding a matter to which this Act relates, with the object of defeating or evading this Act,

shall be guilty of an offence and liable on conviction to a fine not exceeding five thousand emalangeni or treble the value of

the goods in respect of which such offence was committed, whichever is the greater, or imprisonment not exceeding two years, or both, and the goods in respect of which such offence was committed shall be liable to forfeiture. (Amended A.11/1988.)

False document and declaration.

84. (1) Any person who makes a false statement in connexion 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 thereof 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 five thousand emalangeni or treble the value of the goods to which such statement, declaration or document relates, whichever is the greater, or imprisonment not exceeding two years, or both, 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. (Amended A.11/1988.)

(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 domestic value of the price charged by the exporter or any value, price, freight, duty, tax, drawback, refund, rebate, remission or other information whatsoever declared therein which has a bearing on value for the purpose of payment of any duty or on classification in terms of any Schedule or on anti-dumping duty or on extent of rebate, refund or drawback of duty —

(a) is not, except insofar 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 whatsoever, particulars of which are not specified in such invoice or document;

(c) represents any average, adjustment or amendment, particulars of which are not disclosed in such invoice or document, of such values, prices, commissions, discounts, costs, charges, expenses, royalties, freight duties, taxes, drawbacks, refunds, rebates, remissions or other information in respect of goods of the same or of different denominations, descriptions, classes, grades or quantities supplied by the same suppliers.

Beer of higher or lower density than indicated by label or container.

85. Any manufacturer of beer in whose duty warehouse or on whose delivery vehicle beer packed for sale is found of a relative density before fermentation higher or lower than such density specified in the sub-item of tariff item 104.10 registered in terms of section 34(4) in relation to beer of the name indicated on the container of beer so found shall be guilty

of an offence and liable on conviction to a fine not exceeding five thousand emalangeneni or treble the value of the goods in respect of which such offence was committed, whichever is the greater, or imprisonment not exceeding two years, or both, and the goods in respect of which the offence was committed shall be liable to forfeiture. (Amended A.11/1988; A.5/1991.)

Certain specified offences.

86. A person who —

(a) fails to advise the controller of the receipt of any amended prescribed invoice or any credit note or debit note or of any change in the circumstances or particulars of whatever nature as declared in any prescribed invoice or in any other document or of any refund of money or deferred or secret discount, commission or other credit or debit which relates to any goods and which would increase the duty on such goods or exclude them from any rebate or refund or other privilege under this Act;

426

(b) fails to declare in or omits from any prescribed invoice any particulars (including value and origin) in respect of goods to which such invoice relates and which would increase the duty on such goods or exclude them from any rebate or refund or other privilege under this Act;

(c) applies money or credit received by or due to him as a commission in such manner as to avoid or evade any duty or obligation or to obtain any rebate 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 particulars declared in any prescribed invoice or certificate in respect of any goods have changed in any manner whatsoever;

(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 Swaziland in connexion with any goods imported or to be imported into Swaziland with the object of or having the effect of defeating or evading any agreement entered into between Swaziland and any exporting territory which provides for the restriction of or control over the export to Swaziland of any goods in any manner or any restriction of or control over the export of any goods to Swaziland imposed by any exporting territory in any manner by arrangement with or at the instance or suggestion of or with the approval of the Government;

(f) produces to the controller, for the purposes of section 38(4), any sample which is not a sample of the goods of which it purports to be a sample or who so produces any copy of 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 40(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 section 101 or any regulation made in terms of section 73 or 101;

shall be guilty of an offence and liable on conviction to a fine not exceeding five thousand emalangeneni or treble the value of

the goods in respect of which such offence was committed, whichever is the greater, or imprisonment not exceeding two years, or both, and the goods in respect of which such offence was committed shall be liable to forfeiture. (Amended A.11/1988.)

Goods irregularly dealt with liable to forfeiture.

87. (1) Any goods imported, exported, manufactured, warehoused, removed or otherwise dealt with contrary to 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 this Act in the manufacture of any goods shall be liable to forfeiture wheresoever and in the

possession of whomsoever found:

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

(2) 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 used without the consent or knowledge of the owner of such vehicle or other person lawfully in possession or charge thereof.

(3) 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.

Seizure.

88. (1) (a) An officer, magistrate or member of the police force may detain any vehicle, plant, material or goods at any place for the purpose of establishing whether that vehicle, plant, material or goods are liable to forfeiture under this Act.

427

(b) Such vehicle, plant, material or goods may be so detained where they are found or shall be removed to and stored at a place of security determined by such officer, magistrate or member of the police force, at the cost, risk and expense of the owner, importer, exporter, manufacturer or the person in whose possession or on whose premises they are found, as the case may be.

(c) If such vehicle, plant, material or goods are liable to forfeiture under this Act the Commissioner may in his discretion seize the vehicle, plant, material or goods.

(d) The Commissioner may in his discretion seize any other vehicle, plant, material or goods liable to forfeiture under this Act. (Amended A.5/1991.)

(2) (a) (i) If any goods liable to forfeiture under this Act cannot readily be found, the Commissioner may, notwithstanding anything to the contrary in this Act, demand from any person who imported, exported, manufactured, warehoused, removed or otherwise dealt with such goods contrary to the provisions of this Act or committed any offence under this Act rendering such goods liable to forfeiture, payment of an amount equal to the value for duty purposes or the export value of such goods plus any unpaid duty thereon, as the case may be.

(ii) For the purposes of subparagraph (i) the value for duty purposes shall be calculated in terms of the provisions of this Act relating to such value where or not the goods in question are subject to *ad valorem* duty or to a duty calculated according to a unit of quantity, volume or other measurement, as the case may be.

(Amended A.5/1991.)

(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 apply *mutatis mutandis* in respect of any amount paid to the Commissioner 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).

(Amended A.4/1991.)

Notice of claim by owner in respect of seized goods.

89. (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 under section 90' 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 such

seizure to the person seizing or to the Commissioner or to the controller in the area where the seizure was made that he claims or intends to claim such vehicle, plant, material or goods under this section.

(2) If no such notice is given, no legal proceedings whatsoever shall thereafter be instituted against the Government, the Minister, the Commissioner or any officer, based merely upon the seizure of such vehicle, plant, material or goods.

(3) If a notice has been given under subsection (1) the person giving such notice shall, within ninety days of the date thereof, institute proceedings in a court of competent jurisdiction for release of the said vehicle, plant, material or goods: Provided that he shall not, except with the consent of the Commissioner institute such proceedings within one month of the date of such notice.

Disposal of seized goods.

90. (1) Anything seized as being liable to forfeiture under this Act shall forthwith be delivered to the controller at the customs, excise and sales duty office nearest to the place where it was seized or it may be secured by the controller 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 controller.

(2) The controller shall, after condemnation thereof, cause the thing seized to be sold by public auction or in any other manner which the Commissioner deems suitable:

Provided that the Commissioner may direct that in lieu of being sold the thing shall be destroyed or shall be appropriated to the Government:

428

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

Admission of guilt.

91. (1) If any person —

(a) has, in the opinion of the Commissioner, contravened any provision of this Act or failed to comply with any such provision with which it was his duty to comply; (Amended A.10/1978.)

(b) agrees to abide by the Commissioner's decision; and

(c) deposits with the Commissioner such sum as the Commissioner 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 arrangement or complies with such conditions with regard to securing the payment of such sum as the Commissioner may require,

the Commissioner may, after such enquiry as he deems necessary, determine the matter summarily and without legal proceedings order forfeiture by way of penalty of the whole or a part of the amount so deposited or secured.

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

(3) There shall be a right of appeal to the Minister from any determination or order of the Commissioner under subsection (1) whereby a penalty exceeding one thousand emalangeni is imposed, and the Minister's decision on any such appeal shall be final. (Amended A.10/1978; A.5/1991.)

(4) Subject to section 62(3) the imposition of a penalty under subsection (1) shall not be regarded as a conviction in respect of a criminal offence, but no prosecution for the relevant offence shall thereafter be competent.

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

Payment and disposal of fines and penalties.

92. Any fine or penalty recovered under this Act shall be paid to the controller in the area where such fine or penalty is recovered, and shall be paid by him into the Consolidated Fund, and the proceeds of sale of anything forfeited or seized or condemned under this Act shall also be paid into such fund:

Provided that the Commissioner 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. (Added A.5/1991.)

Remission or mitigation of penalties and forfeiture.

93. The Commissioner may direct that any vehicle, plant, material or goods detained, seized or forfeited under this Act be delivered to the owner thereof, subject to payment of any duty which may be payable in respect thereof and any charges which may have been incurred in connexion with the detention, seizure or forfeiture, and to such conditions (including a condition providing for the payment of an amount not exceeding 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.

Recovery of penalties by process of law.

94. (1) Without derogation from any powers conferred upon the Commissioner, any penalty, fine or forfeiture incurred under this Act may be recovered either by civil action or upon criminal prosecution in any court and in the case of a criminal

prosecution the court passing sentence may also make an order regarding any unpaid duty or charge and impose civil penalties or enforce forfeiture.

429

(2) Any civil proceedings under this section may be instituted in the name of the Attorney-General.

Jurisdiction of courts.

95. (1) A court shall have jurisdiction to try any person for an offence under this Act if 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 such court.

(2) Any person who at any place deemed under section 5 (1 bis) to be a place of entry for Swaziland or in any territory with the government with which an agreement has been concluded under section 51, performs any act which constitutes

an offence under this Act shall be guilty of such offence, which shall for purposes of jurisdiction of a court to try the

offence, be deemed to have been committed at any place where the accused happens to be. (Added A.11/1988.)
(Original subsection (3) repealed A.11/1988.)

(3) Notwithstanding any other law, a magistrate's court shall have jurisdiction to impose any punishment prescribed by or make any order of court provided for in this Act. (Amended A.11/1988.)

(4) Notwithstanding anything in any other law contained, a magistrate's court shall have jurisdiction to give judgment for any amount claimed under this Act, together with the costs of obtaining such judgment. (Added A.4/1979.)
Notice of action and period of bringing action.

96. (1) No legal proceedings shall be instituted against the Government, the Minister, the Commissioner 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 section 89, the period of extinctive prescription in respect of legal proceedings against the Government, the Minister, the Commissioner or an officer on a cause of action arising out of this Act shall be one year and shall begin to run from the date when the right of action first arose.

Approval of container operators

96bis. The Commissioner may, subject to such conditions as he may generally or in respect of a particular case determine, approve for operating containers in Swaziland any person providing international transportation of containerized goods. (Added A.11/1988.)

PART XII General

Pilot may appoint agent.

97. Notwithstanding this Act, the pilot of an aircraft, instead of himself performing any act, including the answering of questions, required by or under 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 respects and for all purposes be deemed to be the act of the pilot: Provided that the personal attendance of the pilot may be demanded at any time by the controller.

Liability of principal for acts of agent.

98. Every importer, exporter, 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 any agent acting on his behalf, whether within or outside Swaziland.

Liability of agent for obligations of principal.

99. (1) An agent appointed by any pilot, and a person who represents himself to any officer as the agent of any pilot, 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 by this Act and to any penalties or forfeitures

which may be incurred in respect of such matter.

430

(2) (a) An agent appointed by any importer, exporter, manufacturer, licensee, remover of goods in bond or other principal and 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:

Provided that such person shall cease to be so liable if he proves to the satisfaction of the Commissioner that —

(i) he was not a party to the non-fulfilment by any such importer, exporter, manufacturer, licensee, remover of goods in bond or other principal, of any such obligation;

(ii) when he became aware of such non-fulfilment he notified the Controller thereof as soon as practicable; and

(iii) all reasonable steps were taken by him to prevent such non-fulfilment.

(Added A.2/1985.)

(b) No importer, exporter, manufacturer, licensee, remover of goods in bond or other principal shall by virtue 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.

(Amended A.7/1981.)

(3) Every clearing, shipping and forwarding agent and every agent acting for the master of a ship or 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 the Commissioner may require for the due observance of this Act:

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

(4) Any 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 Swaziland who exports goods to Swaziland shall be liable in respect of any goods ordered through him or obtained by any 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 forfeiture which may be incurred by any 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 Commissioner that —

(a) he was not a party to the non-fulfilment by any such exporter, manufacturer, supplier, shipper or other principal of any such obligation;

(b) when he became aware of such non-fulfilment he forthwith notified the controller thereof; and

(c) all reasonable steps were taken by him to prevent such non-fulfilment.

(5) Every agent of a class referred to in subsection (4) and specified in any regulation for the purposes of this subsection shall register himself with the Commissioner and furnish such security as the Commissioner may require for the due observance of this Act:

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

(6) No agent referred to in subsection (5) shall transact business on behalf of any exporter, manufacturer, supplier, shipper or any other principal after a date specified by the Minister by notice in the Gazette unless he has complied with subsection (5).

(7) The registration and operation of any agent referred to in subsection (5) shall be subject to such conditions as the Commissioner may impose by rule and the Commissioner may cancel the registration of an agent who has persistently contravened or failed to comply with this Act or has committed an offence referred to in section 80, 83, 84, 85 or 86.

431

Agent may be called upon to produce written authority.

100. 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 a form approved by the Commissioner from the person on whose behalf the 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.

Business accounts, documents, etc. to be available for inspection.

101. (1) Any person carrying on any business in Swaziland shall keep within Swaziland in the English language such records relating to his transactions as the Minister may prescribe and such records shall be kept in such form and manner and shall be retained for such period as the Minister may prescribe.

(1bis) The Commissioner may, subject to such conditions as he may determine, allow any person referred to in subsection (1) to retain in lieu of any book, account or document required to be retained in terms of that subsection, a reproduction of any such book, account or document obtained by means of microfilming or any other process. (Added A.7/1981.)

(2) Different provisions may be prescribed in respect of different classes or kinds of records and different classes of persons.

(3) Any person referred to in subsection (1) or (2) shall upon demand by the controller or the Commissioner produce to him such records referred to in those subsections as he may require and such person shall render such returns or submit such particulars in connexion with his transactions to the Commissioner as the latter may from time to time require.

(3bis) The secretary 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 (1bis), 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. (Added A.7/1981.)

(4) The Minister may prescribe the —

(a) records, transactions or operations in respect of which a chartered accountant's certificate shall be produced to the controller by such class of persons referred to in subsection (1) or (2) as he may so prescribe; and

(b) nature and form of the certificate and the intervals at which it shall be produced.

Seller of goods to produce proof of payment of duty.

102. (1) Any person selling, offering for sale or dealing in imported, excisable or sales duty goods or any person removing the same, or any person having such goods entered in his books or mentioned in any documents referred to in section 75(4bis) or 101, 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. (Amended A.5/1991.)

(2) In any prosecution or proceedings under this Act, any statement in any record, letter or other document kept, retained, received or despatched by or on behalf of any person to the effect that any goods of a particular price, value, free on board price or domestic value (including any commission, discount, costs, 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) quantity, quality, nature, strength or other characteristic have been manufactured, imported, ordered, supplied, purchased, sold, dealt with, or in, or held in stock 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, free on board price, domestic value, quantity, quality, nature, strength or other characteristic.

(3) If in any such prosecution or proceedings the question arises 'whether any such goods have been sold or used or disposed of or are or were in the possession of any person in such 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 such manner unless the contrary is proved.

(4) If in any prosecution under this Act or in any dispute in which the government, the Minister or the Commissioner 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 used, imported, exported, manufactured, removed, or otherwise dealt with or in, or that such books, accounts, documents, forms or invoices do not exist or have not been duly completed and kept or have not been so furnished as the case may be, unless the contrary is proved. (Amended A.11/1988; A.5/1991.)

(5) If in any prosecution under this Act or in any dispute in which the Government, the Minister or the Commissioner or any officer is a party, it is alleged by or on behalf of the Government, the Minister or the Commissioner or such officer that any goods or plant have been or have not been imported, exported, manufactured in Swaziland, 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 Swaziland, removed or otherwise dealt with, or in, unless the contrary is proved.

Liability of company, partnership, etc.

103. For the purposes of this Act any reference to a person shall be deemed to include a reference to a company, close corporation, co-operative society, firm, partnership, statutory body or club, and in the event of a contravention of or noncompliance

with this Act or the incurring of any liability under this Act by any company, close corporation, 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. (Amended A.5/1991.)

Deferment of payment of duty.

104. The Commissioner 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 this Act or any penalty imposed by him to be paid by instalments of such amounts and at such times as he may determine.

Samples.

105. (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 Part X, for examination or for ascertaining the duty payable thereon or for such other purpose as the Commissioner deems necessary, and such samples shall be dealt with and accounted for in such manner as the Commissioner 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 characteristic of all the goods in that consignment, vessel, tank or other container shall be deemed to correspond to the nature or characteristic of any sample taken by the officer from such consignment, vessel, tank or other container.

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

106. (1) 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 duty warehouse, where such handling of and dealing with goods shall be performed at the expense and risk of the owner thereof.

(2) Subject to this Act, the Commissioner shall not, except on such conditions, including conditions relating to security, as may be determined by him, allow goods to pass from his control until he has satisfied himself that this Act or any law relating to the importation or exportation or transit carriage of goods through Swaziland has been complied with in respect of such goods, and the Government or the Commissioner or any officer shall in no case be liable in respect of any claims arising out of the detention of goods pending the decision of the Commissioner or for the cost of such detention. (Amended A.11/1988.)

(3) If the Commissioner considers it necessary for the purposes of subsection (2) or section 105(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.

(4) The cost of analysis of any goods for the purposes of subsection (2) shall be borne by the importer, exporter, manufacturer or owner of such goods except where the Commissioner considers the analysis necessary for the purposes of subsection (2) and the result of the analysis confirms the correctness of the declaration or bill of entry made or presented by such importer, exporter, manufacturer or owner in respect of such goods:

Provided that the cost of analysis shall in no case be borne by the Government where it is carried out in connexion 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 prescribed invoice relating thereto.

(5) 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 Controller to the State warehouse or other place indicated by the

Controller, and may thereupon be disposed of in terms of section 42(3). (Added A.4/1979.)

Control in respect of manufacture of certain goods or materials and persons who carry out processes in connexion therewith.

107. (1) The manufacturer of any goods or materials used or capable of being used in the manufacture of any goods to which this Act applies and any person who carries out a preliminary, intermediate or supplementary process in connexion with such goods or materials or any goods to which this Act applies, shall, in accordance with the directions of the Commissioner —

(a) register with the Commissioner any such formula, factory, machinery, instrument, appliance or apparatus used in connexion with the manufacture of such goods or materials or the carrying out of any such process as he may require;

(b) comply with such conditions relating to the manufacture or the carrying out of any such process as he may impose in each case;

(c) keep such records as he may require as to —

(i) the nature, characteristic, source, origin and quantities of the ingredients of such goods and materials and of such other particulars of the ingredients of such goods or materials as he may specify;

(ii) the processes carried out in respect of such goods or materials;

(iii) the person 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 Commissioner may require; and

(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 he may require.

(2) For the purposes of subsection (1) any preliminary, intermediate or supplementary process in connexion with any goods or materials mentioned in that subsection 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.

Embargo on goods.

108. If any officer has reason to believe that the correct duty has 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 this Act or of any law relating to the import or export of goods, he may place an embargo on such goods, plant, vehicle or thing, wheresoever found, and no person shall remove

434

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.

Destruction of goods and detention of vehicles.

109. (1) If in the opinion of the Commissioner it is necessary for the safeguard 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 Commissioner 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 Swaziland for a period not exceeding forty-eight hours.

(2) No person shall be entitled to any compensation for loss arising out of an *bona fide* action of the Commissioner under subsection (1).

(Amended A.4/1791.)

Instruments and tables.

110. (1) Except as elsewhere provided in this Act, the Minister may prescribe the instruments, metres, 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. (Amended A.5/1991.)

(2) For calculating the full quantity of any goods which have been manufactured or used under this Act, the Minister may 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.

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

111. No motor vehicle registering authority in Swaziland shall register any motor vehicle which has previously been registered in a territory outside Swaziland 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. (Amended A.10/1978.)

Wreck.

112. (1) For the purposes of this section “wreck” includes any portion of an aircraft which has been wrecked or abandoned or of its cargo, stores or equipment or any other article thereon.

(2) Any person who has a wreck in his possession shall without delay give notice thereof to the nearest controller and shall (unless he is the owner of such wreck or the duly authorized agent of such owner) if required, forthwith deliver that wreck or permit it to be delivered to such controller, and unless it is necessary for its preservation or safe keeping, no person shall without the permission of such controller remove it or alter it in quantity or quality.

(3) Wreck found in or brought into Swaziland may at any time after it has come under the control of the Commissioner be disposed of by him in the manner set forth in section 42 but shall otherwise be subject to this Act.

(4) The Minister may prescribe the circumstances under which and the conditions subject to which a License may be issued by the Commissioner to any person entitling him to search, or search for, any wreck but no such License shall give

the holder thereof the exclusive right of searching for or salvaging any particular wreck.

Prohibitions and restrictions.

113. (1) The import of the following goods is hereby prohibited —

(a) cigarettes with a mass of more than 2 kilogrammes per 1 000 cigarettes; (Amended A.5/1991.)

(b) (Repealed A.5/1991.)

(c) a proscribed publication under the Proscribed Publications Act, No. 17 of 1968;

435

(d) unlawful reproductions of any work if such reproductions are prohibited from importation under any law relating to copyright;

(e) prison-made and penitentiary-made goods; and

(f) goods the import of which in terms of this Act or any other law required to be authorized by a permit, certificate or other authority, unless imported under such permit, certificate or other authority which purports to have been issued thereunder.

(Amended A.2/1985.)

(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 that subsection unless such permit, certificate or

other authority in question is produced to the controller.

(3) The Minister may by notice in the Gazette suspend the operation of any provision of subsection (1) if he is satisfied that such suspension would be in the public interest.

(4) The Minister may by notice in the Gazette prohibit the export or the transit carriage through Swaziland to any place of munitions or other goods which he considers capable of being converted into or used in the manufacture of munitions.

(5) For the purposes of subsection (4) export 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 a notice issued under subsection (4) 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 despatched such goods, and the person who despatched 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 such goods would be brought to that place, and that he could not have prevented it.

(6) The Minister may by regulation prohibit or restrict the transit carriage through Swaziland of 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.

(7) (a) If any person imports or exports or attempts to import or export 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 such law provides for their disposal, be liable to forfeiture wheresoever and in possession of whomsoever found.

(b) Any officer, magistrate or member of the police force may detain any goods for the purpose of establishing whether those goods are liable to forfeiture under paragraph (a). (Added A.5/1991.)

(c) Any goods so detained may be released by the Commissioner to the Government department or person concerned. (Added A.5/1991.)

(8) No person shall manufacture cigarettes the mass of the tobacco of which exceeds 2 kilograms per 1 000 cigarettes. (Amended A.5/1991.)

(9) The export of goods the export of which is in terms of this Act or of any other law required to be authorized by a permit, certificate or other authority, is hereby prohibited unless exported under such permit, certificate or other authority which in terms purports to have been issued thereunder, and such permit, certificate or other authority is produced to the controller before export of such goods.

Duty constitutes a debt to the Government.

114. (1) (a) The correct amount of duty for which any person is liable in respect of any goods imported into or exported from Swaziland or any goods manufactured in Swaziland shall from the date on which liability for such duty commences; and

(b) any interest payable under this Act and any fine, penalty or forfeiture incurred under this Act shall, from the time when it should have been paid.

constitute a debt to the Government by the person concerned, and any goods in a duty warehouse or in the custody of any officer (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 imported goods in the possession or under the control of such person or on

436 any premises in the possession or under the control of such person, 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, machinery, plant or equipment in the possession or under the control of such person in which fuel in respect of which any duty is prescribed (whether or not such duty has been paid), is used, transported or stored, may be detained in accordance with subsection (4) and shall be subject to a lien until such debt is paid. (Amended A.10/1978; A.11/1988; A.5/1991.)

(1bis) 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 in favour of Government from the time when the liability for the duty payable as contemplated in subsection (1) 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 subsection (2):

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

(Added A.10/1978.)

(2) Any claim of the Government shall have priority over the claim of any person upon anything subject to the lien

contemplated in subsection (1) or (1bis) 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. (Amended A.10/1978.)

(3) 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.

(4) The Commissioner or any officer may detain anything referred to in subsection (1) 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 Commissioner:

Provided that the Commissioner may allow any such thing to be used under such conditions as he may impose in each case. (Amended A.10/1978.)

(5) Any reference to goods in this section shall be deemed to include a reference to the containers of such goods. *Entries, oaths, etc. made outside Swaziland of full force and effect.*

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

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

116. (1) Notwithstanding this Act, the Commissioner may in respect of any excisable goods (except ethyl alcohol) manufactured by individuals (except under item 604.00 of Schedule No. 6) for their own use, and not for sale or disposal in any manner, 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 —

(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 Swaziland 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 purpose of calculating the duty payable on such excisable goods manufactured by any such person, estimate the quantity 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

437
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) if he considers that such manufacturing does not result or is not likely to result in loss of revenue or is not, or is not likely to be, detrimental to any industry in Swaziland, to the extent stated in paragraph (a); or

(c) 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.

(2) Any estimate made by the Commissioner for the purposes of subsection (1)(a)(ii) or any decision given by him as to the basis of calculating the duty to be accepted in terms of subsection (1)(a)(iii) or as to the amount of any duty payable under this section shall be final.

(3) The manufacturer of any goods exempted from the whole or any portion of the duty under this section shall be liable for payment of the whole or such portion of such duty as the Commissioner may determine if they are sold or disposed of by such manufacturer.

(4) The Commissioner may, subject to such conditions as he may in each case impose, exempt any goods to which this section relates from any provision of Part IV, V or VIII.

117. (Repealed A.5/1991.)

Statistics.

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

(2) For the purpose of subsection (1) any person —

(a) entering any goods for import or export shall, in addition to any particulars necessary for making due entry of such goods, furnish such particulars of such goods as the Commissioner may from time to time require for the compilation of import and export statistics; or

(b) manufacturing any excisable goods shall furnish in such manner and at such times as the Commissioner may require the value for excise duty purposes in terms of section 69 of all excisable goods manufactured by him, whether or not such goods are subject to *ad valorem* duty or to a duty calculated according to a unit

of quantity, volume or other measurement, as the case may be.

(Amended A.11/1988.)

Transitional provisions applicable when Schedule amended.

119. If any Schedule is amended and the Schedule as amended provides that the Minister or the Commissioner 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 Commissioner under such Schedule in relation to such class of goods

before such amendment shall be deemed to have been imposed, prescribed or given under such Schedule as amended.

Regulations and rules.

120. (1) The Minister may by reference 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 of or supervision by officers, the rate of 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 duty airports) 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 Swaziland, the placing into or removal from any Government warehouse of goods and the removal in bond of goods, and to the

438
departure of aircraft destined for a place outside the common customs area from a place within Swaziland to another place within Swaziland;

(d) as to the control of the storage or manufacture of goods in duty warehouses (including the suitability of any buildings, plant and methods of manufacture for the purposes of this Act, the hours of conducting any 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 import, export, 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 45 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 Swaziland;

(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 for stamp labels and stamp duties and the disposal of stamp labels;

(h) as to the collection of excise and sales duties and the time, manner, terms of payment and calculation thereof;

(j) as to the collection of duties which become payable under section 58;

(k) as to the circumstances under which Licenses may be granted and the manner of issuing and renewing Licenses;

(l) 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 may be transferred from one manufacturer or owner to another or may be used, and as to the registration of manufacturers or owners so entering goods (including the 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 manufacturers or owners), the records to be kept by such manufacturers or owners and the form of the application for registration and the particulars to be furnished by such manufacturers or owners;

(m) prescribing the returns and price lists to be rendered by importers or manufacturers or owners of any class or kind of goods;

(n) prescribing the form of any License, bill of entry, certificate and any other document, register, stock book or return which he considers necessary for the effective administration of this Act;

(o) as to all matters which by this Act are required or permitted to be prescribed by regulation; and

(p) as to such other matters as are necessary or useful to be prescribed for the purposes of this Act.

(2) The Commissioner may make rules in respect of any matter in connexion 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 section 78(2).

Repeal.

121. (1) Subject to subsection (2) the following laws are hereby repealed —

(a) the Customs Proclamation (Cap. 200);

(b) the Excise Proclamation. (Cap. 201); and

(c) the Customs Duties on South African Spirits, Beer and Wines Proclamation, No. 35 of 1964.

(2) Anything done under the laws repealed by subsection (1) shall be deemed to have been done under the corresponding provision of this Act.