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SUPPLEMENT TO THE SWAZILAND GOVERNMENT GAZETTE

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THE CUSTOMS, FISCAL, EXCISE AND SALES DUTIES (AMENDMENT)
BILL, 1983

(Bill No. 7 of 1983)

(To be presented by the Minister for Finance)

MEMORANDUM IN TERMS OF THE STANDING ORDERS OF PARLIAMENT

The object of this Bill is to amend various provisions of the Customs, Fiscal, Excise and Sales Duties Act, 1971 (Act No. 21) so as to bring them into conformity with the corresponding provisions of the Customs and Excise Act, 1964, of the Republic of South Africa in accordance with Swaziland's obligations under Article 10 of the 1969 Customs Union Agreement, and in particular to amend the Act so as—

- (a) to further regulate the transfer of goods to certain warehouses, the adjustment of bills of entry which are incorrect or invalid or have been passed in error and the disposal of goods on failure to make due entry;
- (b) to provide for the determination of the time of entry for home consumption of certain imported goods;
- (c) to determine in greater detail the powers of the Secretary for Customs and Excise regarding licences required under the said Act;
- (d) to make new provision for determining the value for customs purposes of imported goods;
- (e) to effect certain textual alterations;
- (f) to further regulate rebate of duty in respect of certain goods entered for use in factories, and refunds of duty and other charges in respect of dutiable goods;
- (g) to extend the provisions of the said Act relating to the off-set of certain overpayments in respect of excise duty against amounts due in respect of such duty;
- (h) to define further the liability of agents for the fulfilment of the obligations imposed on their principals;
- (i) to delete certain provisions relating to the prohibition of the importation of certain goods; and
- (j) to provide for matters connected therewith.

D.P. MAKANZA
Attorney—General

A BILL
entitled

An Act to amend the Customs, Fiscal, Excise and Sales Duties Act, 1971.

Short title.

1. This Act may be cited as the Customs, Fiscal, Excise and Sales Duties (Amendment) Act, 1983 and shall be read as one with the Customs, Fiscal, Excise and Sales Duties Act, 1971 (Act No. 21 of 1971) hereinafter referred to as the "principal Act".

Amendment of Section 18.

2. Section 18 of the principal Act is amended —

(a) by replacing subsection (3) with the following—

“(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 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.”; and

(b) by the deletion of subsection (10).

Amendment of Section 39.

3. Section 39 of the Principal Act is amended by replacing subsection (3) with the following—

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

(a) an importer or exporter of manufactured goods shall on discovering that a bill of entry presented by him does not in every respect comply with section 38, or is invalid in terms of subsection (1) of this section, forthwith adjust that bill of entry by means of a voucher of correction or in such other manner as the Secretary may prescribe; or

(b) 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 use under rebate of duty under section 75, the Secretary may allow the importer, exporter or manufacturer concerned 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 at the time the duty was paid in all respects 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.”.

Amendment of Section 40.

4. Section 40 of the principal Act is amended —

(a) by replacing paragraph (a) of subsection (4) with the following—

“(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 Secretary 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.”; and

(b) by replacing paragraph (c) of subsection (4) with the following —

“(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 secretary 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 Secretary 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.”.

Amendment of Section 42.

5. Section 42 of the principal Act is amended by replacing subsection (2) with the following —

“(2) (a) The Secretary may at any time after the expiry of such prescribed period call upon the importer to make due entry of the goods within a time specified and if such importer fails to do so the goods shall be liable to forfeiture.

(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 subsection (3).”.

Amendment of Section 44.

6. Section 44 of the principal Act is amended by replacing subsection (2) with the following —

“(2) For the purpose 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.”.

Amendment of Section 46.

7. Section 46 of the principal Act is amended by replacing subsection (7) with the following —

“(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).”.

Amendment of Section 60.

8. Section 60 of the principal Act is amended by replacing subsection (2) with the following —

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

- (a) refuse any application for a new licence; or
- (b) refuse any application for a renewal of any licence or cancel or suspend for a specified period any licence if the applicant or the holder of such licence, 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.”.

Amendment of Section 65.

9. Section 65 of the principal Act is replaced with the following —

“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.

(4) (a) If in the opinion of the secretary the transaction value of any imported goods cannot be ascertained in terms of section 66 or has been incorrectly ascertained by the importer, the secretary 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 Secretary 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.

(7) (a) Notwithstanding subsections (1) and (4), the value for customs duty purposes of any imported goods specified in Section B of Part 2 of Schedule No. 1 (other than pearls, precious and semi-precious stones, precious metals, rolled precious metals or articles containing or manufactured of such pearls, precious and semi-precious stones, precious metals or rolled precious metals entered under Schedule No. 4) shall be the transaction value thereof plus 15 per cent of such value, plus any non-rebated customs duty payable in terms of Part 1 of Schedule No. 1 on such goods, but excluding the customs duty specified in the said Section B of Part 2 of Schedule No. 1 on such goods.

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

(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.”

Amendment of Section 66.

10. Section 66 of the principal Act is replaced with the following —

- “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 sub-stantially affect the value of the goods;
 - (b) the sale or such price of the goods is not subject to any term or condition for which a value cannot be determined;
 - (c) no part of the proceeds of any disposal, use or subsequent resale of the goods by the buyer will accrue directly or indirectly to the seller, unless an appropriate adjustment can be made in terms of section 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;
 - (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 Secretary such relationship did not influence the price paid or payable; or
 - (b) the importer proves to the satisfaction of the secretary 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 —
- (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 Secretary 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 and the cost of loading, unloading, handling, transport and insurance and associated costs incidental to delivery of the imported goods at the port or place of export in the country of exportation, ready for export to Swaziland;
 - (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 Secretary 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;
 - (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) arbitray 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) 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.”.

Amendment of Section 67.

11. Section 67 of the principal Act is replaced with the following —

- “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 Secretary, 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 licence fees in respect of the imported goods, including payments for patents, trade marks and copyright and for the right to distribute or resell the goods, due by the buyer, directly or indirectly, as a condition of sale of the goods for export to 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.
- (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.”.

Amendment of Section 70.

12. Section 70 of the principal Act is replaced with the following —

- “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.”.

Amendment of Section 74.

13. Section 74 of the principal Act is amended by replacing subsection (1) with the following —

- “(1) Subject to subsection (2), the customs value of any imported goods shall be declared by the importer on entry of such goods.”.

Amendment of Section 74 bis.

14. Section 74 bis of the principal Act is replaced with the following —

- “74 bis (1) The interpretation of sections 65, 66 and 67 shall be subject to the agreement concluded at Geneva on 12 April, 1979 and known as the Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade, the Interpretative Notes thereto and the Advisory Opinions, Commentaries and Explanatory Notes issued under the said Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade.
- (2) The Secretary shall obtain and keep in his office two copies of such Agreement, Interpretative Notes, Advisory Opinions, Commentaries and Explanatory Notes and shall effect thereto any amendment thereof which he is notified by the Secretariat of the General Agreement on Tariffs and Trade.
- (3) The provisions of subsection (1) shall not derogate from the interpretation which would but for that subsection be given to section 65, 66 or 67.”.

Amendment of Section 75.

15. Section 75 of the principal Act is amended —

- (a) by replacing paragraph (c) of subsection (2) with the following —
- “(c) such industry in a factory, mine or works which complies with such requirements in respect of quantity of material used or quantity of goods produced or manufactured as the Secretary may impose.”; and
- (b) by replacing paragraph (b) of subsection 16 with the following —
- “(b) in all other cases, within a period of six months from the date when such refund first becomes due;”.

Amendment of Section 76.

16. Section 76 of the principal Act is amended —

- (a) by replacing paragraph (d) of subsection (2) with the following—

- “(d) the goods concerned having been damaged, destroyed or irrecoverably lost in circumstances beyond his control prior to the release thereof for home consumption;”;
- (b) by replacing paragraph (f) of subsection (2) with the following —
“(f) the substitution of any bill of entry in terms of section 39 (3).”; and
- (c) by the deletion of subsection (6).

Amendment of Section 77.

17. Section 77 of the principal Act is amended by replacing subsection (1) with the following —

- “(1) Any amount due to a licensee of a customs and excise warehouse who, in terms of the regulations, is permitted to pay excise or sales duty monthly or quarterly, in respect of such duty paid by him for which he was not liable or which is refundable to him in terms of item 534.00 of Schedule No. 5 or any item of Schedule No. 6 or 7 may, within a period of one year from the date on which the 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 secretary may in each case require.”.

Amendment of Section 99.

19. Section 99 of the principal Act is amended by inserting at the end of paragraph (a) of subsection (2) to following proviso —

“Provided that such person shall cease to be so liable if he proves to the satisfaction of the Secretary 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.”.

Amendment of Section 113.

20. Section 113 of the principal Act is amended by replacing subsection (1) with the following —

“(1) The import of the following goods is hereby prohibited .

- (a) cigarettes weighing more than four and half pounds per thousand cigarettes;
- (b) goods to which a trade description or a trade mark is applied in contravention of any law relating to merchandise marks;
- (c) a proscribed publication under the Proscribed Publications Act, No. 17 of 1968;
- (d) unlawful reproductions of any work if such reproductions are prohibited from importation under any law relating to copyright;

LEGAL NOTICE NO. 64 OF 1983

THE ROAD TRAFFIC ACT, 1965

(Act No. 6 of 1965)

THE ROAD TRAFFIC (ABNORMAL LOAD AND DIMENSIONS) REGULATIONS, 1983

(Under section 137)

In exercise of the powers conferred by section 137 of the Road Traffic Act, 1965 the Minister for Works, Power and Communications hereby makes the following Regulations —

Citation.

1. These Regulations may be cited as the Road Traffic (Abnormal Load and Dimensions) Regulations, 1983.

Interpretation.

2. In these Regulations, unless the context otherwise requires—

“abnormal load” means a load which does not comply with Part IX of the Road Traffic Regulations, 1966 on account of —

- (a) exceeding the prescribed axle massloads;
- (b) the dimensions of the motor vehicle or of the load;
- (c) the load constituting a hazard to public safety and therefore requiring to be accompanied by a police escort.

Application.

3. These Regulations shall apply to the transportation of goods on a public road.

Abnormal load permits.

4. (1) A person who wishes to transport an abnormal load shall, on 14 days notice and on payment of the fee prescribed under the First and Second Schedule, apply to the Minister for an abnormal load permit.

(2) An abnormal load permit issued under sub-regulation (1), shall be produced by the bearer on demand by a police officer or a person authorised thereto by the Minister and shall be valid for the period specified therein.

(3) Where an abnormal load cannot be transported within the period stipulated in the permit, an additional fee of five Emalangeni shall be payable for the extension of the period.

(4) A person who transports an abnormal load without an abnormal load permit, shall be guilty of an offence.

Massload fee.

5. There shall be paid a massload fee in the First Schedule based on the total mass of the vehicle or combination thereof, the total number of axles, including all the axles of a non-pay-load carrying hauler and the total distance covered by the vehicle from the point of departure to its destination.

Road usage fee.

6. Where the load or the load and the vehicle is wider than three metres or longer than twenty-five metres, a road usage fee in the Second Schedule shall be paid.

Minimum fee.

7. (1) Where the massload fee or the road usage fee chargeable in terms of regulations 5 and 6 amounts to less than five Emalangeni, a minimum fee of five Emalangeni shall be payable.

(2) Where an abnormal load permit is granted for which no fee has been prescribed, a minimum fee of five Emalangeni shall be payable.

Other fees.

8. (1) Where it is necessary in order to transport an abnormal load to rebuild or strengthen or otherwise assess the capacity of or protect any bridges or other structures or to provide by-passes or drifts, the person wishing to transport the abnormal load may be required to pay for the cost of such work before an abnormal load permit is granted.

(2) Where in spite of the precautions taken under sub-regulation (1) damage occurs to or the service life of a bridge or other structure is otherwise reduced, the cost of repair thereto or a fee to cover such reduction in service life shall be recovered from the person transporting the load.

(3) Where it is necessary for the transportation of an abnormal load to make alterations to the road or to divert traffic or to undertake any special works, whether of a temporary or of a permanent nature, a fee may be charged to the person transporting the load based on the actual or estimated cost.

(4) Police escort costs shall be levied as follows —

- (a) at the rate of forty cents per police escort vehicle per kilometer travelled by the load with a minimum of twenty-five Emalangeni for the total distance travelled;
- (b) where there is a delay of thirty or more minutes caused by the person transporting an abnormal load either before or during the transportation of the load, an additional charge of twenty Emalangeni per police escort vehicle per hour or part thereof may be levied.

Offences and penalties.

9. (1) A person who transports an abnormal load without an abnormal load permit shall be guilty of an offence and shall, notwithstanding section 25 of the Interpretation Act, 1970, be liable on conviction to a fine not exceeding two hundred Emalangeni or imprisonment for six months or both.

(2) A person who fails to comply with the conditions of an abnormal load permit shall be guilty of an offence and liable on conviction to a fine not exceeding one hundred Emalangeni or imprisonment for three months or both.

Exemptions.

10. The following vehicles are hereby exempted from the provisions of these Regulations —

- (a) vehicles belonging to the Government;
- (b) vehicles belonging to contractors in respect of movement of plant on the construction site where such construction is undertaken on behalf of the Government;
- (c) vehicles and agricultural machinery belonging to bona fide farmers and used only in connection with farming activities.

G.M. MABILA
Permanent Secretary

MBABANE,
23rd August, 1983.

FIRST SCHEDULE

Massload fee for abnormally heavy vehicles (cents/km)

GROSS MASS (kg)	NO. OF AXLES										
	2	3	4	5	6	7	8	9	10	11	12
Up to 1 000	2	3	4	5	6	7	8	9	10	11	12
10 001 — 12 000	4	3	4	5	6	7	8	9	10	11	12
12 001 — 14 000	8	3	4	5	6	7	8	9	10	11	12
14 001 — 16 000	14	3	4	5	6	7	8	9	10	11	12
16 001 — 18 000	19	4	4	5	6	7	8	9	10	11	12
18 001 — 20 000	20	7	4	5	6	7	8	9	10	11	12
20 001 — 22 000	21	11	4	5	6	7	8	9	10	11	12
22 001 — 24 000	23	16	5	5	6	7	8	9	10	11	12
24 001 — 26 000	24	23	7	5	6	7	8	9	10	11	12
26 001 — 28 000	26	26	9	5	6	7	8	9	10	11	12
28 001 — 30 000	27	27	13	5	6	7	8	9	10	11	12
30 001 — 32 000	28	28	17	7	6	7	8	9	10	11	12
32 001 — 34 000	30	30	23	9	6	7	8	9	10	11	12
34 001 — 36 000	31	31	29	11	6	7	8	9	10	11	12
36 001 — 38 000	33	33	32	15	7	7	8	9	10	11	12
38 001 — 40 000	34	34	34	18	9	7	8	9	10	11	12
40 001 — 42 000	35	35	35	23	11	7	8	9	10	11	12
42 001 — 44 000	37	37	37	38	13	7	8	9	10	11	12
44 001 — 46 000	38	38	38	35	16	8	8	9	10	11	12
46 001 — 48 000	40	40	40	40	20	10	8	9	10	11	12
48 001 — 50 000	41	41	41	41	23	12	8	9	10	11	12
50 001 — 52 000	42	42	42	42	28	15	8	9	10	11	12
52 001 — 54 000	44	44	44	44	33	17	10	9	10	11	12
54 001 — 56 000	45	45	45	45	39	20	12	9	10	11	12
56 001 — 58 000	47	47	47	47	46	24	14	9	10	11	12
58 001 — 60 000	48	48	48	48	48	28	16	10	10	11	12
60 001 — 62 000	49	49	49	49	49	32	19	11	10	11	12
62 001 — 64 000	51	51	51	51	51	37	21	13	10	11	12
64 001 — 66 000	52	52	52	52	52	43	25	15	10	11	12
66 001 — 68 000	54	54	54	54	54	49	28	17	11	11	12
68 001 — 70 000	55	55	55	55	55	55	32	20	13	11	12
70 001 — 72 000	56	56	56	56	56	56	36	22	14	11	12
72 001 — 74 000	58	58	58	58	58	58	41	25	16	11	12
74 001 — 76 000	59	59	59	59	59	59	46	28	18	12	12
76 001 — 78 000	61	61	61	61	61	61	52	32	20	14	12
78 001 — 80 000	62	62	62	62	62	62	58	36	23	15	12

SECOND SCHEDULE

Fees for abnormally dimensioned vehicles cents/km).

Width (mm)	Fee
Up to 3,000	0
3,001—3,500	1
3,501—4,000	2
4,001—4,500	3
4,501—5,000	5
5,001—5,500	7
5,501—6,000	11
6,001—6,500	15
6,501—7,000	21
7,001 and above	28
Length (mm)	Fee
Up to 25,000	0
25,000—30,000	1
30,001—35,000	2
35,001—40,000	3
40,001—45,000	5
45,000—50,000	7
50,001—55,000	10
55,001—60,000	13
60,001—65,000	18
65,001—70,000	24
70,001—75,000	30
75,001—80,000	39
80,001—85,000	49
85,001—90,000	61
90,001—95,000	75
95,001—100,000	91
100,001—105,000	110
105,001—110,000	131
110,001—115,000	155
115,001—120,000	180
120,001—125,000	210
125,001—130,000	250
130,001—135,000	290
135,001—140,000	330
140,001—145,000	380
145,001—150,000	430
150,001—155,000	480
155,001 and above	500

LEGAL NOTICE NO. 65 OF 1983

THE ROAD TRAFFIC ACT, 1965

(Act No. 6 of 1965)

THE ROAD TRAFFIC (AMENDMENT) REGULATIONS, 1983

(Under section 137)

In exercise of the powers conferred by section 137 of the Road Traffic Act, 1965, the Minister for Works, Power and Communications hereby makes the following Regulations —

Citation.

1. These Regulations may be cited as the Road Traffic (Amendment) Regulations, 1983 and shall be read as one with the Road Traffic Regulations, 1966.

Amendment of regulation 101.

2. The Road Traffic Regulations 1966 are amended in regulation 101 by replacing the Table under paragraph (a) (ii) with the following Table —

TABLE

			FINES IN EMALANGENI FOR EXCESS LOAD PER AXLE					
No. of tyres on axle	Shortest distance between centre lines of adjacent tyres	Axle mass load in Kg.	Up to 400 Kg.	401—800 Kg.	801—2000 Kg.	2001—2500 Kg.	2501—3000 Kg.	Over 3000 Kg.
2	Less than 600 mm	4100	35	50	76	122	188	230
2	Between 600 & 699 mm	5000	35	50	76	122	188	230
2	Between 700 & 1199 mm	5750	35	50	76	122	188	230
2	1200 mm or more	7700	35	50	76	122	188	230
4	Less than 600 mm	8200	60	100	152	244	375	460
4	Between 600 and 699 mm	10000	60	100	152	244	375	460
4	700 mm or more	11500	60	100	152	244	375	460

Addition of regulation 104 bis.

3. The Road Traffic Regulations, 1966 are amended by adding after regulation 104 the following new regulation —

“Overloaded vehicle not to continue with journey 104 bis.

104. *bis.* (1) A person whose motor vehicle has been weighed by an officer authorised thereto by the Minister and certified as being in excess of the axle massloads specified under regulation 101, shall be guilty of an offence.

(2) In calculating an axle massload, a margin of error of five per cent per axle shall be allowed in favour of the driver or owner of a motor vehicle.

(3) A motor vehicle referred to sub-regulation (1) shall be held by the police at the driver's or owner's risk and expense and shall not be allowed to proceed until the axle massload complies with the provisions of regulation 101.”

Amendment of regulation 105 quat.

4. Regulation 105 *quat* of the Road Traffic Regulations, 1966 should be replaced with the following new regulation —

“Offences and penalties.

105. *quat.* Any person who —

- (a) contravenes any regulation under this Part other than regulation 101(a)(ii) shall be guilty of an offence and liable on conviction to a fine not exceeding one hundred Emalangenis or imprisonment for three months or both;
- (b) contravenes regulation 101(a)(ii) shall be guilty of an offence and shall, notwithstanding section 25 of the Interpretation Act, 1970, be liable on conviction to a fine prescribed under the Table or to imprisonment for six months or both.

G.M. MABILA
Permanent Secretary

MBABANE,
23rd August, 1983.