

# 1969 SOUTHERN AFRICAN CUSTOMS UNION (SACU) AGREEMENT

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## **CUSTOMS UNION AGREEMENT BETWEEN THE GOVERNMENTS OF THE REPUBLIC OF SOUTH AFRICA, THE REPUBLIC OF BOTSWANA, THE KINGDOM OF LESOTHO AND THE KINGDOM OF SWAZILAND ACCEDED TO BY THE REPUBLIC OF NAMIBIA ON 6 JULY 1990**

The text of an agreement concluded between the Governments of the Republic of South Africa, the Republic of Botswana, the Kingdom of Lesotho and the Kingdom of Swaziland, in terms of section 51 of the Customs and Excise Act, No. 91 of 1964, as amended, and the text of a memorandum of understanding recording additional understandings on which agreement has been reached among the four Governments and which shall be read with, and shall form part of the Agreement are hereby announced for general information.

The Agreement, which provides for the continuance of the customs union arrangements, which have been in operation between the four countries since 1910, was concluded on 11 December 1969, and will come into operation on 1 March 1970.

## **CUSTOMS UNION AGREEMENT BETWEEN THE GOVERNMENTS OF SOUTH AFRICA, BOTSWANA, LESOTHO AND SWAZILAND**

The Governments of the Republic of South Africa, the Republic of Botswana, the Kingdom of Lesotho and the Kingdom of Swaziland -

Being desirous of maintaining the free interchange of goods between their countries and of applying the same tariffs and trade regulations to goods imported from outside the common customs area as hereinafter defined;

Recognizing that the Customs Agreement concluded on 29 June 1910, as amended from time to time, requires modification to provide for the continuance of the customs union arrangements in the changed circumstances on a basis designed to ensure the continued economic development of the customs union area as a whole, and to ensure in particular that these arrangements encourage the development of the less advanced members of the customs union and the diversification of their economies, and afford to all parties equitable benefits arising from trade among themselves and with other countries;

Have agreed as follows:

**[Select your Option - refer below for part descriptions]**

[\[ Part 1 \]](#) [\[ Part 2 \]](#) [\[ Part 3 \]](#) [\[ Part 4 \]](#) [\[ Part 5 \]](#) [\[ Part 6 \]](#) [\[ Part 7 \]](#) [\[ Part 8 \]](#)

[ Part 1 ] : Definitions; Interchange of Domestic Products, Interchange of Goods imported from outside the common Customs Area

[ Part 2 ] : Customs and Sales Duties on Imported Goods, Imposition and Amendment of Customs Duties, Imposition of Additional Duties for Protective Purposes by Botswana, Lesotho or Swaziland

[ Part 3 ] : Specification of Industries of Major Importance to Botswana, Lesotho or

Swaziland, Excise and Sales Duties on Goods Produced in the Common Customs Area,  
Duties on Goods Produced by Specified Industries

[ Part 4 ] : Laws Relating to Customs, Excise and Sales, Import and Export Prohibitions and  
Restrictions, Arrangements for Regulation the Marketing of Agricultural Products

[ Part 5 ] : Pool of Customs, Excise, Sales and Additional Duties, The Pool of Customs,  
Excise, Sales and Additional Duties, Rail and Road Traffic

[ Part 6 ] : Freedom of Transit, Bilateral Consultations, Consultations on Zoo - Sanitary and  
Phyto-Sanitary Matters

[ Part 7 ] : Trade Agreements with Countries Outside the Common Customs Area, General  
Consultations, Termination of 1910 Agreement

[ Part 8 ] : Memorandum and Amendments

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## PART 1

### ARTICLE 1 DEFINITIONS

In this Agreement, unless inconsistent with the context -

**"additional duties"** - means duties imposed in terms of Article 6 of this Agreement;

**"Botswana"** - means the area of the Republic of Botswana;

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

**"customs duties", "excise duties" and "sales duties"** - mean customs duties, excise duties  
and sales duties as defined in the customs and excise legislation in force in the countries of  
the contracting parties;

**"financial year"** - means the period of twelve months commencing on the first of April;

**"Lesotho"** - means the area of the Kingdom of Lesotho;

**"South Africa"** - means the area in respect of which the Government of the Republic of  
South Africa is a contracting party to the General Agreement on Tariffs and Trade;

**"Swaziland"** - means the area of the Kingdom of Swaziland;

and cognate expressions shall be construed accordingly.

### ARTICLE 2 INTERCHANGE OF DOMESTIC PRODUCTS

Except as elsewhere provided herein, a contracting party shall not apply quantitative  
restrictions or impose any duties on goods grown, produced or manufactured in the common  
customs area on importation of such goods from the area of any other contracting party.

### ARTICLE 3 INTERCHANGE OF GOODS IMPORTED FROM OUTSIDE THE COMMON CUSTOMS AREA

Except as elsewhere provided herein a contracting party shall not impose any duties on goods  
which were imported from outside the common customs area on importation of such goods  
from the area of any other contracting party.

## PART 2

### **ARTICLE 4 CUSTOMS AND SALES DUTIES ON IMPORTED GOODS**

(1) Except as elsewhere provided herein, the customs tariff and duties and the sales duties as in force in South Africa from time to time shall be applied to goods imported into the common customs area from outside such area.

(2) Any rebates, refunds or drawbacks of customs duty or sales duty on imported goods granted by the Government of Botswana, Lesotho or Swaziland in respect of such goods for use in or used in any industry shall be identical to any such rebates, refunds or drawbacks in force in South Africa in respect of such goods for use in or used in a corresponding industry in South Africa.

(3) Subject to paragraph (2) and (4), all other rebates, refunds or drawbacks of customs duty or sales duty on imported goods granted by the Government of Botswana, Lesotho or Swaziland in respect of such goods shall be similar to any such rebates, refunds or drawbacks in force in South Africa.

(4) (a) A Contracting party may grant a full rebate of the customs and sales duties in respect of goods imported into its area:

- (i) for the relief of distress of persons in cases of famine and other national disaster;
- (ii) under any technical assistance agreement; and
- (iii) in terms of an obligation under any multilateral international agreement to which such contracting party is or becomes a party.

(b) A contracting party may, with the prior approval of the other contracting parties, grant full rebate of the customs and sales duties in respect of goods imported into its area for such other purposes as may be agreed upon by the parties to this Agreement from time to time.

### **ARTICLE 5 IMPOSITION AND AMENDMENT OF CUSTOMS DUTIES**

(1) Subject to the provisions of paragraph (2) of this Article, the Government of South Africa shall give the other contracting parties adequate opportunity for consultations before imposing, amending or abrogating any customs duty with respect to goods imported into the common customs area from outside such area.

(2) Paragraph (1) of this Article shall not apply if the imposition of, or the removal of, or an amendment to any customs duty either forms part of the measures of the Government of South Africa designed primarily for fiscal purposes, or is resorted to as interim measure designed to assist a local industry in the common customs area pending the completion of an investigation by the appropriate South African authorities.

### **ARTICLE 6 IMPOSITION OF ADDITIONAL DUTIES FOR PROTECTIVE PURPOSES BY BOTSWANA, LESOTHO OR SWAZILAND**

(1) The Government of Botswana, Lesotho or Swaziland may levy additional duties on goods imported into its area to enable new industries in its area to meet competition from other producers or manufacturers in the common customs area, provided that such duties are levied equally on goods grown, produced or manufactured in other parts of the common customs area and like products imported from outside that area, irrespective of whether the latter

goods are imported directly or from the area of any other party to this Agreement and subject to payment of the customs duties applicable to such goods on importation into the common customs area.

(2) Before any such duties are imposed or amended the Government concerned shall consult the other contracting parties in terms of Article 20, and such parties may make recommendations thereon. If the recommendations of any such parties are not acted upon, the Government concerned shall inform the other contracting parties of the reason for its decision.

(3) Protection which is afforded to a new industry in terms of this Article shall not be given for a period exceeding eight years without the prior consent of the contracting parties.

(4) In this Article, "new industry" in relation to any contracting party means an industry which has been established in the area of that party for not more than eight years.

## **PART 3**

### **ARTICLE 7**

#### **SPECIFICATION OF INDUSTRIES OF MAJOR IMPORTANCE TO BOTSWANA, LESOTHO OF SWAZILAND**

(1) The Government of Botswana, Lesotho or Swaziland may with the concurrence of the other contracting parties -

(a) specify industries which are or are likely to be of major importance to its economy; and  
(b) specify period in relation to such industries for the purposes of paragraph (2) of this Article.

(2) The customs duties applicable to goods, imported from outside the common customs area and competing with those of any industry specified in terms of this Article, shall not for the period specified in terms of paragraph (1) (b) above in relation to that industry be decreased or abrogated without the consent of the Government specifying the industry; and during such period of the Government of South Africa shall with due regard to the interests of the other contracting parties and to the criteria usually applied by it in the consideration of representations for tariff assistance and relief, give sympathetic consideration to proposals by any other contracting party to increase any customs duty applicable to such goods or to afford relief of customs duty applicable to any material, used directly in the production or manufacture thereof and to requirements for such industries, where the Government concerned regards such increase or relief necessary to assist the establishment of such industry or to prevent its contraction.

### **ARTICLE 8**

#### **EXCISE AND SALES DUTIES ON GOODS PRODUCED IN THE COMMON CUSTOMS AREA**

(1) The excise duties and the sales duties as in force in South Africa from time to time shall be applied to goods grown, produced or manufactured in the common customs area.

(2) Any rebates, refunds or drawbacks of excise duty or sales duty granted by the Government of Botswana, Lesotho or Swaziland in respect of goods grown, produced or manufactured in the common customs area, for use in or used in any industry shall be identical to any such rebates, refunds or drawbacks in force in South Africa in respect of such goods for use in or used in a corresponding industry in South Africa.

(3) All other rebates, refunds or draw-backs of excise duty or sales duty granted by the

Government of Botswana, Lesotho or Swaziland in respect of goods grown, produced or manufactured in the common customs area shall be similar to any such rebates, refunds or drawbacks in force in South Africa.

**ARTICLE 9**  
**DUTIES ON GOODS PRODUCED BY SPECIFIED INDUSTRIES**

(1) If goods grown, produced or manufactured in Botswana, Lesotho or Swaziland, by an industry specified in pursuance of Article 7 of this Agreement, are subject to excise duties, the margin of protection afforded by the customs duty applicable to such goods shall be maintained for the period specified under that Article and may be changed only with the agreement of the Government specifying the industry.

(2) During the specified period the Government of South Africa shall with due regard to the interests of the other contracting parties and to the criteria usually applied by it in the consideration of representations for tariff assistance and relief, give sympathetic consideration to proposals by such a Government to reduce or abrogate any excise duty applicable to such goods where such a Government regards such duty as injurious to that industry.

**PART 5**

**ARTICLE 10**  
**LAWS RELATING TO CUSTOMS, EXCISE AND SALES DUTIES**

Subject to the provisions of Articles 4 and 8, the Governments of Botswana, Lesotho and Swaziland shall apply laws relating to customs, excise and sales duty similar to such laws in force in South Africa from time to time.

**ARTICLE 11**  
**IMPORT AND EXPORT PROHIBITIONS AND RESTRICTIONS**

(1) The contracting parties recognise the right of each party to prohibit or restrict the importation into or exportation from its area of any goods for economic, social, cultural or other reasons.

(2) Except in so far as may be agreed upon between the parties from time to time the provisions of this Agreement shall not be deemed to suspend or supersede the provisions of any law within any part of the common customs area which prohibits or restricts the importation or exportation of goods.

(3) The provisions of paragraphs (1) and (2) shall not be so construed as to permit the prohibition or restriction of the importation by any contracting party into its area of goods grown, produced or manufactured in other areas of the common customs area for the purpose of protecting its own industries producing such goods.

(4) A contracting party shall upon request by any other contracting party take such steps as may be agreed upon between the parties concerned (including action to make such steps legally enforceable within its area) to prevent the exportation or unrestricted exportation from its area to the area of such other contracting party of such prohibited or restricted goods imported from outside the common customs area or grown, produced or manufactured in its area or to prevent the exportation or unrestricted exportation from its area to a country outside the common customs area of such prohibited or restricted goods imported from the

area of such other contracting party.

(5) The contracting parties shall co-operate in the application of import restrictions with a view to ensuring that the economic objectives of any import control legislation in any country in the common customs area are attained.

## **ARTICLE 12 ARRANGEMENTS FOR REGULATING THE MARKETING OF AGRICULTURAL PRODUCTS**

(1) Whenever an arrangement for regulating the marketing of an agricultural commodity is in operation in any area of the common customs area, such arrangement shall be applied on an equitable basis to similar commodities produced in any other area of the common customs area and marketed in the area where the marketing arrangement is in operation, and the contracting parties concerned, cognisant of the advantages deriving from the effective operation of these arrangements, shall co-operate in such arrangements on a basis to be mutually agreed upon.

(2) The contracting parties agree to consult from time to time on matters affecting production and consumption of agricultural commodities and the improvement and extension of marketing arrangements, for such commodities.

## **PART 5**

### **ARTICLE 13 POOL OF CUSTOMS, EXCISE, SALES AND ADDITIONAL DUTIES**

Any customs, excise, sales and additional duties collected in the common customs area shall be paid quarterly into the Consolidated Revenue Fund of South Africa.

### **ARTICLE 14 THE POOL OF CUSTOMS, EXCISE, SALES AND ADDITIONAL DUTIES**

(1) The common revenue pool of the common customs area shall consist of the gross amounts of customs, excise, sales and additional duties leviable and collected on goods imported into or produced in the common customs area, and any other duties collected in terms of Article 19 (3), but shall not include any duties rebated or refunded under the provisions of any law relating to customs, excise and sales duty (including any rebate or refund specifically provided for in any such law but which is paid from voted funds and not deducted from customs, excise and sales duty revenue).

(2) The contracting parties agree that in determining the share of Botswana, Lesotho or Swaziland of the common revenue pool in respect of any financial year the following formula shall be used:

The cost-insurance-freight value at border of goods from all sources imported during the financial year into the area of each party, plus the value of excisable and sales duty goods produced and consumed in such area during such year, plus the excise and sales duties paid thereon during such year shall be expressed as a percentage of the cost-insurance-freight value of the goods imported during the financial year into the common customs area, plus the customs and sales duties paid thereon during such year, plus the value of excisable and sales duty goods, produced and consumed during such year in the common customs area, plus the excise and sales duties paid thereon during such year. The amount calculated by the

application to the common revenue pool of the percentage so obtained, enhanced by a multiplying factor of 1-42, shall represent the share of each of the three countries in respect of that financial year.

(3) There shall be paid from the Consolidated Revenue Fund of South Africa to the Governments of Botswana, Lesotho and Swaziland, in respect of their share of the common revenue pool, amounts calculated on the following basis:

(a) in respect of the financial year 1972/73 and each financial year thereafter:

(i) an amount resulting from the application to the formula referred to in paragraph (2) above, of the relevant data for the financial year two years before the financial year in question; plus or minus

(ii) a first adjustment in respect of the financial year in question equal to the difference between the total amount actually received by each country in respect of that year and the amount due to each country in terms of the formula referred to in paragraph (2) above, recalculated on the basis of the latest available data for that particular financial year; plus or minus

(iii) a final adjustment in respect of the financial year three years before the financial year in question equal to the difference between the total amount actually received by each country in respect of that year and the amount due to each country in terms of the formula referred to in paragraph (2) above, recalculated on the basis of the final data for that particular financial year;

(b) in respect of the financial year 1971/72:

(i) an amount resulting from the application to the formula referred to in paragraph (2) above of the relevant data for the financial year 1969/70; plus or minus

(ii) an amount in respect of the financial year 1969/70 equal to the difference between the total amount actually received by each country in respect of that year and the amount due to each country in terms of the formula referred to in paragraph (2) above, recalculated on the basis of the latest available data for the financial year 1969/70; (

(c) in respect of the financial year 1970/71; an amount resulting from the application to the formula referred to in paragraph (2) above, of the relevant data for the financial year 1968/69 except that in the case of import values 1968 data shall be used and that agreed estimates of the values of sales duty goods produced and consumed in the financial year 1969/70 and the sales duties collected thereon shall be included;

(d) in respect of the financial year 1969/0; an amount equal to the difference between the total amount actually received by each country in respect of that year and the amount due to each country in terms of the formula referred to in paragraph (2) above, calculated on the basis of the relevant data for the financial year 1968/69, except that in the case of import values 1968 data shall be used, and that no imputed allowances for the values of sales duty goods produced and consumed and the sales duties thereon shall be included.

(4) The amounts referred to in subparagraphs (a) and (b) of paragraph (3) above shall be determined and agreed upon between the contracting parties approximately six months before the beginning of the financial year in question.

(5) The amounts referred to in subparagraph (a), (b) and (c) of paragraph (3) above shall be remitted in equal quarterly installments during the financial year in question.

(6) The payment referred to in subparagraph (d) of paragraph (3) above shall be made before the end of the financial year 1969/70.

(7) The Government of South Africa undertakes to consult the Governments of Botswana,



Lesotho and Swaziland prior to the introduction of changes in the fiscal structure of South Africa where these are expected to have a substantial effect on the structure of taxation measures relating to the common revenue pool.

(8) This Article shall be deemed to have come into operation on the first day of April, 1969, and to have been substituted from that date for the corresponding provisions of the Customs Agreement concluded on 29 June 1910.

## **ARTICLE 15 RAIL AND ROAD TRAFFIC**

(1) The contracting parties undertake that the transit through their areas of goods imported from outside the common customs area to or exported to a country outside the common customs area from the areas of the other contracting parties shall not be subject to transport rate discrimination.

(2) Each contracting party shall ensure that the tariffs applicable within its area to the conveyance of goods by publicly-owned transport to and from the other areas of the common customs area shall be no less favourable than the tariffs applicable to the carriage of similar goods within its area.

(3) Each contracting party undertakes to extend to the motor transport operators registered in the areas of the other contracting parties treatment no less favourable than that accorded to motor transport operators registered within its own area for the conveyance of goods or passengers for reward or in the course of any trade or business.

## **PART 6**

### **ARTICLE 16 FREEDOM OF TRANSIT**

A contracting party shall afford freedom of transit without discrimination to goods consigned to and from the areas of the other contracting parties: Provided, however, that a contracting party may impose such conditions upon such transit as it deems necessary to protect its legitimate interests in respect of goods of a kind of which the importation into its area is prohibited on grounds of public morals, public health or security, or as a precaution against animal or plant diseases, parasites and insects, or in pursuance of the provisions of a multilateral international convention to which it is a party: And provided, further, that a contracting party shall not be precluded from refusing transit, or from taking any measures deemed necessary by it in connection with such transit, for the purpose of protecting its security interests.

### **ARTICLE 17 BILATERAL CONSULTATIONS**

Notwithstanding the provisions of Article 2, if, as a result of unforeseen developments, any product is being introduced into the area of one of the contracting parties from the area of another contracting party in such increased quantities and under in such increased quantities and under such conditions as to cause or threaten serious injury to producers or manufacturers of like or directly competitive products in the area into which such goods are so introduced, the Government of the latter area shall have the right to require the other party to consult at



the earliest possible opportunity and to co-operate with it in finding as soon as possible a mutually acceptable solution.

## **ARTICLE 18**

### **CONSULTATIONS ON ZOO - SANITARY AND PHYTO-SANITARY MATTERS**

Subject to the provisions of Article 11, the contracting parties recognise the importance of measures prescribing zoo-sanitary and phyto-sanitary requirements aimed at the prevention of the spread of animal and plant diseases, parasites and insects and agree to consult from time to time to achieve such aim in the common customs area with due regard to the need to facilitate the flow of trade in products affected by such measures.

## **PART 7**

### **ARTICLE 19**

#### **TRADE AGREEMENTS WITH COUNTRIES OUTSIDE THE COMMON CUSTOMS AREA**

(1) A contracting party shall not, without the prior concurrence of the other contracting parties and subject to such conditions as may be agreed upon by the contracting parties, enter separately into or amend a trade agreement with a country outside the common customs area in terms of which concessions on the duties in force in the common customs area are granted to that country.

(2) A contracting party may enter separately into or amend a trade agreement, other than a trade agreement mentioned in paragraph (1), with a country outside the common customs area, provided the terms of such an agreement or amendment do not conflict in any way with the provisions of this Agreement. Such contracting party shall, as soon as possible after the conclusion of the agreement or amendment, supply each of the other contracting parties with a copy of the agreement or amendment.

(3) (a) A contracting party, having an agreement with a country outside the common customs area which provides for the importation into its area from such country of goods at lower rates of duty than those applicable to like goods in the common customs area, shall collect the duties payable on importation into its area.

(b) Unless the contracting parties have otherwise agreed in respect of any such agreement, where such goods are to be removed from the area of such contracting party to the area of any of the other contracting parties the duties applicable in the common customs area shall become due and payable and the contracting party from whose area such goods are to be removed shall, prior to such removal, collect the differences between the lower duties paid and the duties applicable. If proof of payment of the differences in duty cannot be furnished in the area to which the goods are subsequently removed, the goods shall be liable to forfeiture.

(c) Any duties and differences in duties thus collected shall be paid into the Consolidated Revenue Fund of South Africa. Any payments due by that contracting party under such agreement with a country outside the common customs area, shall be paid on its behalf from the Consolidated Revenue Fund.

### **ARTICLE 20**

#### **GENERAL CONSULTATIONS**

(1) A Customs Union Commission shall be established, comprising representatives of all the contracting parties, for the purpose of discussing any matter arising out of this Agreement.

(2) The Commission shall meet once a year. A contracting party may, however, at any time request a meeting of the Commission for the purpose of discussing a matter connected with this Agreement and the Commission shall meet as soon as possible thereafter.

(3) Where contracting parties have consulted on a matter which may affect the rights of the other parties under this Agreement and arising under Article 12, 17 of 18 or on a matter arising under paragraph (5) of this Article, a report on the results of these consultations shall be furnished to the Commission before its next meeting.

(4) Where a matter has been referred to the Commission for discussion, the Commission shall use its best endeavours to find a mutually agreeable solution to the particular problem or difficulty and the representatives shall report to their respective Governments for consideration of any remedial measures.

(5) Any difficulty or problem arising out of this Agreement which does not directly affect the interests of all the contracting parties may, with the concurrence of all the contracting parties, form the subject of direct consultation between the parties affected with a view to seeking a solution thereof.

## **ARTICLE 21 TERMINATION OF 1910 AGREEMENT**

The Customs Agreement concluded on 29 June 1910, as amended from time to time, shall terminate on the entry into force of this Agreement.

## **ARTICLE 22 ENTRY INTO FORCE OF, AND WITH-DRAWAL FROM AGREEMENT**

This Agreement shall, subject to the provisions of Article 14 (8) enter into force on 1 March 1970.

If a contracting party wishes to withdraw from this Agreement that party shall give notice thereof to all the other contracting parties.

If after consultation the contracting parties fail to agree on the date and conditions of the withdrawal this Agreement shall remain in force until twelve months from the date of such notice and shall then cease to apply to the withdrawing party.

In witness whereof the undersigned, being duly authorised thereto by their respective Governments, have signed this agreement.

Done at Pretoria, in quadruplicate, in Afrikaans and English texts, each of which texts shall be of equal authenticity, this eleventh day of December, 1969.

For the Government of the Republic of South Africa: J.F.W. HAAK.

For the Government of the Republic of Botswana: J.G. HASKINS.

For the Government of the Kingdom of Lesotho: P.N. PEETE.

For the Government of the Kingdom of Swaziland: L. LOVELL.

## **PART 8**

### **MEMORANDUM OF UNDERSTANDING**

With reference to the Customs Union Agreement dated 11 December 1969, between the Governments of South Africa, Botswana, Lesotho and Swaziland, it is desired to place on

record the following additional understandings on which agreement has been reached among the four Governments and which shall be read with, and shall form part of the Agreement:

**AD ARTICLES 3, 4, 8 AND 10**  
**ADMINISTRATION OF CUSTOMS, EXCISE AND SALES DUTY PROVISIONS**

(1) The Governments of Botswana, Lesotho and Swaziland undertake to establish customs and excise administrations capable of administering the terms of the Agreement and any arrangements thereunder, customs and excise storage and manufacturing warehouse provisions, excise provisions and the collection of excise duties and sales duty provisions and the collection of sales duties.

(2) The Contracting parties agree that: (a) goods (including goods for warehousing) destined for Botswana, Lesotho or Swaziland and imported through any place of entry in South Africa (including Lourenco Marques and Jan Smuts Airport) shall be entered for customs, excise or sales duty purposes through South African customs and for that purpose the laws relating to customs, excise and sales duty of South Africa will apply to such goods as if such goods were destined for South Africa: Provided that if the laws relating to customs, excise and sales duty of Botswana, Lesotho or Swaziland as the case may be, should, in relation to such goods, differ in respect of any restriction, prohibition, tariff of rebate under the Agreement, the relative law of the country of destination of such goods shall in that respect be deemed to be the law relating to customs, excise or sales duty, as the case may be, of South Africa in relation to such goods;

(b) goods destined for South Africa and imported other than by road through any place in Botswana, Lesotho or Swaziland shall be entered for customs, excise or sales duty purposes at the place of entry in South Africa. Goods so destined and imported by road shall be so entered at the place of entry into the common customs area;

(c) goods destined for Botswana, Lesotho or Swaziland and imported directly into the country in question shall, subject to the provisions of subparagraph (a), be entered for customs, excise or sales duty purposes in that country;

(d) goods for warehousing in any customs and excise storage warehouse established in the area of Botswana, Lesotho or Swaziland shall be cleared for warehousing at places of entry in South Africa for removal to such warehouse without further entry, but any clearance ex such warehouse of such goods and collection of any customs, excise or sales duty thereon shall be the responsibility of the country in whose area the warehouse is situated;

(e) the administration of any customs and excise manufacturing warehouse (including the collection of any customs, excise or sales duty on any goods manufactured in such warehouse) in Botswana, Lesotho and Swaziland shall be the responsibility of the country in whose area the warehouse is situated; and

(f) provisions relating to drawbacks of duty on goods used in the manufacture of exported goods shall be administered by the Government in whose area the exporter is situated, but the Government of South Africa shall accept responsibility for the processing of claims for drawback of any duty emanating from exporters in Botswana, Lesotho or Swaziland in respect of goods exported from the common customs area and payment of such claims shall be effected from the Consolidated Revenue Fund of South Africa.

Done at Pretoria, in quadruplicate, in Afrikaans and English texts, each of which texts shall be of equal authenticity, this eleventh day of December, 1969.

For the Government of the Republic of South Africa: J.F.W. HAAK.

For the Government of the Republic of Botswana: J.G. HASKINS.

For the Government of the Kingdom of Lesotho: P.N. PEETE.

For the Government of the Kingdom of Swaziland: L. LOVELL

**AMENDMENTS  
MEMORANDUM OF UNDERSTANDING**

With reference to the Memorandum of Understanding which is to be read with and forms part of the Customs Union Agreement dated 11 December 1969, between the Government of Botswana, Lesotho, South Africa and Swaziland, it is desired to place on record that agreement has been reached among the four Governments to amend the aforementioned Memorandum of Understanding by the addition to paragraph (2) thereof of the following new subparagraph (g):

"(g) Notwithstanding the provisions of subparagraph (a) goods destined for Botswana, Lesotho or Swaziland imported by air may be removed in bond for entry at any place of entry in Botswana, Lesotho or Swaziland."

Done in quadruplicate in the Afrikaans and English languages, both texts being of equal authenticity.

For the Government of the Kingdom of Swaziland: Mbabane, 19 November 1973.

For the Government of the Kingdom of Botswana: Gaborone, 23 October 1973.

For the Government of the Kingdom of Lesotho: Maseru, 31 October 1973.

For the Government of the Republic of South Africa: Pretoria, 19 September 1973.

**AGREEMENT AMENDING THE CUSTOMS UNION AGREEMENT OF 11  
DECEMBER 1969 BETWEEN THE GOVERNMENTS OF SOUTH AFRICA,  
SWAZILAND, BOTSWANA AND LESOTHO**

With reference to the Customs Union Agreement dated 11 December 1969, between the Governments of South Africa, Swaziland, Botswana and Lesotho, it is desired to place on record that agreement has been reached among the four Governments to amend the aforementioned Agreement as follows:

**ARTICLE 4**

**Heading: CUSTOMS AND SALES DUTIES ON IMPORTED GOODS AND EXCISE  
AND SALES DUTIES ON MOTOR VEHICLES MANUFACTURED IN THE  
COMMON CUSTOMS AREA.**

Paragraph 4 (a) A contracting party may grant a full rebate of the customs and sales duties in respect of goods imported into its area and a full rebate of the excise and sales duties on motor vehicles manufactured in the common customs area, required: -

- (i) for the relief of distress of persons in cases of famine and other national disaster;
- (ii) under any technical assistance agreement; and
- (iii) in terms of an obligation under any multilateral international agreement to which such contracting party is or becomes a party.

DONE in quadruplicate, in English and Afrikaans texts, each of which shall be of equal authenticity.

For the Government of the Republic of South Africa: Pretoria, 27 October 1975.

For the Government of the Kingdom of Swaziland: Mbabane, 27 November 1975.

For the Government of the Republic of Botswana: Gaborone, 10 November 1975.

For the Government of the Kingdom of Lesotho: Maseru, 18 December 1975.

**AGREEMENT AMENDING THE CUSTOMS UNION AGREEMENT OF 11  
DECEMBER 1969**

With reference to the Customs Union Agreement of 11 December 1969 between the Governments of South Africa, Botswana, Lesotho and Swaziland, it is desired to place on record that agreement has been reached among the four Governments to amend Article 14 of the said Agreement by inserting after Article 14 (3) the following:

(3) (a) Should in respect of the financial year 1976/77 and for subsequent years, the shares of Botswana, Lesotho and Swaziland of the common revenue pool calculated in terms of paragraph (3) (a) (i) above in respect of the relevant data for the financial year two years before (that is, for 1974/75 and subsequent years) expressed as a percentage of the cost, insurance, freight value at border of goods from all sources including all duties paid or payable thereon imported during the financial year into the area of each party (A), plus the value of excisable and sales duty goods produced and consumed in such area during such year (B), plus the excise and sales duties paid thereon during such year (C), be less than 20% then an additional amount to be termed the stabilization factor, equal to 50% of the difference between the amount calculated in terms of the formula referred to in paragraph (5) (a) (i) on the relevant data for the financial year two years before and 20% of the factors A - B - C referred to in this paragraph shall be paid to Botswana, Lesotho and Swaziland from the common revenue pool in addition to the amount calculated under paragraph (3) (a) (i) above, on the understanding that the amount calculated under paragraph (3) (a) (i) together with the stabilization factor in respect of the relevant data two years before shall not be less than 17% of the factors A - B - C referred to in this paragraph.

(b) Should in respect of the financial year 1976/77 and for subsequent years, the shares of Botswana, Lesotho and Swaziland of the common revenue pool calculated in terms of paragraph (3) (a) (i) above in respect of the relevant data for the financial year two years before (that is, for 1974/75 and subsequent years) expressed as a percentage of the cost, insurance, freight value at border of goods from all sources including all duties paid or payable thereon imported during the financial year into the area of each party (A), plus the value of excisable and sales duty goods produced and consumed in such area during such year (B), plus the excise and sales duties paid thereon during such year (C) be more than 20% then an amount equal to 50% of the difference between the amount calculated in terms of the formula referred to in paragraph (3) (a) (i) on the relevant data for the financial year two years before and 20% of the factors A - B - C referred to in this paragraph shall be deducted from the amount calculated under paragraph (3) (a) (i) above, on the understanding that the amount calculated under paragraph (3) (a) (i) together with the stabilization factor in respect of the relevant data two years before shall not be more than 23% of the factors A - B - C referred to in this paragraph.

(c) In respect of the financial year 1977/78 and for subsequent years the stabilization factor calculated on the basis of subparagraphs (a) and (b) shall be adjusted in respect of the final revised data for the financial year three years before the financial year in question and the relevant difference shall, as the case may be, be added to or subtracted from the payment due in respect of the financial year in question.

Done in quadruplicate, in the English and Afrikaans languages, both texts being of equal authenticity.

For the government of the Republic of South Africa PRETORIA, 3 July 1978.

For the government of the Republic of Botswana GABORONE, 2 February 1978.

For the government of the Kingdom of Lesotho MASERU, 30 March 1978

For the government of the Kingdom of Swaziland MBABANE 11 May 1978

## **MEMORANDUM OF UNDERSTANDING**

With reference to the Memorandum of Understanding which is to be read with and forms part of the Customs Union Agreement dated 11 December 1969, between the Governments of South Africa, Swaziland, Botswana and Lesotho, it is desired to place on record that agreement has been reached among the four Governments to amend the aforementioned Memorandum of Understanding by the addition to paragraph (2) thereof of the following new subparagraph (h):

"(h) Notwithstanding the provisions of subparagraph (a), goods consisting of imported parcel post destined for Botswana, Lesotho or Swaziland may be entered for customs, excise or sales duty purposes at any place of entry in those countries provided such goods have remained at all times under the control of the postal authorities concerned."

DONE in quadruplicate in the Afrikaans and English languages, both texts being of equal authenticity.

For the Government of the Republic of South Africa: Pretoria, 25 November 1983.

For the Government of the Kingdom of Swaziland: Mbabane, 29 July 1983.

For the Government of the Republic of Botswana: Gaborone, 18 April 1983.

For the Government of the Kingdom of Lesotho: Maseru, 18 September 1983.

**MEMORANDUM OF UNDERSTANDING AMENDING THE MEMORANDUM OF UNDERSTANDING, DATED 11 DECEMBER 1969, THAT MUST BE READ WITH THE CUSTOMS UNION AGREEMENT DATED 11 DECEMBER 1969.**

With reference to the Memorandum of Understanding dated 11 December 1969 which is to be read with and forms part of the Customs Union Agreement dated 11 December 1969, between the Governments of Botswana, Lesotho, South Africa and Swaziland, it is desired to place on record that agreement has been reached among the four Governments to amend the aforementioned Memorandum of Understanding by the addition to paragraph (2) thereof of the following new subparagraph (i):

"(i) Notwithstanding the provisions of paragraph (a), should any goods -

(i) which are destined for Botswana, Lesotho, South Africa and Swaziland; and

(ii) which, for a period exceeding the period specified in the applicable laws relating to customs, remain unentered in any one of the said countries, excluding the country for which such goods are destined, be received in the State warehouse of such country, the customs authorities of the country for which such goods are destined shall be notified of such receipt and shall be requested to arrange for the removal in bond of such goods for entry at any place of entry in Botswana, Lesotho, South Africa or Swaziland. If at the expiration of a period of 14 days as from the date of such notification a written advice to the effect that the goods in question will be removed in bond has not been received from the country for which the goods are destined, the country in which the goods are destined, the country in which the goods so remain unentered shall dispose thereof and the proceeds shall be dealt with in accordance with the provisions of the applicable laws relating to customs and of Article 13 of the Agreement. It is also agreed and accepted that the authorities of the country for which such goods are destined will assume full and unconditional liability in respect of all claims emanating from the subsequent sale of unentered goods so removed in bond."

DONE in quadruplicate, in English and Afrikaans texts, each of which texts shall be of equal authenticity.

**MEMORANDUM OF UNDERSTANDING**

With reference to the Memorandum of Understanding which is to be read with and forms part of the Customs Union Agreement dated 11 December 1969, between the Governments of

Botswana, Lesotho, South Africa and Swaziland, it is desired to place on record that agreement has been reached among the four Governments to amend the aforementioned Memorandum of Understanding by the addition to paragraph (2) thereof of the following subparagraph:

"(j) Notwithstanding the provisions of subparagraph (a), goods imported in containers manifested for Botswana, Lesotho or Swaziland and destined for importers in those countries or other countries outside the common customs area, may be removed at places of landing in South Africa to container terminals or depots appointed or designated in those countries in accordance with applicable laws relating to customs and excise, and shall be entered for customs, excise and sales duty purposes."

The said amendment shall enter into force on such date as this Memorandum of Understanding shall have been signed on behalf of all four Governments.

DONE in quadruplicate in the English and Afrikaans languages, both texts being of equal authenticity.

For the Government of the Republic of Botswana: Gaborone 9 October 1989.

For the Government of the Kingdom of Lesotho: Maseru, 16 October 1988.

For the Government of the Republic of South Africa: Pretoria, 9 April 1990.

For the Government of the Kingdom of Swaziland: Mbabane, 5 December 1989.

**AGREEMENT AMENDING THE CUSTOMS UNION AGREEMENT BETWEEN  
THE GOVERNMENT OF THE REPUBLIC OF BOTSWANA, THE GOVERNMENT  
OF THE KINGDOM OF LESOTHO, THE GOVERNMENT OF THE REPUBLIC OF  
SOUTH AFRICA AND THE GOVERNMENT OF THE KINGDOM OF SWAZILAND  
OF 11 DECEMBER 1969.**

With reference to the Customs Union Agreement between the Government of the Republic of Botswana, the Government of the Kingdom of Lesotho, the Government of the Republic of South Africa and the Government of the Kingdom of Swaziland dated 11 December 1969, as amended from time to time, it is desired to place on record that agreement has been reached among the four Governments to amend the aforementioned Agreement as follows:

**ARTICLE 1**

The following new Article is inserted immediately after Article 22 of the Customs Union Agreement:

**ARTICLE 23  
ADMISSION OF NEW CONTRACTING PARTIES**

- (1) The contracting parties may, on application by a State not a party to this Agreement, by unanimous decision admit such State as a contracting party to this Agreement.
- (2) An application as contemplated in paragraph (1) of this Article shall be in the form of a diplomatic note addressed to each of the contracting parties.
- (3) Accession to this Agreement shall be effected by the deposit of an instrument of accession with each of the contracting parties.
- (4) On accession, the common customs area shall be extended to include the area of such acceding State, and the rights and obligations applicable to such acceding State under this Agreement shall not be more or less favourable than those applicable to the Governments of Botswana, Lesotho and Swaziland."



## **ARTICLE 2**

This agreement shall enter into force on the date of its signature and shall be read with and form part of the Customs Union Agreement.

IN WITNESS WHEREOF, the undersigned, being duly authorized by their respective Governments, have signed this Agreement.

DONE at Gaborone in quadruplicate, in the English Language, on 30 March 1990.

DONE at Maseru in quadruplicate, in the English Language, on 2 April 1990.

DONE at Pretoria in quadruplicate, in the English Language, on 9 April 1990.

DONE at Mbabane in quadruplicate, in the English Language, on 29 March 1990