



REPUBLIC OF BOTSWANA

AGREEMENT

BETWEEN

THE REPUBLIC OF BOTSWANA

AND

THE REPUBLIC OF ZIMBABWE

AMENDING

THE CUSTOMS AGREEMENT

BETWEEN

THE FEDERATION OF RHODESIA AND NYASALAND

AND

BASUTOLAND, BECHUANALAND PROTECTORATE AND SWAZILAND



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WHEREAS the Contracting Parties recognize that it is desirable that trade between them should be as free and uninterrupted as possible for the purpose of expanding trade and employment creation in their territories;

AND WHEREAS the Contracting Parties are desirous of continuing and improving the traditional trading relations between them on the basis of equality and mutual benefit;

AND WHEREAS the Contracting Parties having recognized that the Customs Agreement entered into in 1956 as amended in 1988, is deficient in several respects, which have caused it to be amended as herein provided.

NOW THEREFORE HAVE AGREED AS FOLLOWS:

ARTICLE 1

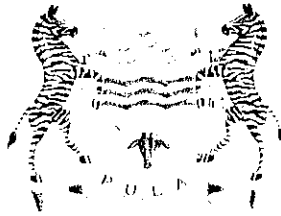
The Customs Agreement between the Federation of Rhodesia and Nyasaland and Basutoland, Bechuanaland Protectorate and Swaziland, which came into force on 1st June 1956 as amended in 1988, is hereby amended.

ARTICLE 2

The Customs Agreement (hereinafter referred to as "the Agreement") is amended by the substitution for the words "the Federation of Rhodesia and Nyasaland" the words "the Republic of Zimbabwe" and for the words "Bechuanaland Protectorate" the words "the Republic of Botswana" wherever they appear in the Agreement.

ARTICLE 3

1. The provision of this Agreement shall apply, except where otherwise provided, to the goods grown, produced or manufactured in the territory of either Contracting Party and exported directly to the territory of the other Contracting Party.
2. Goods which do not qualify in terms of the rules of origin referred to in paragraph 3 of this Article shall be deemed to fall outside the terms of this Agreement.



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3. For the purpose of this Agreement:
- (a) goods grown or wholly produced in the territory of either Contracting Party shall be those categorized in paragraph (4) of this Article;
 - (b) goods manufactured wholly or partly from imported materials, parts or components in the territory of either Contracting Party shall in accordance with paragraph (5) of this Article, be deemed to originate in the territory of either Contracting Party;
 - (c) Waste and scrap means all scrap and waste, including waste resulting from manufacturing or processing operations, or consumption in the same territory, scrap machinery, discarded packaging and household rubbish and all products that can no longer perform the purpose for which they were produced and are fit only for discarding or recovery of raw materials. Such manufacturing or processing operations include all types of processing, not only industrial or chemical but also mining, agricultural, construction, refining, incineration and sewage treatment operations.
4. The following categories of goods shall be considered as wholly produced in the territory of either Contracting Party:
- (a) mineral products extracted from its soil;
 - (b) vegetable products harvested or gathered therein;
 - (c) live animals born and raised therein;
 - (d) products obtained therein from live animals;
 - (e) products obtained therein by hunting or fishing;
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- (f) forest products harvested therein;
 - (g) products derived from waste and scrap; and
 - (h) goods obtained therein exclusively from products specified in sub-paragraph (a) to (g) inclusive of this paragraph.
5. The origin of goods manufactured in the territory of either Contracting Party and imported into the territory of the other shall be determined in accordance with the rules of origin contained in the Annexure attached hereto which forms an integral part of this Agreement.

ARTICLE 4

1. Customs officials of the Contracting Parties shall regularly consult on matters concerning the documentation and procedures relating to the Certificates of Origin issued under this Agreement.
 2. Each Contracting Party's Customs Authority shall be the competent authority to verify the origin of goods that are exported to the territory of the other Contracting Party to ensure that they meet the local content rules of Article 3 (3) of this Agreement.
 3. The importing Contracting Party reserves the right to verify the origin of the goods imported into it under this Agreement. Information and documentation necessary for the verification purposes shall be forwarded to the Customs Authority of the importing Contracting Party at the same time as such details are forwarded to the exporting Contracting Party. Origin verification shall be carried out for all products to be traded for the first time and may be reviewed on a case-by-case basis at the request of either Contracting Party.
 4. Failure to furnish the information stated in paragraph 3 of this Article may lead to the suspension of the goods in question from benefiting from the provisions of this Agreement.
 5. Where necessary, the Customs officials of the Contracting Parties shall jointly visit the manufacturing establishment in the territory of the other Contracting Party for purposes of origin verification.
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ARTICLE 5

1. Subject to the provisions of this Agreement, goods grown, produced or manufactured in the territory of either Contracting Party, on removal to the territory of the other Contracting Party, shall be free of customs duty.
2. Notwithstanding the provisions of paragraph 1 of this Article, a Contracting Party may impose an equivalent duty or tax where this is a countervailing duty or tax to:
 - (a) Sales or similar taxes levied and paid in the territory of the importing Contracting Party; and
 - (b) excise duties or other taxes levied and paid on goods produced in the territory of the importing Contracting Party.

ARTICLE 6

1. Subject to the provisions of paragraph 2, 3 and 4 of this Article and the provisions of Article 3 of this Agreement, goods grown, produced or manufactured in the territory of either Contracting Party shall be exempt from the imposition by their Contracting Party of any quantitative import or export restriction whether imposed directly or indirectly.
2. After consultation with each other, either Contracting Party may impose:
 - (a) Export restrictions temporarily applied to prevent or relieve critical shortages of foodstuffs or other products essential to the exporting Contracting Party;
 - (b) import and export restrictions necessary for the application of standards or regulations for the classification, grading or marketing of commodities;
 - (c) import restrictions, that do not discriminate among exporting country, on agricultural or fisheries products necessary to the enforcement of government measures which operate:



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- (i) to restrict the quantities of the like domestic product permitted to be marketed or produced ; or
- (ii) to remove a temporary surplus of the like domestic product; or
- (iii) to encourage local production;

Provided these measures are not discriminating among countries;

- (d) import restrictions to safeguard its external financial position and its balance of payments taking into account the trading position existing between the Contracting Parties. However, any such restrictions shall not be discriminatory in any respect and shall not be continued after the cause which gave rise to them has been overcome. The Contracting Parties agree to consult with each other at intervals of not more than six months until the cause which gave rise to the restrictions has been overcome;
- (e) import and export restrictions in pursuance of obligations arising from any international commodity agreement or international agreement relating to the prevention of infringement of copyright, trade-marks and industrial patents to which a Contracting Party is or may become a party;
- (f) import and export restrictions on wild animals, wild animal trophies and wild animal products;
- (g) import and export restrictions necessary for the protection of the life and health of humans, animals and plants;
- (h) import and export restrictions on arms, ammunition and implements of war;
- (i) import and export restrictions on gold and other precious metals in any form, currency, and rough and uncut precious stones;



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- (j) import and export restrictions taken in time of war or any other emergency; and
 - (k) measures for the protection of:
 - (i) public morals;
 - (ii) national treasures of artistic, historical or archaeological value;
 - (iii) essential security interests; and
 - (iv) strategic materials.
3. A Contracting Party which proposes to take action in terms of the provisions of this Agreement likely to impair trade in goods in which the other Contracting Party has substantial interest shall consult with the other Contracting Party prior to taking such proposed action and after having considered any representations made by the other Contracting Party may impose such import or export restrictions it deems necessary. Consultation envisaged in this paragraph shall be conducted within a reasonable period of time and through normal diplomatic channels.
4. In critical circumstances, such as might occur under paragraph 2 (g) to (k) of this Article, where delay would cause damage which it would be difficult to repair, action under paragraph (3) of this Article may be taken provisionally without prior consultation, on the condition that consultation shall be effected immediately after such action.

ARTICLE 7

To facilitate and promote the development of trade and commercial transactions under this Agreement, the Contracting Partners agree:

- (a) to allow the organisation of trade fairs and exhibitions in their respective countries in accordance with their laws and regulations;
- (b) to furnish each other, on request, with all available information concerning the possibilities of supplying goods originating from their respective territories.



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ARTICLE 8

The Contracting Parties agree that trade between their two countries shall be conducted through authorised ports of entry or exit, and in the use of road transport, goods shall be carried by vehicles registered in the territory of either Contracting Party, subject to the laws and regulations in force in the territory of either Contracting Party.

ARTICLE 9

The 1956 Customs Agreement is amended by the deletion of Article 7 as therein contained.

ARTICLE 10

The Contracting Parties agree that payments for the transactions between the two territories shall be effected in any freely convertible currency.

ARTICLE 11

The Contracting Parties agree to promote and facilitate the movement of goods through their territories in compliance with the transit rules and regulations in force in their respective countries, which shall not be discriminatory in any respect.

ARTICLE 12

1. The Contracting Parties shall co-operate with each other in curbing dumping and other trade malpractices and shall, on request, provide all possible assistance concerning enquiries relating to:
 - a) allegations of dumping, the granting of bounties or Subsidies; and
 - b) the country of origin of goods.
2. Notwithstanding the provisions of this Agreement, goods exported to the territory of the other Contracting Party that are priced below the fair market value of such goods in the exporting territory of other Contracting Party, as determined in accordance with GATT rules, inflict material damage on the economy of that Contracting Party will be subject to countervailing or anti-dumping duties.



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3. The rates of countervailing or anti-dumping duties shall be established in such a way that the prices of such goods in the importing country are raised to the extent necessary to offset the advantage that would otherwise accrue to the benefit of the exporting country.
4. Notwithstanding the provisions of paragraph (3) of this Article, the Contracting Party of the exporting country undertakes not to introduce retaliatory measures that would have as one of their purposes the enhancement of exports of other types of goods to the territory of the other Contracting Party.

ARTICLE 13

1. Nothing in this Agreement shall be construed as affecting any rights and obligations arising from any international agreement or treaty already in force or that may be entered into.
2. The Contracting Parties shall meet at least once a year or at the request of either Contracting Party, at a convenient time and place for both of them, to review and resolve issues of trade between their two countries.
3. Either Contracting Party may, by written notice, through normal diplomatic channels, present to the other Contracting Party a request for modification of this Agreement.

ARTICLE 14

1. The Contracting Parties hereby agree to establish a Joint Ministerial Trade Committee.
2. The Committee shall be responsible for carrying out consultations in respect of all trade matters affecting both Contracting Parties.
3. Any trade related matters in dispute between the Contracting Parties shall be referred to the Joint Ministerial Trade Committee.



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ARTICLE 15

Upon the termination of this Agreement, its provisions and the provisions of any separate contract or agreement made in respect thereof shall continue to govern any existing obligations in so far as goods or commodities placed under this Agreement had already been ordered by either Contracting Party prior to the notice of non-renewal of this Agreement.

ARTICLE 16

These Amendments shall come into force on a date to be fixed by an exchange of Notes and the provisions of the 1956 Customs Agreement shall apply Mutatis Mutandis.

Done at Windhoek on this 15th day of August 2010 in two originals, in the English language both texts being equally authentic.

*For the Government of the
Republic of Botswana*

HON. DORCAS MAKGATO-MALESU
MINISTER OF TRADE
AND INDUSTRY

*For the Government of the
Republic of Zimbabwe*

HON. PROF. WELSHMAN NCUBE
MINISTER OF INDUSTRY
AND COMMERCE



REPUBLIC OF BOTSWANA

ANNEXURE

TO THE

**AGREEMENT BETWEEN THE REPUBLIC OF BOTSWANA AND THE REPUBLIC
OF ZIMBABWE**

AMENDING

**THE CUSTOMS AGREEMENT BETWEEN THE FEDERATION OF RHODESIA AND
NYASALAND AND BASUTOLAND, BECHUANALAND PROTECTORATE AND
SWAZILAND**

1. For the purpose of Article 3 of the Agreement, goods shall be regarded as having been manufactured in the territory of a Contracting Party when at least twenty five percent (25%) of the manufacturing costs of these goods, as determined herein, which shall constitute "local content", is represented by materials produced or originating in the territory of the Contracting Party and direct labour performed in the territory of manufacture and the last process in the manufacture of those goods has taken place in that territory, provided that:
 - (a) the last process of manufacture is substantial and sufficient to change the nature of product and give it new, essential and distinct characteristics and it was performed in an enterprise equipped for that purpose;
 - (b) the final product represents a completely new product or at least an important state in the manufacturing process; and
 - (c) each type of article or set shall qualify separately in its own right.
 2. For purposes of this Annexure the following operations shall not be regarded as manufacturing:
 - (a) packing bottling, placing in flasks, bags, cases, boxes, fixing on cards or boards and all other simple packing operations;
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- (b) i) assembly, where this involves the construction of an article by putting together finished components which may require slight modifications such as painting or trimming before assembly. Such assembly can involve gluing, screwing, nailing, sewing and minor welding and riveting operations, with or without the addition of local parts or components of minor importance such as screws, nuts and bolts; and
 - ii) simple mixing or blending of imported ingredients which does not result in the formation of a different product;
 - (c) operations to ensure the preservation of merchandise in good condition during transportation and storage such as ventilation, spreading out, drying, freezing, placing in brine, sulphur dioxide or other aqueous solutions, removal of damaged parts, cleaning and similar operations;
 - (d) changes of packing and breaking up of or disassembly of consignments;
 - (e) printing, marking, labelling or fixing other like distinguishing signs on products or other packages;
 - (f) simple operations consisting of removal of dust, sifting or screening, sorting, grading, classifying and matching including the making up of sets of goods;
 - (g) washing, painting, dyeing, bleaching, texturising of textile goods and impregnating or mercerising operation;
 - (h) etching, decorating, calibration, painting, polishing, cutting up, reinforcing of an otherwise finished article;
 - (i) diluting, drying, steaming, heating, salting which does not result in the permanent change in the shape, form or nature of the article;
 - (j) repairing, remodelling, altering;
 - (k) the addition of parts or components of minor importance for example screws, nuts and bolts, minor additives or colourants to foodstuffs;
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- (l) a combination of two or more operations specified in sub-paragraph (a) to (k) of this paragraph;
 - (m) slaughter of animals; and
 - (n) tanning of hides.
3. "Local Content" in relation to goods manufactured in the territory of either Contracting Party means such percentage of the manufacturing costs of such goods in their finished condition as is represented by the cost of;
- (a) any materials which were grown, produced or manufactured in the territory of the Contracting Party and which were used in the manufacture of the goods;
 - (b) the direct labour involved in the manufacture of the goods; and
 - (c) Any materials which are grown, produced or manufactured in the territory of either Contracting Party, provided they meet at least twenty five percent (25%) local content. This provision shall not apply to the manufacture of motor vehicles.
4. In the calculation of the costs of material used and direct labour performed in respect of the manufacture of any goods in any territory, for the purposes of this Annexure, only the following items may be included:
- (a) the cost of local materials, or materials originating in the territory of either Contracting Party, including the cost of waste materials and materials lost in the process of manufacture, as represented by their delivery price at the factory and used directly in the manufacture of such goods.

Where materials which are not wholly produced in the territory of either Contracting Party are used directly in the manufacture, such goods will count to the extent of their prorated local content as determined in accordance with this Annexure.



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Locally manufactured materials or components which have been temporarily exported for further processing in the territory of the either Contracting Party shall, on return to the country of final manufacture be considered as originating for purpose of determining local content if they attain at least twenty five percent (25%) local content in the country where further processing occurred. This provision shall not apply to the manufacture of motor vehicles.

The following shall, *inter alia*, not be regarded as direct materials: water (provided it is not part of the finished product), electricity, consumable items, items for staff benefit such as tea, protective garments and uniforms:-

- (b) the cost of labour directly employed in the manufacture of goods, where in addition to the wages and salaries paid to direct labour, the following costs will be included in the calculations of direct labour costs:-
 - (i) leave except cash in lieu of leave;
 - (ii) salaries of foremen and supervisors related to the manufacturing processes;
 - (iii) overtime payment at normal rates; and
 - (iv) incentives and bonus if pre-determined.

The term "direct labour" shall be taken to refer to those procedures applied to the input materials from which the product is manufactured from the time they first come into the hands of the work force which actually manufacture the product to the time the finished article is put in retail package. It excludes such functions as design, pattern making, dye making.

The following shall, *inter alia*, be excluded from direct labour costs: pension contributions, overtime payments at above normal rates, cash in lieu of leave, maintenance costs, incentive bonus not pre-determined, the portion of salaries of foremen and supervisors not related to the manufacturing process, fringe benefits, business overheads, administration expenses and salaries, or profit.



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5. (a) The manufacturing cost of goods shall be calculated in accordance with the provisions of this Annexure and shall be representative of the cost arising from normal business practices, operating procedures and levels of production in the industry concerned as incurred over a period of not less than three months or such a shorter period as the relevant Customs Authority may approve in the case of special export orders, such cost of the goods in their finished condition based on factual costs, charges and expenses incurred in their manufacture, including the cost of putting the goods up in their retail packages and the cost of such retail packages;

Provided that, if in the opinion of the verifying authority, any cost, charge or expense has not been incurred by the manufacturer at the normal open market price, the verifying authority may assess the amount of that cost, charge or expense on the basis of the normal open market price, and the manufacturing cost shall be calculated in accordance with that assessment.

- (b) For the purposes of determining the local content of any goods manufactured either wholly or partly from locally produced or manufactured materials or component, the local content of such locally produced or manufactured materials or components shall be determined and apportioned as herein provided.
- (c) For the purposes of determining the local content of any goods manufactured either wholly or partly from imported materials, the origin of any charges incidental to the delivery of the imported materials shall be deemed to be that of the imported materials.
- (d) Any information which the verifying authority of a Contracting Party may require for the purpose of ascertaining the local content of the manufacturing cost of any goods shall be provided in such form and certified in such manner as may be agreed by the Contracting Parties to ensure accuracy and clarity.
6. For the purpose of this Annexure, the following costs, charges and expenses shall be included in the manufacturing cost of the goods:



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- (a) the cost of imported materials, including the cost of waste materials and materials lost in the process of manufacture, as represented by the landed cost of those materials at the factory, including any charges incidental to the delivery of such materials to the factory but excluding any duty thereon paid by the manufacturer;

Provided that the cost of imported materials not imported directly by the manufacturer shall be delivered at the import price at the factory;

- (b) the cost of local materials, including the cost of waste materials and materials lost in the process of manufacture, as represented by their delivered price at the factory;

- (c) the cost of direct labour as represented by the wages paid to the operatives responsible for the manufacture of the goods as qualified herein;

- (d) the cost of direct manufacturing expenses as represented by:

- i) the operating costs of the machines used to manufacture the goods;
- ii) the expenses incurred in the cleaning, drying, polishing, pressing or any other process, as may be necessary for the finishing of the goods;
- iii) the cost of putting the goods up in their retail packages and the cost of such retail packages but excluding any extra cost of packaging the goods for transportation or export and the cost of any extra package;

- (e) manufacturing overhead costs, as represented by:

- i) rent, rates and insurance charges directly attributable to the factory;
- ii) indirect labour charges, including salaries paid to factory managers, wages paid to foremen, examiners and testers of the goods and fees paid to efficiency advisers;



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- iii) power, light, water and other service charges directly attributable to the cost of the manufacture of the goods;
 - iv) consumable stores, including minor tools, grease, oil and other incidental items and materials in the manufacture of the goods;
 - v) depreciation and maintenance of factory buildings, plant, machinery, tools and other items used in the manufacture of the goods; and
 - vi) the cost of food supplied to factory workers, workmen's compensation, insurance and contributions to manufacturers' associations.
7. The following costs, charges and expenses shall be excluded from the manufacturing cost of goods:
- (a) administration expenses as represented by:
 - i) office expenses, office rent and salaries paid to accountants, clerks, managers and other executive personnel;
 - ii) directors' fees other than salaries paid to directors who act in the capacity of factory managers;
 - iii) statistical and costing expenses in respect of the manufactured goods; and
 - iv) investigation and experimental expenses.
 - (b) selling expenses as represented by:
 - i) the cost of soliciting and securing of orders, including such expenses as advertising charges and agents or salesmen's commission or salaries; and
 - ii) expenses incurred in the making of designs, estimates and tenders.

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- (c) distribution expenses, other than those provided for in paragraph (a) or (b), as represented by all expenditure incurred after the goods have left the factory including:
- i) the cost of any materials and payment of wages incurred in the packaging of the goods for export;
 - ii) warehousing expenses incurred in the storage of the finished goods; and
 - iii) the cost of transporting the goods to their destination.
- (d) charges not directly attributed to the manufacture of the goods, including:
- i) any duty on the imported raw materials;
 - ii) any excise duty paid on raw materials produced in the territory of the Contracting Party where the finished goods are manufactured; and
 - iii) any royalties paid in respect of patents, special machinery or designs.



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APPENDIX TO THE AGREEMENT BETWEEN THE REPUBLIC OF BOTSWANA AND THE REPUBLIC OF ZIMBABWE AMENDING THE CUSTOMS AGREEMENT BETWEEN THE FEDERATION OF RHODESIA AND NYASALAND AND THE BASUTOLAND, BECHUANALAND PROTECTORATE AND SWAZILAND

Both Parties have agreed to make the following amendments;

PREAMBLE

In paragraph 1; by amending the word '**Whereas**' to read '**WHEREAS**';

In paragraph 2 and 3; by amending the words '**And Whereas**' to read '**AND WHEREAS**' and inserting the words 'as amended in 1988', between '1956' and 'is';

The phrase '**NOW THEREFORE HAVE AGREED AS FOLLOWS**' to read '**NOW THEREFORE HAVE AGREED AS FOLLOWS**'.

ARTICLE 1

By inserting the words '**as amended in 1988,**' between '**1956**', and '**is**'.

ARTICLE 3

Paragraph 1; the word '**to**' was inserted after the word '**provided,**'

Paragraph 5; the words '**country of**' was removed.

ARTICLE 4

Paragraph 3; wherever the word '**country**' appears, it is removed and replaced with the words '**Contracting Party**'

ARTICLE 5

In paragraph 2(a); the word '**country**' is replaced by the words '**Contracting Party**';
and



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In subparagraph (b); by inserting the words **'in the territory of the'** before the word **'importing'** and the word **'country'** has been replaced with the words **'Contracting Party'**.

ARTICLE 7

The word **'country'** in paragraph (b) is replaced with the word **'territories'**.

ARTICLE 8

Wherever the word **'country'** appears it is hereby replaced with the word **'territory'**.

ARTICLE 10

The word **'countries'** is deleted and replaced with the word **'territories'**.

ANNEXURE

PARAGRAPH 1

By replacing the words **'25 per cent'** with the words **'twenty-five percent (25%)'**;
By replacing the words **'either country'** with the words **'territory of the Contracting Party'**; and
By replacing the word **'country'** with the word **'territory'**.

PARAGRAPH 3

In subparagraph (a); by replacing the words **'either country'** with the words **'the territory of either Contracting Party'**; and
In subparagraph (c); by inserting the words **'at least twenty- five percent'** after the word **'the'** in line 3 and placing the figure **'25%'** in brackets **(25%)**.



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PARAGRAPH 4

Subparagraph (a); replacing the words **'either country'** with the words **'the territory of either Contracting Party'** wherever they appear; and by inserting the words **'twenty-five percent'** after the words **'at least'** in line 6 and placing the figure **'25%'** in brackets (25%);

Subparagraph (b)(ii); by replacing the word **'foreman'** with the word **'foremen'**.

PARAGRAPH 5

Subparagraph (a); by inserting the words **'or such a shorter period as the relevant Customs Authorities may approve in the case of special export orders'** between the word **'the'** in line 6 and the word **'such'** in line 7;

PARAGRAPH 6

In (e)(vi); by replacing the word **'manufactures'** with the word **'manufacturers'**;

PARAGRAPH 7

In (d)(ii); by replacing the word **'country'** with the words **'territory of the Contracting Party'**.