

CONTROL OF GOODS (TRADING MARGINS) REGULATIONS

(under section 3)

(1st January, 1975)

ARRANGEMENT OF REGULATIONS

REGULATION

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S.I. 146, 1974,

S.I. 149, 1975,

S.I. 36, 1985,

S.I. 52, 1987.

1. Citation

These Regulations may be cited as the Control of Goods (Trading Margins) Regulations.

2. Interpretation

In these Regulations, unless the context otherwise requires-

"authorised officer" means an authorised officer appointed under the Control of Goods (Authorised Officers) Regulations, and includes the Price Controller and a Price Control Inspector;

"cost price" of any goods in respect of a trader, means the price paid or to be paid by him for those goods excluding any discounts not exceeding 10 per cent *in toto* allowable for prompt payment, bulk order or otherwise, and excluding insurance, freight and delivery charges; and where the price is stated in foreign currency the price in pula shall be ascertained by reference to the rate of exchange on the day on which the goods were imported into Botswana;

"distributor" means a wholesaler who sells to wholesalers;

"manufacturer" means a person who manufactures, or by any process produces, an article from raw, unfinished or partly manufactured materials for sale to a distributor, wholesaler, retailer or direct to the public;

"mark-up", in respect of any goods, means the difference between the actual price at which such goods are sold by a trader, exclusive of any insurance, freight or delivery costs, and the cost price to the trader of such goods plus any insurance, freight, delivery, processing or packaging costs calculated as a percentage of such cost price;

"Price Controller" means the person designated as such under regulation 3;

"Price Control Inspector" means a person designated as such under regulation 3;

"price list" means a price list required to be delivered to the Price Controller under regulation 5;

"retailer" means-

(a) a person who holds or is required to hold a licence under the Trade Act (Cap. 43:02), other than an agent, an auctioneer, a driller, an external representative, an insurance agent, a produce buyer or a wholesaler licence;

(b) a person who holds or is required to hold a bottle store liquor licence under the provisions of the Liquor Act (Cap. 43:11);

(c) a person who, being the holder of, or being required to hold, an hotel liquor licence under the provisions of the Liquor Act, sells liquor in an off-sales department as defined in that Act;

"sale" includes offer for sale and invitation to treat;

"sales agent" means a person who holds or is required to hold an agent's licence or an external representative's licence issued under the Trade Act or the Liquor Act;

"trader" includes wholesaler, distributor, sales agent and retailer;

"wholesaler" means a person who holds or is required to hold a wholesaler's licence issued under the Trade Act or the Liquor Act.

3. Appointment of Price Controller and Inspectors

(1) The Minister may, by notice published in the *Gazette*, designate a public officer to be Price Controller, and such other persons as he deems fit to be Price Control Inspectors.

(2) The Price Controller and all Price Control Inspectors shall be deemed to be authorised officers for the purposes of the Control of Goods (Authorised Officers) Regulations.

4. Application

(1) Subject to the provisions of subregulation (2), these Regulations shall apply to the sale of all goods other than those in respect of which separate price restrictions have been imposed under the Act.

(2) These Regulations shall not apply to the sale of any goods for delivery outside Botswana.

5. Delivery of price lists

(1) No manufacturer, distributor, sales agent or wholesaler shall sell any goods unless he has delivered to the Price Controller two copies of his price list in respect of those goods.

(2) If the Price Controller is not satisfied with a price list he may-

- (a) call for such further information as he may think necessary; or
- (b) declare that such goods shall not be sold in Botswana.

(3) A price list shall include the following information-

- (a) the price actually paid or to be paid by him for such goods;
- (b) the cost of transport or delivery, if additional to the price paid;
- (c) any costs incurred in processing or packaging;
- (d) the price at which such goods are to be sold;
- (e) details of any discounts allowable to a purchaser whether for prompt payment, bulk orders or otherwise;
- (f) details of any transport or delivery charges if payable by a purchaser.

(4) Any manufacturer, distributor, sales agent or wholesaler who-

- (a) gives any false information in a price list;
 - (b) sells any goods at a price exceeding the sale price quoted in a price list; or
 - (c) sells any goods without having first delivered a price list in respect of such goods to the Price Controller,
- shall be guilty of an offence.

(5) The Minister may exempt any class of manufacturers, distributors, sales agents or wholesalers in respect of any specific goods or class of goods from the provisions of subregulation (1).

6. Delivery of invoice or cash sale slip by manufacturer, etc.

(1) No manufacturer, distributor, sales agent or wholesaler shall sell any goods unless at the time of sale he delivers to the purchaser, in the case of a credit sale, an invoice, or, in the case of a cash sale, a cash sale slip which shall, in either case, include the following information-

- (a) a description of the goods sold;
- (b) the date of sale;
- (c) the name of the purchaser;
- (d) the unit price of the goods sold;
- (e) the quantity of goods sold; and
- (f) the total price of the goods sold.

(2) A copy of every invoice or cash-sale slip issued under subregulation (1) shall be retained by the person issuing it for two months from the date of issue and shall be kept available for inspection by an authorised officer.

(3) The original of every invoice or cash-sale slip issued under subregulation (1) shall be retained by the purchaser to whom it is issued for a period of two months from the date of issue and shall be kept available for inspection by an authorised officer.

(4) Any person who contravenes the provisions of this regulation shall be guilty of an offence.

7. Delivery of invoice or cash sale slip by retailer

(1) No retailer shall sell any goods unless, at the time of sale, if so required by a purchaser, he delivers to the purchaser, in the case of a credit sale, an invoice giving the following information, namely-

- (a) the name of the purchaser;
- (b) a description of the goods sold;
- (c) the date of sale;
- (d) the unit price of the goods sold;
- (e) the quantity of goods sold; and
- (f) the total price of the goods sold,

or, in the case of a cash sale, a dated cash sale slip:

Provided that, in the case of a cash sale, no cash sale slip need be issued in respect of goods sold with the unit-price thereof marked upon the goods themselves or upon any package in which the goods are wrapped or packed separate from other goods.

(2) A copy of every invoice or cash sale slip issued under subregulation (1) shall be retained by the person issuing it for a period of two months from the date of issue and shall be kept available for inspection by an authorised officer.

(3) Any person who contravenes the provisions of this regulation shall be guilty of an offence.

8. Goods imported for sale

(1) No retailer importing goods for sale shall sell any such goods unless he has delivered to the Price Controller a statement of the actual cost to him of such goods, setting out as separate items, transport, insurance and other charges included in such cost.

(2) If the Price Controller is not satisfied with a statement delivered to him pursuant to subregulation (1) he may-

- (a) call for such further information as he may think necessary; or
- (b) declare that such goods shall not be sold in Botswana.

(3) Any retailer who-

- (a) gives false information in a statement delivered pursuant to subregulation (1);
- (b) fails to give any information called for by the Price Controller under subregulation

(2)(a);

(c) sells any goods without having first delivered to the Price Controller the statement required under subregulation (1); or

(d) sells goods in contravention of subregulation (2)(b), shall be guilty of an offence.

9. Mark-ups

(1) No distributor, sales agent or wholesaler shall sell any goods specified in the first column of the Schedule with a mark-up greater than that respectively specified in relation thereto in the second column of the said Schedule.

(2) No retailer shall sell any goods specified in the first column of the Schedule with a mark-up greater than that respectively specified in relation thereto in the third column of the said Schedule.

(3) Where the Price Controller is satisfied that a manufacturer, distributor, sales agent, wholesaler or retailer has a common interest with another distributor, sales agent, wholesaler or retailer, he may, by notice served on the persons concerned, limit the total aggregate mark-up on goods passing between those persons.

(4) For the purposes of subregulation (3), a common interest shall be deemed to exist when-

(a) a manufacturer, distributor, sales agent, wholesaler or retailer owns or controls in any distributor, sales agent, wholesaler or retailer, 20 per cent or more of any class of voting shares or other voting participation, either directly or indirectly, or such shares are held with power to vote, or has the power to elect a majority of directors in such other distributor, sales agent, wholesaler or retailer;

(b) one person owns or controls in any manufacturer, distributor, sales agent, wholesaler or retailer 20 per cent or more of any class of voting shares or other voting participation, either directly or indirectly, or holds such shares with power to vote, or has the power to elect a majority of directors, and he or a member of his immediate family owns or controls a similar holding or has similar power in or over any other manufacturer, distributor, sales agent, wholesaler or retailer.

(5) For the purposes of subregulation (4), immediate family includes parent, spouse, child, brother or sister.

(6) Any distributor, sales agent, wholesaler or retailer who sells any goods with a mark-up greater than that permitted by or under this regulation shall be guilty of an offence.

10. Appeal to Minister

Any person dissatisfied with any declaration by the Price Controller under regulation 5(2) or 8(2)(b), or any notice served by the Price Controller under regulation 9(3), may appeal to the Minister.

SCHEDULE

<i>Classification of Goods</i>	<i>Distributor</i>	<i>Retailer</i>			
	<i>Wholesaler</i>				
	<i>Sales Agent</i>				
1. (a) Maize, wheat, rice, sorghum, uncooked and intended for human or animal consumption, whether whole or broken or in the form of meal or flour; tea in any form; candles; bottled gas; milk or milk powder (other than condensed or evaporated milk in tins); matches; sugar in any form.	7 1/2%	10%			
(b) Agricultural implements and tools whether mechanically driven or not, other hand tools and power tools and appliances for industrial, agricultural or	10%	25%			

<p>veterinary use; industrial fasteners of all kinds; wire of all kinds and for any purpose; chemicals and equipment and parts thereof for the treatment of water; building and construction materials of any kind and whether for domestic, industrial or other purposes.</p>					
<p>(c) Books of a kind used for teaching and instruction in schools and other institutions of learning and training; exercise books, pencils and pens of all kinds.</p>	10%	20%			
<p>2. (a) All foodstuffs and beverages (whether alcoholic or not) of whatever kind and whatever form and whether intended for human or animal consumption not otherwise mentioned.</p>	10%	25%			
<p>(b) Soaps, detergents, fertilizers, insecticides, vermicides, fungicides, disinfectants, medicines and remedies, other than those specified in paragraph 3(b), and other goods and materials, in whatever form or however packed, for the maintenance or improvement of cleanliness, health, or sanitary conditions or for improvement or protection in agriculture or horticulture or for veterinary use.</p>	10%	25%			

<p>(c) Domestic fuels; materials, goods and accessories for domestic heating or lighting; ammunition, guns, other hunting or fishing requisites or parts or accessories thereof.</p>	<p>10%</p>	<p>221/2%</p>			
<p>(d) Clothing of any kind including footwear, underwear, outerwear, and having a unit value not exceeding P15; manufactures of textile materials for personal or domestic use; textile fabrics for clothing or furnishing; clothing accessories; cottons and knitting wools; and other items for the making or repair of clothing; bedding; bed linen.</p>	<p>10%</p>	<p>45%</p>			
<p>(e) Hardware of kinds not otherwise mentioned; and including household crockery and cutlery, kitchen utensils and implements; glassware of all kinds.</p>	<p>10%</p>	<p>35%</p>			
<p>(f) Books and stationery including periodicals, and other items normally sold through stationery or bookshops and not otherwise mentioned.</p>	<p>10%</p>	<p>45%</p>			
<p>3. (a) Clothing of any kind having a unit value in excess of P15.</p>	<p>10%</p>	<p>45%</p>			

<p>(b) Drugs and medicines obtainable only from a chemist registered in accordance with the Botswana Health Professions Act (Cap. 61:02).</p>	<p>10%</p>	<p>50%</p>			
<p>(c) Cosmetics, toiletries and other products normally sold through chemist shops and not otherwise specifically mentioned.</p>	<p>10%</p>	<p>33 1/3%</p>			
<p>4. (a) New household furniture and other goods normally sold through furniture shops and not specifically mentioned elsewhere.</p>	<p>10%</p>	<p>50%</p>			
<p>(b) Second-hand furniture and other goods normally sold through furniture shops and not specifically mentioned elsewhere.</p>	<p>5%</p>	<p>35%</p>			
<p>(c) All other goods not specifically mentioned in this Schedule.</p>	<p>10%</p>	<p>331/3%</p>			