

BOTSWANA TRADE COMMISSION (AMENDMENT) ACT, 2023

No. 17



of 2023

ARRANGEMENT OF SECTIONS

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An Act to amend the Botswana Trade Commission Act.

Date of Assent: 13.11.2023

Date of Commencement: ON NOTICE

ENACTED by the Parliament of Botswana.

1. This Act may be cited as the Botswana Trade Commission (Amendment) Act, 2023 and shall come into operation on such date as the Minister may, by Order published in the *Gazette*, appoint.

Short title and commencement

2. The Botswana Trade Commission Act (hereinafter referred to as “the Act”) is amended by substituting for the long title appearing therein, the following new long title —

Amendment of long title to Cap. 42:14

“An Act to establish the Botswana Trade Commission; to provide for an efficient and effective system for the administration and facilitation of international trade; to regulate the import and export of goods; to provide for the implementation of the SACU Agreement; and to provide for matters incidental thereto.”.

3. The Act is amended in section 2 —

Amendment of section 2 of the Act

(a) by substituting for the definitions of “Common Customs Area”, “SACU” and “SACU Tariff Board”, the following new definitions —

“Common Customs Area” means the combined areas of Botswana, Eswatini, Lesotho, Namibia and South Africa established under the Southern African Customs Union (SACU) Agreement of 2002;

“SACU” means the Southern African Customs Union established by Article 3 of the SACU Agreement; and

“SACU Tariff Board” means the SACU Tariff Board established by Article 7 of the SACU Agreement; and

(b) by inserting in their correct alphabetical order, the following new definitions —

““Council” has the meaning assigned to it under the SACU Agreement;

“import surge” means a situation in which the quantity or value of goods imported into the SACU Member State suddenly exceeds the normal level;

“national body” means a body or institution established or designated as such in terms of Article 14 of the SACU Agreement by a SACU Member State;

“Revenue Service” has the meaning assigned to it under the Botswana Unified Revenue Service Act;

“SACU Agreement” means the Southern African Customs Union Agreement for regional integration on the exportation and importation of goods, including customs controls, within the SACU Member State concluded in 2002, to which Botswana is a party;

“SACU Member State” means a member of the Southern African Customs Union; and

“subsidised export” means the export of goods to a Common Customs Area from any country in respect of which the government of, or any public authority within, that country —

(a) has provided financial aid or other assistance with the production, manufacture, transportation or export of the goods; or

(b) has foregone any revenue that would otherwise be due to that government or public authority.”.

Cap. 53:03

Amendment
of section 4
of the Act

4. Section 4 of the Act is amended —

(a) in subsection (1) by substituting for paragraph (f), the following new paragraph —

“(f) assess and determine eligibility for infant industry protection from goods coming from or into the Common Customs Area;

(b) in subsection (1) at paragraph (g), by substituting for the words “members of the Common Customs Area” which appear therein, the words “SACU Member States”;

(c) in subsection (1) at paragraph (h), by substituting for the words “members of the Common Customs Area” which appear therein, the words “SACU Member States”;

- (d) in subsection (1) by substituting for paragraph (i), the following new paragraph —
- “(i) investigate, on its own initiative, trade and industry related matters or such matters as may be referred to the Commission;”;
- (e) by inserting, immediately after paragraph (i) in subsection (1), the following new paragraphs —
- “(j) issue any rebate permit or certificate in terms of the Customs Act;
- (k) issue any certificate or permit in terms of duty drawback provisions of the Customs Act;
- (l) request a national body to evaluate applications received by the Chief Executive Officer in accordance with section 31, and to investigate and compile information available within its jurisdiction concerning such applications;
- (m) make recommendations on tariff changes to the SACU Tariff Board or national body;
- (n) establish an efficient and effective system for the administration, monitoring and review of trade defence measures in trade agreements to which Botswana is a party;
- (o) establish an efficient and effective system for the administration, monitoring and review of international trade within Botswana; and
- (p) receive requests from a national body to evaluate applications for tariff amendment and trade remedies.”; and
- (f) by inserting, immediately after subsection (2), the following new subsections —
- “(3) The Commission may, in writing, direct a person who —
- (a) imports, exports, trades or manufactures any goods; or
- (b) in the course of business or trade, handles or has control of the goods under paragraph (a),
- to provide the Commission, within a specified time, with information relating to the import, export, manufacture, supply or storage of the goods in question.
- (4) Any person who contravenes the provisions of this section, commits an offence and is liable to a fine not exceeding P50 000, or in the case of a corporation, a fine not exceeding 10 percent of its annual turnover.”.
5. Section 6 (2) of the Act is amended by substituting for paragraph (c), the following new paragraph —
- “(c) a representative, at Director level, from the following entities —
- (i) department responsible for international trade at Ministry responsible for trade and industry,
- (ii) department responsible for agri-business at Ministry responsible for entrepreneurship,
- (iii) department responsible for tax policy at Ministry responsible for finance, and

(iv) department responsible for customs at Botswana Unified Revenue Services.”.

Substitution of section 7 of the Act

6. The Act is amended by substituting for section 7, the following new section —

“Functions of Board

7. The Board shall —

- (a) be the governing body of the Commission and shall be responsible for direction of the affairs of the Commission;
- (b) review applications specified under Part VII of this Act and initiate investigations of such applications;
- (c) review recommendations made by the Commission on investigations relating to tariff amendments, allegation of dumping, subsidised exports and imports surges;
- (d) submit decisions for matters reviewed under paragraph (c) to the SACU Tariff Board;
- (e) control exports from Botswana and imports into Botswana;
- (f) advise the Minister on remedial measures including provisional measures where necessary, that can be taken to address trade actions under scrutiny;
- (g) advise the Minister on international trade and SACU related matters;
- (h) take decisions on issues of national interest regarding industrial development; and
- (i) report to the Minister on matters relating generally to the implementation of this Act.”.

Substitution of section 8 of the Act

7. The Act is amended by substituting for section 8, the following new section —

“Tenure of office of member

8. (1) A member other than the Chairperson shall hold office for a period of five years and shall be eligible for re-appointment for one further term not exceeding five years:

Provided that in appointing members of the Board the Minister shall specify the periods of appointment such that the periods of appointment of not more than one-third of the members shall expire in one year.

(2) The Chairperson shall be appointed for a period of five years and shall be eligible for re-appointment for one further term not exceeding three years.”.

Amendment of section 31 of the Act

8. Section 31 of the Act is amended —

(a) by inserting immediately after subsection (4), the following new subsection —

“(4A) Notwithstanding subsection (4), the Minister may, on the recommendation of the Board, request that provisional measures be imposed through SACU structures, where —

(a) a preliminary recommendation approved by the Board has made an affirmative determination of —

- (i) dumping, subsidised exports and import surge, and
- (ii) injury to industry caused by such subsidised export or import surge; and
- (b) the Board considers it necessary or expedient that provisional measures be taken to prevent further injury being caused while investigations are being carried out.”; and
- (b) in subsection (8), by substituting for the words “Tariff Board” appearing therein, the word “Council”.

9. The Act is amended by substituting for section 34, the following new section —

“Power of entry and search

34. (1) Where the Chief Executive Officer has reasonable grounds for suspecting that any person is engaged in an activity or a business connected with an investigation under this Act, the Chief Executive Officer may authorise the entry and search of that person’s premises, by an officer of the Commission appointed in writing by the Chief Executive Officer.

(2) An officer appointed and authorised in terms of subsection (1) may, subject to subsection (3), at any time during business hours —

- (a) enter and search any premises where the activity or business is carried on, for purposes of the investigation;
- (b) require any person who appears to be engaged, or employed, in the activity or business under investigation to produce information or documents relating to the activity or business, including books, records, returns, reports, data stored electronically on a computer or otherwise; or
- (c) seize any documents or item under paragraph (b) that has a bearing on the investigation.

(3) An officer under subsection (2) may not enter and search any premises unless the —

- (a) owner or person in charge of the premises at the time of entry consents to the entry and search of the premises; or
- (b) officer obtains a warrant authorising such entry and search in accordance with subsection (4).

(4) A warrant for the purpose of this section shall be a warrant issued by a magistrate on application made by the officer under subsection (2).

(5) A magistrate shall not issue a warrant under this section unless satisfied that there are reasonable grounds to believe that the person has in their possession or under their control anything that may afford evidence relevant to the investigation.

Amendment
of section 34
of the Act

(6) Notwithstanding subsection (4), an officer under subsection (2) may, without the consent mentioned in subsection (3) (a) or a warrant, enter any premises to exercise the powers conferred by subsection (2) if there are reasonable grounds to suspect that it is necessary to do so to prevent loss, or destruction of, or damage to, of any evidence relevant to the investigation.

(7) A person who, without reasonable excuse, refuses to allow an officer under subsection (2) entry to exercise the powers of search conferred by this section, commits an offence and is on conviction liable to a fine of not less than P50 000, or imprisonment for a term not exceeding two years, or to both.”.

Insertion of section 34A in the Act

10. The Act is amended by inserting immediately after section 34, the following new section —

“Protection of confidential information 34A. (1) Every member, the Chief Executive Officer, or any other person employed by the Commission shall regard, as confidential, all documents and information which may come into his or her possession or to his or her knowledge in the course of his or her duties.

(2) The provisions of subsection (1) shall subsist even after the vacation of office by such a member, Chief Executive Officer or person employed by the Commission.

(3) In this section, “confidential information” means trade, business or industrial information that —

- (a) belongs to a person;
- (b) has a particular economic value; and
- (c) is not generally available to or known by others, and the disclosure of which could —
 - (i) have a significant adverse effect on the owner or on the person that provided the information, or
 - (ii) give a significant competitive advantage to a competitor of the owner.

(4) Subsection (1) shall not apply to a disclosure of information —

- (a) for the purposes of this Act;
- (b) in connection with legal proceedings;
- (c) made with the consent, in writing, of the person affected by the disclosure;
- (d) made in connection with the investigation of a criminal offence; or
- (e) that is already in the public domain.

(5) A person who discloses to any person, information relating to an investigation in contravention of subsection (1), commits an offence and shall be, on conviction, liable to a fine not exceeding P500 000 or to imprisonment for a term not exceeding two years, or to both.”.

11. The Act is amended by inserting immediately after section 36, the following new section —

“Cooperation
with other
regulatory
authorities

36A. (1) In carrying out its functions under this Act, the Commission shall consult with the Revenue Service and other regulatory authorities or Government agencies that have functions related to those of the Commission.

(2) The Commission may enter into arrangements with the Revenue Service and other regulatory authorities or Government agencies referred to in subsection (1).

(3) Without limiting the generality of subsection (2), such arrangements may include the —

(a) exchange of information between the Commission and the Revenue Service, other regulatory authorities or Government agencies;

(b) enforcement of this Act, Customs Act, Excise Duty Act or other trade related laws; and

(c) conduct of joint investigations.”.

Insertion of
section 36A
in the Act

12. Section 37 of the Act is amended —

(a) in subsection (2) by inserting immediately after paragraph (a), the following new paragraph —

“(b) any duties to be paid for dumping, countervailing, import, export and safeguards under the Customs Act and Excise Duty Act;”;

(b) in subsection (2) by inserting immediately after paragraph (d), the following new paragraph —

“(e) the procedure for investigation and evaluation of applications;”;
and

(c) by inserting immediately after subsection (2), the following new subsection —

“(3) Regulations made under this section may prescribe for any person who, without reasonable cause, fails to comply with the regulations to be guilty of an offence and liable to a fine not exceeding P50 000 or imprisonment for a term not exceeding two years, or to both, and in the case of a continuing offence, to a fine of P50 per day for every day during which such offence continues, provided such fine shall not exceed P50 000.”.

Amendment
of section 37
of the Act

PASSED by the National Assembly this 10th day of August, 2023.

BARBARA N. DITHAPO,
Clerk of the National Assembly.