

BOTSWANA TRADE COMMISSION ACT, 2013

No. 20



of 2013

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An Act to establish the Botswana Trade Commission, to regulate the export and import of goods within the Common Customs Area and to provide for matters incidental thereto.

Date of Assent: 04 OCTOBER, 2013

Date of Commencement: ON NOTICE

ENACTED by the Parliament of Botswana.

PART I – *Preliminary*

1. This Act may be cited as the Botswana Trade Commission Act, 2013 and shall come into operation on such date as the Minister may, by Order published in the *Gazette*, appoint.

Short title and commencement

2. In this Act, unless the context otherwise requires —

Interpretation

“Board” means the Board of the Commission established under section 6;

“Commission” means the Botswana Trade Commission established under section 3;

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

“Chief Executive Officer” means the Chief Executive Officer of the Commission, appointed under section 19;

“dumping” means the export or proposed export of goods —

(a) at an export price lower than the price at which similar goods are being sold in the ordinary course of trade in the exporting country for consumption in that country;

(b) at an export price lower than the highest comparable price at which similar goods are being exported in the ordinary course of trade from the exporting country to any third country; or

(c) at an export price lower than the cost of production or the estimated cost of production of the goods concerned in the country of origin and any other costs and profit which the Minister deems reasonable;

“goods” includes all wares, articles, merchandise, animals, currency, crops and plants;

“member” means a member of the Board or of a committee of the Board;

“regulatory authority” means an entity established under any Act for the purpose of regulating an industry or a sector of an industry;

“SACU” means the Southern African Customs Union;
 “SACU Tariff Board” means the Southern African Customs Union Tariff Board;
 “Secretary” means the Secretary of the Commission, appointed under section 21; and
 “senior staff” means any employee of the Commission who holds a position which is designated as such by the Board.

PART II — *Establishment of Commission*

Establishment
of
Commission

3. (1) There is hereby established a body to be known as the Botswana Trade Commission.

(2) The Commission shall be a body corporate with a common seal, capable of suing and being sued in its own name and, subject to the provisions of this Act, of doing or performing all such acts or things as bodies corporate may, by law, do or perform.

General
powers and
functions of
Commission

4. (1) Subject to the control of the Board and the provisions of this Act, the Commission shall —

- (a) investigate and determine the impact of tariffs in Botswana and provide written recommendations regarding any tariff change to the Board;
- (b) investigate allegations of dumping, subsidized exports and import surges within the Common Customs Area that affect Botswana;
- (c) formulate guidelines for the application of trade remedies and tariff amendments within Botswana;
- (d) regulate the import of goods into Botswana;
- (e) regulate the export of goods from Botswana;
- (f) assess and determine eligibility for infant industry protection from goods coming from the Common Customs Area;
- (g) receive requests from SACU Tariff Board to evaluate recommendations made to the SACU Tariff Board from the members of the Common Customs Area;
- (h) investigate requests received from the SACU Tariff Board in relation to allegations of dumping, subsidized exports, import surges and tariff amendments made to the SACU Tariff Board by the members of the Common Customs Area; and
- (i) investigate trade matters that are referred to the Commission by the Minister.

(2) The Minister may, on the recommendation of the Board, by Order published in the *Gazette*, delegate any function of the Commission in respect of any matter relating to an industry or a sector of the industry that the Commission or Ministry is responsible for to —

- (a) any regulatory authority; or
- (b) any Ministry,

subject to such conditions as the Minister may determine.

5. (1) The seal of the Commission shall be such device as may be determined by the Commission and shall be kept by the Secretary.

Seal of
Commission

(2) The seal of the Commission shall be authenticated by the signatures of the Chief Executive Officer and the Secretary.

(3) In the absence of the Chief Executive Officer, the person performing the functions of the Chief Executive Officer may authenticate the seal in his or her place and, in the absence of the Secretary, the person performing the functions of the Secretary may authenticate in his or her place.

(4) The Chief Executive Officer may, in writing, delegate to another employee his or her power to authenticate the seal.

(5) The Secretary may, in writing and with approval of the Chief Executive Officer, delegate to another officer his or her power to authenticate the seal.

(6) A document issued by the Commission and sealed with the seal of the Commission which seal is authenticated in the manner provided by this section shall be received and taken to be a true instrument without further proof unless the contrary is shown.

PART III — *Establishment and membership of Board*

6. (1) There shall be a Board of the Commission which shall perform such functions as may be conferred on it under this Act.

Establishment
of Board

(2) The Board shall consist of —

(a) the Chief Executive Officer who shall be an *ex officio* member;

(b) a representative of the private sector appointed by the Minister who shall be the Chairperson of the Board;

(c) a representative of the —

(i) department responsible for international trade,

(ii) ministry responsible for agriculture,

(iii) ministry responsible for finance; and

(iv) Botswana Unified Revenue Service; and

(d) three members appointed by the Minister with such expert knowledge in international trade, economics, law, accounting, agriculture, exporting and importing trade, freight forwarding trade, finance, insurance, labour or public affairs.

(3) The Minister shall cause to be published by notice in the *Gazette* the appointments under subsection (2) (b) and (2) (d).

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Functions of Board

- 7.** The Board shall —
- (a) review applications specified under Part VII of this Act and initiate investigations of such applications;
 - (b) review recommendations made by the Commission on investigations relating to tariff amendment, allegation of dumping, subsidised exports and imports surges;
 - (c) submit decisions for matters reviewed under paragraph (b) to the SACU Tariff Board;
 - (d) control exports from Botswana and imports into Botswana; and
 - (e) advise the Minister on remedial measures that can be taken to address trade actions under scrutiny.

Tenure of office of member

8. (1) A member other than the Chairperson shall hold office for a period of three years and shall be eligible for re-appointment for successive periods of not more than three years:

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

(2) The Chairperson shall be appointed for a period of five years and shall be eligible for re-appointment for successive periods of not more than three years.

Disqualification, removal and resignation of member of Board

9. (1) A person shall not be appointed as a member or be qualified to continue to hold office where he or she —

- (a) has in terms of a law in force in any country —
 - (i) been adjudged or otherwise declared bankrupt and has not been discharged, or
 - (ii) made an assignment to, arrangement or composition with his or her creditors, which has not been rescinded or set aside; or
- (b) has within the period of 10 years immediately preceding the date of his or her appointment, been convicted —
 - (i) of a criminal offence within Botswana, or
 - (ii) outside Botswana, of an offence which if committed in Botswana, would have been a criminal offence.

(2) The Minister may, in writing suspend from office a member against whom criminal proceedings are instituted for an offence in respect of which a sentence of imprisonment may be imposed, and whilst that member is so suspended, he or she shall not carry out any duties of the Board.

- (3) The Minister shall remove from office a member if the member —
- (a) is absent without reasonable cause from three consecutive meetings of the Board of which he or she has had notice;
 - (b) has been found to be physically or mentally incapable of performing his or her duties efficiently, and a medical doctor has issued a certificate to that effect;

(c) has failed to comply with the provisions of sections 16 or 17;

or

(d) has been convicted of an offence under this Act, or under any other Act for which he or she is sentenced to imprisonment for a term of six months or more without the option of a fine.

(4) A member may resign from office by giving 30 days notice in writing to the Minister.

10. A member shall vacate his or her office and his or her office shall become vacant —

(a) if he or she becomes disqualified, under section 9 to hold office as a member;

(b) if he or she is adjudged bankrupt or insolvent;

(c) if he or she is absent from three consecutive meetings of the Board without reasonable excuse;

(d) on his or her death;

(e) if he or she becomes mentally or physically incapable of performing his or her duties as a member;

(f) upon the expiry of one month's notice in writing to the Minister of his or her intention to resign from office; or

(g) after a period of 30 days from the date that a ruling against the member is made on all appeals made in respect of a conviction of an offence under this Act, or under any other Act for which he or she is sentenced to imprisonment for a term of six months or more without an option of a fine.

11. (1) Where the office of a member becomes vacant before the expiry of a member's term of office, the Minister shall appoint another person to be a member in place of the member who vacates office, until the expiry of a period during which such member would have otherwise continued in office.

(2) Subsection (1) shall not apply where the remainder of the period for which the member whose office has been vacated would otherwise have held office is less than six months.

PART IV — *Meetings and proceedings of Board*

12. (1) At the first meeting of the Board, the members shall elect, from among their number, a Vice Chairperson who shall hold office for such period, being not less than 12 months, as the Board may from time to time determine unless he or she ceases to be a member.

(2) On the expiry of the term of office of the Vice Chairperson or where the Vice Chairperson vacates his or her office as such, a new Vice Chairperson shall be elected by the members from among their number at the next meeting of the Board or as soon thereafter as may be convenient.

Vacation of
office by
member

Filling of
vacancy

Election of
Vice Chair-
person

(3) The Vice Chairperson may vacate his or her office even though he or she remains a member.

(4) The Vice Chairperson shall, whenever the Chairperson is absent or unable to carry out his or her functions, exercise the functions of the Chairperson.

Meetings of
Board

13. (1) The Board shall meet at least four times in a year to discharge its functions.

(2) Upon giving notice in writing of not less than 14 days, a meeting of the Board may be called by the Chairperson and shall be called if not less than one half of the members so request in writing.

(3) Where the urgency of any particular matter does not permit the giving of notice in accordance with subsection (2), a special meeting may be called by giving a shorter notice.

(4) There shall preside at any meeting of the Board —

(a) the Chairperson;

(b) in the absence of the Chairperson, the Vice Chairperson; or

(c) in the absence of the Chairperson and Vice Chairperson, such member as the members present may elect from amongst themselves for the purpose of that meeting.

(5) The quorum at any meeting of the Board shall be five members.

(6) The decisions of the Board shall be by a simple majority of votes, and in the event of an equality of votes, the Chairperson shall have a casting vote in addition to his or her deliberative vote.

(7) A decision of the Board shall not be rendered invalid by reason only of a vacancy in the Board or of the fact that a person who was not entitled to sit as a member did so sit.

(8) Subject to the provisions of this Act, the Board shall regulate its own proceedings.

Committees
of Board

14. (1) The Board may appoint committees of a general or special nature consisting of its members or such number of persons with specialised skills, not being members of the Board, and the members of such committees shall hold office for such period as the Board may determine.

(2) The Board may delegate to any committee the exercise of any of the powers which the Board is authorised by this Act to perform.

Co-option of
other
personnel

15. The Board may invite any person whose presence it considers necessary to attend and participate in its meetings, but such person shall have no right to vote.

Disclosure of
interest

16. (1) Where a member or any person assisting the Board or a committee of the Board is present at a meeting of the Board, at which meeting a matter which is the subject of consideration is one in which he or she is directly or indirectly interested in a private capacity, the member or the person shall, immediately upon the commencement of the meeting, disclose such interest and shall not, take part in any consideration or discussion of, or vote on any question concerning that matter.

(2) A disclosure of interest made in accordance with subsection (1) shall be recorded in the minutes of the meeting at which it is made.

(3) Where a member or a person fails to disclose his or her interest in accordance with subsection (1) and a decision by the Board is made benefiting such a member or person, such decision shall be void.

(4) A member or a person who contravenes the provisions of subsection (1) commits an offence and is liable to a fine not exceeding P5 000, or to imprisonment for a term not exceeding five years, or to both.

17. (1) A member or any person assisting the Board or a committee of the Board shall observe and preserve the confidentiality of all matters coming before the Board or the Committee, and such confidentiality shall subsist even after the termination of the member's or the person's terms of office.

Confidentiality

(2) Any person to whom confidential information is revealed through working with the Board shall not disclose that information to any other person unless he or she is required to do so in terms of any written law or for purposes of any judicial proceedings.

(3) Any person who contravenes the provision of this section commits an offence and is liable to a fine not exceeding P5 000, or to imprisonment for a term not exceeding five years, or to both.

18. A member or a person assisting the Board or a committee of the Board shall where necessary, be paid such remuneration and allowances in connection with his or her service to the Board or committee as the Minister may from time to time determine.

Remuneration and allowances

PART V — Staff of Commission

19. (1) There shall be a Chief Executive Officer of the Commission, who shall be appointed by the Minister after consultation with the Board, on such terms and conditions as may be specified in the instrument of appointment.

Chief Executive Officer

(2) The Chief Executive Officer shall be a person with considerable knowledge and experience in any of the following —

- (a) international trade;
- (b) economics;
- (c) law;
- (d) accounting;
- (e) agriculture;
- (f) exporting and importing trade;
- (g) freight forwarding trade;
- (h) finance;
- (i) insurance; or
- (j) public affairs.

(3) Subject to subsection (2), the Chief Executive Officer may have such other qualifications and experience or proven ability in other fields as the Board and the Minister may consider relevant.

(4) The Chief Executive Officer shall be responsible to the Board.

(5) The Chief Executive Officer shall not, while in the employment of the Commission, engage in paid employment outside the duties of his or her office in the Commission.

(6) The Chief Executive Officer shall hold office for a period not exceeding five years, as may be specified in the instrument of appointment, and shall be eligible for re-appointment.

(7) The Minister may, after consultation with the Board, terminate the appointment of the Chief Executive Officer —

(a) if the Chief Executive Officer conducts himself or herself in a manner that is detrimental to the objective of, or the proper performance of the functions of, the Commission;

(b) if the Chief Executive Officer has been found to be physically or mentally incapable of performing his or her duties efficiently, and his or her medical doctor has issued a certificate to that effect;

(c) if the Chief Executive Officer becomes bankrupt; or

(d) if the Chief Executive Officer absents himself or herself from office without reasonable excuse.

(8) The Chief Executive Officer may resign from his or her office by giving six months' notice, in writing, to the Board and the Minister.

20. (1) The Chief Executive Officer shall, subject to the control of the Board on matters of policy, be responsible for —

(a) the supervision of the day-to-day affairs of the Commission;

(b) ensuring that the Commission is carrying out the functions and duties placed upon it in terms of this Act;

(c) running the Commission on sound commercial and financial principles in accordance with policies and decisions made by the Board;

(d) controlling the resources and operations of all the services under the Commission;

(e) submitting financial reports, statements and estimates of income and expenditure to the Board for its approval;

(f) implementing the decisions of the Board; and

(g) carrying out any duty that may be conferred on him or her by the Minister or the Board.

(2) In the performance of his or her duties, the Chief Executive Officer shall keep the Board fully informed of the affairs of the Commission and shall consult the Board from time to time, as may be necessary.

(3) The Chief Executive Officer may delegate to the Secretary, any senior staff or any member of staff of the Commission, as he or she considers appropriate, the exercise of any powers which he or she is authorised to exercise under this Act.

21. (1) There shall be a Secretary of the Commission who shall be appointed by the Chief Executive Officer, with the approval of the Board, on such terms and conditions as may be specified in the instrument of appointment.

Secretary

(2) The Secretary shall, in addition to any function that may be assigned to him or her by the Board or the Chief Executive Officer, be responsible for —

- (a) taking the minutes of the meetings of the Board;
- (b) keeping the records of all decisions of the Board; and
- (c) keeping records of legal transactions of the Commission.

(3) The Secretary shall, unless under exceptional circumstances the Board otherwise directs, in writing, giving the circumstances leading to its decision, attend all meetings of the Board, but shall not have a right to vote on any matter before the Board.

(4) In the absence of the Secretary, the Board may appoint any member of staff of the Commission to perform the functions of the Secretary until the Secretary resumes office or the vacancy is filled, as the case may be.

(5) In the performance of his or her duties, the Secretary shall be responsible to the Chief Executive Officer.

(6) The Chief Executive Officer may, with the approval of the Board, terminate the appointment of the Secretary, on such grounds referred to in the instrument of appointment or on the same grounds specified in relation to the Chief Executive Officer under section 19 (7).

22. (1) The Chief Executive Officer shall appoint the senior staff of the Commission with the approval of the Board.

Appointment
of staff of
Commission

(2) The Chief Executive Officer shall appoint such other staff as may be necessary for the proper discharge of the functions of the Commission.

(3) The terms and conditions of employment of the senior staff of the Commission as well as other staff shall be determined by the Board.

(4) The Commission shall, in the case of its staff other than the Chief Executive Officer, pay wages, salaries, pensions, allowances and any other pecuniary and non-pecuniary benefits as the Board shall determine.

23. The Commission shall put in place arrangements to train its staff to acceptable standards and for competency for the performance of their duties.

Training of
staff by
Commission

Exemption
from
personal
liability

24. A member or any member of staff of the Commission or other person acting under the direction of the Commission or the Board or its committee shall not, in his or her personal capacity, be liable in civil or criminal proceedings in respect of any act done in good faith in the performance of his or her duties under this Act.

PART VI — *Financial Provisions*

Funds of
Commission

25. (1) The funds of the Commission shall consist of —

- (a) such capital as may be determined by the Government;
- (b) such money as may be appropriated by the National Assembly for the purposes of the Commission;
- (c) grants from Government;
- (d) grants or loans from any body, organisation or person;
- (e) interest on savings made by the Commission;
- (f) such money as may accrue to the Commission in the discharge of its functions; and
- (g) money from any other source as may be approved by the Minister.

(2) The Commission may, with the approval of the Board, invest any of its funds which it does not immediately require to use.

Provision of
information

26. The Commission shall provide to the Minister such information concerning the operations, plans and financial accounts of the Commission as the Minister may, from time to time, consider necessary.

Financial year

27. The financial year of the Commission shall be a period of twelve months commencing on the 1st April in each year and ending on the 31st March of the following year.

Accounts

28. (1) The Commission shall keep proper books of accounts of all its income and expenditure and proper records in relation to those accounts.

(2) The Commission shall cause to be prepared in respect of each financial year and not later than four months after the end of that financial year, a statement of accounts which shall include —

- (a) a balance sheet, a statement of income and expenditure and a statement of surplus and deficit; and
- (b) any other information in respect of the financial affairs of the Commission as the Minister for the time being responsible for finance may require.

Audit

29. (1) The accounts of the Commission in respect of each financial year shall, within four months of the end of the financial year, be audited by an auditor appointed by the Board.

(2) The auditor shall report in respect of the accounts for each financial year, in addition to any other matter on which the auditor deems it pertinent to comment on, whether or not —

- (a) the auditor has received all the information and explanation which, to the best of the auditor's knowledge and belief, were necessary for the performance of the auditor's duties;

- (b) the accounts and related records of the Commission have been properly kept;
- (c) the Commission has complied with all the financial provisions of this Act with which it is its duty to comply with; and
- (d) the statement of accounts prepared by the Commission was prepared on a basis consistent with that of the preceding year and represents a true and fair view of the transactions and financial affairs of the Commission.

(3) The auditor's report and a copy of the audited accounts shall, within 14 days of completion, be forwarded to the Commission by the auditor.

30. (1) The Commission shall, not later than six months after the end of each financial year, prepare an Annual Report on the performance of its functions during that year which Report shall include, among other things —

Annual Report

- (a) the auditor's report and a copy of the audited accounts; and
- (b) a record of all directions received from the Minister in the course of the year.

(2) The Annual Report referred to under subsection (1) shall be presented to the Minister, who shall, within 28 days of receipt thereof, lay it before the National Assembly after which it shall be published in the *Gazette*.

PART VII — *Specific functions of Commission*

31. (1) A person wishing to have any matter investigated under this Act, shall lodge an application with the Chief Executive Officer, in the prescribed form together with a non-refundable prescribed fee.

Manner of investigation

(2) The Chief Executive Officer may, before investigating an application, give notice of the application in the *Gazette*, to allow interested parties, to make written representations about the application within the prescribed time.

(3) The Chief Executive Officer shall evaluate every application received by him or her and where the Chief Executive Officer approves the application, he or she shall submit a preliminary recommendation to the Board.

(4) Where the Board approves the recommendation, it shall authorise the Chief Executive Officer to carry out an investigation and submit a report to the Board.

(5) Where an application under subsection (1) is in respect of dumping, the Chief Executive Officer shall have regard to —

- (a) the price payable for goods sold for export, net of taxes, discounts and rebates granted for such goods;

- (b) the comparable price payable in the ordinary course of trade for goods intended for consumption in the exporting country or country of origin; and
 - (c) the margin of dumping of goods, and make reasonable allowance for differences in conditions and terms of sale, difference in taxation and other difference affecting price comparability.
- (6) The Chief Executive Officer shall submit the recommendations on completion of investigation to the Board.

(7) Where the Board approves the recommendations submitted to it under subsection (6), the Board shall submit a written report to the SACU Tariff Board.

(8) The Board shall publish, by notice in the *Gazette*, a final decision taken by the SACU Tariff Board in relation to a report submitted under subsection (7).

Power to delegate

32. The Chief Executive Officer may authorise in writing, any officer of the Commission to conduct an inquiry or investigation into any allegation made under this Act.

Powers of Chief Executive Officer

33. (1) Where in the course of an investigation under this Act, the Chief Executive Officer is satisfied that it would assist an investigation, he or she may require any person in writing and, within a specified time to —

- (a) produce books, records, returns, reports, data stored electronically on a computer or otherwise and any other documents relating to the functions of any public or private body, relating to an investigation made under this Act; or
- (b) provide any information or to answer any questions which the Chief Executive Officer considers necessary in connection with any investigation which is to be conducted under this Act.

(2) A person who fails to comply with subsection (1) commits an offence and is liable to a fine of P2 000, or to imprisonment for a term not exceeding two years, or to both.

Powers of search

34. (1) The Chief Executive Officer, or an officer of the Commission authorised by the Chief Executive Officer in writing may enter, with or without a search warrant, and —

- (a) search any premises on which he or she has reasonable grounds to believe that any matter connected with an investigation under this Act is being carried on;
- (b) require any person who appears to be engaged in carrying on or employed in any business under investigation, to provide information relating to such business;
- (c) require any person who appears to be engaged in carrying on or employed in the business under investigation, to produce books, records, returns, reports, data stored electronically on a computer or otherwise and any other documents relating to an investigation made under this Act; or
- (d) seize any books, records, returns, reports, computers where data is stored electronically or otherwise and any other documents relating to an investigation made under this Act.

(2) Notwithstanding the provisions of subsection (1) an officer of the Commission authorised by the Chief Executive Officer in writing may, in emergency situations enter without a warrant and perform the activities referred to under subsection (1).

(3) Where an officer of the Commission authorised by the Chief Executive Officer in writing seizes anything in accordance with subsections (1) or (2), the Chief Executive Officer or authorised officer shall —

- (a) give a written inventory of the property to the person from whose custody the property is seized; or
- (b) return the seized item as soon as practicable after achieving the purpose for which it was seized.

PART VIII — *Miscellaneous provisions*

35. The Chief Executive Officer shall issue to an officer of the Commission, an identity card which shall be prima facie evidence of the appointment of such person, as an officer of the Commission.

Identity card

36. A person who knowingly —

- (a) makes or causes to be made to an officer of the Commission a false report regarding the commission of any offence; or
- (b) misleads an officer of the Commission by giving false information or by making false statements or accusations,

False
complaints

commits an offence and is liable on conviction to a fine of P2 000, or to imprisonment for a term not exceeding two years, or to both.

37. (1) The Minister may make regulations prescribing anything required to be prescribed under this Act or for the better carrying out of the provisions of this Act.

Regulations

(2) Without prejudice to the generality of subsection (1), regulations may provide for —

- (a) applications for investigations carried out under Part VII;
- (b) any duties to be paid for dumping, countervailing, import, export and safeguard under the Customs and Exercise Duty Act;
- (c) fees payable under this Act; and
- (d) any other thing which is to be prescribed under this Act.

PASSED by the National Assembly this 5th day of August, 2013.

BARBARA N. DITHAPO,
Clerk of the National Assembly.

