

IMPORT AND EXPORT

Export Credit and Foreign Investments Re-insurance Act 78 of 1957, as amended in South Africa prior to Namibian independence  

Summary: This Act ([SA GG 5908](#), also published in [OG 2100](#)) provides for state re-insurance of insurance contracts relating to exports in order to promote foreign trade.

Applicability to SWA: Section 1 defines “Republic” to include “the Territory”, which is defined as “the Territory of South West Africa and includes for all purposes the portion of the Territory known as the ‘Rehoboth Gebiet’ and defined in the First Schedule to Proclamation No. 28 of 1923”. Section 12 originally stated: “This Act shall apply also in the Territory.” Section 12 (as amended by *Act 88 of 1962*) states “This Act and any amendment thereof, whensoever enacted, shall apply also in the Territory.”

Transfer of administration to SWA: The relevant Transfer Proclamation is the Executive Powers (Commerce) Transfer Proclamation (AG 28/1978), dated 28 April 1978. However, section 3(1)(d) of the transfer proclamation excluded this Act from the operation of section 3(1) of the General Proclamation, meaning that the administration of the Act was not transferred to SWA. Thus, amendments to the Act in South Africa continued to apply to South West Africa by virtue of the wording of section 12.

Amendments: The following pre-independence South African amendments were applicable to SWA –

- *Export Credit Re-insurance Amendment Act 66 of 1961* ([RSA GG 31](#))
- *Export Credit Re-insurance Amendment Act 88 of 1962* ([RSA GG 284](#))
- *Export Credit Re-insurance Amendment Act 75 of 1971* ([RSA GG 3186](#))
- *Export Credit Re-insurance Amendment Act 81 of 1981* ([RSA GG 7841](#))
- *Transfer of Powers and Duties of the State President Act 97 of 1986* ([RSA GG 10438](#))
- *Export Credit and Foreign Investments Re-insurance Amendment Act 27 of 1988* ([RSA GG 11217](#)).

Regulations: Regulations are authorised by section 11 of the Act. Pre-independence regulations have not yet been researched. No post-independence regulations have been promulgated.

Notices: RSA Proc. 84/1989 ([RSA GG 11919](#)) concerns the application of the Act to transactions between persons in the Republic of South Africa and UNTAG.

Importation of Cement Ordinance 24 of 1963

Summary: This Ordinance ([OG 2493](#)) authorises the government to prohibit or regulate the import of cement, cementitious material or slag by notice in the *Official Gazette*. No such notices have been located. It has been earmarked for repeal as an obsolete law by the Law Reform and Development Commission.⁹⁰

Regulations: The Ordinance makes no provision for regulations.

⁹⁰ Law Reform and Development Commission, *Report on Repeal of Obsolete Laws: Phase 2* (LRDC 42), March 2021, pages 42-ff.

Import and Export Control Act 30 of 1994

Summary: This Act ([GG 980](#)) provides for import and export control. It repeals the *Import and Export Control Act 45 of 1963*.

Regulations: This Act makes no provision for regulations. Section 6(2) of the Act states:

Anything done, or deemed to have been done, under the provisions of the said Act, shall be deemed to have been done under the corresponding provisions of this Act.

However, since this Act does not authorise regulations, any regulations made under the repealed Act could not survive.

Notices: Import and export issues are addressed in AG GN 6/1981 (export permits), AG GN 7/1981 and GN 33/1987 (import permits), all of which appear to survive under the new legislation.

The export of returnable bottles is prohibited by GN 176/1992 ([GG 536](#)), which was issued under the previous legislation.

The import of certain ozone-depleting substances is prohibited by GN 148/2020 ([GG 7265](#)), which comes into force on 1 January 2021 and which withdraws (with effect from 31 December 2020) GN 281/2010 ([GG 4636](#)), which withdraws GN 80/2004 ([GG 3193](#)).

The import of certain motor vehicles is prohibited by GN 257/2004 ([GG 3334](#)), as amended by GN 252/2013 ([GG 5293](#)), and by GN 253/2013 ([GG 5293](#)).

The import of certain poultry products is restricted by GN 81/2013 ([GG 5167](#)), as amended by GN 321/2013 ([GG 5351](#)) (which is amended by GN 79/2015 ([GG 5738](#))). While a court challenge against GN 81/2013 was pending (see the list of cases below), GN 81/2013 was withdrawn by GN 54/2020 ([GG 7132](#)), which contains a new restriction on the import of certain poultry products.

Prohibitions pertaining to the export of sheep and goat skins are contained in GN 244/2013 ([GG 5285](#)).

Prohibitions pertaining to the import of certain dairy products are contained in GN 245/2013 ([GG 5285](#)). However, this Government Notice was set aside by *Matador Enterprises (Pty) Ltd v Minister of Trade and Industry & Others* 2015 (2) NR 477 (HC), upheld on the basis of different reasoning in *Minister of Trade and Industry v Matador Enterprises (Pty) Ltd* (SA 44-2014) [2020] NASC (19 March 2020).

Cases:

Matador Enterprises (Pty) Ltd v Minister of Trade and Industry & Others 2015 (2) NR 477 (HC) (considering decision-making process under sections 2 and 3, and relationship to Control of the Importation and Exportation of Dairy Products and Dairy Product Substitutes Act 5 of 1986, and setting aside GN 245/2013); on appeal, in *Minister of Trade and Industry v Matador Enterprises (Pty) Ltd* (SA 44-2014) [2020] NASC (19 March 2020), the Supreme Court upheld the setting aside of GN 245/2013 by means of different reasoning.

South African Poultry Association & Others v Ministry of Trade & Industry & Others 2015 (1) NR 260 (HC) (review application seeking to set aside GN 81/2013 as being *ultra vires* the Act; this case is an interlocutory judgment dealing with discovery in respect of the underlying matter). The underlying application was dismissed in *South African Poultry Association & 5 Others v The Minister of Trade and Industry & 3 Others* (A 326/2015) [2016] NAHCMD 199 (8 July 2016) on the basis that an unreasonable time had elapsed before the application had been launched. However, this judgment was appealed to the Supreme Court, which upheld the appeal in *South African Poultry Association v Minister of Trade and Industry* 2018 (1) NR 1 (SC); the Supreme Court condoned the applicants' delay in launching the application and remitted the matter to the High Court for consideration of the merits. GN 81/2013 was withdrawn before further litigation took place.

Export Levy Act 2 of 2016

Summary: This Act ([GG 6042](#)) provides for an export levy on certain goods, to encourage further processing of resources within Namibia, amongst other things. It was brought into force on 1 June 2017 by GN 132/2017 ([GG 6320](#)).

Amendments: GN 397/2019 ([GG 7080](#)) substitutes Schedules 1, 2 and 3 and inserts Schedule 4, pursuant to the authority of section 7(2)(c) and (d) of the Act. GN 303/2020 ([GG 7401](#)) substitutes Schedule 3 pursuant to the authority of section 7(2)(a) of the Act.

Regulations: Regulations are authorised by section 24 of the Act, but none have yet been promulgated.

Application of law: The administration of this Act is affected by the Namibia Revenue Agency Act 12 of 2017 ([GG 6486](#)), which was brought into force with effect from 6 April 2021 by GN 55/2021 ([GG 7496](#)).

INTERNATIONAL LAW

Agreement Establishing the World Trade Organization (WTO) (Marrakesh Agreement), 1994

Protocol Amending the Marrakesh Agreement Establishing the World Trade Organisation (Agreement on Trade Facilitation), 2014

Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), 1973

Amendment to Article XI of the Convention on International Trade in Endangered Species of Wild Fauna and Flora, Bonn, 1979

SADC Protocol on Trade, 1996

Southern African Customs Union Agreement (SACU), 2002

Amendments to the SACU Agreement, 2002, to institutionalise the SACU Summit, 2013

Annex E to the SACU Agreement on Mutual Administrative Assistance, 2011.

See also **CUSTOMS AND EXCISE**.

See also:

- * Cold Storage Works and Abattoirs Proclamation 50 of 1921 (export of meat)
- * Agricultural Produce Export Ordinance 13 of 1928 (export of agricultural produce and meat)
- * Karakul Sheep Farming Industry Protection Proclamation 31 of 1930 (export of Karakul sheep)
- * Tobacco Growers Protection Ordinance 2 of 1933 (import of tobacco for farming purposes)
- * Karakul Pelt Export Duty Proclamation 34 of 1939 (export of karakul pelts)
- * Bonemeal and Superphosphates Control Proclamation 37 of 1944 (import of bonemeal products)
- * *Dairy Industry Act 30 of 1961* (import of margarine)
- * *Marketing Act 59 of 1968* (regulations concerning the import of vegetable oil were issued under the authority of this Act)
- * Meat Industry Act 12 of 1981 (import and export of livestock, meat and meat products)
- * Karakul Pelts and Wool Act 14 of 1982 (import and export of karakul pelts and wool)
- * Control of the Importation and Exportation of Dairy Products and Dairy Product Substitutes Act 5 of 1986 (import and export of dairy products and dairy product substitutes)
- * Seed and Seed Varieties Act 23 of 2018 (import and export of seed)
(AGRICULTURE).

- * Liquor Act 6 of 1998 (import and export of methylated spirits and yeast)

- * Tobacco Products Control Act 1 of 2010 (import of tobacco products)
(ALCOHOL, DRUGS AND TOBACCO).
- * Animal Health Act 1 of 2011 (the Animal Health Regulations cover the import and export of animals and the import of vaccines)
(ANIMALS).
- * *Tear-gas Act 16 of 1964* (importation of tear-gas and articles which are used to release tear-gas)
- * Arms and Ammunition Act 7 of 1996 (import and export of arms and ammunition)
(ARMS AND AMMUNITION).
- * Forest Act 12 of 2001 (provides for regulations governing export of forest produce)
- * Nature Conservation Ordinance 4 of 1975 (import and export of game and game products)
- * Plant Quarantine Act 7 of 2008 (import and export of plants and plant products)
(ENVIRONMENT).
- * *Explosives Act 26 of 1956* (import and export of explosives)
(EXPLOSIVES).
- * Foodstuffs, Cosmetics and Disinfectants Ordinance 18 of 1979 (import of foodstuffs, cosmetics and disinfectants)
(HEALTH).
- * Diamond Act 13 of 1999 (import and export of diamonds)
(MINING AND MINERALS).
- * Aquaculture Act 18 of 2002 (import and export of aquatic organisms and aquaculture products)
- * Inland Fisheries Resources Act 1 of 2003 (import and export of fish)
(MARINE AND FRESHWATER RESOURCES).
- * Controlled Wildlife Products and Trade Act 9 of 2008 (export of game and game products)
- * Export Processing Zones Act 9 of 1995
(TRADE AND INDUSTRY).