

TRADE AND INDUSTRY

Industrial Development Act 22 of 1940, as amended in South Africa prior to Namibian independence.

Summary: This Act establishes the Industrial Development Corporation of South Africa to promote new industries and develop existing ones. As the Act applied to SWA only by virtue of its definition of “Republic”, its continued applicability since independence is questionable.

Applicability to SWA: Section 1 defines “Republic” to include “the territory of South West Africa”. Amendments and regulations to the Act in South Africa may have been made applicable to SWA by virtue of this definition, although there is no provision in the Act stating that they are automatically applicable to SWA.

Transfer of administration to SWA: The relevant Transfer Proclamation is the Executive Powers (Industries) Transfer Proclamation (AG 5/1978), dated 30 January 1978. However, section 3(1)(a) 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.

Price Control Act 25 of 1964, as amended in South Africa to April 1978.

Summary: This Act allows for state control of the prices of goods and services.

Applicability to SWA: Section 21 states “This Act and any amendment thereof shall apply also in the territory of South West Africa, including the Eastern Caprivi Zipfel referred to in section 3 of the South West Africa Affairs Amendment Act, 1951 (Act No. 55 of 1951)) and in relation to all persons in the portion of the said territory known as the ‘Rehoboth Gebiet’ and defined in the First Schedule to Proclamation No. 28 of 1923 of the Administration of that territory.” Section 1 defines “Gazette” accordingly.

Transfer of administration to SWA: The administration of this Act was transferred to SWA by the Executive Powers (Commerce) Transfer Proclamation (AG 28/1977), dated 28 April 1978. None of the amendments to the Act in South Africa after that date were made expressly applicable to SWA.

Regulations: The application of the Act is affected by a large number of Government Notices. Among the most recent ones are AG GN 51/1989, which amends the Schedule to AG GN 29/1985, and AG GN 59/1989, which repeals RSA GN 237 of 1974.

Maximum margarine prices are contained in GN 43/1990 (GG 60), GN 68/1991 (GG 220), GN 41/1992 (GG 390), GN 146/1992 (GG 512), GN 64/1993 (GG 662), 115/1994 (GG 870) and GN 209/1995 (GG 1183). However, GN 209/1995 is repealed by GN 57/1997 (GG 1528).

Deposits and refunds on returnable containers are addressed in GN 19/1992 (GG 359), GN 27/2003 (GG 2925), GN 130/2005 (GG 3507) and GN 237/2008 (GG 4136).

National Supplies Procurement Act 89 of 1970, as amended in South Africa prior to Namibian independence.

Summary: This Act empowers the Minister of Economic Affairs to acquire goods and services if he deems it necessary to the security of the Republic.

Applicability to SWA: Section 1 defines “Republic” to include “the territory of South West Africa”. Section 19 states “This Act and any amendment thereof shall apply also in the territory of South West Africa, including that part of the said territory known as the Eastern Caprivi Zipfel.”

Transfer of administration to SWA: The relevant Transfer Proclamations are the Executive Powers (Industries) Transfer Proclamation (AG 5/1978), dated 30 January 1978, and the Executive Powers (Commerce) Transfer Proclamation (AG 28/1978), dated 28 April 1978. Both of these transfer proclamations 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.

Trade Practices Act 76 of 1976, as amended in South Africa to April 1978.

Summary: This Act regulates certain advertisements, restricts the use of trade coupons in connection with the sale of goods and services, and controls various other trade practices.

Applicability to SWA: Section 23 states “This Act and any amendment thereof shall apply also in the territory of South West Africa, including the Eastern Caprivi Zipfel.”

Transfer of administration to SWA: The administration of this Act was transferred to SWA by the Executive Powers (Commerce) Transfer Proclamation (AG 28/1978), dated 28 April 1978. None of the amendments to the Act in South Africa after the date of transfer were made expressly applicable to SWA.

Controlled Game Products Proclamation 42 of 1980.

Summary: This Proclamation controls the import, export, possession of and trading in controlled game products. It is replaced by the Controlled Wildlife Products and Trade Act 2 of 2003, which had not come into force as of 30 June 2010.

Amendments: The Proclamation is amended by the Nature Conservation General Amendment Act 31 of 1990, to bring it into line with the legal situation after independence and to make provision for stiffer penalties for offences under the Proclamation.

See also Nature Conservation Ordinance 4 of 1975 re: export of game and game products.

Cases:

S v Machinga 1990 NR 157 (HC)

S v Tuzembeho 1993 NR 134 (HC)

S v Khumalo & Another 1994 NR 3 (HC).

Foreign Investments Act 27 of 1990.

Summary: This Act provides for the promotion of foreign investments in Namibia. It came into force on 7 July 1992 (Proc. 19/1992, GG 433).

Amendments: Act 24/1993 amends sections 3, 10 and 18. Export processing zones are exempted from the operation of the Act by section 9 of the Export Processing Zones Act 9 of 1995.

Regulations: Regulations are contained in GN 120/1992 (GG 477).

The minimum value of eligible investments under the Act in terms of section 5(1) is set at N\$2 million by GN 283/1996 (GG 1436), which repeals GN 121/1992.

Businesses and categories of businesses which can be adequately provided by Namibians are specified in terms of section 3(4) of the Act by GN 75/2010 (GG 4460).

Casinos and Gambling Houses Act 32 of 1994.

Summary: This Act makes provision for the licensing, supervision and control of casinos and gambling houses and provides for the establishment of a Casino Board. It came into force on 2 December 1994 (GN 230/1994, GG 983).

Amendments: Act 12/1995 amends sections 1, 10, 14, 15, 18, 22, 41, 44, 45 and 54 and inserts section 51A. Act 28/1996 inserts section 21A, which suspends the granting of gambling house licences until a date fixed by notice in the *Government Gazette*.

Regulations: Regulations are contained in GN 231/1994 (GG 983), as amended by GN 84/1995 (GG 1084), GN 136/1995 (GG 1124), GN 121/1996 (GG 1317) and GN 76/2010 (GG 4460).

Related laws: See *Gambling Act 51 of 1965* (CRIMINAL LAW AND PROCEDURE) and Licensing of Totalisators Ordinance 5 of 1938 (REVENUE).

Application of law: The application of this law is affected by the Financial Intelligence Act 3 of 2007, which places certain duties on casinos and gambling houses.

Export Processing Zones Act 9 of 1995.

Summary: This Act provides for the establishment, development and management of Export Processing Zones. It came into force on 10 October 1995 (GN 186/1995, GG 1174).

Amendments: Act 6/1996 amends section 8 of the Act to make the Labour Act 6 of 1992 applicable in Export Processing Zones, subject to certain modifications and

exceptions. The Electricity Act 4 of 2007, which came into force on 15 November 2007 (GN 201/2007, GG 3933), amends section 22.

Regulations: The Walvis Bay Export Processing Zone is described in GN 183/1997 (GG 1681), replacing GN 14/1996 (GG 1241) which in turn replaced GN 185/1995 (GG 1174).

Second Hand Goods Act 23 of 1998.

Summary: This Act regulates the business of dealers in second hand goods and scrap metal, auctioneers and pawnbrokers. It establishes record-keeping requirements aimed at detecting stolen goods. It came into force on 1 November 1999 (GN 211/1999, GG 2209).

Amendments: The General Law Amendment Act 14 of 2005 amends section 1 of the Act.

Regulations: Regulations are contained in GN 212/1999 (GG 2209).

Application of law: The application of this law is affected by the Financial Intelligence Act 3 of 2007, which places certain duties on dealers in second hand goods and auctioneers.

Competition Act 2 of 2003.

Summary: This Act safeguards and promotes competition in the Namibian market and establishes the Namibian Competition Commission. It came into force on 3 March 2008 (GN 54/2008, GG 4004). It replaces the *Regulation of Monopolistic Conditions Act 24 of 1955*.

Amendments: The State-owned Enterprises Governance Act 2 of 2006, which was brought into operation by Proc. 13/2006 (GG 3733), substitutes section 5, deletes section 7, and amends section 13.

Regulations: Rules are contained in General Notice 41/2008 (GG 4004). The office address of the Namibian Competition Commission for the purposes of communications to the Commission is set out in General Notice 30/2010 (GG 4423).

Appointments: The appointment of the Namibian Competition Commission is announced in GN 93/2010 (GG 4483).

Related international agreements:

Declaration on Regional Cooperation in Competition and Consumer Policies, 2009

(entered into force: 8 September 2009) (source: SADC)

signature: 8 September 2009 (source: SADC)

no ratification appears to be needed

Controlled Wildlife Products and Trade Act 2 of 2003.

Summary: This Act implements the *Convention on International Trade in*

Endangered Species of Wild Fauna and Flora (CITES). It repeals the Controlled Game Products Proclamation 42 of 1980. It will come into force on a date set by the Minister.

Cases: The following cases concern the Controlled Game Products Proclamation 42 of 1980-

- S v Machinga* 1990 NR 157 (HC)
- S v Tuzembeho* 1993 NR 134 (HC)
- S v Khumalo & Another* 1994 NR 3 (HC).

INTERNATIONAL LAW

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

accession: 18 December 1990; effective: 18 March 1991
(source: <http://www.cites.org/eng/parties/alphabet.shtml>.)

Amendment to Article XI of the Convention, Bonn (Germany), 22 June 1979 (entered into force on 13 April 1987)

accession: 18 December 1990, effective 18 March 1991
(source: <http://www.cites.org/eng/parties/bonn.shtml>)

Namibia has NOT agreed to the following amendment:

- * *Amendment to Article XXI of the Convention, Gaborone (Botswana), on 30 April 1983* (not yet in force internationally as of 20 January 2005).

Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade, 1998

(entered into force internationally on 24 February 2004)

signature: 11 September 1998

deposit: 24 June 2005; effective date: 22 September 2005 (source: www.pic.int)

General Agreement on Tariffs and Trade, 1947 and GATT instruments Nos. 1, 4, 5, 6, 8, 9, 11, 13, 17 and 18

date of succession: 21 March 1990

Namibia became a party to the General Agreement on Tariffs and Trade and the following GATT instruments by means of succession, effective as of the date of independence. Multilateral instruments relating to the General Agreement on Tariffs and Trade (protocols, declarations, etc.) which were concluded after 1 February 1955 are deposited with the Director-General of the Contracting Parties to the General Agreement on Tariffs and Trade rather than with the Secretary-General of the United Nations and are not reflected in this list.

1. Protocol of Provisional Application of the General Agreement on Tariffs and Trade, signed at Geneva on 30 October 1947
4. Protocol modifying certain provisions of the General Agreement on Tariffs and Trade, signed at Havana on 24 March 1948
5. Special Protocol modifying article XIV of the General Agreement on Tariffs and Trade, signed at Havana on 24 March 1948
6. Special Protocol relating to article XXIV of the General Agreement on Tariffs and Trade, signed at Havana on 24 March 1948
8. Protocol modifying part I and article XXIX of the General Agreement on Tariffs and Trade, signed at Geneva on 14 September 1948
9. Protocol modifying part II and article XXVI of the General Agreement on Tariffs and Trade, signed at Geneva on 14 September 1948

11. Third Protocol of Rectifications to the General Agreement on Tariffs and Trade, signed at Annecy on 13 August 1949
13. Protocol modifying article XXVI of the General Agreement on Tariffs and Trade, signed at Annecy on 13 August 1949
17. Fourth Protocol of Rectifications to the General Agreement on Tariffs and Trade, signed at Geneva on 3 April 1950
18. Fifth Protocol of Rectifications to the General Agreement on Tariffs and Trade, signed at Torquay on 16 December 1950

Convention Establishing a Customs Co-operation Council, 1950

accession: 1 July 1992 (source: Ministry of Foreign Affairs)

Fourth ACP-EU Convention of Lomé

ratification: 15 October 1996 (Proc. 7/1997, GG 1605)

Protocol on the accession of three additional members of the European Union to the Fourth ACP-EU Convention of Lomé

ratification: 24 June 1997 (Proc. 7/1997, GG 1605)

African, Caribbean and Pacific (ACP) - European Union (EU) Partnership Agreement, Cotonou, 2000 ("COTONOU Agreement")

(came into force internationally on 1 April 2003; to eventually replace all trade arrangements made under the Fourth ACP-EU Convention of Lomé)

signature: 23 June 2000

ratification approved by Parliament: 14 May 2002 (source: Parliament)

ratification: 7 June 2002 (source: ACP Secretariat, <http://www.acpsec.org/>)

Treaty Establishing the African Economic Community, 1991

signature: 3 June 1991 (source: Ministry of Foreign Affairs)

ratification: 28 June 1992 (source: Ministry of Foreign Affairs)

deposit: 1 July 1992 (source: Ministry of Foreign Affairs)

Protocol to the Treaty Establishing the African Economic Community relating to the Pan-African Parliament, 2001

(came into force within the AU on 14 December 2003) (source: <http://www.africa-union.org>)

signature: 7 May 2001

ratification approved by Parliament: 9 July 2002 (source: Parliament)

deposit: 13 August 2002 (source: <http://www.africa-union.org>)

Common Market in East and Southern Africa (COMESA) Treaty, 1994

signature: 5 November 1993 (never ratified) (source: Ministry of Trade and Industry)

Note: Cabinet announced that Namibia would pull out of COMESA with effect from May 2004. (See *The Namibian*, 16 May 2003.)

Customs Union Agreement between South African Government, Botswana, Lesotho and Swaziland

accession: 6 July 1990 (source: Ministry of Foreign Affairs)

Agreement for the Establishment of Southern African Centre for Ivory Marketing (SACIM), 1991

in force in Namibia: 20 June 1991

(source: Environmental Treaties and Resource Indicators Service, <http://sedac.ciesin.org/entri/>.)

Note: The name SACIM was changed to the Southern African Convention for Wildlife Management (SACWM) in 1996. (source: www.art.org.uk/newsletter/1996_09_expands.html)

SADC Protocol on Trade, 1996

(entered into force within SADC on 25 January 2000) (source: SADC)

signature: 24 August 1996 (source: SADC)

ratification: 22 December 1998 (source: SADC; Ministry of Foreign Affairs)

SADC Amendment Protocol on Trade, 2000

(entered into force within SADC on 7 August 2000) (source: SADC)

signature: 7 August 2000 (source: SADC)

ratification: 4 April 2001 (source: Ministry of Foreign Affairs)

date of implementation: 4 June 2001 (source: Ministry of Foreign Affairs)

SADC list of ratifications dated 23 June 2010 does not show ratification by Namibia

Agreement Amending Article 20 of the Protocol on Trade, 2008

(entered into force within SADC on 17 August 2008) (source: SADC)

signature: 17 August 2008

no ratification appears to be needed

Agreement Amending Annex VI to Protocol on Trade concerning settlement of disputes amongst member states 2007

(entered into force within SADC on 17 August 2007) (source: SADC)

signature: 17 August 2007 (source: SADC)

no ratification appears to be needed

Note: See GN 116/2001 (GG 2548), which relates to the implementation of the SADC Protocol on trade in Namibia.

Memorandum of Understanding between the Governments of the Republics of Botswana, Namibia and South Africa on the Development and Management of the Trans-Kalahari Corridor, 2003

signature: 3 November 2003

ratification: 21 February 2007

published in GN 193/2007 (GG 3927)

Note: Memoranda of understanding are not generally legally binding.

Free Trade Agreement between European Free Trade Association and Southern African Customs Union States, 2005

signature: 26 June 2006 (source: www.efta.int)

ratified by Parliament: 9 October 2007 (source: Parliament)

entered into force: 1 May 2008 (source: www.efta.int)

See also **AGRICULTURE**.

See also **ALCOHOL, DRUGS AND TOBACCO**.

See also **CUSTOMS AND EXCISE**.

See also **IMPORT AND EXPORT**.

See also Aquaculture Act 18 of 2002 (**MARINE AND FRESHWATER RESOURCES**).

See also **MINING AND MINERALS**.

See also as examples of municipal regulations on trading: Windhoek Municipality: Amendment of Street and Traffic Regulations (General Notice 27/1994, GG 797) (including rules regarding hawking by children), Walvis Bay Municipality: Regulations on informal trading (General Notice 291/1998, GG 2000), and Windhoek Municipality: Street Trading Regulations (General Notice 252/1999, GG 2179) (**REGIONAL AND LOCAL GOVERNMENT**).

See also **REVENUE**.

See also **TENDERS**.

See also **TOURISM**.