



Republic of Namibia
Annotated Statutes

Control of the Importation and Exportation of Dairy Products and Dairy Product Substitutes Act 5 of 1986

(OG 5195)
came into force on date of publication: 14 April 1986

ACT

To provide for the control of the importation and exportation of dairy products and dairy products substitutes, and for incidental matters.

(Afrikaans text signed by the Administrator-General on 20 March 1986)

ARRANGEMENT OF SECTIONS

1. Definitions
2. Prohibition on importation or exportation of dairy products or dairy product substitutes
3. Permits for the importation or exportation of dairy products or dairy product substitutes
4. Inspectors
5. Powers of an inspector
6. Offences and penalties
7. Presumption
8. Regulations
9. Delegation of powers
10. Short title

BE IT ENACTED by the National Assembly, as follows:-

Definitions

1. (1) In this Act, unless the context indicates otherwise -

“dairy product” means butter, Cheddar cheese, factory cream, flavoured milk, U.H.T. milk, sterilized milk, Gouda cheese, yoghurt, buttermilk, cultured milk, cottage cheese, milk powder,

industrial milk, cream, fresh milk or any other product which the Cabinet has declared to be a dairy product as contemplated in subsection (2);

“dairy product substitute” means any substance which, irrespective of whether or not any dairy product was used in its production, processing or manufacture, is made from animal or vegetable fats or oils or a mixture thereof in imitation, form or semblance of a dairy product, but does not include margarine;

“department” means the Department of Agriculture and Nature Conservation;

“importation”, in relation to any dairy product or dairy product substitute contemplated in section 2, means importation into the territory with the intent to sell any such dairy product or dairy product substitute;

“inspector” means an inspector contemplated in section 4;

“permit” means a permit contemplated in section 3;

“Secretary” means the Secretary of Agriculture and Nature Conservation;

“sell” includes to offer, advertise, keep, expose, transmit, convey or deliver for sale and an exchange or any disposal for any consideration whatever;

“territory” means the territory of South West Africa;

“this Act” includes the regulations;

“trading” means buying and selling in order to derive an income therefrom.

(2) The Cabinet may at its discretion for the purposes of this Act and by notice in the *Official Gazette*, declare any product that is generally known as a dairy product but is not mentioned in the definition of “dairy product” in subsection (1), to be a dairy product.

Prohibition on importation or exportation of dairy products or dairy product substitutes

2. (1) The Cabinet may at any time by notice in the *Official Gazette* prohibit the importation into or the exportation from the territory of any dairy product or dairy product substitute and for such purposes specified in the notice, or of all dairy products or dairy product substitutes, and may in such notice determine a period for the duration of such prohibition.

(2) The Cabinet may at any time by notice in the *Official Gazette* amend or revoke the prohibition referred to in subsection (1).

Permits for the importation or exportation of dairy products or dairy product substitutes

3. (1) The Cabinet may, on application by a wholesaler or the proprietor of a dairy products processing plant, and on the conditions the Cabinet may determine, issue a permit for the importation into the territory of a specific quantity of a dairy product or dairy product substitute in respect of which a prohibition on importation into the territory under section 2 is in force, if it has ascertained to its satisfaction that -

(a) (i) a dairy product or dairy product substitute of equal quality is not being manufactured or produced in the territory and cannot technically or economically speaking, be manufactured or produced in the territory over the short term; or

- (ii) local manufacturers or producers do not manufacture or produce enough of the dairy product or dairy product substitute concerned to provide in the local demand; and
- (b) the quantity of the dairy product or dairy product substitute for which the permit is required is a realistic quantity for the territory; and
- (c) such imports will not harm the position of competitiveness of the dairy industry in the territory.

(2) The Cabinet may, on application by a wholesaler or the proprietor of a dairy products processing plant, and on the conditions the Cabinet may determine, issue a permit for the exportation from the territory of a specific quantity of a dairy product or dairy product substitute in respect of which a prohibition on exportation from the territory under section 2 is in force, if it has ascertained to its satisfaction that -

- (a) the dairy industry in the territory can spare the particular quantity of the dairy product or dairy product substitute involved without creating a demand therefor locally; and
- (b) it is in the interest of the dairy industry in the territory that such export should take place.

Inspectors

4. (1) The Secretary may, either on a permanent basis or for a special case that has come to his attention, designate any person in his department as an inspector for the investigation of any possible contravention of a prohibition under section 2.

(2) An inspector designated in terms of subsection (1) shall be provided with a letter of authority signed by the Secretary and certifying that the said person has been authorized as an inspector in terms of this Act.

Powers of an inspector

5. (1) An inspector or any person contemplated in subsection (4) may at all reasonable times enter upon any land, or enter any building -

- (a) which is occupied by any person trading or presumed to be trading in some dairy product or dairy product substitute in respect of which a prohibition under section 2 is in force; or
- (b) upon which or in which any dairy product or dairy product substitute is being stocked, sold, manufactured, produced, processed, treated, prepared, graded, classified, packed, distributed or marked, or is presumed to be so stocked, sold, manufactured, produced, processed, treated, prepared, graded, classified, packed, distributed or marked.

(2) An inspector or any person contemplated in subsection (4) so entering upon land or entering a building, may -

- (a) inspect or search such land or building and open any door, cupboard or container;

- (b) demand information regarding any dairy product or dairy product substitute that is found, from any person in whose possession or charge it is or from the proprietor or person in charge of such land or building;
- (c) weigh, count, measure or mark any dairy product, dairy product substitute, ingredient or container thereof that is found;
- (d) examine, or make copies of or take extracts from, any book, statement, label or document that is found and that presumably has a bearing on any dairy product, dairy product substitute or ingredient thereof, or demand from the proprietor or the person in charge of the land or building an explanation for the existence or contents thereof;
- (e) seize any dairy product or dairy product substitute, or any object, label, book, statement or other document which appears to provide proof of a contravention of a prohibition under section 2.

[The word “prohibition” is misspelt in the *Official Gazette*, as reproduced above.]

(3) An inspector shall produce the written authority by virtue of which he is authorized as an inspector to any person affected by the exercise or performance of any power, duty or function of such inspector under this Act.

(4) The powers, duties and functions of an inspector under this Act may also be exercised or performed by a member of the South West African Police or by an inspector appointed under section 10 of the Foodstuffs, Cosmetics and Disinfectants Ordinance, 1979 (Ordinance 18 of 1979).

Offences and penalties

6. (1) Any person who -

- (a) contravenes a prohibition imposed under section 2; or
- (b) fails to comply with a condition imposed in a permit issued in terms of section 3; or
- (c) obstructs or hinders an inspector or a person contemplated in section 5(4) in the performance of his duties or the exercise of his powers in terms of this Act,

shall be guilty of an offence.

(2) On the conviction of any person -

- (a) of the offence referred to in paragraph (a) of subsection (1), such person shall be liable to a fine not exceeding R2 000 or imprisonment for a period not exceeding one year, or to both such fine and such imprisonment;
- (b) of the offence referred to in paragraph (b) of subsection (1), such person shall be liable to a fine not exceeding R1 000 or imprisonment for a period not exceeding six months, or to both such fine and such imprisonment; or
- (c) of the offence referred to in paragraph (c) of subsection (1), such person shall be liable to a fine not exceeding R500 or imprisonment for a period not exceeding three months, or to both such fine and such imprisonment.

Presumption

7. When a person is found to be in possession of a quantity of a dairy product or dairy product substitute in respect of which a prohibition on importation under section 2 is in force and which has not originated from a producer or manufacturer in the territory, it shall be presumed, unless the contrary is proved, that such person has imported the said dairy product or dairy product substitute into the territory.

Regulations

8. The Cabinet may make regulations in relation to -

- (a) the form which an application for a permit has to be in and the information such application has to contain;
- (b) the form which a permit has to be in;
- (c) in general, any matter which it may deem necessary or expedient to prescribe in order that the objects of this Act may be attained.

Delegation of powers

9. The Cabinet may at any time delegate to the Secretary any power conferred on it by section 3.

Short title

10. This Act shall be called the Control of the Importation and Exportation of Dairy Products and Dairy Product Substitutes Act, 1986.