

**REPUBLIC OF NAMIBIA**

**NATIONAL COUNCIL**

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**THE CONTROL OF THE  
IMPORT AND EXPORT OF DAIRY  
PRODUCTS AND DAIRY  
PRODUCT SUBSTITUTES BILL**

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*(As passed by the National Assembly)*

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*(Introduced by the Minister of Agriculture, Water and Forestry)*

## **BILL**

**To provide for the institution of measures to regulate trade in dairy products and dairy product substitutes; and to provide for incidental matters.**

### **ARRANGEMENT OF SECTIONS**

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**BE IT ENACTED** as passed by the Parliament, and assented to by the President, of the Republic of Namibia, as follows:

### **Definitions**

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

“dairy product” means milk, including any product derived from milk, which is intended for consumption by humans;

“dairy product substitute” means any substance declared by the Minister to be a dairy product substitute under section 12;

“Executive Director” means the Executive Director of the Ministry;

“export”, in relation to any dairy product or dairy product substitute contemplated in section 2, means export out of Namibia with the intent to sell any such dairy product or dairy product substitute, but does not include the transport through Namibia of a dairy product or dairy product substitute produced outside Namibia and intended to be sold outside Namibia;

“import”, in relation to any dairy product or dairy product substitute contemplated in section 2, means import into Namibia with the intent to sell any such dairy product or dairy product substitute, but does not include the transport through Namibia of a dairy product or dairy product substitute produced outside Namibia and intended to be sold outside Namibia;

“milk” means milk derived from the mammary glands of animals;

“Minister” means the Minister responsible for agriculture;

“Ministry” means the Ministry responsible for agriculture;

“permit” means a permit required as contemplated in section 2(2)(c) or 2(2)(d), as the case may be;

“quota” means a maximum amount of dairy products or dairy product substitutes that may be imported into, or exported from Namibia which is prescribed under section 2(2)(e);

“prescribe” means prescribe by regulation;

“regulation” means any regulation made under this Act;

“specified person” means a person or body specified as contemplated in section 3(1);

“staff member” means any staff member as defined in section 1 of the Public Service Act, 1995 (Act No. 13 of 1995); and

“this Act” includes any regulation and a notice issued under section 12.

### **Measures for the regulation of trade in dairy products or dairy product substitutes**

2. (1) If the Minister is of the opinion that -
  - (a) it is necessary to protect Namibian producers or manufacturers of dairy products or dairy product substitutes against unfair competition;
  - (b) it is necessary to protect any producer or manufacturer of dairy products or dairy product substitutes, because that producer or manufacturer is part of an infant industry;
  - (c) due to drought or similar circumstances Namibian producers or manufacturers of dairy products or dairy product substitutes are in need of special protection;
  - (d) producers or manufacturers of dairy products or dairy product substitutes outside Namibia follow practices in respect of the production of dairy products or dairy product substitutes that may have the effect that Namibian producers or manufacturers of dairy products or dairy product substitutes are put at a disadvantage;
  - (e) producers or manufacturers of dairy products or dairy product substitutes outside Namibia follow practices in respect of the production of dairy products or dairy product substitutes that may have the effect that the use of imported dairy products or dairy product substitutes may be detrimental to the health or welfare of Namibian consumers; or
  - (f) there is a shortage of dairy products or dairy product substitutes in Namibia, or it is likely that such a shortage may arise,

he or she may, despite the provisions of any other law or any international agreement, prescribe such measures as he or she may consider necessary to regulate trade in dairy products or dairy product substitutes.

(2) Measures prescribed under subsection (1) may include, but are not limited to -

- (a) the prohibition of the import of all dairy products or dairy product substitutes or a prescribed class of dairy products or dairy product substitutes into Namibia;
- (b) the prohibition of the export of all dairy products or dairy product substitutes or a prescribed class of dairy products or dairy product substitutes from Namibia;
- (c) the prohibition of the import of all dairy products or dairy product substitutes or a prescribed class of dairy products or dairy product substitutes into Namibia, unless the person who imports such product or substitute is the holder of a permit;
- (d) the prohibition of the export of all dairy products or dairy product substitutes or a prescribed class of dairy products or dairy product substitutes from Namibia, unless the person who exports such product or substitute is the holder of a permit;
- (e) when the import or export of a dairy product or dairy product substitute or class thereof has been prohibited with out a permit -
  - (i) prescribing a maximum amount of a prescribed class of dairy products or dairy product substitute that may be imported into, or exported from Namibia; or
  - (ii) prescribing of a transparent and fair manner for the determination of such amount in which case the regulations must also prescribe whether the determination must be made by the Minister or the specified person,

and prescribing a fair and transparent manner for the allocation of that quota between importers or exporters of dairy products or dairy product substitutes and prescribing whether the allocation must be done by the Minister or the specified person.

(3) When the Minister institutes, removes or alters measures referred to in subsection (1), he or she must consult with every body or organisation recognised under section 10.

(4) For the purposes of subsection (2) a class or kind of dairy product or dairy product substitute may be specified according to -

- (a) the purposes for which the dairy product or dairy product substitute is intended to be used;
- (b) the place or country where the dairy product or dairy product substitute has been produced or manufactured;

- (c) any aspect of the production or manufacture of the dairy product or dairy product substitute, including the use of any substance, hormone or medicine, or any process or practice employed in the manufacture or production thereof; or
- (d) any other relevant criterion.

(5) Regulations imposing measures as contemplated in subsection (1) may not come into operation earlier than 30 days after the date of its publication in the *Gazette*.

### **Specification of persons or bodies**

3. (1) If a permit is required for the import or export of dairy products or dairy product substitutes as contemplated in section 2(2)(c) or 2(2)(d), the Minister may prescribe that -

- (a) application for permits must be made to a specified person or body; and
  - (b) a specified person or body has the power to consider, decide on and issue permits, which person or body may be different from the person or body specified as contemplated in paragraph (a).
- (2) If a person or body has not been specified as contemplated in subsection (1) -
- (a) application for permits must be made to the Minister;
  - (b) the Minister must consider, decide on and issue permits.

### **Permits**

4. (1) If a permit is required for the import or export of dairy products or dairy product substitutes as contemplated in section 2(2)(c) or 2(2)(d), the Minister may -

- (a) prescribe the form in which an application for a permit must be made as well as any procedural requirements for such an application;
- (b) prescribe the criteria with which an applicant must comply in order to qualify for the issuing of a permit;
- (c) prescribe the application fees for permits and fees for the issuing of permits and prescribe whether those fees must be paid to the State or whether they must be paid to the specified person or prescribe under which circumstances such fees must be paid to the State or under which circumstances such fees must be paid to the specified person;
- (d) prescribe the form of a permit or any requirements with which a permit must comply;
- (e) prescribe conditions subject to which a permit must be issued: Provided that different conditions may be prescribed for different classes of permits;

- (f) prescribe which conditions may be imposed on a permit by the Minister or the specified person and prescribe under which circumstances such conditions may be imposed;
  - (g) prescribe which conditions must be specified on the permit or prescribe under which circumstances such conditions must be so specified;
  - (h) subject to legal requirements for fair administrative procedures and giving affected persons an opportunity to be heard, prescribe the imposition of conditions relating to the circumstances under which permits may be suspended, cancelled or withdrawn as well as the procedure for such suspension, cancellation or withdrawal; and
  - (i) prescribe that, or under which circumstances, an inspector, a customs officer or another specified class of staff member or employee of a specified person may verify compliance with conditions imposed on a permit.
- (2) Regulations made under this Act -
- (a) may provide that the quantity of dairy products or dairy product substitutes whose import or export is authorised by the permit, must be indicated on the permit in the prescribed manner;
  - (b) if a portion of a quota has been allocated to a person applying for a permit, may require that the total allowable amount of dairy products or dairy product substitutes that may be imported or exported or the amount remaining of that amount must be indicated in the prescribed manner on the permit.
- (3) Subject to regulations made under this Act, a permit issued under this Act, may state, in addition to any prescribed particulars -
- (a) the quantity of the dairy product or dairy product substitute or of the class or kind of dairy product or dairy product substitute concerned which may be imported or exported thereunder;
  - (b) the period within which the dairy product or dairy product substitute or class or kind of dairy product or dairy product substitute may be imported or exported;
  - (c) the port, borderpost or other place through which the dairy product or dairy product substitute or class or kind of dairy product or dairy product substitute may be imported or exported;
  - (d) the country or territory from or to which the dairy product or dairy product substitute or class or kind of dairy product or dairy product substitute may be imported or exported;
  - (e) the manner in which the dairy product or dairy product substitute or class or kind of dairy product or dairy product substitute may be imported or exported; and

- (f) such other conditions as the Minister or the specified person may direct, including any condition relating to the possession, ownership or disposal of the dairy product or dairy product substitute or class or kind of dairy product or dairy product substitute after the import thereof or to the use to which the dairy product or dairy product substitute may be put.

### **Keeping of records and provision of information**

5. (1) Regulations made under this Act may provide -
  - (a) that any importer, exporter or person who sells or buys dairy products or dairy product substitutes for the purpose of selling it to distributors or retailers or the public must keep such records as may be prescribed;
  - (b) prescribe that specified information must be provided to a specified person, body or institution at specified times or under specified circumstances.
- (2) The Minister or a person or body authorised to do so in regulations made under this Act, may request such information from any importer, exporter, seller or buyer of dairy products or dairy product substitutes, as may be necessary to determine -
  - (a) the total amount of dairy products or dairy product substitutes imported into, or exported from Namibia or the total amount of any class of such products or substitutes;
  - (b) the total amount of dairy products or dairy product substitutes imported into, or exported from Namibia by a specific person, or the total amount of any class of such products or substitutes imported or exported by a specific person;
  - (c) the total amount of dairy products or dairy product substitutes consumed or sold in Namibia or of any class of such products or substitutes so sold or consumed.

### **Inspectors**

6. (1) The Executive Director may designate, either on a permanent basis or for a special case that has come to his or her attention, any suitable staff member in the Ministry as an inspector to inspect compliance with this Act or a permit.
- (2) the Minister, in the case of a specified person, may designate, either on a permanent basis or for a special case that has come to his or her attention, any suitable officer or employee of the specified person, as an inspector to inspect compliance with this Act or a permit.
- (3) The Executive Director or the Minister must provide an inspector with a signed letter of designation certifying that the staff member, officer or employee concerned has been designated as an inspector in terms of this Act and is authorised to act as such.

**Powers, functions and duties of an inspector**

7. (1) An inspector may at all reasonable times without warrant or notice enter any premises or part of any premises that is not the residence of any person and -

- (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 imposed under section 2(2)(a) or 2(2)(b) is in force or in respect of which a permit is required as contemplated in section 2(2)(c) or 2(2)(d); or
- (b) upon which or in which any dairy product or dairy product substitute in respect of which a prohibition imposed under section 2(2)(a) or 2(2)(b) is in force or in respect of which a permit is required as contemplated in section 2(2)(c) or 2(2)(d), is being stocked, sold, manufactured, produced, processed, treated, prepared, graded, classified, packed, distributed or marked, or is suspected to be so stocked, sold, manufactured, produced, processed, treated, prepared, graded, classified, packed, distributed or marked.

(2) An inspector may enter a home or any premises other than a place contemplated in subsection (1) only -

- (a) with the consent of the owner or occupier; or
- (b) if authorised by a warrant under subsection (3) to do so.

(3) A magistrate or judge of the High Court, in chambers and having jurisdiction, may issue a warrant on written application by an inspector stating under oath or affirmation the reasons for the need to enter the place concerned in order to investigate any possible contravention of this Act or of a permit.

(4) An inspector entering any place or home as contemplated in subsection (1) or (2), may -

- (a) inspect or search the place or home;
- (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 the place or home;
- (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 place or home an explanation for the existence or contents thereof;
- (e) seize, or take a sample of, 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 this Act or a permit.



(5) The powers, functions and duties of an inspector under this Act may also be exercised, performed or carried out by -

- (a) a member of the Namibian Police Force; or
- (b) an inspector appointed under section 10 of the Foodstuffs, Cosmetics and Disinfectants Ordinance, 1979 (Ordinance No. 18 of 1979).

(6) An inspector must produce the letter of designation by virtue of which he or she has been designated as an inspector to any person affected by the exercise, performance or carrying out of any power, function or duty of the inspector under or in terms of this Act.

(7) An inspector exercising, performing or carrying out any power, function or duty under or in terms of this Act -

- (a) may be accompanied by an interpreter or a police officer;
- (b) must provide a receipt for anything seized in terms of subsection (4)(e); and
- (c) must return, subject to subsection (8), anything so seized within a reasonable time.

(8) An inspector who seizes or takes a sample of any dairy product or dairy product substitute as contemplated in subsection (4)(e) may dispose thereof, if the dairy product or dairy product or sample is perishable, with due regard to the interests of the persons concerned, of the article in such manner as the circumstances may require.

### **Offences and penalties**

8. (1) Any person who -

- (a) contravenes or fails to comply with a prohibition imposed under section 2(2)(a) or 2(2)(b);
- (b) imports or exports a dairy product or dairy product substitute without a permit when such a permit is required as contemplated in section 2(2)(c) or 2(2)(d), as the case may be;
- (c) contravenes or fails to comply with any condition imposed in a permit;
- (d) pretends to be an inspector;
- (e) obstructs, hinders or attempts to influence improperly a person or an inspector exercising, performing or carrying out a power, function or duty under or in terms of this Act;
- (f) refuses or fails to answer fully any lawful question put by a person or an inspector exercising, performing or carrying out a power, function or duty under or in terms of this Act;

- (g) refuses or fails to comply with any lawful request by a person or an inspector exercising, performing or carrying out a power, function or duty under or in terms of this Act;
- (h) obtains or attempts to obtain any permit by means of fraud or false pretences or information, or by presenting or submitting a false or forged document;
- (i) contravenes or fails to comply with a directive contemplated in section 5(2) or fails to keep records or to provide information prescribed under section 5(1) or furnishes or records any false information while purporting to comply with such directive or regulation,

commits an offence.

- (2) On the conviction of any person -
  - (a) of an offence referred to in paragraph (a) or (b) of subsection (1), that person is liable to a fine not exceeding N\$400 000 plus a further fine not exceeding three times the commercial value of the dairy product or dairy product substitute in respect of which the offence was committed or to imprisonment for a period not exceeding four years, or to both such fine and such imprisonment;
  - (b) of an offence referred to in paragraph (c) of subsection (1), that person is liable to a fine not exceeding N\$300 000 plus a further fine not exceeding three times the commercial value of the dairy product or dairy product substitute in respect of which the offence was committed or to imprisonment for a period not exceeding three years, or to both such fine and such imprisonment;
  - (c) of an offence referred to in paragraphs (d) or (e) of subsection (1), that person is liable to a fine not exceeding N\$100 000 or to imprisonment for a period not exceeding two years, or to both such fine and such imprisonment; or
  - (d) of an offence referred to in paragraphs (f), (g), (h) or (i) of subsection (1), that person is liable to a fine not exceeding N\$50 000 or to imprisonment for a period not exceeding one year, or to both such fine and such imprisonment.
- (3) The court convicting any person -
  - (a) of importing or exporting or attempting to import or export any dairy product or dairy product substitute or class or kind of dairy product or dairy product substitute in contravention of a provision of regulations made under section 2; or
  - (b) of failing to comply with any requirement contained in a permit or a condition stated in a permit,

may declare the dairy product or dairy product substitute concerned to be forfeited to the State.

(4) A declaration made under subsection (3) does not affect any rights which any person other than the convicted person may have to the dairy product or dairy product substitute concerned, but if the other person is the owner of the goods, the declaration is binding upon the owner, unless credible evidence is adduced that the owner did not know that the goods were being dealt with in contravention of the provision or condition concerned.

(5) Section 35(3) and (4) of the Criminal Procedure Act, 1977 (Act No. 51 of 1977), applies with the necessary changes to any forfeiture under subsection (3).

### **Jurisdiction of magistrate's court**

9. Despite anything to the contrary in any other law contained a magistrate's court has jurisdiction to impose any penalty provided for in this Act.

### **Recognition of body or organisation**

10. The Minister may in writing recognise any body or organisation which is in his or her opinion representative of the dairy industry or may recognise more than one such body, if in his or her opinion, there are different bodies which are representative of different sectors of the dairy industry.

### **Regulations**

11. (1) The Minister may make regulations, after consultation with a body or organisation contemplated in section 10, if any, in relation to -

- (a) any matter relating to which the making of regulations is authorised by this Act; and
- (b) in general, any matter which is necessary or expedient to prescribe in order to attain the objects of this Act.

(2) Before making regulations under this Act, the Minister must publish a copy of the draft regulations in the *Gazette* together with a notice inviting interested parties to comment on the regulations within 30 days from the date of that publication.

(3) The Minister must also publish a notice in two news papers circulating in Namibia giving notice of his or her intention to make the regulations in question and inviting interested parties to comment on the regulations.

(4) The Minister may make the regulations after having considered all comments made within a period of thirty days from the latter of -

- (a) the date of the publication of the notice in the *gazette*; or
- (b) the date on which the notice has appeared in both news papers as contemplated in subsection (3).

(5) Subsection (2) and (3) do not apply to amendments made as a result of submissions made after the publication referred to in subsection (2).

**Declaration of dairy product substitute**

**12.** The Minister may declare by notice in the *Gazette* or may in regulations made under section 11 prescribe that, any substance which, irrespective of whether or not any dairy product was used in its production, processing or manufacture, and which is made from animal or vegetable fats or oils or a mixture thereof in imitation, form or semblance of a dairy product, which is intended for consumption by humans, to be a dairy product substitute for the purposes of this Act.

**Limitation**

**13.** In so far as this Act provides for a limitation of a fundamental freedom contemplated in Article 21 of the Namibian Constitution, in that it authorises a limitation upon a person's right to carry on any occupation, trade or business, the limitation is enacted on authority of Sub-Article (2) of that Article.

**Repeal of law**

**14.** The Control of the Import and Export of Dairy Products and Dairy Product Substitutes Act, 1986 (Act No. 5 of 1986), is repealed.

**Short title and commencement**

**15.** This Act is called the Control of the Import and Export of Dairy Products and Dairy Product Substitutes Act, 2019, and comes into operation on a date to be determined by the Minister by notice in the *Gazette*.

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