

GOVERNMENT OF ZAMBIA

ACT

No. 21 of 2002

Date of Assent: 31st December, 2002

An Act to amend the Customs and Excise Act

[31st December, 2002

ENACTED by the Parliament of Zambia.

Enactment

1. (1) This Act may be cited as the Customs and Excise (Amendment) (No. 2) Act, 2002, and shall be read as one with the Customs and Excise Act, in this Act referred to as the principal Act.

Short title and commencement
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(2) This Act shall come into operation on such date as the Minister may, by statutory instrument, appoint.

2. The principal Act is amended by the insertion after Part VII of the following new Part:

Insertion of new Part VIIA

PART VIIA

SAFE GUARD MEASURES

80A. In this Part, unless the context otherwise requires—
“adjustment plan” in relation to a domestic industry means the plan by the industry to adjust to the increased competition that will follow the removal of the safeguard measures;

Interpretation of Part VIIA

“Agreement” means the Agreement on safeguards under the World Trade Organisation and any other international trade agreement to which Zambia is a party;

“Authority” means the ad hoc Safeguard Investigations Authority constituted under section *four* E of the Control of Goods Act;

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“Committee” means the Committee on safeguards under the World Trade Organisation;

“domestic industry” means—

(a) a producer of a product within the Republic which is like or directly competitive with the investigated product;

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- (b) producers operating within the Republic whose collective output of products which are like or directly competitive with the investigated products constitute a major proportion of the total domestic production of those products;
- “domestic producers” means producers operating within the Republic whose collective output of like or directly competitive products to the investigated product constitute a major proportion of the total domestic production of those products;
- “interested party” means—
- (a) exporters and foreign producers of the investigated product;
 - (b) importers of the investigated product;
 - (c) trade or business associations whose membership is composed of producers, exporters or importers of the investigated product;
 - (d) the Governments of the exporting countries of the investigated product;
 - (e) domestic producers;
 - (f) trade and business associations whose majority membership are producers ;
 - (g) labour unions or other similar organisations representing the interests of workers in the domestic industry;
 - (h) consumer associations; and
 - (i) any other person whom the Minister determines to have sufficient interest in the outcome of the safeguard investigation under this Part;
- “investigated product” means the imported product subject to safeguard investigations under this Act;
- “Member” means a Member State of the World Trade Organisation; and
- “participating interested parties” means those interested parties that indicate their intention to participate in a safeguard investigation under this Part;
- “safeguard measure” means the temporary imposition of customs tariffs or quantitative restrictions to prevent or remedy serious injury to domestic industry;
- “safeguard investigation” means an investigation into whether increased imports of the investigated product have caused serious injury to the domestic industry; and
- “threat of serious injury” means serious injury that is clearly imminent.

80B. Where the Authority after conducting safeguard investigations including the conduct of a hearing where applicable in accordance with sections *four F* to *four K* of the Control of Goods Act, the Authority shall make a determination on the basis of the information available to it and recommend to the Minister that—

Determination
of safeguard
investigations

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- (i) provisional safeguard measures should be imposed;
- (ii) provisional safeguard measures should not be imposed;
- (iii) definitive safeguard measures should be imposed;
- (iv) definitive safeguard measures should not be imposed.

(2) The Minister, on receipt of the Authority's recommendation under subsection (1) and in consultation with the Minister responsible for commerce, trade and industry may—

- (a) confirm the determination of the Authority; or
- (b) refer the matter to the Authority for further investigations.

80C. (1) The Minister shall, on the recommendation of the Authority and in consultation with the Minister responsible for commerce, trade and industry, apply provisional safeguard measures if the Minister is satisfied that—

Provisional
safeguard
measures

- (a) there is clear evidence that increased imports of the investigated product have caused or are threatening to cause serious injury; and
- (b) critical circumstances exist which if action is delayed would cause damage to the domestic industry which would be difficult to repair.

(2) Where the Minister decides to apply provisional safeguard measures under subsection (1), the safeguard measures shall be increases in customs tariffs to such levels as the Minister may prescribe, by statutory instrument, which customs tariffs shall be refundable in accordance with this Part.

(3) Where the Minister on the recommendation of the Authority, decides not to apply provisional safeguard measures, the Minister shall by *Gazette* notice publish a notice which shall contain the following information:

- (a) the decision not to impose provisional safeguard measures;
- (b) a comprehensive description of the investigated product, including its technical characteristics and uses, and an identification of its tariff classification and the duties applicable;

- (c) a comprehensive description of the domestic like or directly competitive product;
- (d) the reasons for the decisions not to apply provisional safeguard measures; and
- (e) a statement indicating whether the safeguard investigations will be terminated or that the investigations will continue to the final phase of determining the application of safeguard measures or otherwise.

Notice
regarding
application of
provisional
safeguard
measures

80 D. (1) Where the Minister decides to apply provisional safeguard measures under section *eighty C*, the Minister shall, by statutory instrument, publish a notice which shall contain the following information:

- (a) the decision to apply provisional safeguard measures;
- (b) a comprehensive description of the investigated product including its technical characteristics and uses and an identification of its tariff classification and the duties applicable;
- (c) a comprehensive description of the domestic like or directly competitive products including their technical characteristics and uses;
- (d) the names of all known producers of the domestic like or directly competitive products;
- (e) the country of origin of the investigated product;
- (f) the basis for the determination —
 - (i) that critical circumstances exist which if there is delay in taking action would cause damage which would be difficult to repair; and
 - (ii) that there is clear evidence that increased imports of the investigated product have caused serious injury;
- (g) the amount of customs tariff increases proposed as the provisional safeguard measures; and
- (h) the intended duration of the provisional safeguard measures.

(2) Where the Minister decides to apply provisional safeguard measures in accordance with this section, the Minister shall on behalf of the Republic notify the Committee and the secretariat of any other international trade organisation of which Zambia is a member and shall initiate consultations in accordance with the Agreement.

80E. The Minister shall not apply provisional safeguard measures for a period of more than two hundred days and may revoke the application of the safeguard before the date of expiration on the recommendation of the Authority.

Duration of
safeguard
measures

80F. (1) The amount of customs tariff increases imposed as provisional safeguard measures shall be paid and collected on a refundable basis or guaranteed by furnishing a bond or deposit in favour of the Customs Division of the Zambia Revenue Authority in accordance with this section.

Payment and
refund of
provisional
safeguard
measures

(2) Where subsequent safeguard investigations do not result in a determination that increased imports have caused or threaten to cause serious injury to the domestic industry—

(a) the amount paid and collected as increased customs tariffs;

(b) any bond or deposit in favour of the Customs and Excise Division of the Zambia Revenue Authority;

as provisional safeguard measures shall be refunded or released as the case may be within a period of not more than sixty days.

80G. (1) Where it has been determined to impose definitive safeguard measures under section *four L* of the Control of Goods Act and if a tariff increase in customs duties is to be imposed as part of the definitive safeguard measures, the Minister, may by statutory instrument—

Imposition
of definitive
safeguard
measures
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(a) prescribe the amount of increase in customs tariffs;

(b) prescribe the proposed date of application of the definitive measures;

(c) prescribe the proposed duration of the definitive measure;

(d) where the period is more than one year, including the period of provisional safeguard measures, prescribe a time schedule for the progressive liberalization of the measures; and

(e) prescribe the names of the developing countries exempted from the measures.

(2) Subject to subsection (3) a definitive safeguard measure shall be applied for a period of not more than four years including the period of application of any provisional safeguard measure unless otherwise extended under this Act.

(3) Notwithstanding subsection (2) a definitive safeguard measure shall be applied for a total cumulative period of not more than eight years, including the period of application of any provisional safeguard measure, and any extension of definitive safeguard measure, in accordance with the provisions of the Agreement.

Non-application of definitive safeguard measures to certain developing countries

80H. Notwithstanding the other provisions of this Part, a definitive safeguard measure shall not be applied on imports of the investigated product originating from a member which is a developing country where the imports amount to not more than three percent of the Republic's total import of the investigated product.

Progressive liberalisation of safeguard measure

80I. The Minister shall progressively liberalise at regular intervals the definitive safeguard measures whose duration exceeds one year in accordance with the schedule of liberalization published in the statutory instrument under paragraph (d) of subsection (1) of section *eighty G*.

Review of definitive safeguard measure

80J. (1) If the duration of a definitive safeguard measure relating to customs tariffs, including the period of application of any provisional measure exceeds three years, the Minister shall cause the Authority to conduct a review in accordance with sections *four F* to *four K* of the Control of Goods Act including a review of the effects of the definitive safeguard measure on the domestic industry concerned and the industry's progress in implementing its adjustment plan.

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(2) The Authority shall produce results of the review referred to in subsection (1) in a report which the Minister shall publish in a *Gazette* Notice.

(3) The Minister shall on the recommendation of the Authority as contained in the report referred to in subsection (2) and in consultation with the Minister responsible for commerce, trade and industry make a decision to —

- (a) maintain the definitive safeguard measure;
- (b) withdraw the definitive safeguard measure; or
- (c) increase the pace of liberalization of the definitive safeguard measure.

(4) The decision of the Minister under subsection (3) shall —

- (a) be published in the *Gazette*; and

(b) be notified to the Committee and the Secretariat of any international trade organisation of which Zambia is a member in accordance with the provisions of the Agreement.

80K. (1) If the domestic industry considers that there is continuing need to apply a definitive safeguard measure relating to customs duties beyond the initial period of application, it shall, six months before the end of the period of application of a safeguard measure submit a written request for extension of the measure to the Minister with evidence showing that the industry is carrying out its adjustment plan.

Extension of
definitive
safeguard
measures
relating to
customs
tariffs

(2) Where a written request by the domestic industry is submitted to the Minister under subsection (1), the Minister in consultation with the Minister responsible for commerce, trade and industry shall cause the Authority to conduct an investigation in accordance with sections *four F* to *four K* of the Control of Goods Act to determine whether an extension of the application of a definitive safeguard measure is warranted.

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(2) Subject to the other provisions of this Part, a definitive safeguard measure shall be extended once for a period of not more than four years.

(4) The Minister shall on the recommendation of the Authority, and in consultation with the Minister responsible for commerce, trade and industry extend the application of a definitive safeguard measure if satisfied that the measure is necessary to prevent or remedy serious injury and that there is evidence to show that the domestic industry is carrying out its adjustment plan.

(5) Where the Minister decides to extend the application of a definitive safeguard measure under this section, the Minister shall—

(a) by statutory notice, publish a notice of extension of application of a definitive measure which shall include the duration of the extension and a time schedule for the progressive liberalization of the measure; and

(b) notify the Committee and the secretariat of any international trade organisation of which Zambia is a member in accordance with the Agreement.

(6) Where the application of a definitive safeguard measure is extended, the safeguard measure shall not be more restrictive than that applied at the initial instance.

(7) During the period that the application of a definitive safeguard measure is extended, the safeguard measure shall be progressively liberalised in accordance with the schedule published in a notice to extend the safeguard measure published under subsection (5).

Reapplication
of definitive
safeguard
measure
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80L. A decision shall be made to reapply definitive safeguard measures under section *four S* of the Control of Goods Act, in relation to customs tariffs if —

- (a) a period of not less than one year has elapsed since the date of application of the earlier safeguard measure on those imported products;
- (b) a safeguard measure has not been applied on imports of the product more than twice in the period of five years immediately preceding the date on which the new safeguard measure is to take effect.

Regulations
on safeguard
measures

80M. The Minister may, by statutory instrument, make regulations for the carrying out of the provisions of this Part and for prescribing anything which by this Act is required to be prescribed.
