

GOVERNMENT OF ZAMBIA

ACT

No. 12 of 2004

Date of Assent: 2nd September, 2004

An Act to amend the Control of Goods Act

[8th September, 2004

ENACTED by the Parliament of Zambia

Enactment

1. (1) This Act may be cited as the Control of Goods (Amendment) Act, 2004, and shall be read as one with the Control of Goods Act, in this Act referred to as the principal Act.

Short title
Cap. 421

(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 repeal of Part III and the substitution therefor of the following:

Repeal and
replacement
of Part III

PART III

SAFEGUARD MEASURES

4A. In this Part unless the context otherwise requires—

Interpretation
of Part III

“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 safeguard measures;

“Advisory Committee” means the Safeguards Committee constituted under section *four G*;

“Agreement” means the Agreement on Safeguards under the World Trade Organisation (WTO) or the safeguard and other applicable provisions of the Common Market for Eastern and Southern Africa (COMESA) Treaty, the Treaty of the Southern African Development Community (SADC) or any other international trade agreement to which Zambia is a Party;

“Committee” means the Committee on safeguards under the World Trade Organisation, or other applicable secretariat or entity of a trade organisation of which Zambia is a member or under another Agreement;

“domestic industry” means—

- (a) the producers as a whole of a product within the Republic which are like or directly competitive with the investigated product; or
- (b) producers operating within the Republic whose collective output of products which are like or directly competitive with the investigated product constitute a major proportion of the total domestic production of those products;

“domestic producers” means producers, operating within the Republic, of like or directly competitive products to the investigated product;

“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 a safeguard investigation under this Act;

“Investigations Committee” means the Safeguard Investigations Committee constituted under section *four C*;

“ Member ” means a Member State that is party to an agreement, which contains international obligations applicable to a safeguard procedure, including the World Trade Organisation Agreement, the COMESA Treaty and the Treaty of the Southern African Development Community (SADC);

“ participating interested parties ” means those interested parties that indicate their intention to participate in a safeguard investigation under this Part;

“ remedy ” includes the imposition of customs tariffs, quantitative restrictions or a combination thereof;

“ safeguard investigation ” means an investigation into whether increased imports of the investigated product have caused serious injury to the domestic industry; and

“ safeguard investigations ” shall be construed accordingly;

“ safeguard measure ” means the temporary imposition of customs tariffs or quantitative restrictions or a combination thereof, in response to an affirmative determination in a safeguard investigation, to prevent or remedy serious injury to the domestic industry; and

“ safeguard measures ” shall be construed accordingly;

“ serious injury ” means a significant overall impairment in the condition of a domestic industry; and

“ threat of serious injury ” means a serious injury that is clearly imminent and “ threaten to cause serious injury ” shall be construed accordingly.

4B. The Ministry responsible for commerce, trade and industry shall be responsible for decisions relating to—

Application,
suspension,
withdrawal
and conduct
of safeguard
measures

(a) the application, suspension or withdrawal of a safeguard measure and for decisions relating to the modification or extension of the corresponding periods of application; and

(b) the conduct of a safeguard investigation.

By the deletion of paragraph 4C and the substitution therefor of the following:

4C. (1) For the purposes of conducting a safeguard investigation under this Part the Minister shall constitute an Investigations Committee consisting of the following members:

Constitution
of
Investigations
Committee

- (a) four representatives of the ministry responsible for commerce, trade and industry;
- (b) a representative of the ministry responsible for finance;
- (c) a representative of the ministry responsible for agriculture;
- (d) a representative of the ministry responsible for home affairs nominated from the Commercial Crimes Department; and
- (e) a representative of the Zambia Revenue Authority.

(2) The members shall elect the Chairperson and the Vice-Chairperson from among their number.

Commence-
ment
of investigation

4D. (1) A domestic industry shall, in writing, apply to the Minister to cause a safeguard investigation or an investigation into whether increased imports of the investigated product threaten to cause serious injury to the domestic product.

(2) The Minister may, on the Minister's initiative, cause a safeguard investigation or an investigation into whether increased imports of an investigated product threaten to cause injury to a domestic industry.

(3) An application made under subsection (1) may be withdrawn prior to initiation and shall, in such a case be deemed not to have been made.

Application
of
provisional
safeguard
measures

4E. (1) Where the Minister decides to cause a safeguard investigation, under section *four D* the Minister shall notify—

- (a) the public, by statutory order;
- (b) the exporting countries, in writing; and
- (c) the Committee, in accordance with the provisions of an Agreement;

of the commencement of the investigation with effect from the date of publication of the statutory order and shall specify that anyone desiring to participate in the investigation shall notify the Minister, in writing, within a period of thirty days from the date of publication of the order.

(2) The statutory order referred to in subsection (1) shall contain such information as the Minister may prescribe.

(3) The Minister shall in determining whether to impose safeguard measures consider what action is appropriate and feasible under this Act to—

- (a) facilitate efforts by the domestic industry to make a positive adjustment to import competition; and
- (b) provide greater economic and social benefits than costs.

(4) Where the Minister determines that the cost of imposing a safeguard measure exceeds national economic interest and is greater than the benefit to the requesting domestic industry, the Minister may determine not to impose a safeguard measure.

(5) Where the Minister, after receipt of an application under this section decides, after considering a recommendation of the Investigations Committee, not to cause an investigation, the Minister shall inform the applicant and give reasons for not commencing the investigation.

4F. (1) The Investigations Committee shall complete a safeguard investigation commenced under section *four E* within a period of six months from the date of commencement of the safeguard investigation.

Schedule of investigations

(2) Notwithstanding subsection (1), the Minister may extend the period referred to in subsection (1) for a further period of two months.

4G. (1) The Minister shall constitute an Advisory Committee consisting of the following members:

Constitution of Advisory Committee

- (a) the Permanent Secretary to the Ministry responsible for commerce, trade and industry;
- (b) the Director responsible for foreign trade in the Ministry responsible for commerce, trade and industry;
- (c) the Director responsible for domestic trade in the Ministry responsible for commerce, trade and industry;
- (d) the Director responsible for industry in the Ministry responsible for commerce, trade and industry;
- (e) the Permanent Secretary responsible for budget and economic affairs in the Ministry responsible for finance and national planning;
- (f) the Permanent Secretary to the Ministry responsible for foreign affairs;
- (g) the Commissioner-General of the Zambia Revenue Authority;
- (h) the Permanent Secretary to the Ministry responsible for agriculture;
- (i) a representative of the Attorney-General; and
- (j) two other persons appointed by the Minister.

(2) The members of the Advisory Committee referred to in subsection (1) shall be appointed by the Minister.

(3) The Chairperson of the Advisory Committee shall be the Permanent Secretary to the Ministry responsible for commerce, trade and industry and the Vice-Chairperson shall be the Permanent Secretary to the Ministry responsible for finance and national planning.

(4) Where any member referred to in subsection (1) is unable to attend any meeting of the Advisory Committee the member may, in writing, nominate another senior officer to attend the meeting in that member's stead and that person shall be deemed to be a member for the purposes of the meeting.

(5) The Advisory Committee may invite any person whose presence is, in its opinion, desirable to attend and participate in any meetings under this Part but such person shall have no vote.

(6) Six members shall make a quorum.

Functions of
Investigations
Committee
and
determination
of
conditions
of safeguard
measure

4H. (1) The Investigations Committee shall—

(a) conduct any safeguard investigation required in accordance with the applicable Agreement; and

(b) in conducting a safeguard investigation take into account all relevant injury factors including those required under an Agreement such as the following:

(i) the rate and amount of the increase in imports of the investigated product, in absolute terms and relative to domestic production of like or directly competitive products to the investigated product;

(ii) the share of the domestic market taken by increased imports of the investigated product;

(iii) the price of the investigated product in relation to the domestic like or directly competitive products;

(iv) the impact of increased imports of the investigated product as evidenced by specific indicators including production, changes in the level of sales, capacity utilisation, inventories, sales and market share prices, profits and losses, and employment;

- (v) factors other than increased imports of the investigated product which may cause or threaten to cause serious injury to the domestic industry;
- (vi) the actual and potential export capacity of the country of production or origin of the investigated product, in case of threat of serious injury;
- (vii) inventories of an investigated product in the country of exportation;
- (viii) probability of exports of investigated products to enter the Republic in increasing quantities in the case of threat of serious injury; and
- (ix) any other factor considered relevant by the Investigations Committee.

(2) Where at the same time other factors in addition to increased imports of the investigated product cause or threaten to cause injury to the domestic industry, such injury shall not be attributed to the increased imports.

(3) The Investigations Committee shall determine whether unforeseen developments led to the product being imported in such increased quantities and such conditions as to cause or threaten to cause serious injury to domestic products.

4I. (1) The Investigations Committee may —

- (a) request for information and data from participating interested parties, officers from the Zambia Revenue Authority, clearing or forwarding companies and other persons from the public and the private sector which it considers relevant for the performance of its investigative functions; and
- (b) conduct investigations to verify or obtain further details concerning information submitted under paragraph (a).

Powers of
Investigations
Committee

(2) The Investigations Committee shall solicit the views of representatives of affected producers, users and consumers of the product produced by the affected industry and shall consider them in its report and recommendations.

Confidentiality of information

4J. (1) The members of the Investigations Committee and the Advisory Committee shall treat as confidential any information or data submitted to them under this Part, which is confidential in nature or submitted on a confidential basis and which the Investigations Committee considers warrants confidential treatment:

Provided that where the Investigations Committee does not consider the information or data submitted to it under this Part to be confidential and if the provider of the information is unwilling to make the information public, the Investigations Committee shall not consider that information to be part of its investigations.

(2) A person shall not without the consent, in writing, publish or disclose to any person otherwise than in the course of duties, the contents of any document, communication or information whatsoever, which relates to and which has come to that person's knowledge in the course of duties under this Part.

(3) Any person who contravenes the provisions of subsection (1) or (2) commits an offence and shall be liable, upon conviction, to a fine not exceeding twelve thousand five hundred penalty units or to imprisonment for a term not exceeding three years, or to both.

(4) If any person having information which to that person's knowledge has been published or disclosed in contravention of subsection (1) unlawfully publishes or communicates any such information to any other person, that person commits an offence and shall be liable, upon conviction, to a fine not exceeding twelve thousand five hundred penalty units or to imprisonment for a term not exceeding three years, or to both.

Conduct of investigations

4K. Where the Minister decides that a safeguard investigation should be conducted under this Act, the Investigations Committee shall receive and consider oral and written submissions from participating interested parties within such times as the Minister may prescribe, in order to determine and recommend to the Minister —

- (a) whether provisional safeguard measures should be imposed;
- (b) the necessity to conduct a public hearing on the matter;
- (c) whether definitive safeguard measures should be imposed; or
- (d) whether the safeguard investigation should be discontinued.

4L. (1) Where a hearing is to be conducted as part of a safeguard investigation under this Part the Minister shall, not less than sixty days before the commencement date of the hearing, by *Gazette* notice, notify the public—

Conduct of hearing

- (a) that the hearing will be conducted by the Investigations Committee;
- (b) the date, duration, venue and time of the hearing; and
- (c) that participating interested parties intending to make representations at the hearing should notify the Investigations Committee at least seven days before the date of the hearing, and submit the names of their representatives and the witnesses who will appear at the hearing.

4M. (1) The Investigations Committee shall, after conducting safeguard investigations including the conduct of a hearing where applicable, make a determination on the basis of the information available to it and submit a report and recommend to the Advisory Committee—

Determination of investigations

- (a) that a provisional safeguard measure should be imposed or extended;
- (b) that a provisional safeguard measure should not be imposed;
- (c) that a definitive safeguard measure should be imposed or extended;
- (d) that a definitive safeguard measure should not be imposed and the investigation terminated; or
- (e) the nature and duration of any measure recommended.

(2) The Advisory Committee shall after receiving and considering the report and recommendation of the Investigations Committee, make a recommendation to the Minister on the basis of the information available to it and subsection (1) shall, with necessary modification, apply to the Advisory Committee.

(3) The Minister may, on receipt of the recommendation of the Advisory Committee and in consultation with the Minister responsible for finance—

- (a) confirm the determination of the Advisory Committee; or
- (b) refer the matter to the Advisory Committee for further investigation by the Investigations Committee.

(4) Where the Minister in accordance with subsection (3), decides not to apply a provisional safeguard measure, the Minister shall, by *Gazette* notice, publish a notice which shall contain the following information:

- (a) the decision not to apply a provisional safeguard measure;
- (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 decision not to apply provisional safeguard measures; and
- (e) a statement indicating whether the investigation will be terminal or that the investigation will continue to the final phase of determining the application of a definitive safeguard measure or otherwise.

(5) The Investigations Committee and the Advisory Committee shall, in performing the functions assigned to them under this Act—

- (a) be bound by the provisions of this law and any regulations made under it; and
- (b) perform their functions in an impartial and transparent manner.

Imposition of
definitive
safeguard
measure

4N. (1) The Minister shall, in consultation with the Minister responsible for finance consider the recommendation of the Investigations Committee and the Advisory Committee determine whether definitive safeguard measures be applied.

(2) Where the Minister in accordance with subsection (1) determines that a definitive safeguard measure is to be applied—

- (a) the Minister shall cause a report of the proceedings of investigations of the Investigations Committee and findings, including a detailed analysis of the information obtained in the investigations and the conclusions of the investigations, to be published in the *Gazette*;
- (b) the Minister shall, by statutory instrument, issue a notice of application of the definitive safeguard measure containing such other information as may, by regulation, be prescribed.

(3) Where the Minister decides to apply a definitive safeguard measure under this section, the Minister shall, on behalf of the Republic, notify the Committee and shall initiate consultations in accordance with the relevant Agreement.

(4) Subject to subsection (5) a definitive safeguard measure

shall be applied for a period consistent with the applicable international agreement and the period of application of any provisional safeguard measure unless otherwise extended under this Act.

(5) Where the WTO Agreement on Safeguards is used, definitive safeguard measures shall be applied for a period of not more than four years.

(6) The period of years referred to in subsection (5) shall include the period of application of any safeguard measure, unless otherwise extended under this Act.

(7) Notwithstanding subsection (5), 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 a definitive safeguard measure, shall be in accordance with the provisions of the Agreement.

40. (1) Subject to the other provisions of this section, definitive safeguard measures in the form of quota on imports of the investigated product shall be taken consistently and in accordance with the applicable international Agreement and the WTO Agreement on Safeguards and shall not reduce the quantity of those imports below the average level registered in the most recent three years for which statistics are available.

Quotas as
definitive
safeguard
measure

(2) Notwithstanding subsection (1) the Minister may, on the recommendation of the Advisory Committee, when satisfied that a different level is necessary to prevent or remedy serious injury or threat of serious injury, apply quotas which reduce the quantity of imports of the investigated product below the average level registered in the most recent three years for which statistics are available.

(3) Subject to the other provisions of this section, in the case of safeguard measures being applied pursuant to the WTO Agreement on Safeguards where more than one country exports the investigated product to the Republic, the application of a definitive safeguard measure in the form of quota on imports shall be allocated among supplying countries in such proportions as may be agreed by the Government and the Governments of those Members having substantial interest in supplying the investigated product based on—

- (a) the proportions of the investigated product supplied by such countries during the previous three years; and
- (b) any special factor which may have affected or may be affecting trade in the investigated product.

(4) Notwithstanding subsection (3) where serious injury to the domestic industry has been established, the Minister may, on the recommendation of the Advisory Committee, allocate quotas among the supplying countries on a basis different from the agreement referred to in subsection (3) if consultations have been held with supplying Members under the auspices of the Committee and evidence is submitted to the Committee that—

- (a) imports from certain countries have increased in disproportionate percentage in relation to the total increase in imports of the investigated products during the most recent three years according to available statistics; and
- (b) the conditions of the allocation of quotas are equitable to all suppliers concerned.

(5) Notwithstanding any other provisions of this Part, a definitive safeguard measure in the form of a quota allocated in accordance with subsection (4) shall not be extended beyond the initial period.

Notification in the event of termination of investigation without application of safeguard measure

4P. (1) The Minister may, after considering the recommendations of the Investigations Committee, the Advisory Committee and any views of any interested party including the private sector and consumers, terminate an investigation under this Part on the ground that the application of a safeguard measure on the available evidence is not justifiable.

(2) Where the Minister terminates a safeguard investigation under subsection (1), the Minister shall inform the exporting countries of the investigated product and the Committee in accordance with the requirements of the Committee under the Agreement and shall publish the decision to terminate the safeguard investigation, with reasons therefor in the *Gazette*.

Non-application of definitive safeguard measures to certain developing countries

4Q. Notwithstanding the other provisions of this Part, a definitive safeguard measure applied pursuant to the WTO Agreement on Safeguards 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 of the investigated product:

Provided that Members that are developing countries with less than a three percent import share collectively account for not more than nine percent of the total imports of the product concerned.

4R. The Minister shall progressively liberalise at regular intervals a definitive safeguard measure whose duration exceeds one year, in accordance with the schedule of liberalisation published in the notice of definitive safeguard measures under paragraph (b) of subsection (2) of section four N.

Progressive liberalisation of safeguard measure

4S. (1) If the duration of a definitive safeguard measure relating to quotas including the period of application of any provisional measure exceeds three years, the Minister shall cause the Investigations Committee to conduct a review in accordance with section four H to four M of this Part, 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.

Review of definitive safeguard measure

(2) The Investigations Committee shall produce results of the review referred to in subsection (1) in a report, with recommendations as to whether a definitive safeguard measure should be continued, withdrawn or the pace of liberalisation be increased, which shall be provided to the Advisory Committee and the Minister for consideration and which the Minister shall publish in a *Gazette* notice.

(3) The Advisory Committee shall, after receiving and considering the report and recommendation of the Investigations Committee, make a recommendation on the basis of the information available to it to the Minister to—

- (a) maintain the definitive safeguard measures and the nature and duration of any measures;
- (b) withdraw the definitive safeguard measure; or
- (c) increase the pace of liberalisation of the definitive safeguard measure.

(4) The Minister shall on the receipt of the recommendations of the Investigations Committee, the Advisory Committee and in consultation with the interested parties including the private sector and consumers determine whether to—

- (a) maintain the definitive safeguard measure and the nature and duration of any measure;
- (b) withdraw the definitive safeguard measure; or
- (c) increase the pace of liberalisation of the definitive safeguard measure.

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

- (a) published in the *Gazette*; and
- (b) notified to the Committee in accordance with the provisions of the Agreement.

Extension of
definitive
safeguard in
relation to
quotas

4T. (1) If the domestic industry considers that there is continuing need to apply a definitive safeguard measure on imports 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.

(2) Where a written request by the domestic industry is submitted to the Minister under subsection (1), the Minister shall cause the Investigations Committee to conduct a safeguard investigation in accordance with this Part to determine whether an extension of the application of a definitive safeguard measure is warranted.

(3) Subject to the other provisions of this Part, a definitive safeguard measure shall be extended not more than twice for a total period of ten years.

(4) The Minister shall, after considering the report of the Investigations Committee and the recommendation of the Advisory Committee, in consultation with the Minister responsible for finance, the interested parties, extend the application of a definitive safeguard measure if satisfied that the conditions of the relevant Agreement have been met and in the case of the WTO Agreement on Safeguards that extending the measure is necessary to prevent or remedy serious injury and that there is evidence to show that the domestic industry is adjusting.

(5) Where the Minister decides to extend the application of a definitive safeguard measure under subsection (4), the Minister shall—

(a) by statutory notice, publish a notice of extension of application of a definitive safeguard measure which shall include the duration of the extension and the time schedule to progressively liberalise the measure; and

(b) notify the Committee in accordance with the Agreement and shall initiate such consultations as may be required by the applicable Agreement.

(6) Where the application of a definitive safeguard measure is extended under this section, 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 to be published in the notice to extend the safeguard measure published in the *Gazette* under subsection (5).

4U. (1) The Minister may in accordance with the provisions of the applicable international agreement re-apply a safeguard measure to imports of an investigated product which was the subject of an earlier safeguard measure.

Re-application of a definitive safeguard measure

(2) The Minister may in accordance with the WTO Agreement on Safeguards apply a safeguard measure to the imports of a product which has been subject to such a definitive safeguard measure, first applied after 1 January 1995:

Provided that a period equal to one half of the duration of an earlier definitive safeguard measure has elapsed and not less than two years have elapsed.

(3) Notwithstanding subsection (2), the Minister may in accordance with the WTO Agreement on Safeguards, apply a safeguard measure for not more than one hundred and eighty days in relation to imports of an investigated product which was the subject of an earlier safeguard measure if—

- (a) a period of 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; and
- (c) an investigation has been conducted by the Investigations Committee in accordance with sections *four H* to *four M*.

4V. Any action taken by the Minister under sections *four M* to *four U* of this Act shall take effect within twenty working days from the date of the statutory instrument.

Determination to take effect within twenty days

4W. 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 Part is required to be prescribed.

Regulations on safeguard measures

