
CHAPTER 327

EXPORT MANUFACTURING INDUSTRIES ENCOURAGEMENT

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CHAPTER 327

EXPORT MANUFACTURING INDUSTRIES
ENCOURAGEMENT

An Act to encourage the establishment and development of export manufacturing industries and for matters connected therewith. *1 of 1990*

*[Assent 9th January, 1990]
[Commencement 15th January, 1990]*

1. This Act may be cited as the Export Manufacturing Industries Encouragement Act, 1989. Short title.

2. (1) In this Act, unless the context otherwise requires —

“export manufacturer” means a person who to the satisfaction of the Minister intends to or annually exports at least ninety-five per centum of the total approved products produced by that manufacturer; Interpretation.

“approved export manufacturer” means a person approved by the Minister under section 5;

“approved product” means a product of manufacture in a category approved by the Minister under section 3;

“Comptroller” means Comptroller of Customs;

“customs duty” means —

(a) any duties of customs levied by or under the Tariff Act; Ch. 295.

(b) any tax or duty payable in respect of any export entry or import entry under the Stamp Act; Ch. 370.

(c) any other duties or taxes now or hereafter by law imposed upon or payable in respect of goods imported into The Bahamas;

“date of production” means the date specified in an order under section 5 pursuant to paragraph (a) of subsection (2) of that section;

“factory premises” means the premises specified in an order under section 5 pursuant to paragraph (b) of subsection (2) of that section;

Ch. 261; Ch. 262;
Ch. 263.

“Hawksbill Creek Agreements” mean those Agreements dated the 4th day of August, 1955, the 11th day of July, 1960 and the 1st day of March, 1966 respectively and which are the subject matters of Chapters 261, 262 and 263 of the Laws of The Bahamas;

“Minister” means the Minister responsible for Industries Encouragement;

“product of manufacture” means any commodity or product category declared by the Minister by Order under subsection (1) of section 4 to be a product of manufacture;

“raw material” means any item declared by the Minister by Order to be a raw material;

“relevant” means —

- (a) in relation to “approved product”, the approved product in relation to which the manufacturer in question has been declared an approved export manufacturer under section 5;
- (b) in relation to “date of production” or “factory premises” respectively the date or premises specified, in an order relating to a manufacturer under the said section 5, pursuant to subsection (2) thereof;

First Schedule.

“scheduled article” means an article mentioned or referred to in the First Schedule;

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“stamp tax” means the tax payable in respect of any export entry or import entry under the Stamp Act.

(2) A reference in this Act to importing anything into any place shall be construed as including taking that thing out of bond in that place.

Approval of
category of
products.

3. (1) Subject to the provisions of section 7, upon application by an export manufacturer the Minister shall by order declare that a category or categories of products of manufacture shall be approved products for the purposes of this Act if he is satisfied that such a declaration is in the public interest and that the manufacture of any such category of products —

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- (a) is or will be of benefit to The Bahamas; and
 - (b) does not, or will not, entail any substantial detriment to The Bahamas,

both economic and social considerations being taken into account.

4. (1) The Minister may by Order declare that a particular commodity or product category is a product of manufacture in relation to any particular industry for purposes of the Act.

Declaration of particular product.

(2) Any decision made by the Minister for purposes of subsection (1) shall be final.

5. (1) Subject to the provisions of section 7 and of subsection (4) of this section if the Minister is satisfied that a declaration is in the public interest and that a person who is manufacturing or proposes to manufacture an approved product is or will be able successfully to manufacture that product the Minister may by order declare that person to be an approved export manufacturer for the purposes of this Act in relation to that product subject to the payment of such annual registration fee having regard to the Second Schedule and to such other terms and conditions as are set out in an agreement entered into between the Minister on behalf of the Government of The Bahamas and that person:

Approval of export manufacturer.

Second Schedule

Provided that the Minister shall not declare any person to be an approved manufacturer as aforesaid if such person is licensed, registered or otherwise howsoever approved for the purpose of any of the enactments specified in the Third Schedule.

Third Schedule.

(2) In every order made under subsection (1) there shall be specified —

- (a) a date as the date on which production is deemed to begin for the purposes of this Act, which may be a date prior to the date of the order; and
- (b) the factory premises in respect of which the benefits in relation to customs duty mentioned in paragraph (b) of subsection (1) of section 9 and the benefits in relation to real property tax mentioned at paragraph (c) of subsection (1) of section 13 may be enjoyed.

(3) On the application of an approved manufacturer, the Minister may, in his discretion and upon such conditions as he may think fit, amend an order made under this section in respect of the factory premises specified in the order if he is satisfied that it is necessary in order to promote the manufacture of the approved product by the approved manufacturer that the factory premises so specified should be varied, and any amending order made under this subsection shall specify the factory premises as so varied in respect of which the benefits mentioned at paragraph (b) of subsection (2) may be enjoyed after the amending order has been made.

(4) The provisions of this Act shall apply to export manufacturers including export manufacturers who are licensees of the Grand Bahama Port Authority Limited and who shall, subject to the provisions of section 13, continue to be entitled to the benefit of all privileges, rights or exemptions under the Hawksbill Creek Agreements.

Application for approval.

6. Every application for the approval of a product or of a manufacturer under this Act shall be addressed to the Minister in such form, and shall contain such particulars, as may be prescribed.

Notice of consideration of application for approval.

7. (1) Before any order is made under section 3 or 5 the Minister shall cause notice of the fact that he is about to consider whether a product shall be declared an approved product or a person should be declared an approved manufacturer for the purposes of this Act to be given, at the expense of the applicant, in not fewer than two issues of —

- (a) the *Gazette*; and
- (b) one newspaper published and circulating in The Bahamas, at intervals of not less than two days.

(2) Every notice published as required by subsection (1) shall specify —

- (a) as respects a proposal by an export manufacturer to make an order under section 3 —
 - (i) the product or categories of products proposed for approval; and
 - (ii) the categories of raw materials used or to be used in the manufacture of such products or categories of products.

(3) Where subsequent to the publication of a notice under subsection (1) there is a change in the circumstances regarding the raw materials contemplated by that notice, then, an export manufacturer wishing to include or exclude any categories of raw materials as aforesaid shall submit written notification thereof to the Minister who may alter the notice accordingly.

(4) Subsections (1) and (2) shall not apply in relation to —

- (a) any raw material included or excluded under subsection (3); or
- (b) an amending order made under subsection (3) of section 5.

8. (1) Where the Minister is satisfied that a person has ceased to be an export manufacturer or that any representations made to him by or on behalf of a person in connection with the application of that person to be declared an approved manufacturer in relation to an approved product were false in any material particular or were made with intent to deceive or were otherwise not made in good faith, and that such representations substantially influenced the decision to declare that person an approved manufacturer in relation to that product the Minister may, by notice in writing, require that person, within thirty days after receipt of such notice, to show cause to the reasonable satisfaction of the Minister why the order under section 5 by which such person became an approved manufacturer in relation to that product should not be revoked or amended so as to terminate or amend the approval of that person in relation to that product; and, if that person fails to show cause accordingly, the Minister may, if he reasonably considers it expedient so to do, by order revoke or amend accordingly the order under section 5 by which that person became an approved manufacturer in relation to that product.

Revocation of approved manufacturer's status.

(2) Upon the coming into force of an order made pursuant to subsection (1) —

- (a) the manufacturer to whom the order relates shall, as respects the approved product to which the order relates, cease to be an approved manufacturer or proceed in accordance with the terms of any amended approval but without prejudice to the continued operation of section 10 and subsection (1) and (4) of section 12; and

- (b) without prejudice to the continued operation of subsections (2), (3) and (5) of the said section 12, the relevant factory premises shall, as respects that product, cease to be factory premises for the purposes of this Act.

Relief from
customs duty.

9. (1) Every approved export manufacturer, other than an export manufacturer who is also a licensee of The Grand Bahama Port Authority Limited manufacturing an approved product, shall for so long as he remains an approved manufacturer be entitled to import into The Bahamas without payment of customs duty —

- (a) any machinery or raw material not being a prescribed protected raw material necessary for the manufacture of such product, if such machinery or raw material is imported for the purpose of manufacture by the approved manufacturer of such product;
- (b) any scheduled article, if such article is imported for the purpose of constructing, altering, reconstructing or extending the relevant factory premises:

Provided that no article shall be imported free of customs duty under this paragraph if such article is intended for the purposes of —

- (i) effecting repairs to the factory premises; or
- (ii) effecting repairs to any apparatus, machinery, appliance or equipment contained in the factory premises.

(2) Subject to the provisions of section 13 nothing in this Act shall prejudice the continued enjoyment by an approved export manufacturer who is a licensee of the Grand Bahama Port Authority Limited of all the privileges, rights and exemptions as are conferred upon him by the Hawksbill Creek Agreements as regards the importing of any items into The Bahamas for the life of those Agreements.

Special
provisions
relating to certain
duty free
exemptions.

10. Every approved export manufacturer who imports into The Bahamas any machinery, raw materials or scheduled articles with the benefit of any exemption from customs duty under section 9 shall —

- (a) upon being required so to do by the Comptroller, cause such machinery, raw materials or articles

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- to be marked with such marks and in such manner as may be required by the Comptroller;
- (b) upon being required so to do by the Minister, keep such machinery, raw materials or articles, and also such records of the production and disposition by the approved manufacturer of the relevant approved product, in such form and containing such particulars, as may be required by the Minister;
 - (c) upon demand made for the purpose, permit the Comptroller, or any person authorized by him, at all reasonable times to inspect such records and to have access to any factory, warehouse, storeroom or other premises under the control of the approved manufacturer for the purpose of examining such machinery, raw materials or articles or to satisfy himself of the accuracy of the particulars contained in such records; and
 - (d) submit to the Minister periodical returns of the production and distribution of the relevant approved product covering such period as the Minister may direct.

11. (1) Every approved export manufacturer who imports into The Bahamas any machinery, raw materials or scheduled articles with the benefit of any exemption from customs duty under section 9 shall, upon being required so to do by the Comptroller, enter into a bond in the prescribed form —

Execution of
bond by
manufacturer.

- (a) in the case of raw materials, in double the amount of any customs duty which, but for the provisions of this Act, would be payable on the importation of the total annual amount of raw materials reasonably estimated by that approved manufacturer as being required to be imported by him for the production of the approved product; and
- (b) in the case of machinery or any scheduled article, in double the amount of any customs duty which, but for the provisions of this Act, would be payable on the importation of such machinery or article,

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to the effect that such raw materials, machinery or scheduled articles shall not be used or applied otherwise than for the purpose specified in such bond; and if any raw materials, machinery or scheduled articles are used or applied in breach of any such bond they shall be forfeited and may be seized and proceeded against in the same manner as goods liable to forfeiture under the Customs Management Act without prejudice to the right of the Comptroller to recover as liquidated damages the penalty fixed by the bond or to the taking of proceedings under subsection (4) of section 12:

Provided that where the full amount of customs duty which would have been payable on any machinery, raw material or article but for the provisions of this Act (or such part of that amount as the Comptroller considers reasonable in the circumstances of the case) is paid to and accepted by the Comptroller in the case of any proposed sale, gift or other disposition thereof, then in every such case the Comptroller shall by memorandum, endorsed on the bond cancel the same insofar as the bond relates to such machinery, raw material or article.

Disposition of
duty free
machinery and
materials
restricted.

12. (1) No machinery or raw material imported into The Bahamas with the benefit of any exemption from customs duty under section 9 shall be used for purposes other than the manufacture of an approved product by an approved export manufacturer or sold, given away or otherwise disposed of within The Bahamas, and no scheduled article so imported shall be sold, given away or otherwise disposed of as aforesaid, except —

- (a) in the case of an assignment, transfer or conveyance of the relevant factory premises, to the assignee of such factory premises; or
- (b) upon the approved export manufacturer by whom such machinery, raw material or article was imported paying, or giving security to the satisfaction of the Comptroller for the payment of, an amount equivalent to the amount of customs duty which, but for the provisions of this Act, would have been payable upon the importation of such machinery, raw material or article; or
- (c) after the expiration of five years from the date of the importation into The Bahamas of such machinery, raw material or article.

(2) Subject to the provisions of subsection (3), no factory premises constructed, altered, reconstructed or extended with the use of any scheduled article in respect of which benefits under paragraph (b) of subsection (1) of section 9 have been obtained (whether or not such factory premises have ceased to be used for the manufacture of an approved product by an approved manufacturer) shall, without the prior approval in writing of the Minister, be used, at any time within ten years after the relevant date of production for any purpose other than that of the manufacture of an approved product by an approved export manufacturer.

(3) Subsection (2) shall not apply in relation to any factory premises if —

- (a) the said premises have ceased to be used for the manufacture of an approved product by an approved export manufacturer; and
 - (b) an amount equal to the amount of the customs duty which, but for the provisions of this Act, would have been payable upon the importation into The Bahamas of the scheduled articles in question has been paid.
- (4) If any approved export manufacturer —
- (a) uses, sells, gives away or otherwise disposes of any machinery or raw material; or
 - (b) sells, gives away or otherwise disposes of any scheduled article,

imported as mentioned in subsection (1) otherwise than as allowed by that subsection, he shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding three times the value of the machinery, raw material or scheduled article in respect of which the offence was committed.

(5) If any person uses, or permits another person to use, any factory premises in contravention of subsection (2), he shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding three hundred dollars and, in default of payment, to imprisonment for a term not exceeding six months, and in the case of a continuing offence to a further fine of one hundred and fifty dollars in respect of each day during which the offence continues.

Tax reliefs.

13. (1) Every approved export manufacturer other than an export manufacturer who is a licensee of The Grand Bahama Port authority Limited shall be entitled to the following relief from taxes for the statutory period, that is to say —

- (a) from an export tax in respect of any relevant approved product manufactured by the approved export manufacturer;
- (b) from any income tax in respect of any profits or gains earned by the approved export manufacturer from the manufacture of the relevant approved product;
- (c) from any real property tax in respect of the relevant factory premises.

(2) Every approved export manufacturer who is a licensee of The Grand Bahama Port Authority Limited shall be entitled subject to the terms and conditions as may be set out in any Agreement executed pursuant to section 5 to the following relief from taxes and duties —

- (a) for the statutory period, all of those taxes, duties or levies from which a licensee is exempt for thirty-five years as set out in the Hawksbill Creek Agreements;
- (b) for the life of the Hawksbill Creek Agreements, all of those taxes, duties or levies from which a licensee under the said Agreements is exempt during the continuance of the said Agreements.

(3) In this section —

“export tax” means the tax payable by any person under any enactment for the time being in force relating to the taxation of exports;

“income tax” means the tax payable by any person under any enactment for the time being in force relating to income tax;

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“real property tax” means real property tax chargeable under the Real Property Tax Act;

“statutory period” means —

- (a) in relation to any approved export manufacturer in respect of whom the relevant date of production is a date anterior to the 21st day of January, 1976, the period commencing on the relevant date of production and ending on the 31st day of December, 1989;

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- (b) in relation to any approved export manufacturer who is a licensee of The Grand Bahama Port Authority Limited the relevant date of production for the exemptions mentioned in paragraph (a) of subsection (2) of this section is the period commencing the 4th day of August, 1990 and continuing for a period of twenty-five years;
 - (c) in relation to any other approved export manufacturer, the period of twenty-five years commencing on the relevant date of production.

14. Any approved export manufacturer who wilfully fails to comply with any requirement lawfully made by any person in the exercise of any power conferred upon such person by section 10 or 11 shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding one thousand five hundred dollars or to imprisonment for a term not exceeding six months or to both such fine and imprisonment. Offences.

15. Where any offence under this Act or any regulation made thereunder is committed by a body corporate and it is proved to have been committed with the consent or connivance of any director, manager, secretary or other officer of the corporation he, as well as the corporation, shall be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly. Offences by corporation.

16. (1) No person who has acquired information in any capacity under this Act or in performing any of his functions or duties under this Act shall, without the express consent of the person from whom that information has been received or acquired, disclose to any person any such information except — Confidentiality.

- (a) to a public officer authorized by the Minister in that behalf for the purpose of the performance of that officer's duties or the exercise of his functions under this Act; or
- (b) when he is lawfully required to make disclosure by a court of competent jurisdiction within The Bahamas.

(2) Where in any proceedings in any court the court determines that the likelihood exists that information

relating to or evidence of any trade secrets or secret process or other commercial or financial information concerning the establishment or maintenance of a competitive business position may be disclosed or given the court shall hear such information or evidence *in camera* and no record thereof shall be made public; and upon the final determination of the proceedings including any appeal any such record shall be destroyed in the presence of and to the satisfaction of the affected party.

(3) Every person who contravenes the provisions of subsection (1) of this section shall be guilty of an offence against this Act and shall be liable on conviction to a fine of fifteen thousand dollars or to a term of imprisonment of two years or to both such fine and imprisonment.

Regulations.

17. The Minister may make regulations for prescribing anything required by this Act to be prescribed and generally for any other matter or thing in respect of which he may consider it expedient to make regulations for the purpose of carrying this Act into effect.

FIRST SCHEDULE (Section 2)

SCHEDULED ARTICLES

All building materials, tools, plant, equipment, pipes, pumps, conveyor belts or other materials or appliances necessary for and used in construction and alteration of factory premises, but not including, in New Providence, any equipment used in the manufacture of wooden door frames, moulding, cement tiles or cement blocks.

SECOND SCHEDULE (Section 5)

Where Market value of factory premises, plant and machinery:	Annual Registration Fee
exceeds twenty million dollars.....	\$300,000
does not exceed twenty million but above five million dollars.....	\$175,000

THIRD SCHEDULE (Section 5)

1. The Agricultural Manufactories Act..... Ch. 243
2. The Hotels Encouragement Act..... Ch. 289
3. The Industries Encouragement Act..... Ch. 326
4. The Spirit and Beer Manufacture Act..... Ch. 373