
CHAPTER 326**INDUSTRIES ENCOURAGEMENT****ARRANGEMENT OF SECTIONS**

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CHAPTER 326

INDUSTRIES ENCOURAGEMENT

An Act to encourage the establishment and development of industries and for matters connected therewith.

10 cf 1970
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5 cf 1981
4 cf 1982
19 cf 1999

[Assent 2nd July, 1976]
[Commencement 18th December, 1976]

1. This Act may be cited as the Industries Encouragement Act. Short title.
2. (1) In this Act, unless the context otherwise requires — Interpretation.
- “approved manufacturer” or “manufacturer” means a person approved by the Minister under section 5;
- “approved product” means a product of manufacture 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 or any enactment passed in amendment thereof or substitution therefor; Ch. 295.
- (b) any tax payable in respect of any export entry or import entry under the Stamp Act or any enactment passed in amendment thereof or substitution therefor; 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;
- “Minister” means the Minister responsible for Industrial Encouragement; *E L A O, 1974*

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- 4 cf 1982, s 2* “product of manufacture” means any commodity declared by the Minister by order under section 4(1) to be a product of manufacture; and
- 4 cf 1982, s 2* “raw material” means any item declared by the Minister by order under section 9(4) 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 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;
- Ch. 370. “stamp tax” means the tax payable in respect of any export entry or import entry under the Stamp Act or any enactment passed in amendment thereof or substitution therefor.
- (2) Any 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 product.
- 3.** Subject to the provisions of section 7, the Minister may by order declare that a product of manufacture shall be an approved product for the purposes of this Act if he is satisfied that such a declaration is in the public interest and that the manufacture of such product —
- (a) is or will be of benefit to The Bahamas; and
 - (b) does not, or will not, entail any, or any substantial, detriment to The Bahamas,
- both economic and social considerations being taken into account.
- Declaration of particular commodity.
- 4.** (1) The Minister may by order declare that a particular commodity is a product of manufacture in relation to any particular industry for purposes of the Act.
- 4 cf 1982, s 3* (2) Any decision made by the Minister for the purposes of subsection (1) shall be final.
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5. (1) Subject to the provisions of section 7, the Minister may by order declare that any person who is manufacturing, or proposes to manufacture, an approved product shall be an approved manufacturer for the purposes of this Act in relation to that product, if he is satisfied that such a declaration is in the public interest and that that person is or will be able successfully to manufacture the approved product:

Approval of
manufacturer

Provided that the Minister shall not declare any person to be an approved manufacturer as aforesaid if such person —

(a) is licensed, registered or otherwise howsoever approved for the purpose of any of the enactments specified in the Second Schedule; or

Second Schedule

(b) is a licensee of the Port Authority within the meaning given to that word in paragraph (e) of subclause (1) of clause 2 of the agreement made between the Government of The Bahamas and the Port Authority pursuant to the Hawksbill Creek, Grand Bahama (Deep Water Harbour and Industrial Area) Act, unless such licensee undertakes to the satisfaction of the Minister not to demand or exercise, in respect of the manufacture by such licensee of the relevant approved product during such time as he is an approved manufacturer under this Act, any privilege, right or exemption available to him under the terms of that agreement.

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(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; 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 in 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 in paragraph (b) of subsection (2) may be enjoyed after the amending order has been made.

Applications 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.

Objections to proposals to approve a product or manufacturer
5 cf 1981, s 2

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 should 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 (2) issues of —

- (a) the *Gazette*; and
- (b) one newspaper published and circulating in The Bahamas,

at intervals of not less than two (2) days.

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

- (a) as respects a proposal to make an order under section 3 —
 - (i) the product proposed for approval; and
 - (ii) the raw materials used or to be used in the manufacture of such product; and
- (b) as respects a proposal to make an order under section 5, the present or proposed location of the relevant factory premises; and
- (c) such other particulars of the product for which or, as the case may be, the person for whom, approval is proposed as the Minister may consider necessary in order that any interested person may object in writing to the product or person being so approved.

(3) Every such notice as aforesaid shall also state a date on or before which any objection shall be made by any interested person, so, however, that such date shall not

be earlier than the seventh day after the date on which the notice is last published.

(4) Every objection in writing received by the Minister on or before the date stated in the notice (or such later date as the Minister may in his direction allow) shall be considered by the Minister before any order is made under section 3 or 5.

(5) 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, on the application of an approved manufacturer, or a person who proposes to manufacture an approved product, the Minister may, if he is satisfied that it is necessary in order to promote the manufacture of the approved product by the approved manufacturer or the person who proposes to manufacture the proposed product, and upon such conditions as he may think fit, alter the notice so as to include or exclude any raw material in respect of which the change exists.

(6) Subsections (1), (2), (3) and (4) shall not apply in relation to —

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

8. (1) Where any approved manufacturer fails or neglects to commence to manufacture a relevant approved product on or before the relevant date of production in quantities considered by the Minister to be marketable quantities, or where any approved manufacturer has commenced to manufacture a relevant approved product on or before the approved date but fails or neglects to continue to manufacture such product for a period in excess of three months, the Minister may by notice in writing require such manufacturer, within thirty days after receipt of such notice, to establish to the satisfaction of the Minister that —

- (a) the failure or neglect to commence to manufacture that approved product in marketable quantities as aforesaid or to continue to manufacture that approved product for the period aforesaid was due to some cause beyond the control of the manufacturer; and

Revocation of orders under section 5

19 cf 1999, s 2

19 cf 1999, s 2

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- (b) there is a reasonable prospect of the manufacturer commencing to manufacture the approved product in marketable quantities within such time as the Minister may consider to be reasonable,

and if the manufacturer fails to satisfy the Minister accordingly, the Minister, if he considers it expedient so to do, may, by order, terminate the approval of that manufacturer in relation to that product either by amending or by revoking, as the case may require, the order under section by which the manufacturer became an approved manufacturer in relation to that approved product.

(2) Where the Minister is satisfied 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 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 the approval of that person in relation to that product; and, if that person fails to show cause accordingly, the Minister may, if he 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.

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

- (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 for the purposes of this Act, but without prejudice to the continued operation of section 10 and subsections (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.

9. (1) Every approved manufacturer 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 — Relief from
customs duty

- (a) any machinery or raw material not being a 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 purpose of —

- (i) effecting repairs to the factory premises; or
- (ii) effecting repairs to, or, unless the Minister otherwise directs in any particular case, replacing, any apparatus, machinery, appliance or equipment contained in the factory premises.

(2) On any question whether any machinery or raw material is imported for the purpose mentioned in paragraph (a) of subsection (1) or whether any scheduled article is imported or intended for any purpose mentioned in paragraph (b) thereof, the decision of the Minister shall be conclusive.

(3) In paragraph (a) of subsection (1) of this section the expression “protected raw material” means raw material declared by the Minister by order to be a protected raw material.

(4) The Minister may by order declare that a particular item is a raw material in relation to the manufacture of any particular product for purposes of the Act. *4 cf 1982, s 4*

4 cf 1982, s 4

(5) Any decision made by the Minister for purposes of subsection (4) shall be final.

19 cf 1999, s 3

(6) For the purposes of this section, customs duties exemptions shall be available only —

- (a) in respect of materials used for plant construction and equipment on a one time basis at commencement of registration and subsequently only upon the expansion or replacement of the plant but got including spare or replacement parts;
- (b) on approved raw materials as may be prescribed by the Minister.

Special provisions relating to machinery, raw materials and scheduled articles imported free of customs duty
5 cf 1981, s 3

10. Every approved 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 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 authorised 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.

Bonding

11. Every approved 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 such form as may be directed by the Comptroller with two sureties —

- (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,

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 or any enactment passed in amendment thereof or substitution therefor, 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:

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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 in so far as the bond relates to such machinery, raw material or article.

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 manufacturer or sold, given away or otherwise

Restriction on disposition of raw materials, etc., imported duty free and on use of factory premises.

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 of the relevant factory premises, to the assignee of such factory premises; or
- (b) upon the approved 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 provision 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 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 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 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.

13. (1) Every approved manufacturer shall be entitled to the following relief from taxes for the statutory period, that is to say —

Relief from other taxes

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

(2) 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;

“real property tax” means real property tax chargeable under the Real Property Tax Act, or any enactment passed in amendment thereof or substitution therefor;

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“statutory period” means —

- (a) in relation to any approved manufacturer in respect of whom the relevant date of production is a date anterior to the first day of January, 1976, the period commencing on the relevant date of production and ending on the thirty-first day of December, 1989;
- (b) In relation to any other approved manufacturer, the period of fifteen years commencing on the relevant date of production.

Offences against sections 10 and 11.

14. Any approved manufacturer who fails without reasonable excuse to comply with 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 by corporations.

15. Where any offences under this Act or any regulation made thereunder committed by a corporation 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.

Regulations.

16. 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.

Repeal, saving and transitional.
27 cf 1951

17. (1) Subject to subsection (2), the Industries Encouragement Act, 1951 is hereby repealed.

(2) Subject to subsection (3), the said repeal shall not affect the validity of any order made under section 3 of the said Industries Encouragement Act which was in force immediately before the commencement of this Act, but every such order shall continue in force, and the provisions of that Act shall continue in force in relation to every such order, as if this Act has not been passed.

(3) Where any manufacturer, as defined in section 2 of the said Industries Encouragement Act, owning a factory

registered by virtue of such an order as is mentioned in subsection (2) of this section, makes application for the purpose, the Minister may by order under this section revoke such first-mentioned order and cancel the operation of that Act in relation thereto.

(4) Any manufacturer on whose application an order has been made under subsection (3) may apply to be declared to be an approved manufacturer by an order under section 5 of this Act, and the Minister may, subject to the provisions of that section and section 7, approve the application, but in such case the order under the said section 5 shall make such supplementary provisions as to the Minister may appear necessary or expedient for the purpose of reducing, in relation to such manufacturer, the benefits available under this Act to an approved manufacturer; and thereupon the provisions of this Act shall have effect in relation to such manufacturer accordingly.

18. Nothing contained in this Act shall apply so as to derogate from the operation of the provisions of the Business Licence Act.

*Derogation.
19 of 1999, s 4
Ch. 329.*

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)

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| 1. The Agricultural Manufactories Act..... | Ch. 243 |
| 2. The Spirits and Beer Manufacture Act | Ch. 373 |
| 3. The Hotels Encouragement Act | Ch. 289 |
| ¹ 4. The Cement Industry (Encouragement and Control) Act, 1961. | |

¹ Omitted from the 1987 Revision.