

**THE LOCAL MANUFACTURES
(EXPORT COMPENSATION) ACT, 1974**

No. 9 of 1974

Date of Assent: 12th June, 1974

Date of Commencement: By Notice

An Act of Parliament to provide for compensatory payments to be made in respect of certain locally manufactured goods which are exported from East Africa; and for matters connected therewith and incidental thereto

ENACTED by the Parliament of Kenya as follows:—

1. This Act may be cited as the Local Manufactures (Export Compensation) Act, 1974, and shall come into operation on such date as the Minister may, by notice in the Gazette, appoint.

Short title
and
commencement.

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

Interpretation.

“appointed dealer” means an authorized dealer appointed under section 3 of this Act to pay compensatory payments on behalf of the Commissioner;

“authorized dealer” means a person who is authorized under the Exchange Control Act to deal in foreign currency;

Cap. 113.

“the Commissioner” means the person for the time being having charge of the East African Customs and Excise Department in Kenya;

“compensatory payment” means a payment provided for by section 3 of this Act;

“eligible goods” means goods originating in Kenya which are—

(a) taxable goods, as defined in the Sales Tax Act, other than those specified in Part I of the Second Schedule to this Act; or

No. 7 of 1973.

(b) goods specified in Part II of that Schedule;

“export” means to take out or cause to be taken out of the Partner States by air, land or water;

“foreign currency” means any currency other than that of one of the Partner States;

“the Minister” means the Minister for the time being responsible for matters relating to finance;

“originating in Kenya”, in relation to any goods, means that such goods—

- (a) have been produced wholly in Kenya; or
- (b) have been produced in Kenya and the total value of **imported materials**, or materials of **undetermined origin**, which have been used at any stage in the production of the goods does not exceed seventy per cent of the ex-factory value of the goods;

“the Partner States” means Kenya, Tanzania and Uganda;

“regulations” means regulations made under section 12 of this Act.

Compensatory
payments.

3. Subject to the provisions of this Act, any person who exports any eligible goods shall be paid by or on behalf of the Commissioner a compensatory payment at the rate specified in the First Schedule to this Act:

Provided that no compensatory payment shall be paid by or on behalf of the Commissioner in respect of the exportation of any eligible goods specified in and for the purpose of an Order made under section 3 of the Local Industries (Refund of Customs Duties) Act.

Cap. 481.

Deduction from
divisible revenue.
E.A. Cap. 23.

4. Notwithstanding the provisions of the Customs and Excise Revenue Allocation Act, the Commissioner shall **deduct all compensatory payments** from that portion of the divisible customs and excise revenue falling to be paid to Kenya under paragraph 8 of Article 68 of the Treaty for East African Co-operation before such payment is made.

Restriction
on payment.

5. (1) No compensatory payment shall be made in respect of the exportation of any eligible goods before—

- (a) such exportation is completed; and
- (b) foreign currency due in respect of such exportation has been received in Kenya by an authorized dealer.

(2) For the purposes of section (1) of this section, exportation of goods shall be deemed to be completed—

- (a) in the case of exportation by sea or air, at the time at which the vessel or aircraft carrying the goods departs from its final berth, anchorage or position at the port or airport within the Partner States at which the goods are shipped for export;

(b) in the case of exportation by land, at the time at which the vehicle carrying the goods passes across the external frontiers of the Partner States; and

(c) in the case of exportation by parcel post, at the time the export entry document is stamped by a proper officer of customs.

(3) Where eligible goods which have been exported are subsequently, for whatsoever reason, imported into any of the Partner States, such exportation shall be deemed not to have taken place, and any compensatory payment made in respect thereof shall be repaid to the Commissioner by the person by whom it was received.

6. An application for a compensatory payment made by a person claiming to be entitled thereto shall be made to the Commissioner, through an appointed dealer, in such form as may be prescribed.

Application
for payment.

7. (1) Where an application for a compensatory payment is received by an appointed dealer he shall, if satisfied that exportation of the eligible goods concerned is completed as required by section 5 of this Act, notify the Commissioner the appropriate amount of compensatory payment due to the exporter, calculated on the amount of foreign currency received by such dealer in respect of such exportation, and, when so authorized by the Commissioner, shall pay to the applicant on behalf of the Commissioner the appropriate amount of compensatory payment.

Action to be
taken on
application.

(2) In respect of any application for a compensatory payment, the Commissioner—

(a) if he is satisfied that the applicant is not entitled thereto, or that there has been any breach of this Act or the regulations in relation to the eligible goods concerned, or to the exportation thereof, may disallow the application in whole or in part; or

(b) in any other case, shall allow the application.

(3) Where an application is disallowed under paragraph (a) of subsection (2) of this section, any payment made under subsection (1) in relation to that application shall be repayable to the Commissioner by the person by whom it was received to the extent required by the disallowance.

Offences.

8. (1) Any person who—

- (a) knowingly or recklessly makes or causes to be made any statement, whether oral or in writing, in or for the purposes of an application under section 6 of this Act, which is false in any material particular; or
- (b) fails, in any such application, to disclose any information materials to the application which is within his knowledge; or
- (c) fails to comply with any condition applicable to the allowance of any such application.

shall be guilty of an offence and liable to a fine not exceeding fifty thousand shillings, or to imprisonment for a term not exceeding five years, or to both such fine and imprisonment.

(2) Upon the conviction of any person for an offence under subsection (1) of this section, any compensatory payment made in respect of the application concerned shall forthwith be repayable to the Commissioner by the person by whom it was received, whether such person is the person so convicted or not.

Liability of
employers and
of officers of
companies.

9. (1) Where any offence under paragraph (a) or (b) of subsection (1) of section 8 of this Act is committed by an employee or agent, the person by whom such employee or agent is employed shall, if he is a person who has received or may have expected to receive any compensatory payment as a result of the application concerned, be guilty of the like offence unless he proves to the satisfaction of the court that he did not know, and could not reasonably be expected to know, that the act or omission constituting the offence was taking place, and that he took all reasonable steps to ensure that such offence was not committed.

(2) Where a person convicted of an offence under this Act is a limited company, every director of the company, and every officer of the company concerned in the management thereof, shall also be guilty of the like offence unless he proves to the satisfaction of the court that the act or omission constituting the offence took place without his knowledge or consent and that he could not reasonably be expected to have such knowledge.

Proceedings.

10. (1) Any sum stated by this Act to be repayable to the Commissioner shall be a civil debt recoverable summarily by the Commissioner from the person responsible for the repayment.

(2) Any officer, as defined in the East African Customs and Transfer Tax Management Act, shall, subject to the control of the Attorney-General, have power to conduct a prosecution for an offence against this Act and for such purpose shall have all the powers of a public prosecutor appointed under the Criminal Procedure Code.

E.A. Cap. 27.

Cap. 75.

11. (1) The Minister may, by order, amend either of the Schedules to this Act.

Amendment of Schedules.

(2) Every order made under this section shall be laid before the National Assembly without unreasonable delay, and, if a resolution is passed by the Assembly within twenty days on which it next sits after the order is laid before it that the order be annulled, it shall thenceforth be void, but without prejudice to the validity of anything previously done thereunder or to the making of any new order.

12. (1) The Minister may make regulations for the better carrying into effect of the purposes and provisions of this Act and, without prejudice to the generality of the foregoing, such regulations may be made for the purposes of—

Regulations.

- (a) prescribing anything which is to be, or may be, prescribed under this Act;
- (b) regulating applications under section 6 of this Act, and providing for the method of proof of any matters required to be fulfilled or proved for the purposes of any such application;
- (c) the administration and application of the provisions of this Act in relation to the production and origin of eligible goods and the application of the percentage criterion in the ex-factory value of eligible goods;
- (d) prescribing the information to be supplied, by the exporter or producer, or any other person concerned in the production or exportation, of eligible goods, for the purposes of the proper valuation of such goods;
- (e) providing for the production of books of account and other documents relating to the purchase, production, sale or exportation of eligible goods.

(2) The regulations may prescribe the penalties, not exceeding a fine of ten thousand shillings, which may be annexed to any breach of the regulations.

FIRST SCHEDULE

(s. 3)

RATE OF COMPENSATION PAYMENT

The rate of compensatory payment shall be ten per centum of the f.o.b. value of goods declared for export or of the payment in respect of such export received in foreign currency by an authorized dealer, whichever is the less.

SECOND SCHEDULE

(s. 2)

PART I—ITEMS SUBJECT TO SALES TAX BUT NOT ELIGIBLE FOR COMPENSATORY PAYMENT

Chapter	Tariff No.	
27	27.10	B. Motor spirit, gasoline and other light oils and other products for similar uses.
28	27.17	Electric current.
	28.01/58	Chemical elements, inorganic chemical compounds and other products specified in Notes 1 and 2 to this Chapter.

PART II—ITEMS NOT SUBJECT TO SALES TAX BUT ELIGIBLE FOR COMPENSATORY PAYMENT

Chapter	Tariff No.	
11	11.01	Cereal Flours.
	11.02	Cereal groats and cereal meal; other worked cereal grains, (for example, rolled, flaked, polished, pearled or kibbled, but not further prepared), except husked, glazed, polished, or broken rice; germ of cereals, whole, rolled, flaked or ground.
30	11.07	Malt; roasted or not.
	11.08	Starches, inulin.
	30.01	Organo-therapeutic glands or other organs, dried, whether or not powdered; organo-therapeutic extracts of glands or other organs or of their secretions; other animal substances prepared for therapeutic or prophylactic uses, not elsewhere specified or included.
	30.02	Antisera; microbial vaccines, toxins, microbial cultures (including ferments but excluding yeasts) and similar products.
	30.03	Medicaments (including veterinary medicaments): A. Prepared according to the British Pharmacopoeia, the National Pharmacopoeia of a Member State of the E.E.C., the British Pharmaceutical Codex, the United States Pharmacopoeia, the Soviet Pharmacopoeia, the United States National Formula or the British Veterinary Codex, but not including any proprietary drugs or medicinal preparations. B. Proprietary drugs, medicinal and veterinary preparations intended solely for ethical sale or for the prophylaxis of disease which the Commissioner may, on the advice of the Chief Medical Officer or the Chief Veterinary Officer, admit under this sub-heading.

SECOND SCHEDULE—(Contd.)

Chapter	Tariff No.	
		C. Other.
	30.04	Wadding, gauze, bandages and similar articles (for example, dressings, adhesive plasters, poultices), impregnated or coated with pharmaceutical substances or put up in retail packings for medical or surgical purposes, other than goods specified in Note 3 to this Chapter;
30	30.04	A. White absorbent cotton wadding.
		B. Other.
	30.05	Other pharmaceutical goods:
		A. First-aid boxes and kits.
		B. Other.
31	31.02	Mineral or chemical fertilizers, nitrogenous.
	31.03	Mineral or chemical fertilizers, phosphatic.
	31.04	Mineral or chemical fertilizers, potassic.
	31.05	Other fertilizers; goods of the present chapter in tablets, lozenges, and similar prepared forms or in packings of a gross weight not exceeding 10 kg.
38	38.11	Disinfectants, insecticides, fungicides, weed killers, anti-sprouting products, rat poisons and similar products, put up in forms or packings for sale by retail or as preparations or as articles (for example, sulphur-treated bands, wicks and candles, fly-papers).
48	48.01	Paper and paper-board (including cellulose wadding), machine-made, in rolls or sheets:
		A. Paper.
		(1) Cigarette.
		(2) For the manufacture of corrugated paperboard.
		(3) Other.
		B. Paperboard.
		C. Cellulose wadding:
		(1) Bleached, for the manufacture of sanitary towels;
		(2) Other.
49	49.01	Printed books, booklets, brochures, pamphlets and leaflets.
	49.02	Newspapers, journals and periodicals, whether or not illustrated.
	49.03	Children's picture books and painting books.
	49.04	Music, printed or in manuscript, whether or not bound or illustrated.
	49.05	Maps and hydrographic and similar charts of all kinds including atlases, wall maps and topographical plans, printed; printed globes (terrestrial or celestial).
59	59.04	Twine, cordage, ropes and cables, plaited or not.
62	62.03	Sacks and bags, of a kind used for the packing of goods.
	62.05	Other made-up textile articles (including dress patterns):
		A. Surgeons' face masks.
70	70.17	Laboratory, hygienic and pharmaceutical glassware, whether or no graduated or calibrated; glass ampoules:
		B. Ampoules for pharmaceutical products.
73	73.14	Iron or steel wire, whether or not coated but not insulated.
	73.26	Barbed iron or steel wire; twisted hoop or single flat wire, barbed or not, and loosely twisted double wire, of kinds used for fencing, of iron or steel.
	73.40	Other articles of iron or steel:
		G. Fencing posts, strainers, winders, turnbuckles and similar fittings or fasteners.
	73.40L	L. Traps and snares for the destruction of pests

SECOND SCHEDULE—(Contd.)

Chapter	Tariff No.	
76	76.10	Casks, drums, cans, boxes and similar containers (including rigid and collapsible tubular containers), of aluminium, of a description commonly used for the conveyance or packing of goods:
82	82.01	A. Milk containers of 10 litres or less. Hand tools, the following: spades, shovels, picks, hoes, forks and rakes; axes, bill hooks and similar hewing tools; scythes, sickles, hay knives, grass shears, timber wedges and other tools of a kind used in agriculture, horticulture or forestry.
84	84.24	Agricultural and horticultural machinery for soil preparation or cultivation (for example, ploughs, harrows, cultivators, seed and fertilizer distributors); lawn and sports ground rollers.
	84.26	Dairy machinery (including milking machines).
	84.28	Other agricultural, horticultural poultry-keeping and bee-keeping machinery; germination plant fitted with mechanical or thermal equipment; poultry incubators and brooders; B. Other.
87	87.01	Tractors (other than those falling within heading No. 87.07), whether or not fitted with power take-offs, winches or pulleys: B. Other.
	87.14	Other vehicles (including trailers), not mechanically propelled, and parts thereof: A. Trailers specially designed for attachment to or for the conveyance of tractors of heading 87.01(B). C. Agricultural wagons, carts and trailers. D. Carts and trailers imported for public services in connexion with the collection and disposal of refuse.