THE COMMODITY IMPORT SUPPORT REGULATION (AMENDMENT) ACT, 1999

ARRANGEMENT OF SECTIONS

Section *Title*

PART I

PRELIMINARY PROVISIONS

THE UNITED REPUBLIC OF TANZANIA

NO. 13 OF 1999

I ASSENT,

Benjamin W. Mkapa

President

22nd December, 1999.

An Act to amend the Commodity Import Support Regulation Act, 1992 to provide for effective procedure for payment and collection of unpaid debts, and for other related matters.

[..]

ENACTED by the Parliament of the United Republic of Tanzania.

PART I

PRELIMINARY PROVISIONS

Short title Act No. 15 of 1992

1. This Act may be cited as the Commodity Import Support Regulation (Amendment) Act, 1999 and shall be read as one with the Commodity Import Support Regulation Act, 1992 herein referred to as "the Principal Act and shall apply to any person or institution who or which has been allocated a commodity Import Support facility under this Act whether before or after these amendments.

Addition of Part I

2. The Principal Act is amended by adding immediately before section 1 the following Part, and heading;

"PART I

PRELIMINARY PROVISIONS"

Amendment of Section 2

3. Section 2 of the principal Act is amended-

(a) by adding immediately before the word "beneficiary" the following new definitions:

"agent" means a person appointed as such under subsection (1) of section I 1;

"**appointment notice" means a notice issued by the** Commissioner for appointing an agent under section 11,"

(b) by adding immediately after the definition of the term "Cash cover" the following definitions;

"Commissioner" means the Commissioner for Income Tax;

"moneys" includes any debt, deposit or credit, any salary, wages, pensions payments and any other remuneration;

"principal" means a person in respect of whom an agent is appointed;

(c) by deleting the term "Principal Secretary" in the definition section and wherever the term appears in the Act and substituting for it the term "Permanent Secretary"

(d) by adding immediately after the definition of the term "Principal Secretary" the following definitions:

"guarantee" means a guarantee given by the beneficiary under section 6 to the Permanent Secretary;

"guarantor" means any person specified by the beneficiary under section 6 to be a guarantor."

Addition of Part H

4. The Principal Act is amended by adding immediately after Section 2 the following new Part and heading-

"'PART 11

ALLOCATION AND REPAYMENT OF COMMODITY IMPORT SUPPORT FACILITY"

5. Section 6 of the Principal Act is amended-

(a) by adding immediately after paragraph (b) the following new paragraph:

"(c) a detailed guarantee under which in default of payment of cash cover, instalment and interests thereof a specific guarantor shall be required to pay the debts,"

(b) by renumbering section 6 as section 6(l) and by adding immediately after subsection (1) as renumbered the following subsection-

"(2) Notwithstanding paragraph (c) of subsection (1), the Permanent Secretary may, where he is satisfied with the properties secured by the applicant as the guarantee for payment of cash cover, installment and interest, allow that applicant to guarantee him "self for payment of debt under this Act."

6. Section 7 of the principal Act is amended- Amendment of section 7

(a) in subparagraph (ii) of paragraph (b) by deleting the words "twenty percentum" which appear in the second line and substituting for them the words' "thirty percentum"

(b) by renumbering section 7 as section 7(l) and by adding immediately after subsection (1) as renumbered the following new subsection:

"(2) The Permanent Secretary shall, after the issuance of letter of allocation to the beneficiary under this section, inform the Commissioner in writing stating the particulars of the beneficiary, the amount of moneys extended to the beneficiary and the conditions or terms of allocations"

7. Section 8 of the principal Act is amended- Amendment of Section 8

(a) by renumbering section 8 as section 8(l); and

(b) by adding immediately after the renumbered subsection (1) the following new subsection:

"(2) Any interest charged under paragraph (b) of subsection (1) shall, for the purpose of the provisions of this Act relating to the collection and recovery of cash cover or installments, be deemed to be a cash cover."

Addition of Part M and IV

8. The Principal Act is amended by adding immediately after section 9 the following new Parts;

"PART III

PROCEDURE FOR RECOVERY AND COLLECTION
OF UNPAID DEBTS"

Unpaid in"Iments and interest to be recovered from a guarantor

10.-41) Notwithstanding the provisions of this Act, the Commissioner may by notice in writing served upon any beneficiary,, require that the whole of the cash cover facility extended to such beneficiary, or such part thereof as remains unpaid and the interest thereof be secured to the Commissioner's satisfaction.

(2) Where any security has been given under subsection (1), and such security consists of a form of guarantee under which,in default of payment of cash cover, and interests thereof, a guarantor, is obliged to pay such cash cover and such interest, the Commissioner shall, in default of such payment, by notice in writing served on the guarantor, require such guarantor to pay within ninety days of the notice, such, amounts of the defaulted cash cover payments and interests as may be specified, in the notice.

Provided that payments of defaulted cash cover and interests shall not exceed the amount guaranteed by the guarantor,

(3) The amount of installments and interest specified in the notice issued under subsection (2) shall be recovered from a guarantor as if such amounts were debts payable by the guarantor.

(4) Where a guarantor fails to pay the defaulted cash cover, installments and interests within ninety days as required under this section, the Commigsioner shall by notice in writing order the distress of the guarantors properties as may be detailed under paragraph (b) of section *6* and the provisions of sections 1 3 and I 4 regarding the execution of distress under this Act shall apply.

Appointment and duties of agents

11.-41) The Commissioner may, in his discretion and by written notice-

(a) appoint any person to be the agent of Another person for the purposes of the collection and recovery of cash cover, installments and interests due from such other person, and

(b) specify the amount of such cash cover, installments and, interest to be collected and, recovered.

(2) An agent appointed under subsection (1) shall pay the cash cover, installments and interest specified in his appointment notice out of any moneys which may at an y time during twelve months following the date of notice be held by him for or become due from him to his principal.

(3) Where an agent claims to be, or to have become unable to comply with subsection (2) by reasons of lack of moneys held by him for, or due from him, he shall as soon as may be practicable, notify the Commissioner accordingly in writing setting out the reasons for his inability so to comply.

(4) The Commissioner may, after receiving the notification from the agent under subsection (3)-

(a) accept the notification and cancel or amend the appointment notice accordingly; or.

(b) Where he is not satisfied by the reasons set out in the notification, reject the notification.

(5) Where the agent has not given a notification to the Commissioner under subsection. (3)-

(a) sufficient moneys for the payments of the cash cover, installments and interest specified in his appointment notice shall be presumed to be held by him for or due from him to his principal; and

(b) in any proceedings for collection or recovery of such cash cover, installments and interests, the agent shall be estopped from as. serting the lack of such moneys.

Limitation of time for payment

12.-(I) The Commissioner may at any time, by notice in writing, require any agent to furnish him within a reasonable time being not less than thirty days from the date of service of such notice, a return showing any moneys which is or may be held by such agent of dew or which has become due to him by any other person from whom cash cover, installments and interest is due.

(2) The Commissioner shall, after receiving a return from the agent under subsection(l), by notice in writing to the agent specify the amount of cash cover, installments, and interest to be paid by the agent within thirty days from the date of service of such notice.

(3) Where an agent fails to Pay any amount specified in the notice within thirty days from the date Of service of such notice or from the date On which any moneys came into his hands or become due by him to, his Principal, and.

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(a) he has not given a notification under subsection (3) of section I 1; or

(b) he has given such notification which has been rejected by the Commissioner, under subsection (4) of section I 1,

the Provisions of this Act relating to the collection and recovery of cash cover, installments and interest shall apply to the collection and recovery of such amount as if they were due and Payable by the agent, the due date Of Payment Of which was the date upon which such amounts should have been paid to the Commissioner under this section.

(4) Notwithstanding any Provisions to the contrary in any written law, contract or agreement, an agent who has made any payment under this section shall, for all Purposes be deemed to have acted with the authority Of his principal and of all other persons concerned and shall be indemnified m respect of such payment against all Proceedings, civil or criminal and all process, whether judicial or extrajudicial.

(5) For the purposes of section 11 and this section cases where money are new by an agent for or due by him to his principal shall include cases where the agent-

(a) Owes or is about to pay or becomes liable to pay money to the principal; or

(b) holds money for or on account Of the Principal; or

(c) holds money on account of some other person f the principal; or

(d) has authority from some other Person to pay money to the principal.

Unpaid installments and interest to be recovered by distress

13.-(I) The Commissioner may, in any case in which cash cover, Installments and interest are recoverable in the manner provided for by section 9, instead Of suing for such debts, recover the debts by distress, and may, for that Purpose by order under his hand authorized any pub, lie officer or an officer of a court to execute such distress upon the goods and chattels of the person from whom such debts are recover able

(2) Any officer authorized by the Commissioner under subsection (1) may, at the cost of the person from whom such debts are recover- able employ such servants or agents as he may think necessary to assist him in the execution of the distress.

(3) Where the full amount of the amounts due and payable are not recovered by distress executed under this section, the Commissioner may forthwith recover the difference in the manner provided for by section 9.

(4) Where. the full amount due and payable have been paid after the issuance of an order under subsection (1) and before the, execution of distress, any costs and expenses incurred by the Commissioner prior to the payment of such amount shall be deemed to be debts due and payable to the Government by the person in respect of whom the order was signed and may be recovered by the Commissioner as debts re-coverable under this Act.

Procedure for execution of distress,

14.-(1) Any officer authorized- under subsection (1) of section 13 together with such servants or agents as such officer may consider necessary to employ, may, for the purposes of executing any dis tress under this Act, break open in the day time any premises and shall require a police officer to be present while such distress is being executed.

(2) Goods and chattels recovered by, distress executed under subsection (1) shall be kept for ten days either at the premises at which such distress was , executed or at such other place as the authorized officer, may consider appropriate at the cost of the person from whom cash cover, installment and interest are recoverable.

(3) Where the person from whom the debts are recoverable by dis-tress, does not pay such debts together with the costs, of the distress within the period of ten days referred to in subsection (2), the goods and chattels distrained upon shall be sold by public auction for payment ofthe debts due and payable and all other costs relating to the executed dis-tress.

(4) The proceeds of the sale under subsection (1) shall be applied first towards the cost of taking, keeping and selling the goods and chat-tels distrained upon and then towards the debts due and payable and any remainder of such proceeds shall be restored to the owner of the prop-erty distrained.

Security of property for unpaid cash cover, instabrients and interest

15.-(I) Where any person being the owner of land or any premises situated in the United Republic, fails to make payment of cash cover, installment or interest due by him on the due dates specified under section 8 of this Act, the Commissioner may, by notice in writing, notify such person of his intention to apply to the Registrar of Titles for such land or premises to be the subject of security for the defaulted cash cover, installments and interest specified in the notice.

(2) Where any person on whom a notice has been served under subsection (1), fails to make payment of the whole of the amounts specified in such notice within thirty days from the date of service of the notice, the Commissioner may, by notice published in the Gazette direct the Registrar of Titles that the land or building to the extent of the interest of such person therein, be the subject of security for the defaulted cash cover, installments and interest as may be specified in such notice.

(3) The Registrar of Titles shall, after the publication of the notice under subsection (2), register the direction of the Commissioner without fee as if it were an instrument of mortgage over or charge on such land or premises as the case may be and thereupon such registration shall, subject to any prior mortgage or charge, operate while it subsists in all respects as a legal mortgage over or charge on such land or premises to secure the amount of the defaulted cash cover installments, and interests.

(4) The Commissioner shall-

(a) after the registration of direction by the Registrar of Titles under subsection (3), by notice in writing require the beneficiary or the owner of the land to make payment of cash cover installment and interest within ninety days from the date of service of notice; and

(b) upon payment of the whole of the cash cover, installment and interest secured under subsection (2) cancel the direction made under this section, by notice in writing to the Registrar of Titles and the Registrar shall, without fee, record such cancellation and thereupon such direction shall cease to subsist.

(5) Where the beneficiary on whom the notice has been served under paragraph (a) of subsection (4) fails to make payments within ninety days, the Commissioner shall by notice published in the Gazette order the sale of the property secured under subsection (3) to recover the defaulted cash cover, installments and interest.

(6) The proceeds of sale under subsection (5) shall be applied first towards the debts due and payable and the remainder of such proceeds if any shall be restored to the owner of the property.

(7) Where the proceeds of sale are not sufficient enough to recover the debts the Commissioner shall continue to recover the debts under section 9 of this Act-

PART TV

MISCELLANEOUS PROVISIONS

16.-41) Any person who gives fraudulent information for the repayment of cash cover, installments or interests or who, with intent to evade liability- offences and penalty

(a) makes a false application under this Act, by omitting therefrom or concealing therein any information which should have been stated therein;
(b) breaches agreement signed under this Act;
(c) gives any false information in relation to any matter or thing affecting his liability to cash cover, installments or interest;
(d) falsifies or authorizes falsification of documents relating to liability;
(e) fails to pay cash cover, installments or interest under this Act;
(f) remits payment by false cheque;
(g) fails to preserve any record or document as required by this Act,

commits an offence and shall, on conviction be liable to a fine not exceeding five million shillings or to imprisonment for a term not exceeding two years or to both such fine and imprisonment.

(2) Any person, who in any way, obstructs or attempts to obstructs an officer in the performance of his duties or in the exercise of this powers under this Act, commits, an offence and upon conviction shall be liable to a fine not exceeding five million shillings or to imprisonment for a term not exceeding two years to both such fine and imprisonment.

(3) Any person, who commits an offence under this Act, and for which no other penalty is specifically provided, that person shall be liable on conviction to a fine not exceeding five million shillings or to imprisonment for a term not exceeding two years, or to both such fine and imprisonment.

Offences by principal or employer

17. Where any offence under this Act is committed by a person as an agent or employee then, that agent or employee as well as the principal or employer, commits an offence and on conviction shall be liable to be proceeded against and punished accordingly' unless be proves to the satisfication of the court that he had no knowledge, and coud not by the exercise of reasonable diligence have had knowledge of the commission of the offence.

Offences by agents

18. Any agent who in giving notification to the Commissioner under subsection (3) of section I 1, makes any false or misleading statement or conceals any material fact, commits an offence and shall upon conviction be liable to a fine not exceeding five million shillings or to imprisonment for,a term not exceeding two years or to, both such fine and imprisonment.

Burden of proof and payment of debts after conviction

19.-(I) In any proceeding for an offence under this Act the burden to prove that-

(a) an application for allocation of commodity import support facility under this Act of particulars stated therein are true;

(b) any cash cover, installment or interest has been paid;

(c) the accused is a person not liable to pay any cash cover, instalment or interest;

(d) any amount of cash cover, installment or interest due under Part 11 was remitted to the Treasury in the time within which it is required to be so remitted,

sball be on the person charged.

(2) For the avoidance of doubts, the amount of any cash cover, instalments or interest due and payable under this Act shall not be abated by reason only of the conviction or punishment'of the person liable for the payment thereof under this Act.

Publication of names of offenders

20.-(1) The Commissioner may publish a notice m the Government Gazette or in any other newspaper circulating, m the United Republic a list of persons who.

(a) fails to pay cash cover, instalments or interest under this Act;

(b) have been convicted of any offence under this Act; or

(c) have conducted themselves m a manner which amount to an offence under this Act.

(2) Every such list of names of persons published under subsection (1) shall specify:

(a) the name and address of the offenders;

(b) such particulars of offence as the Commissioner may think fit;

(c) the amount of moneys or unpaid debts involved; and

(d) the particulars of the fine or sentence imposed.

(3) Publication of list of names of offenders under subsection (1) shall be done after the completion of any appeal or review instituted in relation to the committed offence.

Preservation of documents

21. Every person allocated with a commodity import support facility shall preserve every document relating to such facility until such times the liability thereto is fully liquidated, and he obtains a written certificate of clearance of such facility from the Commissioner.

Regulations

22.—(1) The Minister may upon recommendations of the Commissioner, make regulations.

(a) prescribing the application forms and the manner in which the application forms shall be obtained.

(b) prescribing a form of standard contract or allocation agreements to be entered by beneficiaries under this Act.

(c) prescribing anything which under this Act is to be prescribed by the Regulations; and

(d) for the better carrying out of the objects and purposes of this Act.

(2) The Regulations made under this section shall be published in the *Gazette*."

Passed in the National Assembly on the 4th November, 1999

Clerk of the National Assembly

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