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Acts (No. 4C)

MALAWI GOVERNMENT

(Published 29th June, 2018)

Act

No. 15 of 2018

I assent

PROF. ARTHUR PETER MUTHARIKA

PRESIDENT

16th June, 2018

ARRANGEMENT OF SECTIONS

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An Act to regulate the import into and export out of Malawi, of certain classes of goods and for other matters connected therewith and incidental thereto

ENACTED by the Parliament of Malawi as follows—

Short title and commencement 1. This Act may be cited as the Control of Goods Act, 2018, and shall come into operation on a date the Minister shall appoint, by notice published in the *Gazette*.

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

“export” means goods taken out of or sent from Malawi;

“goods” means all kinds of movable personal property, including—

- (a) anything capable of being imported or exported;
- (b) any kind of manufactured or unmanufactured commodity; and
- (c) any kind of animal or plant life;

“goods in transit” means goods imported into Malawi for the sole purpose of being exported after transportation through Malawi;

“import” means goods that are brought into Malawi;

“interested party”, in relation to goods, includes—

- (a) a producer, exporter or importer;
- (b) any person or entity who has a beneficial interest;
- (c) a trade or business association of which a majority of its members are either producers, exporters or importers;
- (d) a trade or business association of which a majority of its members will be affected by any decision taken under this Act;
- (e) unions or other similar organizations representing the interests of farmers and other persons that may be affected by a measure;
- (f) consumer associations; or
- (g) any other person that the Minister considers appropriate;

“regulated goods” means any goods or class of goods, the import into or the export from Malawi of which is prohibited, restricted or otherwise regulated by an Order made pursuant to section 4 of this Act; and

“trade remedy measures” includes anti-dumping duties, countervailing duties and safeguard measures.

Application 3. This Act shall apply to imports and exports of goods in Malawi, including goods in transit or transshipment through Malawi.

4.—(1) The Minister shall, by notice published in the *Gazette*, make orders to regulate the import or export of goods in Malawi, by prescribing that—

Regulation of
exports and
imports

(a) goods of a specified class may not be imported into or exported from Malawi;

(b) goods of a specified class may not be imported into or exported from Malawi for a specified duration; and

(c) goods of a specified class may not be imported into or exported from Malawi, except under the authority of a licence.

(2) In making an order under subsection (1), the Minister shall take into consideration—

(a) the provisions of section 6;

(b) necessity or expedience in the public interest; or

(c) an application by an interested party.

(3) For purposes of subsection (2)(b), grounds of public interest include—

(a) prevention of or relief to critical shortages of foodstuffs, food or other products essential to the country;

(b) the protection of domestic industry from serious injury imposed by import surges;

(c) ensuring the supply of essential raw materials;

(d) the protection of consumers;

(e) combating the spread of contagious human, animal or plant diseases;

(f) protecting public health or safety;

(g) the protection of the environment;

(h) combating the illicit trade in narcotics, arms and ammunition, endangered species or any other prohibited goods;

(i) maintaining balance of payments;

(j) support of infant industries;

(k) security of export proceeds; or

(l) the prevention of criminal activity.

(4) The Minister shall verify with relevant authorities that the thresholds that require intervention on grounds of public interest listed in subsection (3) have been reached and require measures to be taken under this Act.

(5) The order made under this section shall be for a specified period not exceeding two consecutive years in order to address the problem identified.

Application
for institution
and review of
measures

5.—(1) An interested party may, in the prescribed manner and form, on submission of evidence—

(a) at any time, make an application to the Minister to consider instituting measures under section 4(1); or

(b) after publication of a measure in the *Gazette*, petition the Minister for variation, continuation, or revocation of an order made under section 4(1).

(2) An application made under subsection (1) shall contain sufficient information to allow the Minister to evaluate whether the grounds upon which the application has been made are in the public interest.

(3) The Minister shall respond to an application made pursuant to this section, within fourteen days.

Consultations

6.—(1) The Minister shall consult relevant interested parties before a final determination is made to make an order to regulate specified goods under section 4(1) or section 5(1).

(2) The Minister shall publish a notice of the consultations in at least two newspapers of general nationwide circulation and the website of the Ministry.

(3) The notice referred to in subsection (2) shall—

(a) include sufficient details of the classes of goods that the intended order will cover, the nature of the measures, and the reasons for the intended measures; and

(b) state the period, which shall not, in any case, be less than thirty days, within which interested parties may make representations on the proposed measure.

(4) The Minister may, in circumstances where a delay would cause irreparable damage, impose provisional measures pursuant to section 4(1) which shall be in force for not more than sixty days, before a final determination of the appropriate measure is made.

Representations

7.—(1) Interested parties may, where a notice is issued pursuant to section 6 (2), within the prescribed period, make representations to the Minister concerning intended measures.

(2) The Minister shall take into consideration the representations made pursuant to subsection (1) and make a determination to implement or not to implement the measure.

(3) Within twenty-one days of making his determination, the Minister shall publish his determination and giving reasons therefor, by notice published in the *Gazette*.

8.—(1) An interested party may, with reasons and in writing, request the Minister to consider reviewing the decision made under this Act.

Request for
review of
measures

(2) The application for review may be made where—

(a) the situation or conditions giving rise to the order have changed; or

(b) material information emerges that information provided by a person who made an application, or made other representations under this Act was incorrect or in contravention of this Act.

(3) A request for a review under subsection (1) may take place at any time that the applicant becomes aware of these facts.

9.—(1) An order made under this Act shall be reviewed by the Minister—

Review and
variation of
orders

(a) automatically after—

(i) six months in the case of agricultural products; and

(ii) twelve months for all other products; and

(b) on application by an interested party.

(2) If, on consultation with an interested party there is evidence that the situation or conditions that called for the measures taken under that order have materially changed, the Minister may amend or revoke an existing order.

(3) The Minister may, at any time, consider amending or revoking any licence issued pursuant to an existing order, if it comes to light that—

(a) an applicant supplied incorrect or incomplete information in support of the application; or

(b) an applicant utilized misleading information or deceit in seeking the order to be made.

10.—(1) The Minister, or any person authorized by him may, in writing, direct any person who imports, exports, manufactures, supplies, trades, handles, stores, transports, or otherwise has control over goods to which this Act applies, his agent or servant, to—

Furnishing of
information

(a) furnish the Minister, or his authorized representative, with any information at his disposal relating to the importation, export, manufacture, supply or storage of the goods concerned;

(b) furnish the Minister, or his authorized representative, with any information at his disposal relating to any goods which he has or has had in his possession or custody, or over which he has or has had any control; or

(c) produce to any person, as may be so specified, any books, accounts, or other documents relating to that particular trade, business, undertaking, or enterprise.

Inspections

11.—(1) The Minister may appoint inspectors to conduct inspections to ascertain whether this Act or any orders made or licences issued under this Act are being complied with.

(2) Inspectors appointed pursuant to subsection (1) may, at any time, enter into and inspect any premises, storage or vehicle in which any goods to which section 4(1) applies are stored, manufactured, supplied, handled, sold, transported or otherwise dealt with.

(3) An inspector conducting an inspection under this Act, may direct any person who imports, exports, manufactures, supplies, trades, handles, stores, transports, or otherwise has control over goods to which this Act applies, or his agent or servant, to—

(a) produce to the inspector any such goods or document in connection with the goods in his custody or under his control; and

(b) furnish the inspector with any other information or explanation, either in writing or verbally, as the inspector may require.

(4) An inspector may examine any relevant documents relating to regulated goods, and may request from any of the persons referred to in subsection (3) an explanation of any entries therein.

(5) An inspector may, for the purposes of examination or for production as evidence, and in accordance with applicable law, seize and remove any goods, books, records, or documents that may be used as evidence of commission of an offence under this Act, which are in the possession of any person referred to in subsection 3(a).

(6) If the owner or person in control of an article or document—

(a) refuses to surrender an article or document to an inspector or person conducting the search; and

(b) if this materially affects the performance of duties the inspector or authorized person necessary to give effect to this Act, the inspector shall take custody of the article or document, seal it,

and have it attached pending a determination by a court regarding whether or not the information it contains is confidential.

12.—(1) An inspector exercising any power or performing any duty conferred upon him by this Act, shall— Obligations
of inspectors

(a) at all times, be in possession of an identification card to the effect that he is an inspector; and

(b) on demand by any concerned person, produce the identification.

(2) An inspector who removes anything from premises, storage or a vehicle being inspected under this section shall make a record of the items removed.

(3) Anything seized by an inspector in terms of this section shall, as soon as is practicable, at the conclusion of the examination or inquiry or any proceedings taken or made in relation thereto, be returned to its owner.

13. Any person aggrieved by any determination, decision, or action, other than one falling under section 8, taken under this Act may— Review by
the High
Court

(a) within twenty one days of that determination, decision, or action, or of becoming aware of it; and

(b) in the prescribed form and manner, apply to the High Court for review of the determination, decision or action.

14.—(1) Any person who—

(a) contravenes or fails to comply with this Act or any order made under this Act; Offences and
penalties

(b) contravenes or fails to comply with any lawful request made under this Act;

(c) willfully furnishes the Minister, officer inspector or any authorized person, with incorrect, incomplete, or misleading information or explanation;

(d) hinders, obstructs or delays any officer in the performance of his duties or the exercise of his powers under this Act;

(e) unduly influences or attempts to improperly influence any person in the performance of his duties or the exercise of his powers under this Act;

(f) refuses or fails to answer fully, and to the best of their knowledge or ability, any questions lawfully put to him under this Act;

(g) fails to comply with a condition stated in a licence issued under regulations under this Act;

(h) fails to comply with any conditions relating to an exemption granted under this Act;

(i) fails to supply information, or document or other item as ordered, in his possession;

(j) does not re-export goods which were exempted from an Order under this Act on the understanding that the goods in question were in transit through Malawi, or had been imported for the sole purpose of transshipment;

(k) imports or exports goods whose import or export has been prohibited by an order made under this Act; or

(l) otherwise contravenes or fails to comply with this Act,

commits an offence and, on conviction, shall be liable to a fine of K25,000,000 and to imprisonment for ten years.

(2) For any subsequent offences under this Act, a convicted person shall be liable to a fine not exceeding K10,000,000 or to imprisonment for five years.

(3) In case of a legal person convicted for an offence under this Act, a court may, in addition to a penalty imposed under this Act, revoke any licence or registration of the legal person.

Regulations

15.—(1) The Minister shall make regulations, to give effect to the objects of this Act.

(2) Notwithstanding subsection (1), regulations may—

(a) provide for the consultation process under section 6;

(b) make provision for issuance of licences under this Act;

(c) set out the prescribed forms and procedures to be used for applications and appeals under this Act;

(d) provide for procedures to be followed in the process of issuance of orders;

(e) define and establish thresholds for grounds of public interest; and

(f) provide for administration, application, and review of orders made under this Act.

(3) Notwithstanding the provisions of section 1(e) of the General Interpretation Act, the Minister may in Regulations made under this Act, prescribe a fine of up to K25,000,000 and imprisonment for ten years.

Cap. 1: 01

Repeals and
savings
Cap.18:08

16.—(1) The Control of Goods Act is hereby repealed.

(2) Any regulations, orders or licenses made pursuant to the repealed Act and which were in force immediately prior to the

coming into operation of this Act, shall be deemed to have been made under this Act.

Passed in Parliament this fifteenth day of May, two thousand and eighteen.

FIONA KALEMBA
Clerk of Parliament