

PERISHABLE PRODUCTS EXPORT CONTROL ACT 9 OF 1983

[ASSENTED TO 21 FEBRUARY 1983] [DATE OF COMMENCEMENT: 1 APRIL 1984]

(Afrikaans text signed by the State President)

as amended by

Transnet Limited Amendment Act 52 of 1991

ACT

To provide for the control of perishable products intended for export from the Republic of South Africa and for matters connected therewith.

1 Definitions

In this Act, unless the context otherwise indicates-

'board' means the Perishable Products Export Control Board mentioned in section 2;

'exporter' means any person who despatches or conveys a perishable product by ship out of the Republic or makes any arrangement for the despatch or conveyance of a perishable product out of the Republic; and

'export' has a corresponding meaning;

'export group' means any association of exporters formed in respect of a specific perishable product or group of products intended for export;

'general manager' means the general manager mentioned in section 13;

'Minister' means the Minister of Transport Affairs;

'perishable product' means any of the following products intended for export, and any by-product derived from such product, where such product or by-product requires storage in refrigerated chambers or requires to be conveyed under cold storage conditions, namely, vegetables, fruit, flowers, butter, deep frozen foods, eggs, cheese, fish (including shellfish and crustaceans), meat and any other product which the Minister may by notice in the *Gazette* declare to be a perishable product;

'port' means a seaport or an airport;

'regulation' means a regulation made under this Act;

'ship' includes aircraft; and 'shipment', 'shipowner', 'shipped', 'shipping' and 'shipping space' have corresponding meanings.

2 Continued existence of Perishable Products Export Control Board

The Perishable Products Export Control Board, established in terms of the Perishable Products Export Control Act, 1926 (Act 53 of 1926), shall, notwithstanding the repeal of that Act by this Act, continue to exist and to be a juristic person.

3 Object of board

The object of the board shall be to bring about the orderly and efficient export of perishable products from the Republic.

4 Constitution of board

(1) The board shall consist of the following members, to be appointed by the Minister, namely-

- (a) six persons, of whom each shall represent one of the six largest export groups, determined on the basis of average annual export volume, as ascertained by the board, over the consecutive five years immediately preceding the year in which each such person is appointed a member;
- (b) one additional person to represent each export group of which the average annual export volume, so ascertained, exceeds 20 per cent of the total annual export volume, so ascertained, of all perishable products;
- (c) one person nominated by the South African Agricultural Union to represent exporters not represented in terms of paragraph (a) or (b); and
- (d) one person designated by the Minister.

(2) (a) For the purposes of every appointment in terms of paragraph (a), (b) or (c) of subsection (1), the Minister shall cause every export group mentioned in that paragraph (a) or (b) and the South African Agricultural Union mentioned in that paragraph (c) to be called upon by notice in writing to submit to him, within a period specified in the notice, the names of three persons, from which every appointment in terms of the said paragraph (a), (b) or (c) may be made by the Minister.

(b) If, after having been called upon by notice in terms of paragraph (a), the body concerned fails to submit the names concerned within the period specified in such notice, the Minister may appoint such person or persons required as he may deem suitable, to be a member or members of the board in terms of the paragraph concerned of subsection (1).

(3) The Minister may on the recommendation of the board appoint on such conditions and for such period as he may determine, a person as an additional member of the board, for a particular purpose.

5 Qualifications of members of board and circumstances in which they vacate office

(1) No person shall be appointed as a member of the board-

- (a) if he is an unrehabilitated insolvent; or
- (b) if he has been convicted of any offence and has been sentenced to imprisonment without the option of a fine.

(2) A member of the board shall vacate his office-

- (a) if he becomes subject to any disqualification for appointment mentioned in subsection (1);
- (b) if he dies;
- (c) if he resigns as a member;
- (d) if he has absented himself from three consecutive meetings of the board without the leave of the board; or
- (e) if he is removed from office in terms of subsection (3).

(3) A member of the board may at any time be removed from office by the Minister-

- (a) on the recommendation of the board or an export group or the South African Agricultural Union;
- (b) if he has failed to comply with a condition of his appointment;
- (c) if in the opinion of the Minister he has been guilty of improper conduct; or
- (d) if in the opinion of the Minister he is unable to perform efficiently his duties as a member of the board.

6 Chairman and vice-chairman of board

(1) The members of the board shall elect a chairman and a vice-chairman from their number.

(2) If the office of chairman or vice-chairman becomes vacant for any reason other than effluxion of time, the members of the board shall, at the first meeting after such vacancy occurred or as soon thereafter as may be convenient, elect from their number a new chairman or vice-chairman, as the case may be, and the member so elected shall hold office for the unexpired portion of the period for which his predecessor was elected.

(3) If for any reason the chairman is not able to act, the vice-chairman shall perform all the duties and exercise all the powers of the chairman.

(4) The chairman or vice-chairman of the board may vacate his office without terminating his membership of the board.

7 Tenure of office of members of board

(1) A member of the board shall be appointed for such period, but not exceeding three years, and on such conditions as may be determined by the Minister at the time of appointment.

(2) A member of the board shall continue to hold office after the period for which he was appointed has expired until his successor has been appointed or he has been reappointed, but not for a period of more than three months.

8 Vacancies on board

(1) If the office of a member of the board becomes vacant before the expiration of the period for which he was appointed, the Minister may, subject to the provisions of sections 4 and 5 (1), appoint any other person as a member, for the unexpired portion of that period on such conditions as the Minister may determine.

(2) If the Minister is satisfied that any member of the board is for any reason unable to act, the Minister may appoint any other person whom he deems fit (hereinafter referred to as an acting member) on such conditions as the Minister may determine, to act in the member's stead while he is unable to act.

9 Remuneration and allowances of members of board

A member or acting member of the board who is not in the full-time employment of the State shall be paid in respect of the performance of his functions as such member, from the funds of the board such remuneration and such travelling and subsistence allowances as may be determined by the board.

10 Functions of board

The board shall-

- (a) control the export shipment of perishable products from the Republic and the order of shipment thereof at all ports;
- (b) determine which ships are suitable for the conveyance of perishable products and the class of accommodation to which any perishable product shall be assigned;
- (c) call for and receive from intending exporters of perishable products estimates and other particulars of their intended exports;
- (d) call for and receive from shipowners or their representatives information respecting the amount of space suitable for the conveyance of perishable products available on any ship appointed to call at any port in the Republic;
- (e) make enquiries, negotiate and contract or otherwise arrange for the provision of such port facilities and shipping space for the handling and conveyance of perishable products as may be deemed necessary by the board;
- (f) cause to be diverted, when the board deems it necessary, perishable products to such ports of shipment as in the opinion of the board are the most suitable;
- (g) make investigations regarding conveyance and cold storage requirements for perishable products and make recommendations thereon to any department of State or any interested person;

[Para. (g) substituted by s. 36 of Act 52 of 1991.]

- (h) make recommendations regarding the way of handling perishable products when moved from and to railway trucks, other vehicles or cold stores;

- (i) promote uniform freight rates in respect of the export of perishable products, with due allowance for particular perishable products, ports of export and means of conveyance;
- (j) perform such other functions in relation to the export of perishable products from the Republic as may be prescribed by regulation.

11 Powers of board

In order to achieve its objects and to perform its functions, the board may-

- (a) appoint, on such conditions as it may determine, persons as officers and employees of the board and delegate or assign to any such officer or employee any power or duty conferred or imposed upon the board by or under this Act: Provided that the board shall not be divested of any power or duty so delegated or assigned and may amend or withdraw any decision made by any such officer or employee in the exercise or performance of any power or duty so delegated or assigned;
- (b) pay any person in its employ remuneration according to the conditions of his appointment, but subject, in the case of the general manager, to the approval of the Minister;
- (c) make rules prescribing the conditions of service of the persons in its employ;
- (d) purchase or sell, or acquire or dispose of in any other manner, or hire or let or hypothecate any movable or immovable property;
- (e) appoint committees consisting of members of the board and any other persons and, subject to such conditions as the board may deem fit, delegate or assign to any such committee such of its powers or duties as it may deem fit;
- (f) establish a reserve fund which shall not exceed an amount approved by the Minister from time to time, for such purposes as, with due regard to section 18 (7), it may deem fit;
- (g) negotiate with shipowners or other persons and enter into contracts with them with regard to the export of perishable products from the Republic;
- (h) carry out or cause to be carried out research in connection with perishable products, finance it or contribute financially thereto and obtain the results of any research in connection with perishable products,

and do all such other things as are necessary or incidental to the performance of its functions or duties.

12 Meetings of board

(1) The board shall meet at such times and places as the chairman or, if he is absent, the vice-chairman may determine.

(2) The chairman shall cause reasonable notice to be given to any member of the time and place of every meeting of the board.

(3) The chairman or, if he is absent, the vice-chairman shall preside at all meetings of the board, and if both the chairman and the vice-chairman are absent from a meeting of the board, the members present shall elect a person from among themselves to preside at such meeting.

(4) The decision of a majority of the members of the board present at a meeting of the board shall constitute a decision of the board and, in the event of an equality of votes on any matter, the person presiding at the meeting in question shall have a casting vote in addition to his deliberative vote.

(5) The quorum for a meeting of the board shall consist of four members who represent at least three export groups, and the person presiding at the meeting.

13 General manager

The board may designate an officer in its employ as a general manager, who shall be the chief executive officer of the board with power to manage and control the work authorized by the board and to exercise supervision over the other officers and the employees in the employ of the board.

14 Inaccurate estimate of shipping space requirements

Whenever any exporter who has forwarded to the board an estimate of intended exports in terms of section 10 (c) fails to export the estimated quantity and in consequence of such failure the board is unable to arrange for the occupation of so much of any shipping space contracted for on the faith of such estimate as would have been occupied but for such failure, the board may charge to him the cost of the shipping space so unoccupied or such other charge as may in the opinion of the board be fairly claimed by a shipowner as a result of such failure, and such charge shall be a debt due by such exporter to the board and may be recovered by the board from him.

15 Appeal against act or decision of board

(1) Any person aggrieved by any act or decision of the board may, after having given notice to the board in the manner prescribed by regulation, within a period of 30 days after the date of such act or decision appeal to the Minister in the manner prescribed by regulation against such act or decision.

(2) The board shall within a period of 14 days after the date on which any notice referred to in subsection (1) is received by it, furnish the Minister with its reasons for the act or decision concerned.

(3) The Minister may, after consideration of the said reasons and the appellant's grounds of appeal, confirm, amend or set aside the board's act or decision concerned.

16 Reports by board

(1) The board shall within six months after the end of each financial year (which shall end on 31 December) furnish the Minister and all registered exporters with a report in respect of its activities during that financial year.

(2) Every report referred to in subsection (1) shall be accompanied by a balance sheet, audited as provided by section 18 (10), and a full statement, so audited, of the board's income and expenditure in respect of that financial year.

(3) The Minister shall lay every report, balance sheet and statement of income and expenditure furnished in terms of this section upon the Table of the House of Assembly within 30 days after receipt thereof, if the House of Assembly is then in ordinary session, or, if the House of Assembly is not then in ordinary session, within 30 days after the commencement of its next ensuing ordinary session.

17 Imposition of a levy

(1) The board may, with a view to meeting expenditure incurred by the board in the performance of its functions in terms of this Act and the regulations, by notice in the *Gazette* impose a levy on any perishable product exported in any calendar year under contract or other arrangement made by, through or with the consent of the board.

(2) The said levy shall be paid by the exporter of the perishable product on which the levy is imposed to the board in such manner and at such times as may be prescribed by regulation.

(3) The said levy may differ according to the form of transport used in such export and may differ further in respect of different categories or kinds of perishable products and may vary according to the aggregate quantity of any perishable product exported by all exporters of that perishable product at any time during the calendar year concerned.

(4) The board shall deposit the proceeds of the said levy in an account mentioned in section 18 (6).

18 Accounts and auditing

(1) The board shall keep proper account of all moneys received by it and of all payments made by it.

(2) The board shall as soon as possible after the end of each financial year prepare statements of account and a balance sheet showing in appropriate detail the moneys received and the expenditure incurred by it during, and its assets and liabilities as at the end of, that financial year.

(3) On or before 31 December of each year the board shall approve a detailed estimate of its proposed income and expenditure for the ensuing year.

(4) The board shall not incur any expenditure except in accordance with an estimate of expenditure approved in terms of subsection (3).

(5) The board may, during the course of a financial year, approve supplementary estimates of expenditure for that year.

(6) The board shall open accounts with banking institutions and may arrange for bank overdrafts.

(7) All expenditure incurred by the board in the performance of its functions in terms of this Act or the regulations shall be met from moneys in any such account and, if such moneys are insufficient, the reserve fund established under section 11 (*f*).

(8) The board may direct that after payment of such expenditure the reserve fund be credited with any surplus or part thereof, on an account referred to in subsection (6).

(9) If the board does not so direct or directs that a portion only of the said surplus be credited to the said reserve fund, such surplus or the balance thereof, as the case may be, shall be refunded to the exporters who paid the levy imposed during the year concerned, in such a manner that each such exporter receives an amount which bears the same ratio to the total amount to be refunded as the total amount of the levy paid by him bears to the total amount of the levy paid during that year by all exporters.

(10) The board shall cause its books and accounts to be audited annually by a person registered as a public accountant and auditor under the Public

Accountants' and Auditors' Act, 1951 (Act 51 of 1951), and appointed by the board.

(11) The board shall produce and lay before the auditor all books and accounts of the board with all vouchers in support thereof, and all books, papers and writings relating thereto which are in its possession or under its control.

(12) The auditor shall disallow any payment made without being authorized by the board, and report the disallowance to the board.

(13) The expenses of or incidental to any audit shall be borne by the board.

19 Recovery of losses and damages

(1) If a person who is or was in the employ of the board caused the board any loss or damage because he-

- (a) failed to collect moneys due to the board for the collection of which he is or was responsible;
- (b) is or was responsible for an irregular payment of the board's moneys or for a payment of such moneys not supported by a proper voucher;
- (c) is or was responsible for fruitless expenditure of the board's moneys due to an omission to carry out his duties;
- (d) is or was responsible for a deficiency in, or for the destruction of, or damage to the board's moneys, stamps, face value documents and forms having a potential value, securities, equipment, stores or any other property of the board;
- (e) due to an omission to carry out his duties, is or was responsible for a claim against the board,

the general manager shall determine the amount of such loss or damage and shall, subject to the provisions of subsection (5), by notice in writing, order that person to pay to him, within 30 days from the date of such notice, the amount so determined.

(2) If a person who is in the employ of the board and who has in terms of subsection (1) been ordered to pay an amount, fails to pay the amount within the period stipulated in the notice in question, the amount shall, subject to the provisions of subsections (4), (6) and (7), be deducted from his salary or wages: Provided that such deduction shall not exceed one-fourth of his salary or wages at a time.

(3) If a person who was in the employ of the board and who has in terms of subsection (1) been ordered to pay an amount, fails to pay the amount within the period stipulated in the notice in question, the general manager shall, subject to the provisions of subsections (4), (6) and (7), recover the amount from the person concerned by legal process.

(4) If a person who has in terms of subsection (1) been ordered to pay an amount makes, within the period stipulated in the notice in question, an offer to pay the amount in instalments, the general manager may allow payment in such instalments as he may consider reasonable: Provided that if the redemption of that amount in terms of the offer will not be effected within a period of 12 months calculated from the date on which the first instalment is payable, the approval of the board shall be obtained for the payment thereof over a period in excess of the period mentioned, and the board may determine the other terms and conditions subject to which the amount shall be paid.

(5) If for any reason whatsoever the general manager is of the opinion that the amount of a loss or damage referred to in subsection (1) should not be recovered or should be recovered in part only from the person responsible therefor, he may request the board to exempt that person from payment of the whole or a portion of that amount, and the board may in its discretion approve of the whole or a portion of such amount not being recovered: Provided that no amount shall be so exempted where such loss or damage is the result of theft or fraud by that person.

(6) A person who has in terms of subsection (1) been ordered to pay an amount may, within a period of 30 days from the date of such order, in writing request the general manager, stating the grounds for his request, that a request as contemplated in subsection (5), be addressed to the board, and if the general manager refuses to address such a request to the board or if the board refuses to approve, as contemplated in the said subsection, of the whole or a portion of the amount in question not being recovered as requested, such person may within 30 days after he has been notified in writing of any such refusal, appeal against such refusal to the Minister, and the Minister may, after such further investigation as he may deem necessary, dismiss the appeal or order that the appellant be exempted either wholly or partly, according as he may consider fair and reasonable, from the payment of such amount.

(7) A person who has in terms of subsection (1) been ordered to pay an amount may, instead of appealing to the Minister in accordance with subsection (6), apply within a period of 30 days from the date of the order, or within such further period as the court may allow, to a competent court for an order setting aside the first-mentioned order or reducing that amount, and the court may upon such an

application, if it is not convinced by the general manager on the merits of the case that the order was rightly made or that that amount is correct, make an order setting aside such first-mentioned order or reducing that amount, as the case may be.

(8) If an amount is reduced in terms of subsection (5), (6) or (7), the reduced amount shall *mutatis mutandis* be recovered in accordance with the provisions of subsections (1), (2), (3) and (4).

(9) If a person who has in terms of subsection (1) been ordered to pay an amount, fails to pay such amount within the period stipulated in the notice in question, interest thereon shall be payable from the date immediately following on the date on which that period expires, at such rate as the board may determine.

20 Insurance against patrimonial damage or loss or claims

The board may arrange with an insurer for insurance against any patrimonial damage or loss or against claims of any nature which may be instituted against the board.

21 Freedom from liability

(a) No liability shall attach to the State or to the board for any loss or damage occasioned to any person as a result of a *bona fide* performance by the board or a committee appointed under section 11 (e) or by any agent, officer or employee of the board of any function or duty under this Act or the regulations.

(b) A member (including an acting member) or an officer or employee of the board shall not be personally liable for any act or default done or committed in good faith in the course of performing his functions in terms of this Act or the regulations.

22 Exclusion of certain countries or territories

This Act shall not apply to the export of perishable products to and for consumption in any country or territory excluded by the Minister by notice in the *Gazette* from the application thereto of this Act.

23 Functions in respect of export of perishable products of foreign origin

If requested thereto any person in any other country or territory, the board may, with the approval of the Minister and on such conditions as he may determine, perform for and in respect of such person any function in relation to perishable products of such country or territory which it would be capable of performing in the Republic in terms of this Act.

24 Offences and penalties

(1) Any person who-

- (a) exports any perishable product without being registered with the board as an exporter;
- (b) exports any perishable product save under contract or other arrangement made by, through or with the consent of the board;
- (c) accepts shipping space for the export of perishable products from anyone other than the board save under contract or other arrangement made by, through or with the consent of the board;
- (d) submits to the board a false statement or representation, knowing it to be false, regarding any matter in connection with the export of perishable products;
- (e) save for the purpose of this Act or the regulations, or on the order of the Supreme Court of South Africa or with the consent of the board, discloses any information obtained from estimates or particulars received under section 10 (c),

shall be guilty of an offence and liable on conviction to a fine not exceeding R5 000 or to imprisonment for a period not exceeding three years or to both such fine and such imprisonment.

(2) If any person convicted of an offence mentioned in subsection (1) is registered with the board as an exporter, the board may withdraw such registration for such period as it may determine.

25 Regulations

(1) The Minister may after consultation with the board make regulations as to-

- (a) functions of the board in terms of this Act, except the prescribing of conditions of service contemplated in section 11 (c);
- (b) the extent of shipments and shipping space required for the safe conveyance of perishable products and the standards required for such shipping space;

- (c) the cleansing and disinfecting of any cold storage and shipping space intended for perishable products;
- (d) the environmental conditions and the manner of handling, conveyance and storage required for perishable products;
- (e) the shipping of perishable products;
- (f) registration with the board of exporters;
- (g) any information with which exporters shall furnish the board;
- (h) statistics to be maintained by the board in respect of the export of perishable products;
- (i) fees payable in respect of services rendered by the board in the performance of its functions;
- (j) any matter which in terms of this act is required or permitted to be prescribed by regulation,

and generally as to any matter he deems it necessary or expedient to prescribe in order to achieve the object of this Act, and the generality of this provision shall not be limited by the preceding paragraphs of this subsection.

(2) Regulations made under subsection (1) may prescribe penalties for any contravention of or failure to comply with their provisions, not exceeding the penalties mentioned in section 24.

26 Repeal of laws

(1) Subject to the provisions of subsection (2), the Perishable Products Export Control Act, 1926 (Act 53 of 1926), the Perishable Products Export Control Amendment Act, 1935 (Act 31 of 1935), the Perishable Products Export Control Amendment Act, 1954 (Act 30 of 1954), the Perishable Products Export Control Amendment Act, 1957 (Act 50 of 1957), and the Perishable Products Export Control Amendment Act, 1979 (Act 1 of 1979), are hereby repealed.

(2) Any notice, approval, authorization or document given, granted or issued or any contract concluded under any provision of any law repealed by subsection (1) shall be deemed to have been given, granted, issued or concluded under this Act.

27 Short title and commencement

This Act shall be called the Perishable Products Export Control Act, 1983, and shall come into operation on a date fixed by the State President by proclamation in the *Gazette*.