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PRE-SHIPMENT OF EXPORTS DECREE NO. 10 OF 1996 ACT CAP. P25 L.F.N. 2004

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(19 April 1996)

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CHAPTER P25

PRE-SHIPMENT INSPECTION OF EXPORTS ACT

An Act to make provision for the inspection of goods in Nigeria prior to their shipment to a place outside Nigeria.

1996 No. 10.

19th April, 1966

Commencement.

PART I

Pre-shipment inspection of exports, etc.

1. Pre-shipment inspection of goods

(1) As from the commencement of this Act, no goods to which this Act applies shall be exported from Nigeria unless an inspecting agent appointed pursuant to section 12 of this Act has issued in respect of the goods a Clean Certificate of Inspection to the overseas buyers of the goods.

(2) For the avoidance of doubt, no agency or department of any government of the Federal Republic of Nigeria shall as from the commencement of this Act issue Clean Certificate of Findings in respect of the goods to which this Act applies except the inspecting agent appointed pursuant to section 12 of this Act.

(3) Any person intending to export any goods to which this Act applies shall, prior to the shipment of those goods from Nigeria—

(a) complete and furnish his bank with such number of copies of the prescribed form as may be specified in guidelines issued pursuant to this Act; and

(b) provide such additional information as may be required, from time to time, by the bank and any appropriate agency of the Federal Government.

(4) To facilitate the carrying out of the duties imposed on an inspecting agent by or pursuant to this Act, the exporter shall, in addition to the requirements referred to in subsection (3) of this section,

ensure that—

(a) the inspecting agent is given not less than ten days' notice prior to the proposed date of the pre-shipment inspection;

(b) the inspecting agent is provided with a copy of the pro-forma invoice, indent, purchase order, price list, letter of credit, contract agreement and any other document relevant to the transaction and which the inspecting agent may consider necessary for the proper carrying out of the pre-shipment inspection;

(c) the inspecting agent is provided with all necessary facilities to enable the inspecting agent to carry out quality and quantity inspections, price comparison and other processes as may be required in the circumstances;

(d) all necessary arrangements are made for the handling, presentation, including unpacking and repacking, sampling, shop testing and any other thing required to be done in connection with the inspection of the goods;

(e) the inspecting agent is provided with a copy of the final invoice covering the goods; and

(f) he complies with such other conditions as may be prescribed.

(5) The goods which are liable to pre-shipment inspection by an inspecting agent and the type of pre-shipment to which some goods or categories of goods shall be subject, are as set out in sections 2, 4, 5 and 6 of this Act.

(6) For the purposes of this section and the other provisions of this Act—

“pre-shipment inspection” means inspection of goods in Nigeria prior to the shipment of those goods outside Nigeria.

2. Goods liable to pre-shipment inspection

Subject to the exceptions and qualifications specified in section 3 of this Act, all oil and non-oil goods are liable to pre-shipment inspection by an inspecting agent with respect to their quality, quantity and price comparison.

3. Exemptions, etc., from pre-shipment inspection

The goods listed in the Export Prohibition List set out in the Sixth Schedule to the Customs, Excise, Tariff, etc., (Consolidation) Act, objects of art, explosives, pyrotechnic products, arms, ammunition, weapons, implements of war, animals, household and other non-commercial products, including—
1995 No. 4. Cap. C49.

- (a) gifts and personal effects;
 - (b) trade samples and printed business matters;
 - (c) machinery and equipment being shipped out of Nigeria for repairs and return;
 - (d) return of empty container;
 - (e) transhipments;
 - (f) supplies to diplomatic consular missions and international organizations for their own needs;
 - (g) such other goods as may be prescribed,
- are hereby exempted from pre-shipment inspection.

4. Inspection of second-hand goods

Where the inspecting agent inspects second-hand goods, the conclusion drawn regarding quality, condition and valuation shall only be approximative.

5. Inspection of chemical-based goods

(1) The inspecting agent shall, with respect to dyestuffs, paints, insecticides, special chemicals, cosmetics, wines (other than in bulk), spirit and similar goods, restrict its pre-shipment inspection to quantity inspection and comparative pricing analysis and not to the quality inspection of the goods.

(2) In this section—

“special chemical” means any chemical product not included under cosmetics, dyestuffs, paints, insecticides, and which—

- (a) is not used in any pharmaceutical or medical preparations;
- (b) is unique in that it is produced by a specific manufacturer; and
- (c) has a formula that is covered by a brand name or is confidential.

6. Inspection of pharmaceutical products

The inspecting agent shall, with respect to the inspection of pharmaceutical products, restrict its pre-shipment inspection to—

- (a) the inspection of the expiry date;
- (b) cost of the products to be exported; and
- (c) ensuring that the products conform with the active ingredients and chemical requirements specified by the overseas buyer.

PART II

Issuance of Certificate of Inspection

7. Issuance of Provisional Certificate of Inspection

(1) The inspecting agent shall, on receipt of the documents and particulars referred to in subsections (2) and (3) of section 1 of this Act—

- (a) scrutinise the documents and particulars; and
- (b) immediately thereafter, conduct an initial examination of the goods prior to their being loaded into containers and carriers at the port.

(2) The inspecting agent shall, if satisfied with the documents and particulars and the examination specified in subsection (1) of this section, issue to the exporter a document to be known as a Provisional Certificate of Inspection.

8. Issuance of Clean Certificate of Inspection

(1) Upon inspecting and loading of the goods into containers and carriers prior to shipment, the inspecting agent shall, if—

- (a) satisfied that the requirements as to quality, quantity and price of the goods have been complied with, issue to the exporter a document to be known as a Clean Certificate of Inspection;
- (b) not satisfied that the requirements specified in paragraph (a) of this subsection have been complied with, issue to the exporter a document to be known as a Non-negotiable Certificate of Inspection,

in respect of the goods.

(2) Where the exporter subsequent to the issuance of a Non-negotiable Certificate of Inspection makes the necessary adjustments as to the quality, quantity or price of the goods, as the case may be, the inspecting agent may issue a Clean Certificate of Inspection in respect of the goods concerned.

(3) Where goods are sold on international contracts requiring settlements to be based upon the discharged quantity and quality, the inspecting agent, where necessary, shall attend at the overseas port of discharge to certify the quantity and quality of the goods and repatriable proceeds.

9. Distribution of copies of Certificate of Inspection

(1) The inspecting agent shall, on issuing a Clean Certificate of Inspection in respect of goods inspected pursuant to this Act, send an original copy each of the Clean Certificate of Inspection to—

(a) the Federal Ministry of Finance;

(b) the Nigerian Customs Service;

(c) the Nigerian Ports Authority;

(d) the exporter;

(e) the exporter's bank, for onward transmission to the buyer's bank overseas; and

(f) the Central Bank.

(2) A copy of the Clean Certificate of Inspection issued by the inspecting agent under this Act shall be attached by the exporter to all relevant shipping documents and carriers of the goods in question to deliver the said documents including the original bill of lading issued in respect of the goods to the collecting or negotiating bank specified in the prescribed form referred to under subsection (3) of section 1 of this Act.

(3) The inspecting agent shall also furnish reports, on a weekly basis, giving details of all successfully executed pre-shipment inspections, to—

(a) the Federal Ministry of Finance;

(b) the Federal Ministry of Commerce; and

(c) the Central Bank.

(4) For the avoidance of doubt, no payment shall be made to the credit of any person in respect of goods liable to pre-shipment inspection which are exported outside Nigeria, unless a Certificate of Inspection in respect of those goods is presented together with the shipping documents.

PART III

Payment for exports, etc.

10. Modes of payments for exports in Nigeria

As from the commencement of this Act, it shall be unlawful for payments to be made for the exports covered by this Act except by means of letters of credit or other approved international modes of payments.

11. Exporters to open foreign currency domiciliary accounts

An exporter of goods, including petroleum products, shall open, maintain and operate a foreign currency domiciliary account in Nigeria into which shall be paid all exports proceeds corresponding to the entire proceeds of the exports concerned.

PART IV

Administration

12. Appointment of inspecting agents

The President shall appoint such number of companies as inspecting agents to carry out any pre-shipment inspection required by or pursuant to this Act.

(2) In the exercise of the power to appoint an inspecting agent pursuant to subsection (1) of this section, the President may appoint an inspecting agent to cover a specific country or countries or group of countries within a specified geographical location.

(3) Subject to the provisions of section 16 of this Act, nothing in subsections (1) and (2) of this section shall be construed as preventing pre-shipment inspection pursuant to this Act of any goods (whether or not goods of a description mentioned in this Act) by any department or agency of the

government of the Federation or of a State or of any statutory body (corporate or unincorporate) established by that government or accredited representative of that such government or by any exporter or his authorised agent.

13. General administration of this Act

(1) The Central Bank shall be charged generally with the responsibility for the administration of the provisions of this Act.

(2) The Central Bank shall make regulations and prescribe such forms as may be required for the purpose of carrying out the intendment of this Act.

14. Establishment, etc., of special account by the Central Bank

(1) There shall be established and maintained at the Central Bank a special account for the purpose of this Act.

(2) There shall be paid and credited into the special account established pursuant to subsection (1) of this section the levies payable by exporters of goods on all oil and non-oil exports as may be approved in guidelines issued pursuant to this Act by the Federal Government, from time to time.

(3) All expenses relating to the remuneration, fees and other charges payable to the inspecting agents shall be defrayed from the special account.

(4) Any balance remaining in the special account after making the payments referred to in subsection (3) of this section shall be used to fund the pre-shipment inspection programme established pursuant to this Act.

15. Technical Committee to assist Central Bank

(1) The Technical Committee (hereinafter referred to as “the Technical Committee”) established under the Pre-shipment Inspection of Imports Act shall assist the Central Bank in the discharge of its functions under this Act.

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(2) For the purpose of this Act, the Technical Committee shall comprise a representative each of the following, that is—

- (a) the Central Bank;
- (b) the Federal Ministry of Finance;
- (c) the Federal Ministry of Commerce;
- (d) the Federal Ministry of Industry;
- (e) the Ministry of Petroleum Resources (Inspectorate Division);
- (f) the Federal Ministry of Agriculture and Rural Development;
- (g) the Nigerian Customs Service; and
- (h) the National Agency for Food and Drug Administration and Control.

(3) The Technical Committee shall for the purpose of this Act make standing orders regulating its meetings and the frequency of such meetings.

(4) The quorum of the meetings of the Technical Committee shall be five.

16. Saving of pre-shipment duties of some departments, etc.

(1) Without prejudice to the duty imposed on the inspecting agent to take responsibility for all pre-shipment inspections carried out pursuant to this Act, the following departments and agencies of the government of the Federation, that is to say—

- (a) the Inspectorate Division of the Ministry of Petroleum Resources;
- (b) the Quarantine Division of the Federal Ministry of Agriculture and Rural Development;
- (c) the Standard Organisation of Nigeria; and
- (d) the National Agency for Food and Drug Administration and Control,

shall continue to carry out the specific pre-shipment inspection functions which had hitherto been carried out by those departments and agencies prior to the coming into force of this Act except that the responsibility for the issuance of the Clean Certificate of Inspection provided for under this Act shall be vested only in the inspecting agent appointed under section 12 of this Act.

(2) The functions conferred on the Produce Inspection Officers under the Produce (Enforcement of Exports Standards) Act and the rules, regulations and directions issued thereunder shall as from the

commencement of this Act be restricted to the following, that is—

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(a) the carrying out of pest control and fumigation at the ports of shipment; and

(b) ensuring that the material used for packaging of goods for export are of good quality.

(3) In addition to the specific functions conferred under subsection (2) of this section, the Weights and Measures Division of the Federal Ministry of Commerce shall continue to carry out functions relating to the calibration of crude oil prior to the export thereof in collaboration with the inspecting agents appointed under section 12 of this Act.

17. Modifications to existing legislations

(1) The provisions of any existing law or enactment conferring pre-shipment inspection functions on the departments and agencies referred to in subsections (1), (2) and (3) of section 16 of this Act shall be read with such modifications so as to bring them into conformity with the provisions of this Act.

(2) Where any other law or enactment, including the laws referred to in subsection (1) of this section, are inconsistent with the provisions of this Act, the provisions of this Act shall prevail and that other law shall, to the extent of such inconsistency, be void.

PART V

Miscellaneous

18. Offences and penalties for unlawful exportation

(1) Any person who, at any time after the commencement of this Act, knowingly exports goods liable to pre-shipment inspection under this Act otherwise than in compliance with the provisions of this Act, is guilty of an offence under this Act.

(2) Any person found guilty of an offence under this Act is liable on conviction—

(a) in the case of an individual, to a fine of N50,000 or the value of the goods, whichever is higher, or to imprisonment for a term of not more than twelve months or to both such fine and imprisonment;

and

(b) in the case of a body corporate, to a fine of N100,000 or twice the value of goods, whichever is higher.

(3) Where an offence under this section is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of any director, manager, secretary or other similar officer, servant or agent of the body corporate (or any person purporting to act in such capacity), that person as well as the body corporate shall be deemed to be guilty of the offence and may be proceeded against and punished in the same manner as an individual under paragraph (a) of subsection (1) of this section.

(4) For the purposes of subsection (2) of this section, “value” means the amount stated on the face of the document or documents relating to the transaction in question and, where this is not expressed in Nigerian currency, its equivalent in Nigerian currency, so however, that nothing in this subsection shall be construed as precluding proof of value by any other method or means permitted by any other enactment or law (including rules of law).

(5) Notwithstanding the other provisions of this section, it shall be a defence to an offence under this section for the person charged with the offence, including—

(a) the exporter of goods in respect of which the offence has been committed;

(b) any consignee or endorsee for valuable consideration of any bill of lading or any other appropriate document representing goods to have been shipped from Nigeria; and

(c) any other person who in the normal course of his duties handles exported goods,

to prove that the goods in question were exported without default on his part or by fraud or negligence of the exporter or of any other person.

19. Proof of certain documents

(1) Without prejudice to any other mode of proof, if in any proceedings taken before a court under this Act, any book or document in the official custody of the Central Bank or the proper officer is required to be used as evidence as to the transactions to which it relates, copies thereof or extracts

thereof certified by the Central Bank or proper officer shall be admissible for that purpose, without production of the original.

(2) In any proceedings under this Act, documents issued pursuant to or in connection to its provisions and copies of official documents purporting to be certified under the hand and seal or stamp of the principal officers of the inspecting agent or of any of its principal representatives in Nigeria or abroad shall be sufficient evidence of the matters stated therein unless the contrary is proved.

20. Prosecution and trial of offences

(1) The prosecution of offences under this Act shall be at the instance of the Attorney-General of the Federation or by such other officer as the Attorney-General may authorise so to do.

(2) The question as to whether any authority has been given in pursuance of subsection (1) of this section or what the authority was shall not be enquired into by any person except at the instance of the Attorney-General.

(3) Every proceeding under this Act shall, subject to the applicable procedure, be commenced in the Federal High Court and reference in this Act to “court” shall be construed accordingly.

21. Power of the Central Bank to compound proceedings, etc.

(1) Subject to subsection (2) of this section, the Central Bank may—

(a) without prejudice to the provisions of section 174 of the Constitution of the Federal Republic of Nigeria 1999, (which relate to the power of the Attorney-General of the Federation to institute, continue or discontinue criminal proceedings against any person in any court of law), stay or compound any proceedings for an offence or for the forfeiture of any goods under the provisions of this Act; or

Cap. C23.

(b) subject to the approval of the Minister, restore any goods forfeited pursuant to the provisions of this Act.

(2) The powers conferred on the Central Bank under this section shall be exercised so as not to

defeat the objects of this Act.

22. Power to issue directives

The Minister may give directives and issue such guidelines as may be required, from time to time, for carrying into effect the objectives of this Act.

23. Annual reports

(1) The Technical Committee shall, not later than fifteen months after the commencement of this Act and thereafter at intervals of twelve months, prepare and submit, to the Minister, a report on the operation of the pre-shipment inspection scheme during the immediate preceding year.

(2) The Minister shall lay each report submitted to him under this section before the President.

24. Contractual obligations of exporters not affected by Act

Nothing in this Act shall be construed as relieving any exporter of his contractual obligations to the overseas importer of any goods liable to pre-shipment inspection or of any other goods.

25. Interpretation

(1) In this Act, unless the context otherwise requires—

“Central Bank” means the Central Bank of Nigeria established under the Central Bank of Nigeria Act; Cap. C4.

“inspecting agent” means an inspecting agent appointed under section 12 of this Act;

“Minister” means the Minister charged with the responsibility for matters relating to finance;

“exporter” includes any supplier or seller of goods in Nigeria;

“oil exports” includes crude oil and petroleum products;

“prescribed” means prescribed by the Minister by order published in the Federal Gazette;

“pre-shipment inspection” means inspection of goods in Nigeria prior to shipment of those goods outside Nigeria as provided in this Act;

“Technical Committee” means the Technical Committee referred to in section 15 of this Act; and

“shipment” means transfer of goods by sea, air, road, rail or any other means whatsoever and

“shipped” shall be construed accordingly.

26. Short title

This Act may be cited as the Pre-Shipment Inspection of Exports Act.

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