THE REVISIONS TO THE COTTON ACT, 2005

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Outline of the Presentation

- Background information
- Concerns and proposed amendments
- Conclusion
Background information

- First crashes in the cotton sector (1999-2000)
  - Prompted stakeholders to start the process of formulating the 2005 Cotton Act.
- Act was Assented on 28th September, 2005.
- It was enacted by the Parliament of Zambia on 7th October, 2005
- Cotton Board of Zambia was finally seated in early 2009
Concerns about the Act were raised as early as 2005 by some key stakeholders in the Cotton sector.

Republican President directed MACO to accommodate the raised concerns.

- MACO created a committee in 2006 comprising MACO, ZCGA, CAZ, CDT, FSRP/IAPRI to review the Act.
Concerns and proposed Amendments [1]

- Equal punitive regulation of unregistered producers and ginners (56,000 vs 56,000) penalty units
  - Emphasis of the proposed changes has redirected the Act away from equal regulation of producers and ginners to simpler and less punitive regulation (15,000 vs 180,000) penalty units
Concerns and proposed Amendments [2]

- Lack of clarity in the definition and use of the term “cotton” and other cotton sector terminology
  - CWG made sure that the terms were defined clearly and used correctly
Concerns and proposed Amendments [3]

- Public/private sector Balance of the Cotton Board: Original drafts, composition was public (3), private (6), Composition as per Act of 2005 – public (6), private (6)
  - composition proposed by CWG: public (5), private (5) to save on operating costs by excluding anyone who would not be directly affected by the provision of the Act
  - to provided flexibility for changing circumstances, clause 5(1)(h) was added
Handling of appeals: 2005 Act allows judicial review of Board decision after appeal to the Appeals Committee followed by the Minister 23(1) and (2). However, appeals under section 37(1) allows the Minister to handle the appeals before judicial review.

- The Minister will continue handling the appeals which may be subject to further appeal to the high Court if the aggrieved person is not satisfied with the Minister’s decision. Clause 37(1) was included to allow notification.
Concerns and proposed Amendments [5]

- Inconsistency between the penalties in the Act: for example: fines under section 15(2) and 31(2) are identical but potential imprisonment terms differ
  - A new list of fines and sentences were proposed by CWG,
  - They were reviewed by a legal practitioner and vetted with PS of the Ministry of Justice
## Comparison of fines

<table>
<thead>
<tr>
<th>Section</th>
<th>Offence</th>
<th>Fine</th>
<th>Imprisonment</th>
</tr>
</thead>
<tbody>
<tr>
<td>15 (2)</td>
<td>Unauthorized disclosure</td>
<td>30,000 (10,000)</td>
<td>6 months</td>
</tr>
<tr>
<td>15 (3)</td>
<td>Knowingly publish or communicate information which has been unlawfully published or disclosed.</td>
<td>30,000 (10,000)</td>
<td>6 months</td>
</tr>
<tr>
<td>24</td>
<td>A producer who sells but is not registered</td>
<td>15,000 (56,000)</td>
<td>3 months (2 years)</td>
</tr>
<tr>
<td>29 (2)</td>
<td>Illegal use of a distinguishing mark</td>
<td>60,000 (10,000)</td>
<td>12 months</td>
</tr>
<tr>
<td>31 (2)</td>
<td>Not licenced to pre-finance, buy, gin or otherwise deal in seed cotton</td>
<td>180,000 (56,000)</td>
<td>36 months</td>
</tr>
<tr>
<td>35 (3)</td>
<td>Licence holder not maintaining appropriate auditable records</td>
<td>60,000 (5,000)</td>
<td>12 months (0)</td>
</tr>
<tr>
<td>45</td>
<td>Obstructing an Inspector or not producing a licence or certificate</td>
<td>120,000 (8,000)</td>
<td>24 months (6 months)</td>
</tr>
</tbody>
</table>
Concerns and proposed Amendments [5]

- Timeline for pre-financing cotton inputs, buying and ginning the seed cotton, selling the lint takes about 24 months.
  - Instead of a licence being valid for only 12 months, the CWG proposed a 24 month licensing period.
  - However, a new 24 month licence still has to be obtained each year if the licencee wishes to again pre-finance and purchase next crop.
Concerns and proposed Amendments [6]

- Instead of “The Minister shall appoint the Chairperson”
  - The CWG proposed that “There shall be a Chairperson and Vice-Chairperson who shall be elected amongst the Board Members subject to the approval of the Minister and that the Chairperson will be from the Private sector.”
Concerns and proposed Amendments [7]

- Registration of seed cotton producers
  - CWG proposed that farmers should be registered in their own name as cash producers or via their outgrower financier.

- Under section 25, the Board is required to publishing in the Gazette a list of all farmers registered under this.
  - CWG proposed all the section be Deleted because it is would be an expensive exercise (3,000 pages of Gazette)
Cotton Board of Zambia is in the process of developing the SI.

- Has the process of developing SI being consultative?
- Are the contents of the SI in conformity with the Cotton Act provisions, and more in general, appropriate for Zambia?
Conclusion

- The Act has to have provisions that have to inspire confidence in the sector: Cotton Working Group (CWG) proposed amendments to the Cotton Act
  - Because of time passed there is need to look at each proposed amendment critically
- Cotton farmers database, will be difficult to operationalize if ginning companies do not buy into the process
Conclusions

- Stakeholders have to ensure that SI is in conformity with the law (Cotton Act)
THANK YOU