



COLONY AND PROTECTORATE OF KENYA

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**The Pyrethrum Industry
Proposals to Amend Existing
Legislation**

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THE PYRETHRUM INDUSTRY: PROPOSALS TO AMEND EXISTING LEGISLATION

PART I—INTRODUCTORY

1. A dispute has continued for some years between the Pyrethrum Board of Kenya and the East African Extract Corporation Ltd., whose managing agents are Mitchell Cotts (E.A.) Ltd. (now Cotts Holding (E.A.) Ltd.), and the parties have been involved in two major lawsuits.

2. This situation is damaging both the general interests of the Colony and the particular interests of the pyrethrum industry. Since 1956 the Government has directed its efforts through a series of meetings to mediating between the parties with a view to bringing about a settlement which would lead to a resumption of free and amicable trading, but these efforts have been unsuccessful. The situation must be resolved. The Government therefore feels obliged to take action and sets out below its proposals for the introduction of legislation.

3. In 1954 the Pyrethrum Board requested the Government to introduce legislation to amend the Pyrethrum Ordinance (Cap. 195) in order to allow the Board to set up its own processing plant.

4. At that time the only processor in East Africa was the East African Extract Corporation Ltd. which had invested in a plant in Nairobi which it was operating under an Agreement to process on behalf of the Board. The managing agents of the Corporation, Mitchell Cotts, on learning of the intention of the Pyrethrum Board to set up its own plant, requested the Government to introduce legislation to protect their position. They argued that, since all Kenya pyrethrum growers were required by law to sell their flowers to the Board, the Board would be able, if it erected its own extraction plant, to cut off the supply of flowers to the Corporation and so put it out of business.

5. This argument threatened to delay the introduction of the Pyrethrum Bill (replacing the original Ordinance—Cap. 195) which was then under consideration by the Government. At the suggestion of the then Minister for Agriculture, the Pyrethrum Board agreed to extend the term of its guarantee of a supply of flowers to the Corporation under the processing Agreement for a further two years beyond the date on which it was then due to expire, i.e. from 31st December, 1959, to 31st December, 1961. In these circumstances, the Government decided to proceed with the Bill enabling the Board to set up its own processing factory, and undertook to introduce further legislation to protect processors, unless agreement between the Pyrethrum Board and the East African Extract Corporation rendered such legislation unnecessary. The Bill became law as Ordinance No. 9 of 1956.

6. Despite protracted negotiations on amendments to the Ordinance, the Government was unable to obtain agreement between the Pyrethrum Board and Mitchell Cotts on the basis of delivery and of fixing the price of flowers.

7. Meanwhile, soon after the extension of the processing Agreement until 31st December, 1961, referred to in paragraph 5, Mitchell Cotts informed the Pyrethrum Board that, in their view, the declared intention of the Board to set up its own processing plant was not in accordance with the Agreement and that they intended to terminate the Agreement and to start processing on their own account.

8. The Pyrethrum Board at that time had no processing facilities of its own, and therefore entered into negotiation with Mitchell Cotts for a fresh Agreement. This was concluded between the parties in September, 1956, and was conditional on the Board signing a parallel but separate Agreement with the Mitchell Cotts Group, Limited, London, in regard to the overseas selling agency—both Agreements extending to 30th June, 1961.

9. The new processing Agreement included a clause providing for its termination if the amendments to the Ordinance which Mitchell Cotts required were not passed by 31st December, 1957, but in the event of such termination the Board guaranteed to sell to Mitchell Cotts not less than 30 per cent of the pyrethrum crop available to the Board each year until 30th June, 1961.

10. Since no understanding on the amendments to the Ordinance was reached before the due date (31st December, 1957), the Agreement was terminated and the continuing clauses referred to in the previous paragraph came into effect.

11. Since that time, as already mentioned above, two major lawsuits have been instituted on the interpretation of the Agreements. Further attempts by the Government to mediate between the parties, in the light of its belief that the interests both of the industry and of the Colony as a whole would best be served by a settlement of the dispute, have not been successful. The Government is therefore compelled to introduce legislation in accordance with the undertaking referred to in paragraph 5.

PART II—PRINCIPLES OF LEGISLATION

12. It is emphasized that the proposals set out in this Paper are related to the special circumstances of the pyrethrum industry explained in Part I, and that they are not to be taken as forming a precedent for any other type of industry.

13. In considering the foregoing situation the Government has had to bear the three following general principles in mind:—

- (a) The grower must, to the greatest degree possible, be assured the best price to which market considerations entitle him.
- (b) Commercial organizations which introduce capital and skill are generally of benefit to the Colony and should be entitled to reasonable rewards and protection in respect of the businesses they establish.
- (c) A measure of healthy competition in commercial enterprise and efficiency is generally advantageous both to the industry and to the Colony.

14. In addition to the principles set out above, the Government's proposals for legislation have been influenced by the following considerations:—

- (a) A monopoly of all processing interests in the Colony to the exclusion of other processing interests is undesirable: this could lead to inefficient processing and to loss to the grower.
- (b) One solution might be the establishment of a completely free market, in which all processors were free to bid for pyrethrum flowers direct to the growers. This, however, could lead to an economic war between the existing processors, and to the elimination of one or other of them.
- (c) Any proposals which aim to limit the legitimate profit to be made by a processor, or to prevent such processor from enjoying the right to reasonable participation in the expansion of the industry, might lead to withdrawal of that processor from the industry, and so to a *de facto* monopoly.

- (d) Legislation should therefore ensure that both parties should be in a position to continue operations subject to ordinary commercial risks. At the same time, there should be an element of free marketing sufficient to encourage the maintenance and increase of efficiency by both factories.
- (e) So long as the Pyrethrum Board retains the sole right, granted to it by the Government, to purchase flowers from growers and, at the same time, is also engaged in processing and marketing in competition with Mitchell Cotts, it is unlikely that the relations between the two can become satisfactory.
- (f) The Board responsible for the overall direction and development of the industry should therefore be divorced from the organization engaged in processing and marketing on the growers behalf. This should become a separate organization.
- (g) Subject to existing processors being given such protection as the Government considers reasonable, the growers are, in principle, entitled to retain control over the bulk of the extract derived from their own flowers.

15. As stated in paragraphs 9 and 10 above, under the existing commercial Agreement which runs till 30th June, 1961, the Pyrethrum Board has entered into an obligation to supply Mitchell Cotts with 30 per cent of the flowers available to the Board. The term "flowers available to the Board" includes the small proportion of flowers from outside Kenya delivered to the Board, and also includes direct flower sales overseas.

16. In order to create the element of free marketing referred to in paragraph 14 (d) it is proposed that a percentage should be deducted from the allocation to which each party is entitled under the present commercial Agreement. In determining what the percentage should be in each case, two considerations have been borne in mind:—

- (a) In the overall interests of the Kenya industry, it is desirable that the direct overseas flower sales now made by the Pyrethrum Board should continue. It is considered that these direct flower sales should be regarded as an allocation to a third processor, and they should be deducted from the amount of flowers available to Kenya processors before the allocation to such processors is made.
- (b) Mitchell Cotts at present receive 30 per cent of the *total* crop available to the Board. If under the proposals set out in this Paper they are now to receive a percentage of the *balance* of the crop after direct flower sales have been deducted, it would be equitable for Mitchell Cotts to be required to surrender a smaller percentage than that to be surrendered by the Board as their "contribution" towards the free market element.

PART III—THE GOVERNMENT'S PROPOSALS FOR LEGISLATION

17. The Government therefore proposes to introduce legislation to make amendments to the existing law in order to carry out the following proposals:—

(1) Pyrethrum Board of Kenya

(a) *Membership*

The Pyrethrum Board of Kenya to be re-constituted as follows:—

- (i) Chairman, appointed by the Minister for Agriculture.
- (ii) Four members to represent growers from the Scheduled and Non-Scheduled areas, to be selected and appointed in such manner as shall be prescribed.

(iii) Not more than four members appointed for a fixed term by the Minister for Agriculture, of whom one shall be an official representing the Minister.

(b) Duties of Pyrethrum Board

- (i) Licensing of growers, in conjunction with the Director of Agriculture, as provided in the present legislation.
- (ii) Purchase of all flowers from growers, as provided in the present legislation.
- (iii) Payment to growers for flowers purchased.
- (iv) Storing, grading and examination of pyrethrum flowers.
- (v) Allocation of flowers to licensed processors, in accordance with the provisions proposed below.
- (vi) Direct sales of flowers for export from the Colony, either by the Board or through a licensed processor acting as agent.
- (vii) Laboratory and Field Research.
- (viii) Appointment of Agents for the handling, storage and distribution of the crop.
- (ix) Other functions of the Board as laid down in the present legislation except that the Board shall be prohibited from processing.

(2) Processing Board

(a) Establishment and Title

A new Board to be established, to be known as the Kenya Pyrethrum Growers' Processing Board.

(b) Membership

Five members, to be elected by the growers in such manner as shall be prescribed by Regulation.

(c) Functions

- (i) Processing of flowers which have been allocated by statute, or successfully tendered for under the proposals set out below, or purchased outside the Colony.
- (ii) Marketing of extract derived from flowers allocated to or purchased by it.
- (iii) Marketing of flowers, sold as such, on behalf of the Pyrethrum Board, if so requested by that Board.
- (iv) After providing for such Reserve Funds as may be approved by the Minister profits from the sale of extract shall be paid to the growers' account or be applied for such other purpose in the interests of growers as the Board may determine.

(3) Assets and Liabilities of the Pyrethrum Board

(a) All assets and liabilities of the processing factory, at present the property of the Pyrethrum Board, to be vested in the Kenya Pyrethrum Growers' Processing Board.

(b) All other assets and liabilities of the existing Pyrethrum Board of Kenya, to be vested in the new Pyrethrum Board of Kenya as reconstituted under these proposals.

(c) The manner in which the above vesting of assets and liabilities shall take place to be prescribed by the Minister for Agriculture by Regulation, after consultation with the growers.

(4) Licensing of Processors

(a) All processors shall require to be licensed.

(b) Licences to be issued and revocable by the Governor in Council of Ministers.

(c) Licences to be issued in the first place to the East African Extract Corporation and to the Kenya Pyrethrum Growers' Processing Board.

(d) Licences to any new processor to be issued after consultation with the Pyrethrum Board.

(e) Any licence, other than those referred to in (c), shall be for processing only, and shall provide that the resultant extract shall remain the property of the Pyrethrum Board of Kenya.

(f) Licences shall not be transferable save with the consent of the Minister.

(5) Allocation of Flowers

(a) Not later than 31st August, 1960, and thereafter at least ten months before the beginning of each crop year, the Pyrethrum Board to publish the following information:—

(i) An estimate of the Kenya crop to be delivered to the Pyrethrum Board during the coming crop year.

(ii) The estimated tonnage of flowers which the Board proposes to export by direct flower sales. Such estimated tonnage shall be subject to approval by the Minister each year.

(iii) An estimate of the tonnage to be sold to each licensed processor. This will be a guaranteed allocation expressed as a percentage of the balance remaining after the deduction of proposed direct flower sales overseas from the total crop.

Allocations will be:—

Kenya Pyrethrum Growers' Processing Board .. 62½ per cent

E.A. Extract Corporation 27½ per cent

(iv) The price, which shall be the same to all licensed processors, at which the Pyrethrum Board intends to sell the guaranteed allocations.

(v) The estimated tonnage represented by the remaining 10 per cent of the balance of the crop which shall be available for sale to licensed processors by tender. This amount shall be divided by the Pyrethrum Board into not less than three equal lots.

(b) Within one month of the publication of the above information, any licensed processor may tender for one or more of the equal lots into which the Pyrethrum Board of Kenya has divided the 10 per cent of the balance of the crop referred to in (a) (v). The Board shall sell each lot to the highest bidder for that lot, and shall notify tenderers within two weeks of the closing date for tenders, of the Board's decision regarding the tenders submitted. The Pyrethrum Board shall not, however, be obliged to accept any tender which is below the price fixed by the Board for the guaranteed minimum allocation. In the event of no tender being accepted for any lot, the Board shall dispose of that lot in such manner as appears to the Board to be most advantageous to the interests of the growers.

(c) During each month of the crop year, unless the Minister authorizes some other arrangement, the Pyrethrum Board shall deduct from the pyrethrum delivered to the Board during the preceding month the percentage which it has declared is required for direct flower sales overseas. The Pyrethrum Board shall then deliver or make available to licensed processors the balance of flowers delivered during the preceding month *pro rata* the total allocation to each processor for the crop year.

(d) The Pyrethrum Board shall ensure, as far as possible, that monthly deliveries to licensed processors contain, *pro rata*, the same proportions of grades of flowers as were contained in the total deliveries to the Board during the preceding month.

(e) In the event of any new processor being licensed for processing only on behalf of the Pyrethrum Board by the Governor in Council, the Governor in Council may alter the percentages set out in (iii) and (v) of (a) above. Any re-allocation will be made *pro rata* to the percentage allocated to existing licensed processors, except with the consent of such processors. It is not envisaged that any new licence will be granted within the first four years of the operation of the Ordinance.

(6) Arbitration

(a) In the event of any disagreement concerning the price fixed by the Board for the guaranteed minimum allocation of flowers, or concerning the terms and conditions of sale fixed by the Board, or concerning grading of flowers, the party aggrieved may appeal to an Arbitrator.

(b) The Arbitrator shall be a person qualified to be a Judge of the Supreme Court and shall be appointed in such manner as shall be prescribed.

(c) In determining any appeal the Arbitrator shall ensure that a fair business profit is allowed to any licensed processor.

(d) Costs of arbitration including fees for the services for the Arbitrator, shall be apportioned by the Arbitrator.

(7) Cesses

The Pyrethrum Board, with the approval of the Minister, shall be empowered to raise cesses at the same rate on all flowers purchased by a licensed processor from the Board, for such purposes as the Minister may approve.

(8) Notice of Closure of Plant

Every licensed processor shall be obliged, unless the Minister otherwise directs, to accept the minimum statutory allocation for any crop year unless he has given notice of his intention not to do so at least two years before the beginning of that crop year.

(9) Consequential Amendments

A number of consequential amendments of a minor nature to the existing law will be necessary.

(10) Effective date of Legislation

As already stated, the existing Agreement between the Board and the Corporation does not expire until 30th June, 1961. It is hoped that the necessary amending legislation will come into effect for the crop year commencing 1st July, 1961. It is therefore proposed to introduce a Bill as soon as possible.