



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 12.03.1997
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Recommendation for a
COUNCIL COMMON POSITION

concerning the approval of the Protocol governing
the accession of the Republic of South Africa
to the Fourth ACP-EC Convention
as revised by the Agreement signed in
Mauritius on 4 November 1995

(presented by the Commission)

Introduction

On 19 June 1995 the Council of Ministers approved directives for the European Commission to negotiate a framework for the longer term relationship between the European Community and the Republic of South Africa. The directives propose that this relationship be built on two elements: (a) a Protocol to the Lomé Convention laying down the terms and conditions of South Africa's accession to the Convention, and (b) a bilateral Trade and Co-operation Agreement between the European Community and South Africa.

The Community proposal responded to the request of the government of South Africa, expressed in a letter of Deputy President Thabo Mbeki in November 1994, "to open negotiations with a view to establishing the closest possible relationship with the Lomé Convention". South Africa also asks "that negotiations should cover a possible agreement with the European Union on specific elements that might more appropriately be accommodated outside the Lomé Convention, to the benefit of the existing Lomé Members and South Africa itself".

The Community proposal of June 1995 followed the launching of a "package of initial measures for South Africa", in April 1994, and the conclusion of a "simplified co-operation agreement" between the Community and South Africa in October 1994.

The proposal was completed on 25 March 1996, when Council approved its complementary negotiation directives for the trade part of the proposed bilateral agreement between the EU and South Africa. These directives summarized the details of the Community's bilateral trade proposal to South Africa, which would entail a Free Trade Area between the two.

Attached draft Council Common Position deals with the first track of the Community proposal: the Protocol to the Lomé Convention.

Qualified membership

The negotiating directives of 19 June 1995 state expressly that "South Africa's membership of Lomé will be qualified." It says that "a list of Chapters and Articles of the Lomé Convention that shall, for the duration of the present Convention, not be applicable to South Africa will be identified".

Council further decided that whereas South Africa would be invited to formally participate in the institutions of the Convention as well as in all areas of ACP-EC co-operation, it would not be eligible for trade concessions and financial instruments under the Convention.

It was agreed that with the exception of assistance referred to under Article 255 of the Convention (refugee assistance), all references in the Convention to the use of financial resources under the Convention shall not apply to South Africa. Other sources, outside the Convention, would remain available for financial assistance to South Africa.

There was also consensus that trade and trade co-operation would be more appropriately accommodated in the context of the bilateral EU/South Africa relationship.

Council attached a table to the negotiating directives, which gave a detailed overview of those articles of the Lomé Convention that would and those that would not apply to South Africa.

Comprehensive package

The negotiating directives of 19 June 1995 did not raise the issue of "linkage" between the two tracks of the Community proposal. Whereas it was assumed that both issues would be negotiated in parallel, the directives said explicitly that "the negotiations will take place in a dual institutional setting", and that "the Protocol defining the terms and conditions of South African accession to the Lomé Convention will be separately discussed and approved in the appropriate form".

It was only on the occasion of the adoption of the complementary (trade) negotiating directives of March 1996 that a Declaration by Council established a link between the different issues under negotiation. In a statement attached to these directives Council made specific reference to sectoral agreements covering co-operation on fishing, wines and spirits and science and technology. Council considered that these three agreements, "while formally separate", "must be negotiated in parallel and concluded in principle at the same time as the Trade and Co-operation Agreement and the Protocol on accession to the Lomé Convention".

Whilst defending a truly comprehensive approach and actively pursuing parallel progress on all issues and tracks under negotiation with South Africa, the Commission had not associated itself to the Council declaration on linkages. The Commission felt it was not realistic to expect that all negotiations could be concluded at the same time.

One element of the package, the Science and Technology agreement, has already been approved by Council in December 1996.

Facilitating clause

In November 1995 the ACP/EC Council of Ministers approved and signed the revised Lomé IV Convention. This Convention contains a clause (Article 364) which pre-empts South Africa accession, and aims to facilitate this process by avoiding the need for ratification of such a decision. Article 364 says that "If before the entry into force of the provisions amending this Convention (...), the negotiations with South Africa lead to an agreement on its accession to this Convention, then (...) the Council of Ministers shall act on the outcome of such negotiations and take a decision on the terms and conditions of the accession (...). In case of a positive decision, South Africa shall be added to the States signatory to this Convention without further ratification needed by the Signatories of this Convention".

It is expected that the revised Lomé IV Convention will enter into force well before the end of 1997. This implies that the ACP/EC Council of Ministers of 24/25 April 1997 in Luxembourg will probably provide the last opportunity to make use of the facilitating provisions of Article 364. If this Council would not be able to approve the Protocol on South Africa's accession to the Convention, there is a real risk that such a decision needs to be separately ratified by the Signatories of the Convention.

This legal reality puts considerable time constraints on the approval procedure.

The outcome of the technical discussions

Technical discussions between the Commission and representatives of the government of the Republic of South Africa started in July 1995. Work on the Lomé Protocol was finalized on 24 February 1997, when South African negotiators informed the Commission that they accepted the draft Protocol.

During the last stages of the discussions between Commission and South Africa on the draft Protocol eight issues remained controversial. On six of these subjects South Africa unconditionally accepted the initial Community proposals:

Trade Exclusion Clause (Art. 3 of Protocol). South Africa has accepted that its Membership to the Convention does not give the country access to the Trade Co-operation provisions of Lomé.

Human Rights and Non-Execution Clause (Art. 5 / 366a of Convention): South Africa has withdrawn its initial request to add a unilateral declaration to these Articles.

Toxic Waste (Art. 39). South Africa has fully accepted the disciplines in this area that are also imposed on other ACP countries.

Fisheries Co-operation (Art. 64 and 68). By accepting these articles, South Africa confirms its willingness to negotiate a fisheries agreement with the EU.

Maritime Transport (Art. 126). South Africa accepts, and thereby subscribes to the principle of unrestricted access on a commercial basis.

ACP preference for EDF tenders (Art.303). South Africa accepts that this special provision will not be applicable. Natural and legal persons of South Africa and of EU countries will compete for EDF contract on exactly the same terms.

On the two remaining controversial subjects, cumulation of origin and access to 7th EDF tenders, "procedural understanding" was reached between the Commission and South Africa. It was agreed that whilst further discussion and clarification on these issues is desirable, there is no strict legal need to do so prior to the conclusion of the Protocol.

Issues for further clarification outside the context of the Protocol

Cumulation of Origin (Art. 6(5) of Protocol 1 and annex 86). South Africa has accepted the fact that its objections against the use of the words "ad hoc" in annex 86, cannot and will not be solved in the context of the Protocol of accession. In recognition of this reality, South Africa has introduced a unilateral declaration to the Protocol in which it calls on the Contracting Parties to "clarify at the earliest time the conditions under which inputs originating in South Africa shall be considered eligible to the Cumulation procedure set out in Article 6(5) of Protocol 1."

Access to tenders under the 7th EDF (Art. 294). South Africa expressed its wish that Article 294, which will apply to it, should be interpreted as referring not only to EDF 8, but also to EDF 7. Indeed, since Article 294 refers to "the Fund" in general, without being more specific, Art. 294 applies to both funds. However, the Commission informed South Africa that allowing South Africa's access to cover 7th EDF contracts would have to be agreed by Council, because South Africa would then be better treated than the three new EU Member States. Depending on whether Council will accept or reject South Africa's eligibility to EDF 7 contracts, the South African government will decide at a later stage whether it will add a unilateral declaration to the Protocol.

Conclusion

The Commission is satisfied with the outcome of the negotiations with the Republic of South Africa on the latter's accession to the revised Lomé IV Convention. It considers the attached draft Protocol fully in line with the negotiating directives that Council had approved on 19 June 1995. The Commission is confident that South Africa's accession to the Convention, under the terms and conditions as laid down in the draft Protocol, will not only benefit South Africa itself, but also the ACP Group as a whole.

Whilst regretting that it had not been possible to make even more progress on the other, bilateral, track of the planned framework of co-operation the Commission has no reason to doubt that the eventual outcome of the negotiation process will be comprehensive and will address all issues and sectors of mutual interest.

The Commission furthermore considers that an early accession of South Africa to the revised Lomé Convention would constitute an important political signal by the Community to both South Africa, and the current ACP group of countries, and may have a positive effect on both the ongoing bilateral negotiations with South Africa as well as on the wider discussions on the future of Lomé.

In the light of the above, the Commission recommends that the Council approves the Protocol in Annex and takes advantage of the facilitating clause of Article 364 of the revised Lomé IV Convention, which would allow South Africa to accede to the Convention at the moment of its entering into force.

COUNCIL COMMON POSITION

of

concerning the approval of the Protocol governing
the accession of the Republic of South Africa
to the Fourth ACP-EC Convention
as revised by the Agreement signed in
Mauritius on 4 November 1995

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 238,
in conjunction with the second sentence of Article 228(2) and the second subparagraph of
paragraph 3 thereof;

Having regard to the proposal from the Commission ;

Having regard to the assent of the European Parliament

Whereas South Africa requested to establish the closest possible relationship with the Lomé
Convention in a letter dated 17 November 1994 sent to the Co-Presidents of the ACP-EC Council
of Ministers;

Whereas the EU-Council of Ministers has in its decision of 19 June 1995 invited South Africa to
accede to the Lomé Convention on terms and conditions to be laid down in a Protocol to the
Convention .

HAS DECIDED AS FOLLOWS :

Article 1

The Protocol governing the accession of the Republic of South Africa to the Fourth ACP-EC
Convention as revised by the Agreement signed in Mauritius on 4 November 1995 is hereby
approved on behalf of the Community.

The text of the Protocol is attached to this decision.

Article 2

The President of the Council shall, on behalf of the Community and the Member States, notify
this approval to the President of the ACP Council, and request the ACP-EC Council to take a
decision on the terms and conditions contained in the Protocol at its meeting of 24 April 1997 in
Luxembourg.

Done at Brussels

For the Council
The President

PROTOCOL N° 11

**governing the accession of the
Republic of South Africa to the
Fourth ACP-EC Convention of Lomé
as revised by the Agreement
signed in
Mauritius
on 4 November 1995**

Article 1

Qualified Accession

The Contracting Parties to the Convention agree that the accession of South Africa to the Convention will be subject to certain qualifications as set out in this Protocol.

Article 2

Financial Resources

1. With the exception of assistance referred to under Article 255 of the Convention, all references in the Convention to the use of financial resources under the Convention shall not apply to South Africa.
2. Assistance under Article 255 may be granted in the event of a significant influx of refugees from neighbouring ACP states into South Africa.
3. All other assistance which may be made available by the Community to South Africa will be drawn from sources outside the financial resources of the Convention.

Article 3

Trade Cooperation

All references in the Convention to Trade Cooperation and to the use of Trade Cooperation shall not apply to South Africa. This is without prejudice to the provisions on cumulation of origin set out in Art. 6.5 of Protocol N° 1 and Annex LXXXVI to the Convention.

Article 4

Applicability

The table hereunder sets out those articles of the Convention which shall apply to South Africa and those which shall not apply.

Revised Lomé IV Convention Part/Chapter/Article	Applicability to South Africa	
	Applicable	Not Applicable
PART ONE : GENERAL PROVISIONS OF ACP-EC		
Ch 1 : Objectives and Principles of cooperation (<i>Arts 1-12a</i>)	1-12a	-
Ch 2 : Objectives and guidelines of the Convention in the main areas of cooperation (<i>Arts 13-19</i>)	13-19	-
Ch 3 : Widening participation in cooperation activities (<i>Arts 20-22 deleted</i>)	-	-
Ch 4 : Principles governing the instruments of cooperation (<i>Arts 23-28</i>)	23, 26-27	24-25, 28
Ch 5 : Institutions (<i>Arts 29-32</i>)	29-32	-
PART TWO : THE AREAS OF ACP-EC COOPERATION		
Title I : Environment (<i>Arts 33-41</i>)	33-41	-
Title II : Agricultural cooperation, food security and rural development (<i>Arts 42-57</i>)	42-49 51-57	50
Title III : Fisheries (<i>Arts 58-68</i>)	58-68	-
Title IV : Cooperation on commodities (<i>Arts 69-76</i>)	69-76	-
Title V : Industrial development, manufacturing and processing (<i>Arts 77-87; Art. 88 deleted; Arts 89-93; Arts 94-96 deleted; Arts 97-98</i>)	77-87 89-93 97-98	-
Title VI : Mining development (<i>Arts 99-104</i>)	99-104	-
Title VII : Energy development (<i>Arts 105-109</i>)	105-109	-
Title VIII : Enterprise development (<i>Arts 110-113</i>)	110-113	-
Title IX : Development of services (<i>Arts 114-134</i>)	114-134	-
Title X : Trade development (<i>Arts 135-138</i>)	135-138	-
Title XI : Cultural and social cooperation (<i>Arts 139-155</i>)	139-155	-
Title XII : Regional Cooperation (<i>Arts 156-166</i>)	156-166	-

PART THREE : The Instruments of ACP-EC COOPERATION		
Title I : Trade Cooperation (<i>Arts 167-185</i>)	-	167-185
Title II : Cooperation in the Field of Commodities		
- STABEX (<i>Arts 186-212</i>)	-	186-212
- SUGAR (<i>Art 213</i>)	-	213
- SYSMIN (<i>Arts 214-219</i>)	-	214-219
Title III : Development Finance Cooperation		
- General provisions (<i>Arts 220-230</i>)	-	220-230
- Financial cooperation (<i>Arts 231-257</i>)	255-256	231-254, 257
- Investment (<i>Arts 258-274</i>)	258-274	-
- Technical cooperation (<i>Arts 275-280</i>)	275-280	-
- Implementation procedures (<i>Arts 281-310</i>)	294-302 304-310	281-293 303
- Management and executing agents (<i>Arts 311-327</i>)	311-327	-
Title IV : Least developed, landlocked and island ACP States (<i>Arts 328-337</i>)	328-337	-
PART FOUR : OPERATION OF THE INSTITUTIONS		
- The Council of Ministers (<i>Art 338-345</i>)	338-345	-
- The Committee of Ambassadors (<i>Arts 346-347</i>)	346-347	-
- Common provisions (<i>Arts 348-349</i>)	348-349	-
- The Joint Assembly (<i>Arts 350-351</i>)	350-351	-
- Other provisions (<i>Arts 352-355</i>)	352-355	-
PART FIVE : FINAL PROVISIONS		
(<i>Arts 356-369</i>)	356-369	-

PROTOCOLS		
- <i>Second Financial Protocol</i>	Art 255 resources	Rest of Second Financial Protocol
- <i>Protocol N° 1</i> Definition of the concept of "originating products" and methods of administrative co-operation	-	Protocol 1
- <i>Protocol N° 2</i> Operating expenditure of Joint Institutions	Protocol 2	-
- <i>Protocol N° 3</i> Privileges and immunities	Protocol 3	-
- <i>Protocol N° 4</i> Safeguard measures	-	Protocol 4
- <i>Protocol N° 5</i> Bananas	-	Protocol 5
- <i>Protocol N° 6</i> Rum	-	Protocol 6
- <i>Protocol N° 7</i> Beef and veal	-	Protocol 7
- <i>Protocol N° 8</i> Sugar	-	Protocol 8
- <i>Protocol N° 9</i> ECSC	-	Protocol 9
- <i>Protocol N° 10</i> Forest Resources	Protocol 10	-

ANNEXES TO THE PROTOCOL OF ACCESSION

Annex 1

Joint Declaration by the Community and its Member States, the ACP States and South Africa on the Joint Declarations annexed to the Lomé Convention

The Community and its Member States, the ACP States and South Africa agree that the joint declarations contained in the annexes to the Lomé Convention listed below are also relevant to South Africa : Annexes I, II, IV, V, VI, VII, VIII, IX, XII, XIII, XIV, XV, XVI, XXII, XXIII, XXV, XXVI, XXXII, L, LII, LIII, LIV, LV, LVI, LVII, LXVIII, LXXIII, LXXIX, LXXX, LXXXII, LXXXIII, LXXXIX together with the joint declarations contained in the following annexes to the Minutes of the signing of the fourth ACP-EC Convention : Annexes I and II.

Annex 2

Community Declaration on the Community Declarations annexed to the Lomé Convention.

The Community considers that the Community Declarations contained in the annexes to the Lomé Convention listed below are also relevant to South Africa : Annexes III, IIIA, XVIIIA, XIX, LXIX, LXX, LXXI, LXXII.

Annex 3

Declaration by South Africa on the ACP Declarations annexed to the Lomé Convention

South Africa hereby associates itself with the ACP declarations contained in the annexes to the Lomé Convention listed below : Annexes XVIIIB, XVIII, XXIV, LI.

Annex 4

Declaration by South Africa on Cumulation

South Africa wishes to reiterate the importance of economic integration between ACP states as being of key relevance in promoting their development. This is especially true in the Southern African region where the Southern African Customs Union (SACU) and the Southern Africa Development Community (SADC) Trade Protocol underline attempts to promote such integration.

South Africa, furthermore, wishes to draw attention to the fact that it is now listed as a developing country by the Development Aid Committee of the OECD.

With a view to reducing the element of uncertainty which might affect investors and other economic operators, thereby also negatively affecting the aforementioned economic integration and its accompanying stimulation of development, South Africa calls upon the other Contracting Parties to clarify at the earliest time the conditions under which inputs originating in South Africa shall be considered eligible to the cumulation procedure set out in Article 6(5) of Protocol I.

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DOCUMENTS

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