



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 11.05.1999  
COM(1999) 245 final

99/ 0112 (AVC)

Proposal for a

COUNCIL AND COMMISSION DECISION

Concerning the conclusion of the

Trade, Development and Co-operation Agreement between the European Community, on  
the one part, and the Republic of South Africa, on the other part,

Proposal for a

**COUNCIL DECISION**

on the signing,

on behalf of the European Community,

of the Trade, Development and Co-operation Agreement between the European  
Community and the Republic of South Africa

(Presented by the Commission)





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## EXPLANATORY MEMORANDUM

### **General**

- (1) By means of a decision of 19 June 1995, the Council authorised the Commission to open negotiations with the Republic of South Africa with a view to concluding an Agreement for Trade and Co-operation between the European Community and the Republic of South Africa and a Protocol to the Lomé Convention covering the terms and conditions of South Africa's accession to the Convention, and approved negotiating directives to that end. On 25 March 1996 Council approved complementary negotiating directives for the Trade and Co-operation Agreement between the European Community and the Republic of South Africa, providing guidelines for the trade and trade-related sections of the agreement.
- (2) Following some 25 rounds of negotiations, which took place in the course of 1995, 1996, 1997 and 1998, the negotiations on the Trade, Development and Co-operation Agreement were concluded on 23 March 1999.

On 24 March 1999 the European Council in Berlin approved the Agreement.

Negotiations on the Protocol to the Lomé Convention were concluded in March 1997. On 24 April 1997 the ACP-EC Council of Ministers approved the Protocol governing the accession of the Republic of South Africa to the Fourth ACP-EC Convention of Lomé as amended by the Agreement signed in Mauritius on 4 November 1995.

- (3) The Commission considers that the Agreement conforms to the negotiating directives by the Council.
- (4) In order to commit the signature and conclusion of the Trade, Development and Co-operation Agreement the Commission proposes that the Council approves the text of the Agreement and adopt the proposals for a Decision in the Annex.
- (5) The European Parliament will be asked to give its assent to the Agreement.
- (6) The Agreement will supersede the Co-operation Agreement between the European Community and the Republic of South Africa as approved by Council Decision of 19 December 1994.

### **Nature of agreement**

- (7) Negotiations with South Africa have been conducted on the assumption that both sides were aiming at a Community Agreement. The negotiating mandate of 19 June 1995 was for a Community Agreement. In its Working Document of 10 November 1998 the Commission confirmed its view that this agreement should be a Community Agreement. The South African government has also indicated a clear preference for an Agreement between two partners; South Africa and the European Community.
- (8) The Commission preference for a Community Agreement is based on the following considerations:

- (a) The field and the scope of co-operation that is outlined in the Agreement is fully in line with the Community competences defined in the Treaty of Amsterdam. From a legal point of view a Community agreement is therefore the most appropriate option. There is no legal need or justification to opt for another scenario.
- (b) In any case the conclusion of the Agreement at the EU side will take place under the heaviest procedure possible. The Agreement will require a unanimous decision by Council and the assent of the European Parliament, as it is based on Art. 310 and Art. 300 of the Amsterdam Treaty.
- (c) Once Council and the South African authorities will have concluded the Agreement, and the European Parliament has given its assent, it will come into immediate force. Co-operation in all sectors identified in the Agreement will commence quickly. The choice for a Community Agreement will "kick-start" the co-operation with South Africa. There will be no need for an interim agreement or a limited provisional application of certain provisions of the agreement. This will obviously save a lot of time and efforts, which can then be utilised for the implementation of the co-operation with South Africa, rather than for procedural preparations of it.
- (d) Under a Community Agreement the review process will be a useful and manageable instrument. A major comprehensive review will take place no later than 5 years after the entry into force of the Agreement. Under a mixed Agreement, this comprehensive review would take place years later, and the modifications resulting from this review would again be subjected to a long and complicated ratification process.
- (e) A Community Agreement will, because of its quick conclusion, soon be part of the acquis communautaire and will therefore not be subjected to separate negotiations with future acceding Member States of the European Union.

### **The proposal**

- (9) The Commission considers that for the reasons stated above, there would be considerable advantages to a Community agreement. There is no legal impediment to proceeding with a Community agreement. The Commission has taken account of the comments made by the Council Legal Service in its note of 24 November 1998, including the provisions on political dialogue. It is proposed that the Declaration relating to political dialogue should not form an integral part of the agreement but should rather be attached to the Final Act. This is consistent with international treaty practice according to which the term "declaration" is used for commitments which are not intended by the parties to the agreement to be formally part of an agreement. As regards the other matters mentioned by the Council Service in pages 5-8 of its note of 24 November 1999, the drafting modifications suggested have been included in the text.
- (10) In addition, the Commission also accepts the interpretation given on page 7 of the note of the Council Legal Service and hereby reconfirms that attached Agreement does not affect or prejudice any of the Member States competences in any field of co-operation between the Community and South Africa, including in the area of investments, intellectual property, services and maritime transport. In this context,

the Commission proposes a joint declaration to the Council minutes, providing that the Council and the Commission confirm that the provisions of the Agreement on Trade, Development and Co-operation between the European Community and the Republic of South Africa are without prejudice to Opinion 1/94 and other relevant case law of the Court of Justice of the European Communities, and that their legal implications concerning the division of competencies between the European Community and its Member States are limited to the treaty relations between the European Community and South Africa.

- (11) If the Council decides, nonetheless, that the Agreement with South Africa should be mixed, the Commission would recommend that attached Agreement and Final Act be concluded as an Interim Agreement between South Africa and the European Community. Hereby, the Community would at least be able to maintain the integrity and balance of the negotiating results, which would establish a basis for the immediate strengthening of EU/SA co-operation in a comprehensive field of activities.

This Interim Agreement could then in due time be superseded by a mixed Agreement between South Africa, the European Community and its Member States. This mixed Agreement would – over and above the provisions of the interim agreement - include additional commitments, inter alia on political dialogue.

- (12) The Commission also proposes that the Council authorize the President of the Council to designate the person(s) empowered to sign the Agreement on behalf of the Community. This draft Council decision is annexed, taking into account the new Art. 300 paragraph 2 of the EC Treaty which has entered into force on 1 May 1999.

proposal for a

99/ 0112 (AVC)

## COUNCIL AND COMMISSION DECISION

Concerning the conclusion of the

Trade, Development and Co-operation Agreement between the European Community, on the one part, and the Republic of South Africa, on the other part,

THE COUNCIL OF THE EUROPEAN UNION, THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Coal and Steel Community, and in particular its Article 95,

Having regard to the Treaty establishing the European Community and in particular its Article 310 in connection with the second phrase of article 300 (2) and the second subparagraph of paragraph 3,

Having regard to the consultation of the Consultative Committee and with the favourable opinion of the Council regarding article 95 of the Treaty establishing the European Coal and Steel Community,

Having regard to the proposal from the Commission,

Having regard to the assent of the European Parliament,

Whereas the Trade, Development and Co-operation Agreement between the European Community, on the one part, and the Republic of South Africa, on the other part, signed in ..... on ..... should be approved.

HAS DECIDED AS FOLLOWS:

### Article 1

The Trade, Development and Co-operation Agreement between the European Community, on the one part, and the Republic of South Africa, on the other part, together with the Annexes and Protocols attached thereto and the declarations made by the Community unilaterally or jointly with other parties that are attached to the Final Act are hereby approved on behalf of the European Community and in the name of the European Coal and Steel Community.



The texts of the Agreement, Annexes, Protocols and the Final Act are attached to this Decision.

## Article 2

The President of the Council shall give the notification provided for in Article 108 of the Agreement on behalf of the European Community.

The President of the Commission shall give this notification on behalf of the European Coal and Steel Community.

## Article 3

1. The position to be taken by the Community within the Co-operation Council established by the Agreement, shall be laid down by the Council, on a proposal from the Commission, in accordance with the corresponding provisions of the Treaties establishing the European Community and the European Coal and Steel Community.
2. In accordance with Article 96 of the Agreement, a representative of the Commission shall preside over the Co-operation Council and present the position of the Community.

## Article 4

This Decision shall be published in the Official Journal of the European Communities.

Done at Brussels,

For the Council  
The President

For the Commission  
The President

proposal for a

COUNCIL DECISION

on the signing,

on behalf of the European Community,

of the Trade, Development and Co-operation Agreement between the European  
Community and the Republic of South Africa

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community and in particular its  
Article 310 in conjunction with the first sentence of the first subparagraph of Article  
300(2) thereof,

Having regard to the proposal from the Commission (1),

Whereas the Agreement negotiated by the Commission on Trade, Development and Co-  
operation between the European Community and the Republic of South Africa should be  
signed on behalf of the European Community,

HAS DECIDED AS FOLLOWS :

The President of the Council is hereby authorised to designate the person empowered to  
sign, on behalf of the European Community, the Agreement on Trade, Development and  
Co-operation between the European Community and the Republic of South Africa,

Done at Brussels,

For the Council,  
The President

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(1) OJ.....

## **FINANCIAL STATEMENT**

### **1. TITLE OF OPERATION**

Conclusion of a Trade, Development and Co-operation Agreement between the European Community and the Republic of South Africa.

### **2. BUDGET HEADINGS INVOLVED**

Implementation of the Agreement will directly involve the special budget line for South Africa:

B7-3200	European Programme for Reconstruction and Development in South Africa
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Furthermore, any other Community budget line to which South Africa is or will be eligible could be used to facilitate co-operation under the Agreement.

### **3. LEGAL BASIS**

Trade, Development and Co-operation Agreement between the European Community, on the one part, and the Republic of South Africa, on the other part.

### **4. DESCRIPTION OF OPERATION**

#### **4.1 General objective**

Conclusion and implementation of the Trade, Development and Co-operation Agreement between the European Community and the Republic of South Africa.

#### **4.2 Period covered and arrangements for renewal**

The agreement will have no time limit.

### **5. CLASSIFICATION OF EXPENDITURE OR REVENUE**

This agreement establishes a framework for the strengthening and deepening of the co-operation between the EU and South Africa in a broad field of activities. To facilitate this co-operation a wide range of existing financial instruments will be used, all of which will be implemented according to their established rules and procedures.

This agreement will not lead to the creation of a specific new budget for co-operation.

#### **5.1 Compulsory/Non-compulsory expenditure**

Not applicable.

**5.2      Differentiated/Non-differentiated appropriations**

Not applicable.

**5.3      Type of revenue involved**

Not applicable.

**6.        TYPE OF EXPENDITURE OR REVENUE**

- The implementation of the tariff dismantlement schedules and the granting of tariff quota vis-a-vis South Africa will result in a decrease of the Community's customs revenue.
- The level of funding of an action within the context of existing financial instruments varies dependent on the implementing agency, up to 100% in the case of an NGO implemented project, and as a contribution towards total costs when channelled through government. All expenditure is in the form of grants.
- Furthermore it is foreseen that the European Investment Bank could consider, at the request of the Council of the European Union, the extension of its financing of investment projects in South Africa by means of long-term loans on its own resources. This would require a continuation of the Community budget guarantee on EIB loans to South Africa, already effective since 1995

**7.        FINANCIAL IMPACT**

Co-operation between the EU and South Africa will be facilitated through a series of existing financial instruments. The agreement will not lead to the creation of a specific new budget for co-operation.

As for the expected loss of Community customs revenue the following amounts have been calculated:

Products under tariff quota

10 million euro (ref. 1996)	As from entry into force.
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Other products

83 million euro (ref. 1996)	By the end of the 10 years transitional period
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Total

93 million euro (ref. 1996)	By the end of the 10 years transitional period
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**7.1      Method of calculating total cost of operation (relation between individual and total costs)**

Not applicable.

**7.2 Itemised breakdown of cost**

Not applicable.

**7.3 Operational expenditure for studies, experts etc. included in Part B of the budget**

Not applicable.

**7.4 Schedule of commitment and payment appropriations**

Not applicable.

**8. FRAUD PREVENTION MEASURES**

Fraud prevention measures operated under the respective budget lines will apply.

**9. ELEMENTS OF COST-EFFECTIVENESS ANALYSIS**

The objectives, target population, modalities as regards monitoring and evaluation etc. are project-specific and will therefore be defined in the context of the respective financing proposals.

**9.1 Specific and quantified objectives; target population**

Not applicable.

**9.2 Grounds for the operation**

Not applicable.

**9.3 Monitoring and evaluation of the operation**

Not applicable.

**10. ADMINISTRATIVE EXPENDITURE (SECTION III, PART A OF THE BUDGET)**

**10.1 Effect on the number of posts**

For the managing of development co-operation actions the following staff would be foreseen (this table is taken from the draft proposal for a new Council Regulation on the European Programme for Reconstruction and Development, that will replace Council Regulation (EC)N°2259/96 expiring 31.12.1999).

Type of post		Staff to be assigned to managing the operation		Source		Duration
		Permanent posts	Temporary posts	Existing resources in the DG or department considered	Additional resources	
Officials or temporary staff	A	1,25 (VIII)		1,25 (VIII)		7 years  (2000-2006)
		1,25 (SCR)		1,25 (SCR)		
		3 (Del)		3 (Del)		
	B	1 (VIII)		1 (VIII)		
		2 (SCR)		2 (SCR)		
		2 (Del)		2 (Del)		
	C	1 (VIII)		1 (Bxl)		
		1 (SCR)		1 (SCR)		
		0,25 (Del)		0,25 (Del)		
Other resources						
Project officers(LA)		6,75		4,75	2 <sup>(1)</sup>	
Secretariat (LA)		6,5		4,5	2	
Other (LA) <sup>(2)</sup>		2,5		1,5	1	
Junior experts		2		2		
Total		30,5		25,5	5	

(\*) The number of posts would remain constant whether aid to South Africa is from Budget or EDF

(1) – one of the two posts indicated, for a computing/finance officer, was the subject of a request introduced to DG LA-E in December 1998.

(2) – drivers

As for the non-development aspects of future co-operation (trade, trade-related aspects, economic co-operation, social and cultural co-operation, political dialogue etc.) it is proposed to maintain the current South Africa desk as it is.

Type of post		Staff to be assigned to managing the operation		Source		Duration
		Permanent posts	Temporary posts	Existing resources in the DG or department considered	Additional resources	
Officials or temporary staff	A	1 (VIII)		1,0 (VIII)		10 years  (2000-2010)
	C	0,5 (VIII)		0,5 (VIII)		

10.2 Overall financial impact of resources

As for co-operation in the area of development the financial impact is the following (this table is taken from the draft proposal for a new Council Regulation on the European Programme for Reconstruction and Development, that will replace Council Regulation (EC)N°2259/96 expiring 31.12.1999).

	Amounts (EURO)	Method of calculation
Officials	101.100	2xGr I (2 x 15,000)x13 = 390.000ZAR 2xGr III (2 x 8,000)x13 = 208.000ZAR 1xGr V (1 x 5,000)x13 = 65.000ZAR
Temporary staff		
Other resources (A60010)		
	101.100	

As regards the non-development aspects there will be no financial impact.

### 10.3 Administrative expenditure as a result of the operation

Regarding co-operation in the area of development administrative expenditures will be as follows (this table is taken from the draft proposal for a new Council Regulation on the European Programme for Reconstruction and Development, that will replace Council Regulation (EC)N°2259/96 expiring 31.12.1999).

Budget heading	Amounts (EURO)	Method of calculation
60020 - pension funds	5.100	Estimations on the basis of current prices in South Africa
- missions	6.000	
60120 - equipment (furniture, PCs)	25.000	Idem
60130 - vehicle	25.000	Idem
60180 - telephone charges	10.000	Idem
7031 - Costs of the Committee	5.750	<sup>1</sup> Average costs based on 5 meetings a year – see below
Total	76.850	

<sup>1</sup> Costs calculated on the average meeting costs relative to the EDF and Food Aid Committees (charged to the same budget line) of 11.000 Euro per meeting (1998). The South Africa Committee is held on average 5 times a year, always at the same time as the EDF Committee for which the same members are usually present – one quarter of the average costs of 5 meetings are set against this operation.

As for the non-development aspects of co-operation no specific additional administrative expenditures are expected, apart from the usual mission expenditures. It is assumed that the review process (that will take place before the end of the fifth year after the entry into force of the agreement) will not lead to additional expenditures by the Commission.



# FINAL ACT

The plenipotentiaries of

THE COUNCIL OF THE EUROPEAN UNION acting on behalf of the European Community and the COMMISSION acting on behalf of the European Coal and Steel Community (hereinafter referred to as "the Community"), of the one part,

and the plenipotentiary of

THE GOVERNMENT OF THE REPUBLIC OF SOUTH AFRICA acting on behalf of the Republic of South Africa (hereinafter referred to as "South Africa"), of the other part,

meeting at ..... this ..... in the year one thousand nine hundred and ninety-nine for the signature of the Trade, Development and Co-operation Agreement between the European Community, on the one part, and the Republic of South Africa, on the other part, have adopted the following texts:

The Trade, Development and Co-operation Agreement including its Annexes and the following Protocols:

Protocol 1      Concerning the definition of the concept of "originating products" and methods of administrative co-operation,

Protocol 2      On mutual administrative assistance in customs matters.

The plenipotentiaries of the Community and the plenipotentiary of South Africa have adopted the texts of the joint declarations listed below and attached to this Final Act:

Joint Declaration in relation to non-execution

Joint declaration in relation to political dialogue

Joint declaration in relation to export refunds

Joint declaration in relation to accelerated tariff elimination by the Republic of South Africa

Joint declaration on agricultural quota

Joint declaration in relation to public aid

Joint declaration in relation to fisheries

Joint declaration in relation to bilateral agreements

Joint declaration in relation to illegal immigration

The plenipotentiary of South Africa has taken note of the declarations listed below and attached to this Final Act:

Community declaration in relation to the essential element

Community declaration in relation to financial aspects of co-operation

Draft EIB declaration in relation to financial aspects of co-operation

The plenipotentiaries of the Community have taken note of the declarations listed below and attached to this Final Act:

Declaration by South Africa in relation to the essential element

Declaration by South Africa in relation to sanitary and phytosanitary measures

Declaration by South Africa in relation to financial aspects of co-operation

Done at ..... in the year one thousand nine hundred and ninety nine.

For the European Community, represented by the Council of the European Union and the European Commission;

For the Republic of South Africa;

## ***Ad Title I – General objectives and principles***

### **Community Declaration in relation to the essential element**

In the context of a political and institutional environment respectful of human rights, democratic principles and the rule of law, the Community considers good governance as meaning the transparent and accountable management of all a country's human, natural, and internal and external economic and financial resources for the purposes of equitable and sustainable development.

### **Declaration by South Africa in relation to the essential element**

Good Governance is understood on the SA side as compliance with the SA Constitution (Act 108 of 1996), in particular the provisions related to the transparent, equitable and accountable management of her human, natural, economic and financial resources for the purpose of economic growth and sustainable development.

### **Joint Declaration in relation to non-execution**

The parties agree that the violation of the essential elements of the agreement referred to at Article 3, paragraph 3 of this Agreement shall only consist of a grave violation of democratic principles or fundamental Human Rights or the serious interruption of the rule of law, creating an environment not conducive for consultations or where a delay would be detrimental to the objectives or interests of the Parties to this Agreement.

The parties also agree that the appropriate measures referred to at Article 3, paragraphs 1, 3 and 5 of this Agreement must be proportional to the violation. In the selection and implementation of these measures, the parties will pay particular attention to the circumstances of the most vulnerable groups of the population and will ensure that they are not unduly penalised.

### **Joint Declaration in relation to Political Dialogue**

- (1) A regular political dialogue shall be established between the European Union and South Africa (hereinafter referred to as the Parties). It shall accompany and help consolidate their co-operation as well as contribute to the establishment of lasting links of solidarity and new forms of co-operation.
- (2) The political dialogue and co-operation are in particular intended to:
  - (a) promote greater mutual understanding between the parties and a greater convergence of views;
  - (b) enable each party to consider the position and interests of the other;
  - (c) encourage the support for democracy, the rule of law and the respect of human rights;
  - (d) promote social justice and help create the necessary conditions to eliminate poverty and all forms of discrimination.
- (3) The political dialogue shall cover all issues of common interest to the parties.
- (4) The political dialogue shall take place whenever necessary, notably:
  - (a) at ministerial level
  - (b) at the level of senior officials representing South Africa, on the one hand, and European Council Presidency and the European Commission on the other;
  - (c) taking full advantage of all diplomatic channels, including regular briefings, consultations on the occasion of international meetings and contacts between diplomatic representatives in third countries;
  - (d) where appropriate, by any other means or at any other levels to be agreed between the parties which would make a useful contribution to consolidating the dialogue and increasing its effectiveness.
- (5) In addition to the bilateral political dialogue provided for in the previous articles, the Parties shall take full advantage of, and contribute actively to, the regional political dialogue between the EU and the countries of Southern Africa, with a view in particular to promoting lasting peace and stability in the region.
- (6) The parties shall also participate in the political dialogue in the larger ACP/EU framework, as foreseen and laid down in relevant ACP/EC Treaties.

**Joint Declaration in relation to export refunds**

- (1) In drawing up the trade components of the Agreement, the Parties have examined on a case by case basis, the potential impact of export refund mechanisms on the process of trade liberalisation.
- (2) The Community states for its part that further examination of the future export refunds in connection with trade with South Africa will take place when the present discussions on agricultural reform have been completed.

**Joint declaration in relation to accelerated tariff elimination by the Republic of South Africa**

The Parties agree to anticipate the application of the procedures provided in Article 16 of this Agreement during the interim period before the entry into force of the Agreement in order to allow the possible application of an accelerated timetable for tariff elimination and elimination of export refunds on the date of entry into force of the Agreement.

**Joint Declaration on agricultural quota**

1. The annual growth factors set out in Annex IV list 6 and Annex VI list 3 and 4 of the present agreement will be periodically examined and reconfirmed starting no later than 5 years after entry into force of the Agreement.
2. Concerning in particular prepared fruits (peaches, pears and apricots), South Africa agrees to manage its exports to the European Union in a balanced way.

*Ad Title III – Trade related issues*

**Joint declaration in relation to Public Aid**

The Parties agree that The South African economy and its interaction with the economies in the Southern African Development Community are undergoing a substantial restructuring that will be facilitated by the State.

#### ***Ad Title IV – Economic Co-operation***

##### **Declaration by South Africa in relation to Sanitary and Phytosanitary Measures**

The South African government wishes to stress that the smooth and efficient functioning of the mechanism for the implementation of sanitary and phytosanitary measures is vital for the successful and effective implementation of this agreement. In this regard, South Africa urges the Community to treat South Africa, as preferred trade partner, as a priority country in its sanitary and phytosanitary dealings.

##### **Joint declaration in relation to Fisheries**

The Parties will make their best endeavours to negotiate and conclude the fisheries agreement referred to in Article 61 of this Agreement no later than the end of the year 2000.

## ***Ad Title VII – Financial aspects of co-operation***

### **Community declaration in relation to financial aspects of co-operation**

In the past a special financial facility was established as the European Programme for Reconstruction and Development (EPRD), under Council Regulation (EC) n° 2259/96. The Community earmarked about ECU 500 Million for this facility over the period 1996-1999 in support of the policies of the Government of South Africa and agreements were signed on this basis. This amount covers four annual appropriations, which are subject to approval by the Community budget authority. The Community declares its willingness to maintain its financial co-operation with South Africa at a substantial level, and will take the necessary decisions in this respect on the basis of a proposal by the Commission.

Other appropriate financial instruments (e.g. in the framework of the EC/ACP Co-operation Agreement) could be made available after this Agreement has entered into force. In this context, the Community would be willing to consider the possibility of channelling part of its future assistance, in a targeted manner (e.g. emerging entrepreneurs), in the form of risk capital or of interest rates subsidies on EIB own-resources lending.

### **Declaration by South Africa in relation to financial aspects of co-operation**

The South African government anticipates that the present level of grant financial co-operation with respect to funding beyond 1999 shall be at least maintained at the same levels.

### **Draft EIB declaration in relation to financial aspects of co-operation**

As set out in the Framework Agreement signed between South Africa and the EIB on 12 September 1995, the EIB was authorised by its Board of Governors on 19 June 1995 to make loans up to a total of ECU 300 million on the Bank's own resources in South Africa over the two year period from 19 June 1995 to 19 June 1997. Under a second authorisation by the Bank's Board of Governors on 12 June 1997 and a supplementary Framework Agreement signed between South Africa and the EIB on 6 March 1998, a further ECU 375 million has been authorised for the period June 1997 to December 1999.

The Article refers to the possible extension of these activities of the Bank at the end of this period.

Within its mandate, the EIB would be willing to consider loans to South African borrowers for projects in South Africa, and, on a case by case basis, for projects in the SADC region.



## ***Ad Title VIII – Final Provisions***

### **Joint declaration in relation to bilateral agreements**

Notwithstanding any implication to the contrary in this agreement, any such rights of one or more Member States of the European Community contained in such existing agreements shall not be construed to have been extended to the other Member States.

### **Joint declaration in relation to illegal immigration**

The parties, recognising the importance of co-operating together for the prevention and control of illegal immigration, declare their readiness to pursue these issues in exchanges within the framework of the Co-operation Council with a view to seeking solutions to problems which would arise in this sector.



**AGREEMENT**  
**ON TRADE, DEVELOPMENT**  
**AND CO-OPERATION**

**BETWEEN**  
**THE EUROPEAN COMMUNITY**  
**AND**  
**THE REPUBLIC OF SOUTH AFRICA**

**Final version – 30.04.99**

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# **TITLE I**

## **GENERAL OBJECTIVES AND PRINCIPLES**

### **Preamble**

THE COUNCIL OF THE EUROPEAN UNION acting on behalf of the European Community and the Commission acting on behalf of the European Coal and Steel Community (hereinafter referred to as "the Community"), of the one part, and

THE GOVERNMENT OF THE REPUBLIC OF SOUTH AFRICA acting on behalf of the Republic of South Africa (hereinafter referred to as "South Africa"), of the other part, hereinafter referred to as the "Parties";

CONSIDERING the importance of the existing links of friendship and co-operation between the Community and South Africa and the common values that the Contracting Parties share;

CONSIDERING that the Community and South Africa wish to further strengthen these links and to establish close and lasting relations based on reciprocity, partnership and co-development;

RECOGNISING the historical achievements of the South African people in abolishing the apartheid system and building a new political order based on the rule of law, human rights and democracy;

RECOGNISING the Community's political and financial support to this process of political change and transition in South Africa;

RECALLING the firm commitment of the Parties to the principles of the United Nations Charter and to democratic principles and fundamental human rights as laid down in the Universal Declaration on Human Rights;

BEARING IN MIND the Co-operation Agreement between South Africa and the European Community which was signed on 10 October 1994;



RECALLING the wish of the Parties to establish the closest possible relationship between South Africa and the countries of the Lomé Convention as reflected in the signing, on 24 April 1997, of the Protocol governing the accession of South Africa to the revised Fourth ACP-EC Convention of Lomé.

TAKING ACCOUNT of the Parties' rights and obligations in terms of their membership of the World Trade Organisation, the need to contribute to the implementation of the results of the Uruguay Round, and the efforts already made by both parties in this respect;

RECALLING the importance attached by the Parties to the principles and rules which govern international trade and to the need to apply them in a transparent and non-discriminatory manner;

CONFIRMING the Community's support and encouragement for the process of trade liberalisation and economic restructuring currently under way in South Africa;

RECOGNISING the efforts by the South African government to ensure economic and social development for the people of South Africa;

EMPHASISING the importance both the European Union and South Africa place on the successful implementation of the South African Reconstruction and Development Programme;

CONFIRMING the commitment of the Parties to promote regional co-operation and economic integration between the countries of Southern Africa, and to encourage the liberalisation of trade between those countries;

BEARING IN MIND The Parties' commitment to ensure that their mutual arrangements do not impede the process of restructuring the Southern African Customs Union, which links South Africa to four ACP States;

UNDERLINING the importance which the Parties attach to the values and principles set out in the Final Declarations of the International Conference on Population and Development held in Cairo in 1994, of the World Summit for Social Development held in Copenhagen in March 1995, and of the Fourth World Conference on Women held in Beijing in 1995;

REAFFIRMING the commitment of the parties to economic and social development and the respect for the fundamental rights of workers, notably by promoting the relevant ILO Conventions covering such topics as the freedom of association, the right to collective bargaining and non-discrimination; the abolition of forced labour and child labour;

HAVE AGREED AS FOLLOWS

## **Article 1**

### **Objectives**

The objectives of this Agreement are:

- (a) to provide an appropriate framework for dialogue between the parties, promoting the development of close relations in all areas covered by this Agreement;
- (b) to support the efforts made by South Africa to consolidate the economic and social foundations of its transition process;
- (c) to promote regional co-operation and economic integration in the Southern African region to contribute to its harmonious and sustainable economic and social development;
- (d) to promote the expansion and reciprocal liberalisation of mutual trade in goods, services and capital;
- (e) to encourage the smooth and gradual integration of South Africa into the world economy;
- (f) to promote co-operation between the European Community and South Africa within the bounds of their respective powers, in their mutual interest.

## **Article 2**

### **Essential element**

Respect for democratic principles and fundamental Human Rights as laid down in the Universal Declaration on Human Rights, as well as for the principles of the rule of law underpins the internal and international policies of the Community and of South Africa and constitutes an essential element of this agreement.

The contracting parties also reaffirm their attachment to the principles of good governance.

### **Article 3**

#### **Non-execution**

- (1) If either Party considers that the other has failed to fulfil an obligation under this agreement, it may take appropriate measures.
- (2) Before doing so it shall supply the other Party, within 30 days, with all relevant information required for a thorough examination of the situation, with a view to seeking a solution acceptable to the Parties.
- (3) In circumstances of particular urgency, appropriate measures may be taken without prior consultations. These measures shall be immediately notified to the other Party and shall be a subject of consultations, if the other party so requests. These consultations shall be convoked within 30 days from the notification of the measures. If no satisfactory solution is found, the Party concerned may avail itself of the procedure relating to the settlement of disputes.
- (4) The Parties agree, for the purpose of the correct interpretation and practical application of this Agreement, that the term “circumstances of particular urgency” in paragraph (3) means a case of the material breach of the Agreement by one of the Parties. A material breach of the Agreement consists in (i) repudiation of the Agreement not sanctioned by the general rules of international law, or (ii) violation of the essential elements of the Agreement, as described in the previous Article.
- (5) The Parties agree that the appropriate measures referred to in paragraph (1) of this Article are those taken in accordance with international law and in the selection of these measures, priority must be given to those which least disturb the functioning of this Agreement.

# **TITLE II**

## **TRADE**

### **GENERAL**

#### **Article 4**

##### **Free Trade Area**

- (1) The European Community and the Republic of South Africa agree to establish a Free Trade Area (FTA) in accordance with the provisions of this Agreement and in conformity with those of the WTO.
- (2) The FTA will be established over a transitional period lasting, on the SA side, a maximum of twelve years and, on the Community side, a maximum of ten years starting from the entry into force of the Agreement.
- (3) The FTA covers the free movement of goods in all sectors. This Agreement will also cover the liberalisation of trade in services and the free movement of capital.

#### **Article 5**

##### **Classification of goods**

On the Community side, the combined nomenclature of goods shall apply to the classification of goods imported from South Africa. On the SA side, the harmonised system shall apply to the classification of goods imported from the Community.

#### **Article 6**

##### **Basic duty**

- (1) For each product, the basic duty to which the successive reductions set out in the Agreement are to be applied shall be that effectively applied on the day of entry into force of the Agreement.
- (2) The Community and South Africa shall communicate to each other their respective basic duties, in accordance with the standstill and rollback commitment agreed between the Parties, and the agreed derogations to these principles, as set out in Annex I.
- (3) In cases where the process of tariff dismantlement does not start at the entry into force of the agreement (notably the products listed in Annex II,

list 3, 4 and 5; Annex III, list 2, 3, 4 and 6; Annex IV, list 3, 4, 7 and 8; Annex V; Annex VI, list 2,3 and 5; Annex VII) the duty to which successive reductions set out in the Agreement are to be applied shall be either the basic duty referred to in paragraph (1) of this Article, or the duty applied on an erga omnes basis on the starting day of the relevant tariff dismantlement schedule, whichever is the lower.

## **Article 7**

### **Customs duties of a fiscal nature**

The provisions concerning the abolition of customs duties on imports shall also apply to customs duties of a fiscal nature, with the exception of non-discriminatory excise duties levied on both imported and locally produced goods which are in accordance with the provisions of Article 20 of this Agreement.

## **Article 8**

### **Charges having an equivalent effect to customs duties**

The Community and South Africa shall abolish in their respective imports any charge having an effect equivalent to customs duties on imports upon entry into force of the Agreement.

## **INDUSTRIAL PRODUCTS**

## **Article 9**

### **Definition**

The provisions of this chapter apply to products originating in the European Community and the Republic of South Africa with the exception of the products covered by the definition of agricultural products under this Agreement.

## **Article 10**

### **Tariff elimination by European Community**

- (1) Customs duties applicable on import into the European Community of industrial products originating in the Republic of South Africa other than those listed in Annex II shall be abolished upon the entry into force of this Agreement.

- (2) Customs duties applicable on import into the European Community of products originating in the Republic of South Africa listed in Annex II list 1 shall be progressively abolished in accordance with the following schedule:

on the date of entry into force of this Agreement each duty shall be reduced to 75% of the basic duty;

one year after the date of entry into force of this Agreement each duty shall be reduced to 50% of the basic duty;

two years after the date of entry into force of this Agreement each duty shall be reduced to 25% of the basic duty;

three years after the date of entry into force of this Agreement the remaining duties shall be abolished.

- (3) Customs duties applicable on import into the European Community of products originating in the Republic of South Africa listed in Annex II list 2 shall be progressively abolished in accordance with the following schedule:

on the date of entry into force of this Agreement each duty shall be reduced to 86% of the basic duty;

one year after the date of entry into force of this Agreement each duty shall be reduced to 72% of the basic duty;

two years after the date of entry into force of this Agreement each duty shall be reduced to 57% of the basic duty;

three years after the date of entry into force of this Agreement each duty shall be reduced to 43% of the basic duty;

four years after the date of entry into force of this Agreement each duty shall be reduced to 28% of the basic duty;

five years after the date of entry into force of this Agreement each duty shall be reduced to 14% of the basic duty;

six years after the date of entry into force of this Agreement the remaining duties shall be abolished.

- (4) Customs duties applicable on import into the European Community of products originating in the Republic of South Africa listed in Annex II list 3 shall be progressively abolished in accordance with the following schedule:

three years after the date of entry into force of this Agreement each duty shall be reduced to 75% of the basic duty;

four years after the date of entry into force of this Agreement each duty shall be reduced to 50% of the basic duty;

five years after the date of entry into force of this Agreement each duty shall be reduced to 25% of the basic duty;

six years after the date of entry into force of this Agreement the remaining duties shall be abolished.

For a number of products indicated in this list, tariff elimination will start four years after the date of entry into force of this agreement. Tariff elimination of these products will take place in three equal annual reductions, to be concluded six years after the date of entry into force of the Agreement.

For a certain number of steel products indicated in this list, tariff reduction will be realised on a MFN basis, to arrive at a zero duty in the year 2004.

- (5) Customs duties applicable on import into the European Community of products originating in the Republic of South Africa listed in Annex II list 4 shall be abolished within a maximum of ten years after the date of entry into force of the Agreement.

For motorcar components indicated in this list, the applied tariff will be reduced by 50% as from the entry into effect of the agreement.

The precise European Community basic duties and tariff elimination schedule for the products on this list will be established in the second semester of the year 2000, after both parties have examined the prospects for a further liberalisation of South African imports of automotive from the Community mentioned in Annex III list 5 and 6, in the light of – inter alia – the outcome of South African Motor Industry Development Programme review.

- (6) Customs duties applicable on import into the European Community of products originating in the Republic of South Africa listed in Annex II list 5 shall be reviewed in the fifth year of this Agreement in view of a possible elimination of tariffs.

## **Article 11**

### **Tariff elimination by the Republic of South Africa**

- (1) Customs duties applicable on import into South Africa of industrial products originating in the Community other than those listed in Annex III shall be abolished upon the entry into force of this Agreement.
- (2) Customs duties applicable on import into South Africa of products originating in the Community listed in Annex III list 1 shall be progressively abolished in accordance with the following schedule:
- on the date of entry into force of this Agreement each duty shall be reduced to 75% of the basic duty;
- one year after the date of entry into force of this Agreement each duty shall be reduced to 50% of the basic duty;

two years after the date of entry into force of this Agreement each duty shall be reduced to 25% of the basic duty;

three years after the date of entry into force of this Agreement the remaining duties shall be abolished.

- (3) Customs duties applicable on import into South Africa of products originating in the Community listed in Annex III list 2 shall be progressively abolished in accordance with the following schedule:

three years after the date of entry into force of this Agreement each duty shall be reduced to 67% of the basic duty;

four years after the date of entry into force of this Agreement each duty shall be reduced to 33% of the basic duty;

five years after the date of entry into force of this Agreement the remaining duties shall be abolished.

- (4) Customs duties applicable on import into South Africa of products originating in the Community listed in Annex III list 3 shall be progressively abolished in accordance with the following schedule:

three years after the date of entry into force of this Agreement each duty shall be reduced to 90% of the basic duty;

four years after the date of entry into force of this Agreement each duty shall be reduced to 80% of the basic duty;

five years after the date of entry into force of this Agreement each duty shall be reduced to 70% of the basic duty;

six years after the date of entry into force of this Agreement each duty shall be reduced to 60% of the basic duty;

seven years after the date of entry into force of this Agreement each duty shall be reduced to 50% of the basic duty;

eight years after the date of entry into force of this Agreement each duty shall be reduced to 40% of the basic duty;

nine years after the date of entry into force of this Agreement each duty shall be reduced to 30% of the basic duty;

ten years after the date of entry into force of this Agreement each duty shall be reduced to 20% of the basic duty;

eleven years after the date of entry into force of this Agreement each duty shall be reduced to 10% of the basic duty;

twelve years after the date of entry into force of this Agreement the remaining duties shall be abolished.

- (5) Customs duties applicable on import into South Africa of products originating in the Community listed in Annex III list 4 shall be progressively abolished in accordance with the following schedule:



five years after the date of entry into force of this Agreement each duty shall be reduced to 88% of the basic duty;

six years after the date of entry into force of this Agreement each duty shall be reduced to 75% of the basic duty;

seven years after the date of entry into force of this Agreement each duty shall be reduced to 63% of the basic duty;

eight years after the date of entry into force of this Agreement each duty shall be reduced to 50% of the basic duty;

nine years after the date of entry into force of this Agreement each duty shall be reduced to 38% of the basic duty;

ten years after the date of entry into force of this Agreement each duty shall be reduced to 25% of the basic duty;

eleven years after the date of entry into force of this Agreement each duty shall be reduced to 13% of the basic duty;

twelve years after the date of entry into force of this Agreement the remaining duties shall be abolished.

- (6) Customs duties applicable on import into South Africa of products originating in the Community listed in Annex III list 5 shall be progressively reduced according to the schedule included in the annex.
- (7) Customs duties applicable on import into South Africa of products originating in the Community listed in Annex III list 6 shall be periodically reviewed in the course of the operation of the Agreement in view of the further liberalisation of trade.

South Africa will inform the Community about the outcome of the South African Motor Industry Development Programme review. It will present proposals for a further liberalisation of South African imports of automotive products from the Community mentioned in Annex III lists 5 and 6. The parties will jointly examine these proposals in the second semester of the year 2000.

## **AGRICULTURAL PRODUCTS**

### **Article 12**

#### **Definition**

The provisions of this chapter apply to products originating in the European Community and the Republic of South Africa covered by the WTO definition of agricultural products as well as fish and fisheries products (chapter 3, 1604, 1605 and products 05119110, 05119190, 19022010 and 23012000).

## **Article 13**

### **Tariff elimination by European Community**

- (1) Customs duties applicable on import into the European Community of agricultural products originating in the Republic of South Africa other than those listed in Annex IV shall be abolished upon the entry into force of this Agreement.
- (2) Customs duties applicable on import into the European Community of products originating in the Republic of South Africa listed in Annex IV list 1 shall be progressively abolished in accordance with the following schedule:
  - on the date of entry into force of this Agreement each duty shall be reduced to 75% of the basic duty;
  - one year after the date of entry into force of this Agreement each duty shall be reduced to 50% of the basic duty;
  - two years after the date of entry into force of this Agreement each duty shall be reduced to 25% of the basic duty;
  - three years after the date of entry into force of this Agreement the remaining duties shall be abolished.
- (3) Customs duties applicable on import into European Community of products originating in the Republic of South Africa listed in Annexes IV list 2 shall be progressively abolished in accordance with the following schedule:
  - on the date of entry into force of this Agreement each duty shall be reduced to 91% of the basic duty;
  - one year after the date of entry into force of this Agreement each duty shall be reduced to 82% of the basic duty;
  - two years after the date of entry into force of this Agreement each duty shall be reduced to 73% of the basic duty;
  - three years after the date of entry into force of this Agreement each duty shall be reduced to 64% of the basic duty;
  - four years after the date of entry into force of this Agreement each duty shall be reduced to 55% of the basic duty;
  - five years after the date of entry into force of this Agreement each duty shall be reduced to 45% of the basic duty;
  - six years after the date of entry into force of this Agreement each duty shall be reduced to 36% of the basic duty;
  - seven years after the date of entry into force of this Agreement each duty shall be reduced to 27% of the basic duty;

eight years after the date of entry into force of this Agreement each duty shall be reduced to 18% of the basic duty;

nine years after the date of entry into force of this Agreement each duty shall be reduced to 9% of the basic duty;

ten years after the date of entry into force of this Agreement the remaining duties shall be abolished.

- (4) Customs duties applicable on import into the European Community of products originating in the Republic of South Africa listed in Annex IV list 3 shall be progressively abolished in accordance with the following schedule:

three years after the date of entry into force of this Agreement each duty shall be reduced to 87% of the basic duty;

four years after the date of entry into force of this Agreement each duty shall be reduced to 75% of the basic duty;

five years after the date of entry into force of this Agreement each duty shall be reduced to 62% of the basic duty;

six years after the date of entry into force of this Agreement each duty shall be reduced to 50% of the basic duty;

seven years after the date of entry into force of this Agreement each duty shall be reduced to 37% of the basic duty;

eight years after the date of entry into force of this Agreement each duty shall be reduced to 25% of the basic duty;

nine years after the date of entry into force of this Agreement each duty shall be reduced to 12% of the basic duty;

ten years after the date of entry into force of this Agreement the remaining duties shall be abolished.

For certain products indicated in this annex a duty free quota will apply, in accordance with the conditions there mentioned, as from entry into force of the agreement until the end of the tariff phase down for these products.

- (5) Customs duties applicable on import into the European Community of products originating in the Republic of South Africa listed in Annex IV list 4 shall be progressively abolished in accordance with the following schedule:

five years after the date of entry into force of this Agreement each duty and charge shall be reduced to 83% of the basic duty;

six years after the date of entry into force of this Agreement each duty and charge shall be reduced to 67% of the basic duty;

seven years after the date of entry into force of this Agreement each duty and charge shall be reduced to 50% of the basic duty;

eight years after the date of entry into force of this Agreement each duty and charge shall be reduced to 33% of the basic duty;

nine years after the date of entry into force of this Agreement each duty and charge shall be reduced to 17% of the basic duty;

ten years after the date of entry into force of this Agreement the remaining duties shall be abolished.

For certain products indicated in this annex a duty free quota will apply, in accordance with the conditions there mentioned, as from entry into force of the agreement until the end of the tariff phase down for these products.

- (6) Customs duties applicable to processed agricultural products imported into the Community and originating in the Republic of South Africa are listed in Annex IV list 5, and will be applied in accordance with the conditions mentioned therein.

The Co-operation Council may decide on (a) the extension of the list of processed agricultural products under Annex IV, list 5, and (b) the reduction of the duties applying to processed agricultural products. This reduction of duties may take place when in trade between the Community and South Africa the duties applying to basic products are reduced or, in response to reductions resulting from the mutual concessions relating to processed agricultural products.

- (7) Reduced customs duties applicable to certain agricultural products imported into the Community and originating in the Republic of South Africa are listed in Annex IV list 6, and will be applied as from entry into force of this agreement and in accordance with the conditions mentioned in this Annex.
- (8) Customs duties applicable on import into the European Community of products originating in the Republic of South Africa listed in Annex IV list 7 shall be reviewed periodically in the course of the operation of the Agreement in function of future developments in the Common Agricultural Policy.
- (9) Tariff concessions on products listed in Annex IV list 8 are not applicable as these products are covered by protected EU denominations.
- (10) Tariff concessions applicable on import into the European Community of products originating in the Republic of South Africa listed in Annex V will be applied in accordance with the conditions mentioned therein.

## **Article 14**

### **Tariff elimination by the Republic of South Africa**

- (1) Customs duties applicable on import into South Africa of agricultural products originating in the Community other than those listed in Annex VI shall be abolished upon the entry into force of this Agreement.

- (2) Customs duties applicable on import into South Africa of products originating in the Community listed in Annex VI list 1 shall be progressively abolished in accordance with the following schedule:

on the date of entry into force of this Agreement each duty shall be reduced to 75% of the basic duty;

one year after the date of entry into force of this Agreement each duty shall be reduced to 50% of the basic duty;

two years after the date of entry into force of this Agreement each duty shall be reduced to 25% of the basic duty;

three years after the date of entry into force of this Agreement the remaining duties shall be abolished.

- (3) Customs duties applicable on import into South Africa of products originating in the Community listed in Annex VI list 2 shall be progressively abolished in accordance with the following schedule:

three years after the date of entry into force of this Agreement each duty shall be reduced to 67% of the basic duty;

four years after the date of entry into force of this Agreement each duty shall be reduced to 33% of the basic duty;

five years after the date of entry into force of this Agreement the remaining duties shall be abolished.

- (4) Customs duties applicable on import into South Africa of products originating in the Community listed in Annex VI list 3 shall be progressively abolished in accordance with the following schedule:

five years after the date of entry into force of this Agreement each duty shall be reduced to 88% of the basic duty;

six year after the date of entry into force of this Agreement each duty shall be reduced to 75% of the basic duty;

seven years after the date of entry into force of this Agreement each duty shall be reduced to 63% of the basic duty;

eight years after the date of entry into force of this Agreement each duty shall be reduced to 50% of the basic duty;

nine years after the date of entry into force of this Agreement each duty shall be reduced to 38% of the basic duty;

ten years after the date of entry into force of this Agreement each duty shall be reduced to 25% of the basic duty;

eleven years after the date of entry into force of this Agreement each duty shall be reduced to 13% of the basic duty;

twelve years after the date of entry into force of this Agreement the remaining duties shall be abolished.

For certain products indicated in this annex a duty free quota will apply, in accordance with the conditions there mentioned, as from entry into force of the agreement until the end of the tariff phase down for these products.

- (5) Customs duties applicable on import into South Africa of products originating in the Community listed in Annex VI list 4 shall be reviewed periodically in the course of the operation of the Agreement.
- (6) Customs duties applicable on import into South Africa of fisheries products originating in the Community listed in Annex VII shall be progressively abolished in parallel to the elimination of customs duties of the corresponding tariffs positions by the Community.

## **Article 15**

### **Agricultural Safeguard**

Notwithstanding other provisions of this Agreement and in particular Article 23, if, given the particular sensitivity of the agricultural markets, imports of products originating in one Party causes or threatens to cause a serious disturbance to the markets in the other Party, the Co-operation Council shall immediately consider the matter to find an appropriate solution. Pending a decision by the Co-operation Council, and where exceptional circumstances require immediate action, the affected Party may take provisional measures necessary to limit or redress the disturbance. In taking such provisional measures, the affected Party will take into account the interests of both Parties.

## **Article 16**

### **Accelerated tariff elimination by the Republic of South Africa**

- (1) If requested by the Republic of South Africa, the European Community will consider proposals relating to an accelerated timetable for tariff elimination for imports of agricultural products into South Africa, coupled with the elimination of all export refunds for exports to South Africa of the same products originating in the European Community.
- (2) If the European Community replies positively to this request, the new timetables for tariff elimination and elimination of export refunds will simultaneously apply as of a date to be agreed by the two parties.
- (3) In case of a negative response from the European Community, the provisions of the present agreement on tariff elimination will continue to be applicable.

## **Article 17**

### **Review Clause**

No later than five years after the entry into force of this Agreement, the Community and South Africa will consider further steps in the process of liberalisation of their reciprocal trade. For this purpose, a review will be undertaken of, in particular but not exclusively, the customs duties applicable to products listed in Annex II list 5, Annex III list 5 and 6, Annex IV list 5,6,7, Annex V list 1, 2, 3 and 4, Annex VI list 4 and 5 and Annex VII.

# **TITLE III**

## **TRADE RELATED ISSUES**

### **SECTION A - COMMON PROVISIONS**

#### **Article 18**

##### **Border measures**

- (1) Quantitative restrictions on imports or exports and measures having equivalent effect on trade between the Republic of South Africa and the Community shall be abolished upon the entry into force of this Agreement.
- (2) No new quantitative restrictions on imports or exports or measures having equivalent effect shall be introduced in trade between the Community and the Republic of South Africa
- (3) No new customs duties on imports or exports or charges having equivalent effect shall be introduced, nor shall those already applied be increased, in the trade between the Community and South Africa from the date of entry into force of this Agreement.

#### **Article 19**

##### **Agricultural policies**

- (1) The Parties may have regular consultations in the Co-operation Council on the strategy and practical modalities of their respective agricultural policies.
- (2) If either Party, in pursuit of their respective agricultural policies, consider it necessary to amend the arrangements laid down in this Agreement it will notify the Co-operation Council, which decides on the requested modification.
- (3) If the Community or South Africa, in applying paragraph 2, amends the arrangements made by this Agreement for agricultural products, it shall make adjustments to be agreed upon by the Co-operation Council so as to maintain the concessions on imports originating in the other Party at an equivalent level to that provided for in this agreement.



## **Article 20**

### **Fiscal measures**

- (1) The Parties shall refrain from any measure or practice of an internal fiscal nature establishing, whether directly or indirectly, discrimination between the products of one Party and products originating in the territory of the other Party.
- (2) Products exported to the territory of one of the Parties may not benefit from repayment of indirect internal taxation in excess of the amount of indirect taxation imposed on them directly or indirectly.

## **Article 21**

### **Customs Unions and Free Trade Areas**

- (1) The Agreement shall not preclude the maintenance or establishment of customs unions, free trade areas or other arrangements between either of the parties and third countries, except insofar as they alter the rights and obligations provided for in this Agreement.
- (2) Consultation between the Community and the Republic of South Africa shall take place within the Co-operation Council concerning agreements establishing or adjusting customs unions or free trade areas and, where required, on other major issues related to their respective trade policy with third countries. In particular, in the event of a third country acceding to the EU, such consultation shall take place so as to ensure that account can be taken of the mutual interests of the Community and the Republic of South Africa.

## **Article 22**

### **Anti-dumping and countervailing measures**

- (1) Nothing in this Agreement shall prejudice or affect in any way the taking, by either Party, of anti-dumping or countervailing measures in accordance with Article VI of the GATT 1994, the Agreement on Implementation of Article VI of the GATT 1994, the Agreement on Subsidies and Countervailing measures, annexed to the Marrakech Agreement establishing the WTO.
- (2) Before definitive anti-dumping and countervailing duties are imposed in respect of products imported from the Republic of South Africa, the Parties may consider the possibility of constructive remedies as provided for in the Agreement on Implementation of Article VI of the GATT 1994 and the Agreement on Subsidies and Countervailing Measures.

## **Article 23**

### **Safeguard Clause**

- (1) Where any product is being imported in such increased quantities and under such conditions as to cause or threaten to cause serious injury to domestic producers of like or directly competitive products in the territory of one of the Contracting Parties, the Community or the Republic of South Africa, whichever is concerned, may take appropriate measures under the conditions provided for in the WTO Agreement on Safeguards or the Agreement on Agriculture annexed to the Marrakech Agreement establishing the WTO and in accordance with the procedures laid down in Article 25.
- (2) Where any product is being imported in such increased quantities and under such conditions as to cause or threaten to cause serious deterioration in the economic situation of the European Union's outermost regions, the European Union, after having examined alternative solutions, may exceptionally take surveillance or safeguard measures limited to the region(s) concerned, in accordance with the procedures laid down in Article 25.
- (3) Where any product is being imported in such quantities and under such conditions as to cause or threaten to cause serious deterioration in the economic situation of one or more of the other Members of the Southern African Customs Union, South Africa, at the request of the country or countries concerned, and after having examined alternative solutions, may exceptionally take surveillance or safeguard measures in accordance with the procedures laid down in Article 25.

## **Article 24**

### **Transitional Safeguard Measures**

- (1) Notwithstanding the provisions of Article 23, exceptional measures of limited duration which derogate from the provisions of Articles 11 and 14 may be taken by South Africa in the form of an increase or reintroduction of customs duties.
- (2) These measures may only concern infant industries or sectors facing serious difficulties caused by increased imports originating in the European Community as a result of the reduction of duties envisaged under Articles 11 and 14, particularly where these difficulties produce major social problems.

- (3) Customs duties on imports applicable in South Africa to products originating in the European Union introduced by these measures may not exceed the level of the basic duty or the applied MFN rates of duty or 20% ad valorem, whichever is the lower, and shall maintain an element of preference for products originating in the European Community. The total value of all imports of the products which are subject to these measures may not exceed 10% of total imports of industrial products from the European Community during the last year for which statistics are available.
- (4) These measures shall be applied for a period not exceeding four years. They shall cease to apply at the latest on the expiry of the maximum transitional period of twelve years. These time limits may exceptionally be extended by decision of the Co-operation Council.
- (5) No such measures can be introduced in respect of a product if more than three years have elapsed since the elimination of all duties and quantitative restrictions or charges or measures having an equivalent effect concerning that product.
- (6) South Africa shall notify the Co-operation Council of the exceptional measures it intends to take and, at the request of the European Community, consultations shall be held on such measures before they are applied in order to reach a satisfactory solution. Its notification shall include an indicative schedule for the introduction and subsequent elimination of the customs duties to be imposed.
- (7) If no agreement on the proposed measures referred to in paragraph 6 has been reached within 30 days of such notification, South Africa may take the appropriate measures to remedy the problem and shall provide the Co-operation Council with the definite schedule for the elimination of the customs duties introduced under this article. This schedule shall provide for a phasing out of these duties at equal annual rates starting at the latest one year after their introduction. The Co-operation Council may decide on a different schedule.

## **Article 25**

### **Safeguard procedures**

- (1) In the event of the European Community or the Republic of South Africa initiating a surveillance mechanism in respect of difficulties referred to in Article 23 which has as its purpose the rapid provision of information on the trend of trade flows, it shall inform the other Party thereof and, if requested, enter into consultations with it.
- (2) In the cases specified in Article 23, before taking the measure provided for therein or, in cases to which sub-clause 5(b) of this Article apply, the Community or the Republic of South Africa, as the case may be, shall as soon as possible supply the Co-operation Council with all relevant information, with the view to seeking a solution acceptable to both Parties.
- (3) In the selection of measure, priority must be given to those which least disturb the functioning of this Agreement and they shall be limited to the extent necessary to prevent or remedy serious injury and to facilitate adjustment.
- (4) The safeguard measures shall be notified immediately to the Co-operation Council and shall be the subject of periodic consultations within that body, particularly with a view to establishing a timetable for their abolition as soon as circumstances permit.
- (5) For the implementation of the previous paragraphs the following provisions shall apply:
  - (a) As regards Article 23, difficulties arising from the situation referred to in that Article shall be referred for examination to the Co-operation Council, which may take any decision needed to put an end to such difficulties. If the Co-operation Council or the exporting Party has not taken a decision putting an end to the difficulties or no other satisfactory solution has been reached within 30 days of the matter being so referred, the importing Party may adopt appropriate measures to remedy the problem. Such measures should be taken for a period not exceeding 3 years and shall contain elements which would degressively lead to their elimination at the end of the set period, at the latest.
  - (b) where exceptional circumstances requiring immediate action make prior information or examination, as the case may be, impossible, the Community or the Republic of South Africa, whichever is concerned, may, in the situations specified in Article 23, apply forth with the precautionary measures necessary to deal with the situation and shall inform the other Party immediately thereof.

## **Article 26**

### **Exceptions**

The agreement shall not preclude prohibitions or restrictions on imports, exports, goods in transit or trade in used goods justified on grounds of public morality, public policy or public security; the protection of health and life of humans, animals or plants; the protection of national treasures of artistic, historic or archaeological value or the protection of intellectual, industrial and commercial property or rules relating to gold and silver. Such prohibitions or restrictions shall not, however, constitute a means of arbitrary or unjustifiable discrimination where the same conditions prevail or a disguised restriction on trade between the Parties.

## **Article 27**

### **Rules of origin**

The rules of origin for the application of tariff preferences provided for in this agreement are laid down in Protocol 1.

**SECTION B -**  
**RIGHT OF ESTABLISHMENT**  
**AND SUPPLY OF SERVICES**

**Article 28**

**Reconfirmation of GATS obligations**

- (1) In recognition of the growing importance of services for the development of their economies, the Parties, within the limits of their respective competencies, underline the importance of strict observance of the General Agreement on Trade in Services (GATS), in particular its principle on most-favoured-nation treatment, and including its applicable protocols with annexed commitments.
- (2) In accordance with the GATS, this treatment shall not apply to:
  - (a) advantages accorded by either Party under the provisions of an agreement as defined in Article V of the GATS or under measures adopted on the basis of such an agreement;
  - (b) other advantages accorded pursuant to the list of most-favoured-nation exemptions annexed by either Party to the GATS.
- (3) The Parties reaffirm their respective commitments as annexed to the fourth protocol to the GATS concerning basic telecoms and the fifth protocol concerning financial services.

**Article 29**

**Further liberalisation of supply of services**

- (1) Within the limits of their respective competencies, the Parties will endeavour to extend the scope of the Agreement with a view to further liberalising trade in services between the Parties. In the event of such an extension, the liberalisation process shall provide for the absence or elimination of substantially all discrimination between the Parties in the services sectors covered and should cover all modes of supply including the supply of a service :
  - (a) from the territory of one Party into the territory of the other ;
  - (b) in the territory of one Party to the service consumer of the other ;

- (c) by a service supplier of one Party, through commercial presence in the territory of the other ;
  - (d) by a service supplier of one Party, through presence of natural persons of that Party in the territory of the other.
- (2) The Co-operation Council shall make the necessary recommendations for the implementation of the objective foreseen in paragraph 1.
  - (3) When formulating these recommendations, the Co-operation Council shall take into account the experience gained by the implementation of the obligations of each Party under the GATS, with particular reference to Article V generally and especially paragraph 3(a) thereof covering the participation of developing countries in liberalisation agreements.
  - (4) The objective foreseen in paragraph 1 shall be subject to a first examination by the Co-operation Council e at the latest five years after the entry-into-force of this Agreement.

## **Article 30**

### **Maritime Transport**

- (1) The Parties shall endeavour to apply effectively the principle of unrestricted access to the international maritime market and traffic based on fair competition on a commercial basis.
- (2) The Parties agree to extend to each other's nationals and the vessels registered in the territory of either of the Parties treatment no less favourable than that granted to the most favoured nation in respect of the maritime transport of goods, passengers or both, access to ports, the use of infrastructure and auxiliary maritime services of those ports and related fees and charges, customs facilities and the assignment of berths and facilities for loading and unloading, based on fair competition and on commercial terms.
- (3) The Parties agree to consider maritime transport, including intermodal operations, in the context of Article 29, without prejudice to nationality restrictions or agreements entered into by either Party, which exist at that time and which would be consistent with the Parties' rights and obligations under the GATS agreement.

**SECTION C -**  
**CURRENT PAYMENTS**  
**AND MOVEMENT OF CAPITAL**

**Article 31**

**Current payments**

- (1) Subject to the provisions of Article 33, the Parties undertake to allow all payments for current transactions between residents of the Community and of South Africa to be made in freely convertible currency.
- (2) South Africa may take the necessary measures to ensure that the provisions of clause 1 above, which liberalise current payments, are not used by its residents to make unauthorised capital outflows.

**Article 32**

**Capital movements**

- (1) With regard to transactions on the capital account of balance of payments, the Community and South Africa shall ensure, from the entry into force of this Agreement, that capital relating to direct investments in South Africa in companies formed in accordance with current laws can move freely, and that such investment and any profit stemming therefrom can be liquidated and repatriated.
- (2) The Parties shall consult each other with a view to facilitating and eventually achieving full liberalisation of the movement of capital between the Community and South Africa.

**Article 33**

**Balance of Payment difficulties**

Where one or more Member States of the Community, or South Africa, is in serious balance of payments difficulties, or under threat thereof, the Community or South Africa, as the case may be, may, in accordance with the conditions established under the General Agreement on Tariffs and Trade and Articles VIII and XIV of the Articles of Agreement of the International Monetary Fund, adopt restrictions on current transactions which shall be of limited duration and may not go beyond what is necessary to remedy the balance of payments situation. The Community or South Africa, as the case may be, shall inform the other Party forthwith and shall submit to it as soon as possible a timetable for the elimination of the measures concerned.



## **SECTION D-A – COMPETITION POLICY**

### **Article 34**

#### **Definition**

The following are incompatible with the proper functioning of this Agreement, insofar as they may affect trade between the Community and South Africa

- (a) Agreements and concerted practices between firms in horizontal relationships, decisions by associations of firms, and agreements between firms in vertical relationships, which have the effect of substantially preventing or lessening competition in the territory of the Community or of South Africa, unless the firms can demonstrate that the anti-competitive effects are outweighed by pro-competitive ones;
- (b) abuse by one or more firms of market power in the territory of the Community or of South Africa as a whole or in a substantial part thereof.

### **Article 35**

#### **Implementation**

If, at the entry into force of this agreement, either Party has not yet adopted the necessary laws and regulations for the implementation of Article 34, in their jurisdictions it shall do so within a period of three years.

### **Article 36**

#### **Appropriate measures**

If the Community or South Africa considers that a particular practice in its domestic market is incompatible with the terms of Article 34, and:

- (a) is not adequately dealt with under the implementing rules referred to in Article 35, or

- (b) in the absence of such rules, and if such practice causes or threatens to cause serious prejudice to the interests of the other Party or material injury to its domestic industry, including its services industry,

the party concerned may take appropriate measures consistent with its own laws, after consultation within the Co-operation Council, or after 30 working days following referral for such consultation. The appropriate measures to be taken shall respect the competencies of the Competition Authority concerned.

## Article 37

### **Comity**

- (a) The Parties agree that, whenever the Commission or the South African Competition Authority has reason to believe that anti-competitive practices, found under Article 34, are taking place within the territory of the other authority and are substantially affecting important interests of the Parties, it may request the other Party's competition authority to take appropriate remedial action in terms of that authority's rules governing competition.
- (b) Such a request shall not prejudice any action under the requesting authority's competition laws that may be deemed necessary and shall not in any way encumber the addressed authority's decision-making powers or its independence.
- (c) Without prejudice to its respective functions, rights obligations or independence, the competition authority so addressed shall consider and give careful attention to the views expressed and documentation provided by the requesting authority and, in particular, pay heed to the nature of the anti-competitive activities in question, the firm or firms involved, and the alleged harmful effect on the important interests of the aggrieved Party.
- (d) When the Commission or the Competition Authority of South Africa decides to conduct an investigation or intends to take any action that may have important implications for the interests of the other Party, the Parties must consult, upon the request of either Party and both shall endeavour to find a mutually acceptable solution in the light of their respective important interests, giving due regard to each other's laws, sovereignty, the independence of the respective competition authorities and to considerations of comity.

## **Article 38**

### **Technical assistance**

The Community shall provide South Africa with technical assistance in the restructuring of its competition law and policy, which may include i.a.:

- (a) the exchange of experts;
- (b) organisation of seminars;
- (c) training activities.

## **Article 39**

### **Information**

The Parties shall exchange information taking into account the limitations imposed by the requirements of professional and business secrecy.

## **SECTION D-B – PUBLIC AID**

### **Article 40**

#### **Public aid**

- (1) In so far as it may affect trade between the Community and South Africa, public aid favouring certain firms or the production of certain goods, which distorts or threatens to distort competition, and which does not support a specific public policy objective or objectives of either Party, is incompatible with the proper functioning of this Agreement.
- (2) The Parties agree that it is in their interests to ensure that public aid is granted in a fair, equitable and transparent manner.

### **Article 41**

#### **Remedial measures**

- (1) If the Community or South Africa considers that a particular practice is incompatible with the terms of Article 40, and that such practice causes or threatens to cause serious prejudice to the interests of the other Party or material injury to its domestic industry, the Parties agree, where it is not adequately dealt with under existing rules and procedures, to enter into consultations with a view to finding a mutually satisfactory solution. Such consultations will be without prejudice to the Parties' rights and obligations in terms of their respective laws and international commitments.
- (2) Either Party may invite the Co-operation Council to examine, in the context of such consultation, the Parties' public policy objectives justifying the grant of public aid referred to in Article 40.

### **Article 42**

#### **Transparency**

Each Party shall ensure transparency in the area of public aid. In particular, where a Party so requests, the other Party shall provide information on aid schemes, on particular individual cases of public aid, or on the total amount and the distribution of aid given. The exchange of information between the Parties shall take into account the limitations

imposed by either Party's laws relating to the requirements of business and professional secrecy.

### **Article 43**

#### **Review**

- (1) In the absence of any rules or procedures for the implementation of Article 40, the provisions of Article VI and XVI of the General Agreement on Tariffs and Trade 1994 as well as the WTO Agreement on Subsidies and Countervailing Measures shall apply to public aid or subsidies.
- (2) The Co-operation Council shall periodically review the progress made in these matters. In particular it shall continue to develop co-operation and understanding on the measures taken by each Party in regard to the operation of Article 40.

## **SECTION E**

### **OTHER TRADE RELATED PROVISIONS**

#### **Article 44**

##### **Government Procurement**

- (1) The Parties agree to co-operate to ensure that access to the Parties procurement contracts is governed by a system which is fair, equitable and transparent.
- (2) The Co-operation Council shall periodically review the progress made in this matter.

#### **Article 45**

##### **Intellectual property**

- (1) The Parties shall ensure adequate and effective protection of intellectual property rights in conformity with the highest international standards. The Parties apply the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs) from 1 January 1996 and undertake to improve, where appropriate, the protection provided for under that Agreement.
- (2) If problems in the area of intellectual property protection affecting trading conditions were to occur, urgent consultations shall be undertaken, at the request of either Party, with a view to reaching mutually satisfactory solutions.
- (3) The Community confirms the importance it attaches to the obligations arising from:
  - (a) Protocol to the Madrid Agreement concerning the International Registration of Marks (Madrid 1989)
  - (b) International Convention for the Protection of Performers, Producers of Phonogram and Broadcasting organisation (Rome 1961)
  - (c) Patent Co-operation Treaty (Washington 1979 as amended and modified in 1984)
- (4) Without prejudice to the obligations arising from the WTO Agreement on TRIPs, The Republic of South Africa could favourably consider accession to the multilateral conventions referred to in the paragraph 3.

- (5) The Parties confirm the importance they attach to the following instruments:
- (a) the provisions of the Nice Agreement concerning the International Classification of Goods and Services for the purposes of the Registration of Marks (Geneva 1977 and amended in 1979)
  - (b) Berne Convention for the Protection of Literary and Artistic Works (Paris Act, 1971)
  - (c) International Convention for the Protection of New Varieties of Plants (UPOV) (Geneva Act, 1978)
  - (d) Budapest Treaty on the International Recognition of the Deposit of Micro organisms for the Purposes of Patent Procedure (1977 modified in 1980)
  - (e) Paris Convention for the Protection of Industrial Property (Stockholm Act, and amended in 1979)WIPO,
  - (f) Copyright Treaty WCT, 1996
- (6) In order to facilitate the implementation of this Article, the Community may provide, on request and on mutually agreed terms and conditions, technical assistance to the Republic of South Africa in, amongst other things, the preparation of laws and regulations for the protection and enforcement of intellectual property rights, the prevention of the abuse of such rights, the establishment and reinforcement of domestic offices and other agencies involved in enforcement and protection, including the training of personnel.
- (7) The parties agree that for the purpose of this Agreement, intellectual property includes in particular copyright, including the copyright on computer programmes and neighbouring rights, utility models, patents, including biotechnical inventions, industrial designs, geographical indications, including appellations of origin, trademarks and service marks, topographies of integrated circuits, as well as the legal protection of data bases and the protection against unfair competition as referred to in Article 10 bis of the Paris Convention for the Protection or Industrial Property and protection of undisclosed information on know how.

## **Article 46**

### **Standardisation and conformity assessment**

The Parties will co-operate in the field of standardisation, metrology, certification and quality assurance in order to reduce differences between the Parties in these areas, remove technical barriers and facilitate bilateral trade. This co-operation shall include:

- (a) measures, in accordance with the provisions of the WTO TBT Agreement, to promote greater use of international technical regulations, standards and conformity assessment procedures, including sector specific measures;
- (b) developing agreements on mutual recognition of conformity assessment in sectors of mutual economic interest;
- (c) co-operation in the area of quality management and assurance in selected sectors of importance to South Africa;
- (d) facilitation of technical assistance for Southern African capacity building initiatives in the fields of accreditation, metrology and standardisation.
- (e) developing practical links between South African and European standardisation, accreditation and certification organisations

## **Article 47**

### **Customs**

- (1) The Parties shall promote and facilitate co-operation between their customs services in order to ensure that the provisions on trade are observed and to guarantee fair trading. The co-operation shall give rise, among other things, to the exchange of information and training schemes.
- (2) Without prejudice to other forms of co-operation envisaged in this agreement, in particular under Article 89, the Contracting Parties' administrative authorities shall provide mutual assistance in accordance with the provisions of Protocol 2 of this Agreement.



## **Article 48**

### **Statistics**

The Parties agree to co-operate in this field. The co-operation will be geared mainly to the harmonisation of statistical methods and practice to enable processing, according to mutually agreed bases, of data on trade in goods and services and, more generally, on any field covered by the agreement lending itself to statistical treatment.

## **TITLE IV**

### **ECONOMIC CO-OPERATION**

#### **Article 49**

##### **Introduction**

Within the limits of their respective competencies, both Parties agreed to develop and promote co-operation on economic and industrial matters to their mutual advantage and in the interest of the Southern African region as a whole, by diversifying and strengthening their economic links, promoting sustainable development in their economies, supporting patterns of regional economic co-operation, promoting co-operation between small and medium sized enterprises, protecting and improving the environment, promoting the economic empowerment of historically disadvantaged groups, including women, protecting and promoting worker and trade union rights.

#### **Article 50**

##### **Industry**

The aim of co-operation in this area is to facilitate the restructuring and modernisation of the South African industry while fostering its competitiveness and growth and to create conditions favourable to mutually beneficial co-operation between South African and EU industry.

The aim of the co-operation shall be, inter alia, to:

- (a) encourage co-operation between the Parties' economic operators (companies, professionals, sectoral and other business organisations, organised labour etc.);
- (b) back the efforts of South Africa's public and private sectors to restructure and modernise industry, under conditions ensuring environmental protection, sustainable development and economic empowerment;
- (c) foster an environment which favours private initiatives, with the aim of stimulating and diversifying output for the domestic and export markets
- (d) promote improved utilisation of South Africa's human resources and industrial potential through, inter alia, the facilitation of access to credit and investment finance and support to industrial innovation, technology transfer, training, research and technological development.

## **Article 51**

### **Investment promotion and protection**

Within the limits of their respective competencies co-operation between the Parties shall aim to establish a climate which favours and promotes mutually beneficial investment, both domestic and foreign, especially through improved conditions for investment protection, investment promotion, the transfer of capital and the exchange of information on investment opportunities.

The aims of co-operation shall be, inter alia, to facilitate and encourage:

- (a) the conclusion, where appropriate, between the Member States and South Africa of agreements for the promotion and protection of investment;
- (b) the conclusion, where appropriate, between the Member States and South Africa of agreements to avoid double taxation;
- (c) the exchange of information on investment opportunities;
- (d) work towards harmonised and simplified procedures and administrative practices in the field of investment;
- (e) support, through appropriate instruments the promotion and encouragement of investment in South Africa and in the Southern African region.

## **Article 52**

### **Trade development**

- (1) The Parties undertake to develop, diversify and increase trade between them and to improve the competitiveness of South African production on domestic, regional and international markets.
- (2) Co-operation in the field of trade development shall in particular focus on the following:
  - (a) elaboration of appropriate trade development strategies and creation of a trade environment supportive of competitiveness;
  - (b) capacity building and development of human resources and professional skills in the field of trade and support services in both the public and private sector, including labour;
  - (c) exchanges of information on market requirements;
  - (d) know-how and technology transfer through investment and joint ventures;
  - (e) development of the private sector, in particular SMEs, engaged in trade;
  - (f) establishment, adaptation and strengthening of organisations concerned with the development of trade and support services;
  - (g) regional co-operation for the development of trade and trade-related infrastructure and services in Southern Africa.

## **Article 53**

### **Micro Enterprises and Small and Medium Sized Enterprises**

The Parties shall aim to develop and strengthen micro enterprises (MEs) and small and medium sized enterprises (SMEs) in South Africa, as well as to promote co-operation between SMEs in the Community and in South Africa and the region in a manner that is sensitive to gender equality. The Parties shall, inter alia:

- (a) co-operate, where appropriate, in the creation of enabling legal, administrative, institutional, technical, tax and financial frameworks for the setting up and expansion of SMMEs;
- (b) provide assistance required by SMMEs, whatever their legal status, in areas such as financing, skills training, technology and marketing;
- (c) provide assistance to companies, organisations, policy makers and agencies providing services referred to under paragraph (b) of this Article through appropriate technical support, information exchange and capacity building;
- (d) establish and facilitate appropriate links between South African, Southern African and Community private sector operators in order to improve the flow of information (relating to strategy formulation and implementation, business trends and opportunities, networking, joint-ventures and transfer of skills).

## **Article 54**

### **Information Society - Telecommunication and Information Technology**

- (1) The Parties agree to co-operate in the area of information and communication technology (ICT) which they consider as key sectors of modern society and which are vital to economic and social development and to the development of an information society. Communication in this context encompasses Post, Broadcasting, Telecommunications, Information Technologies. The aim of co-operation shall be to:
  - (a) improve the access of South African public and private entities to means of communications, electronics and information technologies through support to the development of infrastructural networks, human resources and appropriate information society policies in South Africa.
  - (b) support co-operation between the countries of the Southern African region in this area, in particular in the context of satellite technology.
  - (c) address the challenges of globalisation, new technologies, institutional and sector restructuring, and the developing gap in basic information services and in advanced services.
- (2) Co-operation shall include among others:
  - (a) dialogue on different aspects of information society, including regulatory aspects and communications policy.
  - (b) information exchanges and possible technical assistance on regulation, standardisation, conformity testing and certification of information and communications technologies and the use of frequencies;
  - (c) dissemination of new information and communication technologies, and the development of new facilities, particularly in relation to interconnection of networks and interoperability of applications;
  - (d) promotion and implementation of joint research, technological development on projects in the field of new technologies related to the information society;
  - (e) access for South African organisations to Community projects or programmes on the basis of the arrangements applying in the various fields concerned, and access for EU organisations to operations initiated by South Africa under the same conditions.

## **Article 55**

### **Postal co-operation**

Within the limits of their respective competencies, co-operation in this area shall include:

- (a) exchange of information and dialogue on postal matters in relation to, inter alia, regional and international activities, regulatory aspects and policy decisions;
- (b) technical assistance on regulation, operational standards and human resource development;
- (c) promotion and implementation of joint projects, including research, on technological development in this sector.

## **Article 56**

### **Energy**

- (1) Within the limits of their respective competencies, co-operation in this area shall include the aim of co-operation in this area shall be to:
  - (a) improve the access of South Africans to affordable, reliable and sustainable sources of energy;
  - (b) reorganise and modernise the energy producing, distributing and consuming subsectors so that appropriate services are provided on optimum terms of economic efficiency, social development and environmental acceptability;
  - (c) support co-operation between countries in the Southern African region to exploit locally available energy resources in an efficient and environmentally friendly manner.
- (2) Co-operation shall specifically aim to:
  - (a) support the development of appropriate energy policies and infrastructure in South Africa;
  - (b) diversify energy supplies in South Africa;
  - (c) improve energy operators performance standards in technical, economic and financial terms especially in the electricity and liquid fuels sectors;

- (d) facilitate capacity building of local expertise especially by general and technical training;
- (e) develop new and renewable forms of energy and support infrastructure especially for rural energy power supply;
- (f) improve the rational use of energy notably by the promotion of energy systems efficiency;
- (g) promote transfer and use of environmentally friendly technologies;
- (h) promote regional energy co-operation in Southern Africa.

## **Article 57**

### **Mining and Minerals**

- (1) The aim of co-operation in this area is, inter alia:
  - (a) to support and promote policy measures that improve health and safety standards in the mining industry as well as conditions of employment;
  - (b) to make mineral resources and geoscience information accessible for exploration and mining investment. The co-operation should also create a mutually beneficial climate for attracting investment in the sector, including SMEs (and previously disadvantaged communities).
  - (c) to support policies which ensure that mining activities take place with due consideration to the environment and sustainable development, taking into account the specific circumstances in the country and nature of mining.
  - (d) to co-operate on mining and minerals technology research and development
- (2) Co-operation will include South African activities undertaken within the framework of the SADC Mining Co-ordination Unit.



## **Article 58**

### **Transport**

- (1) The aim of the co-operation in this area shall be to:
  - (a) improve the access of South Africans to affordable, safe and reliable modes of transport and to facilitate the flow of goods in the country through the support to the development of intermodal infrastructure networks and transport systems, that are economically and environmentally sustainable.
  - (b) support co-operation between the countries of the Southern African region in order to create a sustainable transport network for regional needs.
- (2) Co-operation shall specifically focus on:
  - (a) contributing to the restructuring and modernisation of road, rail, port and airport infrastructure;
  - (b) gradually improve the conditions of air transport, rail, road and multimodal transit, as well as the management of roads, railways, ports and airports, and maritime and air traffic;
  - (c) improve the safety of air and maritime traffic by improving aids to navigation and training to enable efficient programmes.

## **Article 59**

### **Tourism**

- (1) Within the limits of their respective competencies the Parties will co-operate with the aim of strengthening the development of a competitive tourism industry. In this context the Parties in particular agree to:
  - (a) promote the development of the tourism industry as a generator of economic growth and empowerment, employment and foreign exchange;
  - (b) seek to establish a strategic alliance involving public, private and community interests in order to ensure the sustainable development of tourism;
  - (c) carry out joint operations in such areas as the development of products and markets, human resources and institutional structures;

- (d) co-operate on tourism training and capacity building in order to improve service standards;
  - (e) co-operate in promoting and developing community-based tourism through pilot projects in rural areas;
  - (f) facilitate liberal movement of tourists;
- (2) The Parties agree that co-operation in the field of tourism will be based, inter alia, on the following guidelines:
- (a) respecting the integrity and interests of local communities, particularly in rural areas;
  - (b) stressing the importance of cultural heritage;
  - (c) facilitating training, know-how transfer and awareness creation in the wider community;
  - (d) providing positive interaction between tourism and environmental preservation;
  - (e) promoting regional co-operation in Southern Africa.

## **Article 60**

### **Agriculture**

- (1) Co-operation in this area shall be aimed at the promotion of integrated, harmonious and sustainable rural development in South Africa. Co-operation will in particular be geared to:
- (a) modernise and restructure, where appropriate, the agricultural sector through methods including the modernisation of infrastructure and equipment, the development of packaging and storage techniques and the improvement of private distribution and marketing chains;
  - (b) facilitate the development and the enhancement of competitiveness of farmers from previously disadvantaged communities and the provision of appropriate agricultural services in this regard ;
  - (c) diversify and develop output and external markets ;
  - (d) achieve and develop co-operation in animal health, plant health and agricultural production techniques.
  - (e) examine measures to harmonise standards and rules on animal and plant health, with a view to facilitate trade, taking into account of the

legislation in force for both Parties and in conformity with the rules of the WTO.

- (2) Co-operation will take place, inter alia, through the transfer of know-how, the establishment of joint ventures, and capacity building programmes.

## **Article 61**

### **Fisheries**

Co-operation in this area shall aim at promoting sustainable management and use of fisheries resources in the long-term interest of both parties. This will be achieved by exchanges of information and the design and implementation of agreed arrangements which may address the economic, commercial, developmental, scientific and technical aspirations of the parties. These arrangements will be set out in a separate mutually beneficial fisheries agreement which the parties undertake to seek to complete as soon as possible.

## **Article 62**

### **Services**

The Parties agree to foster co-operation in the services sector in general and in the area of banking, insurance and other financial services in particular, through, inter alia;

- (a) encouraging trade in services;
- (b) exchanging, where appropriate, information on rules, laws and regulations governing the services sector in the Parties;
- (c) improving accounting, auditing, supervision and regulation of financial services and financial monitoring, e.g. through the facilitation of training schemes.

## **Article 63**

### **Consumer Policy and Protection of Consumer's Health**

Parties shall start co-operation in the area of consumer policy and consumer health protection, in particular aiming at:

- (a) establishing systems of mutual information on domestically prohibited and dangerous products;
- (b) exchanging information and experience on the establishment and operation of post market surveillance of products and product safety;
- (c) improving information provided to consumers especially on prices, characteristics of products and services offered;
- (d) encouraging exchanges between consumer interest representatives;
- (e) increasing the compatibility of consumer policies and systems;
- (f) exchange of information on increasing consumer awareness through information and education;
- (g) notifying enforcements and co-operation between the parties in investigating harmful or unfair business practices;
- (h) exchange of information on effective ways of redressing any wrongs to consumers victimised by illegal activities.

# **TITLE V**

## **DEVELOPMENT CO-OPERATION**

### **SECTION A - GENERAL**

#### **Article 64**

##### **Aims**

- (1) Development co-operation between the European Community and South Africa shall be conducted in a context of policy dialogue and partnership, and shall support the policies and reforms carried out by the national authorities.
- (2) In particular, development co-operation shall contribute to South Africa's harmonious and sustainable economic and social development and to its insertion into the world economy and to consolidate the foundations laid for a democratic society and a State governed by the rule of law in which human rights in their political, social and cultural aspects, and fundamental freedoms are respected.
- (3) Within this context, priority shall be given to supporting operations, which help the fight against poverty.

## **Article 65**

### **Priorities**

- (1) The areas of development co-operation will mainly concern the following:
  - (a) support for policies and instruments towards the progressive integration of the South African economy into the world economy and trade, for expansion of employment, for development of sustainable private enterprises, for regional co-operation and integration. In this context, special attention will be given to providing support to the adjustment efforts occasioned in the region by the establishment of the free-trade area under this Agreement, especially in the SACU.
  - (b) enhancement of living conditions and delivery of basic social services;
  - (c) support to democratisation, the protection of human rights, sound public management, the strengthening of civil society and its integration in the development process.
- (2) Dialogue and partnership between public authorities and non-governmental development partners and actors will be promoted.
- (3) Programmes shall be focused on the basic needs of the previously disadvantaged communities and reflect the gender and environmental dimensions of development.

## **Article 66**

### **Eligible Beneficiaries**

Co-operation partners eligible for financial and technical assistance shall be national, provincial and local authorities and public bodies, non-governmental organisations and community-based organisations, regional and international organisations, institutions and public or private operators. Any other body could be made eligible if so designated by both parties.

## **Article 67**

### **Means and methods**

- (1) The means that may be deployed under the co-operation operations referred to in Article 65 shall include in particular studies, technical assistance, training or other services, supplies and works, and also evaluation and monitoring audits and missions.

- (2) Community financing, in local or foreign currency, depending on the needs and nature of the operation, may cover :
  - (a) government budget expenditures to support reforms and policy implementation in the priority sectors identified through a policy dialogue
  - (b) investment (with the exception of the purchase of buildings) and equipment;
  - (c) in certain cases and in particular where a programme is implemented by a non-government partner, recurrent expenditure;
- (3) Contribution from the partners defined in Article 66 shall in principle be required for each co-operation operation. The nature and amount of this contribution shall be adapted to the possibilities of the partner and the nature of operations.
- (4) Opportunities may be sought for coherence and complementarity with other providers of funds, particularly the Member States of the European Union.
- (5) Appropriate steps will be taken by both parties to ensure that the Community character of development co-operation under this Agreement is made known to the general public.

## **Article 68**

### **Programming**

- (1) Multiannual indicative programming based on specific objectives derived from the priorities in Article 65 and indicating modalities for the preparation, implementation and monitoring of the development co-operation and resulting operations during a reference period shall be carried out in the context of close contacts between the Community and South Africa government with the contribution of the European investment Bank. The outcome of programming discussions shall be set out in a Multiannual Indicative Programme signed by both parties.
- (2) Detailed operational procedures and provisions for implementation and monitoring of the development co-operation shall be attached to the Multiannual Indicative Programme.

## **Article 69**

### **Project identification, preparation and appraisal**

- (1) The identification and preparation of development operations shall be the responsibility of the Government of South Africa National Authorising Officer as defined in Article 79, or any other eligible beneficiary defined in Article 66.
- (2) Project or programme dossiers submitted for financing by the Community must contain all the information necessary for their appraisal. Such dossiers shall be officially transmitted to the Head of Delegation by the National Authorising Officer or the other eligible beneficiaries.
- (3) The appraisal of development operations shall be undertaken jointly by the National Authorising Officer and/or the other eligible beneficiaries and the Community.

## **Article 70**

### **Financing proposal and decision**

- (1) The conclusions of the appraisal shall be summarised by the Head of Delegation in a financing proposal prepared in close collaboration with the National Authorising Officer and/or the requesting partner.
- (2) The Commission shall finalise the financing proposal and forward it to the Community's decision-making body.

## **Article 71**

### **Financing agreements**

- (1) Any project or programme approved by the Community shall be covered by :
  - (a) either a financing agreement drawn up between the Commission, acting for the Community, and the National Authorising Officer acting for the government of South Africa, or the eligible beneficiary,
  - (b) or a contract with international organisations or legal bodies, physical persons or any other operator defined in Article 66 responsible for carrying out the project or programme.
- (2) All financing agreements or contracts shall provide for on the spot checks by the Commission and the European Court of Auditors.



## **SECTION B - IMPLEMENTATION**

### **Article 72**

#### **Eligibility of contractors and supplies**

- (1) Participation in invitations to tender and contracts shall be open on equal terms to all natural and legal persons in the Member States of the European Union, South Africa and the ACP States. Participation may be extended to include other developing countries in duly substantiated cases and in order to ensure the best cost-effectiveness ratio.
- (2) Supplies shall originate in the Member States, South Africa or the ACP States. In duly substantiated exceptional cases, they may originate in other countries.

### **Article 73**

#### **Contracting Authority**

- (1) Works, supply and service contracts shall be prepared, negotiated and concluded by the eligible beneficiary, in agreement and in collaboration with the Commission.
- (2) The eligible beneficiary may request the Commission to prepare, negotiate and conclude service contracts on their behalf, directly or through its relevant agency.

### **Article 74**

#### **Procurement Procedures**

Procedures for procurement or for contracts financed by the Community are laid down in the General Clauses attached to the financing agreements

## **Article 75**

### **General Regulations and Conditions**

The award and performance of works, supply and service contracts financed by the Community shall be governed by this Agreement and by the respective General Regulations for Works, Supply and Service Contracts and General Conditions as adopted by decision of the Co-operation Council.

## **Article 76**

### **Settlement of disputes**

Any dispute arising between South Africa and a contractor, supplier or provider of services during the performance of a contract financed by the Community shall be settled by arbitration according to the Procedural Rules on Conciliation and Arbitration of Contracts as adopted by decision of the Co-operation Council.

## **Article 77**

### **Fiscal and customs arrangements**

- (1) South Africa government shall apply to all contracts financed by the Community a full exemption from fiscal and custom duties and/or taxes or charges having an equivalent effect.
- (2) The details of the arrangements, referred to in paragraph 1 above shall be established by means of an exchange of letters between the South African government and the Commission.

## **Article 78**

### **Chief Authorising Officer**

The Commission will appoint a Chief Authorising Officer who shall be responsible for managing resources made available by the Community for Development Co-operation with South Africa.

## **Article 79**

### **National Authorising Officer and Paying Agent**

- (1) The South African government will appoint a National Authorising Officer to represent it in all operations relating to projects financed by the Commission which are the subject of a financing agreement between South Africa and the Community. A Paying Agent will also be appointed.
- (2) Obligations and tasks of the Chief Authorising Officer and the National Authorising Officer and the Paying Agent will be established by way of an exchange of instruments between the South African government and the Commission in accordance with the provisions of the financial regulations of the European Commission applicable to preferential agreements.

## **Article 80**

### **Head of Delegation**

- (1) The Commission is represented in South Africa by the Head of Delegation who ensures, together with the National Authorising Officer, the implementation, monitoring and follow-up of the financial and technical co-operation in conformity with the principles of sound financial management and the provisions of this Agreement. In particular, the Head of Delegation shall be granted powers to facilitate and expedite the preparation, appraisal and execution of projects and programmes.
- (2) The government of South Africa shall accord to the Head of Delegation and the officials from the Commission appointed in South Africa privileges and immunities in accordance with the Vienna Convention on Diplomatic Relations of 1961.
- (3) In defining the tasks and obligations of the National Authorising Officer and the Head of Delegation, the parties will seek to ensure the greatest degree of local management of projects and programmes as well as compatibility and coherence with practices applying in the other ACP states.

## **Article 81**

### **Monitoring and evaluation**

- (1) The objective of monitoring and evaluation shall consist in the external assessment of development operations (preparation, implementation and subsequent operation), with a view to improving the development effectiveness of ongoing and future operations. This work shall be done jointly by South Africa and the Community.
- (2) Monitoring and evaluation of the co-operation shall be done jointly by South Africa and the Community. Annual Consultations may be held to assess progress and agree on the measures to be taken to adapt and improve implementation of the Multiannual Indicative Programme and to prepare for future operations.

## **TITLE VI**

### **CO-OPERATION IN OTHER AREAS**

#### **Article 82**

##### **Science and Technology**

The Parties undertake to intensify scientific and technological co-operation. Detailed arrangements for the implementation of this objective have been set out in a separate agreement, which has entered into force in November 1997.

#### **Article 83**

##### **Environment**

- (1) The Parties will co-operate to pursue sustainable development through the rational use of non-renewable natural resources and the sustainable use of renewable natural resources, thus promoting protection of the environment, prevention of its deterioration and the control of pollution. The Parties will aim to improve the quality of the environment and work together to combat global environmental problems.
- (2) The Parties will give special consideration to the development of capacity in environmental management. There will be dialogue on the identification of environmental priorities. The impact of past South African policies on the state of the environment will be reviewed and addressed where possible.
- (3) The co-operative relationship will involve, inter alia, matters relating to urban development and land use for agricultural and non-agricultural purposes; desertification; management of waste, including hazardous and nuclear waste; management of dangerous chemicals; conservation and sustainable use of biological diversity; the sustainable management of forestry resources; water quality control; control of pollution from industrial and other sources; control of coastal and marine pollution and the management of marine resources; integrated water catchment management, including management of international river basins; water demand management and issues surrounding the reduction of greenhouse gas emissions.

## **Article 84**

### **Culture**

- (1) The Parties undertake to co-operate in the sphere of culture in order to promote a thorough knowledge and better understanding of cultural diversities within South Africa and the EU. Parties will clear obstacles to intercultural communication and co-operation, and will stimulate awareness of the interdependence of peoples of different cultures. They shall foster participation by the population of South Africa and the European Union in the process of reciprocal cultural enrichment.
- (2) Cultural contacts will aim at preserving and enhancing the cultural heritage and producing and disseminating cultural goods and services. The widest possible use shall be made of national, regional and interregional communications media and infrastructure to facilitate cultural contacts, whilst promoting respect for copyright and related rights.
- (3) The parties shall co-operate in cultural events and exchanges among institutions and associations from the Republic of South Africa and the European Union.

## **Article 85**

### **Social Issues**

- (1) The Parties will engage in a dialogue on social co-operation. This shall include, but not necessarily be limited to, questions relating to the social problems of post-apartheid society, poverty alleviation, unemployment, gender equality, violation against women, children's rights, labour relations, public health, safety at work and population.
- (2) The Parties consider that economic development must be accompanied by social progress. They recognise the responsibility to guarantee basic social rights, which specifically aim at the freedom of association of workers, the right to collective bargaining, the abolition of forced labour, the elimination of discrimination in respect of employment and occupation and the effective abolition of child labour. The pertinent standards of the ILO shall be the point of reference for the development of these rights.

## **Article 86**

### **Information**

The Parties shall take appropriate measures to promote and encourage an effective mutual exchange of information. Priority will, inter alia, be given to ensuring the spread of information on co-operation between South Africa and the Community. In addition, the Parties shall endeavour to provide basic information about South Africa and the EU for the general public, and specialised information about EU policies for specific audiences in South Africa as well as specialised information about South African policies for specific audiences in the EU.

## **Article 87**

### **Press and Audio-visual**

The Parties shall encourage co-operation in the field of press and audio-visual media, in order to support the further development and fostering of independence and pluralism in the media. Co-operation shall be sought, inter alia, through:

- (a) promotion of the development of human resources, in particular through training and exchange programmes for journalists and media professionals;
- (b) encouragement of wider access to sources of information for the media;
- (c) exchange of technical know-how and information
- (d) production of audio-visual programmes.

## **Article 88**

### **Human Resources**

- (1) The Parties shall co-operate in order to enhance the value of human resources in the Republic of South Africa in all areas covered by the envisaged agreement. Co-operation shall aim to strengthen institutional capacity in the government's key human resource development areas, paying special attention to the most disadvantaged sections of the population.
- (2) In order to develop the level of expertise of senior staff in the public and private sectors, the Parties shall step up their co-operation on education and vocational training and co-operation between educational institutions

and firms. Particular attention shall be paid to promote the establishment of permanent links between specialised bodies in the European Union and South Africa so as to encourage the pooling and exchange of experience and technical resources.

- (3) The Parties shall encourage the exchange of information in order to foster co-operation on the recognition of degrees and diplomas by the relevant authorities.
- (4) The parties shall encourage linkage and co-operation between institutions of higher learning, e.g. universities.

## **Article 89**

### **Fight against Drugs and Money Laundering**

Within the limits of their respective competencies, the Parties undertake to co-operate in the fight against drugs and money laundering by:

- (a) promoting the South African drugs control master plan and enhancing the effectiveness of South African and Southern African regional programmes to counter the illegal abuse of narcotic drugs and psychotropic substances as well as the production, supply and trafficking of these substances, based on the relevant international UN Drugs Control Conventions;
- (b) preventing the use of their financial institutions to launder capital arising from criminal activities in general and from drugs trafficking in particular on the basis of standards equivalent to those adopted by international bodies, in particular the Financial Action Task Force (FATF), and
- (c) preventing the diversion of precursor chemicals and other essential substances used for the illicit production of narcotic drugs and psychotropic substances on the basis of the standards adopted by international authorities concerned, notably those of the Chemical Action Task Force (CATF).



## **Article 90**

### **Data Protection**

- (1) The Parties shall co-operate to improve the level of protection to the processing of personal data, taking into account international standards.
- (2) Co-operation on personal data protection may include technical assistance in the form of exchanges of information and experts and the establishment of joint programmes and projects.
- (3) The Co-operation Council shall periodically review the progress made in this regard.

## **Article 91**

### **Health**

- (1) The Parties shall co-operate to improve the mental and physical health of populations by promoting health, and preventing disease.
- (2) In the field of public health the Parties will co-operate by sharing knowledge and experience on programmes which, inter alia, disseminate information, improve the education and training of public health professionals, monitor disease and develop health information systems, decrease risks from lifestyle related diseases, prevent and control HIV/AIDS and other communicable diseases.
- (3) Co-operation in the field of safety and health at work will include exchange of information on legislative and non-legislative measures to prevent accidents, occupation related diseases and occupation related health risks.
- (4) Co-operation in the pharmaceutical field may include support in the evaluation and registration of medicinal products.

# **TITLE VII**

## **FINANCIAL ASPECTS OF CO-OPERATION**

### **Article 92**

#### **Objective**

In order to achieve the objectives of this Agreement, South Africa shall benefit from financial and technical assistance from the Community in the form of grants and loans to support its socio-economic development needs.

### **Article 93**

#### **Grants**

Financial assistance in the form of grants shall be covered by :

- (a) a special financial facility established under the Community budget, in support of the development co-operation activities referred to in Articles 64 and 65 of Title V.
- (b) other financial resources made available from other Community budget lines for development and international co-operation activities falling within the scope of those budget lines. The procedure for presentation and approval of requests, implementation, and monitoring/evaluation will be in accordance with the general conditions relating to the budget line in question.

### **Article 94**

#### **Loans**

As regards financial assistance in the form of loans, the European Investment Bank could consider, at the request of the Council of the European Union, the extension of its financing of investment projects in South Africa by means of long-term loans, within the limits of maximum amounts and periods of validity to be determined in application of the relevant dispositions of the EC Treaty.

## **Article 95**

### **Regional co-operation**

The financial assistance from the Community referred to in the previous articles may be used to fund projects or programmes of national or local interest in South Africa as well as the participation of South Africa in regional co-operation activities which it undertakes together with other developing countries.

## **TITLE VIII**

### **FINAL PROVISIONS**

#### **Article 96**

##### **Institutional setup**

- (1) The Parties agree on the establishment of a Co-operation Council which will perform the following functions:
  - (a) to ensure the proper functioning and implementation of the Agreement and the dialogue between the Parties,
  - (b) to study the development of trade and co-operation between the Parties;
  - (c) to seek appropriate methods of forestalling problems which might arise in areas covered by the agreement;
  - (d) to exchange opinions and make suggestions on any issue of mutual interest relating to trade and co-operation, including future action and the resources available to carry it out.
- (2) The composition, frequency, agenda and venue of Co-operation Council meetings shall be agreed upon through consultation between the Parties.
- (3) The Co-operation Council referred to above shall have the power to take decisions in respect of all matters covered by this Agreement.
- (4) The Parties agree to encourage and facilitate regular contacts between their respective Parliaments on the various areas of co-operation covered by the agreement.
- (5) The Parties will also encourage contacts between other similar and relevant institutions in South Africa and the European Union such as the Economic and Social Committee of the European Community and the National Economic Development and Labour Council (NEDLAC) of South Africa.

## **Article 97**

### **Tax Carve-out Clause**

- (1) The Most Favoured Nation treatment granted in accordance with the provisions of this Agreement, or any arrangements adopted under this Agreement, does not apply to tax advantages which South Africa and the European Union Member States are providing or may provide in the future on the basis of agreements to avoid double taxation or other tax arrangements, or domestic fiscal legislation.
- (2) Nothing in this Agreement, or in any arrangements adopted under this Agreement, may be construed to prevent the adoption or enforcement of any measure aimed at preventing the avoidance or evasion of taxes pursuant to the tax provisions of agreements to avoid double taxation or other tax arrangements, or domestic fiscal legislation.
- (3) Nothing in this Agreement, or in any arrangements adopted under this Agreement, shall be construed to prevent the European Union Member States or South Africa from distinguishing, in the application of the relevant provisions of their fiscal legislation, between taxpayers who are not in the same situation, in particular with regard to their place of residence, or with regard to the place where their capital is invested.

## **Article 98**

### **Duration**

This agreement shall be valid for an unlimited period. Either Party may denounce this agreement by notifying the other Party in writing. The agreement shall cease to apply six months after the date of such notification.

## **Article 99**

### **Non-Discrimination**

In the fields covered by this Agreement, and without prejudice to any special provisions contained therein:

- (a) the arrangements applied by the Republic of South Africa in respect of the Community shall not give rise to any discrimination between the Member States, their nationals, or their companies or firms,
- (b) the arrangements applied by the Community in respect of the Republic of South Africa shall not give rise to any discrimination between South African nationals or its companies or firms.

## **Article 100**

### **Territorial application**

This Agreement shall apply, in respect of South Africa, to the territories as defined in the South African Constitution and in respect of the European Union to the territories in which the treaties establishing the European Community are applied and under the conditions laid down in those treaties.

## **Article 101**

### **Future developments**

The parties may, by mutual consent and within their respective spheres of competence, expand the agreement in order to enhance the level of co-operation and add to it by means of agreements on specific sectors or activities.

Within the framework of this agreement, either of the parties may put forward suggestions for expanding the scope of the co-operation, taking into account the experience gained in its application.

## **Article 102**

### **Review**

The parties will review this agreement within 5 years after its entering into force in order to address the possible implications of other arrangements which may affect this agreement. Further reviews may be mutually agreed upon.

## **Article 103**

### **Dispute settlement**

- (1) Each Party may refer to the Co-operation Council any dispute relating to the application or interpretation of this Agreement.
- (2) The Co-operation Council may settle any dispute by means of a decision.
- (3) Each Party shall be bound to take the measures involved in carrying out the decision referred to in paragraph 2.
- (4) In the event of it not being possible to settle the dispute in accordance with paragraph 2, either party may notify the other of an appointment of an arbitrator; the other Party must then appoint a second arbitrator within two months of the appointment of the first arbitrator.
- (5) The Co-operation Council shall appoint a third arbitrator within six months of the appointment of the second arbitrator.
- (6) The arbitrator's decisions shall be taken by majority vote within 12 months.
- (7) Each Party to the dispute must take the steps required to implement the decision of the arbitrators.
- (8) The Co-operation Council shall establish the working procedures for arbitration.
- (9) In the case of disputes arising under Titles under II and III of this agreement, the following procedures shall apply:
  - (a) The appointment of a second arbitrator must be made within 30 days.
  - (b) The Co-operation Council shall appoint a third arbitrator within 60 days of the appointment of the second arbitrator.
  - (c) The arbitrators shall, as a general rule, submit their findings and decisions to the Parties and to the Co-operation Council not later than six months from the date of the composition of the arbitration panel. In cases of urgency, including those involving perishable goods, the arbitrators shall aim to issue their report to the parties within three months.
  - (d) The Party concerned shall inform the other Party and the Co-operation Council within 60 days of its intentions in respect of implementation of the findings and decisions of the Co-operation Council or the arbitrators, as the case may be.

- (e) If it is impractical to comply immediately with the findings and decisions of the Co-operation Council or the arbitrators, the Party concerned shall be afforded a reasonable period of time to do so. The reasonable period of time shall not exceed 15 months from the date of submission of the findings and decisions to the Parties. However, that period of time may by mutual consent of the Parties be reduced or extended, depending on the particular circumstances.
- (10) Without prejudice to their right to have recourse to WTO dispute settlement procedures, the European Community and South Africa shall endeavour to settle disputes relating to specific obligations arising under Titles II and III of this agreement through recourse to the specific dispute settlement provisions of this agreement. Arbitration proceedings established under this agreement will not consider issues relating to each Party's WTO rights and obligations, unless the parties agree to refer any such issues to the arbitration.

## **Article 104**

### **Clause on bilateral agreements**

Except in so far as it creates equivalent or greater rights for the parties involved, this agreement shall not affect rights contained in existing Agreements binding one or more Member states, on the one hand, and South Africa, on the other.

## **Article 105**

### **Amendment Clause**

- (1) Any Party desirous of amending this Agreement may put forward its proposal for the amendment, together with its submissions in motivation of the proposed amendment, to the Co-operation Council for consideration and decision.
- (2) In the event that the other Party considers that the proposed amendment could detrimentally impact on its rights in terms of the Agreement, it may submit a proposal for compensatory adjustments of the Agreement to the Co-operation Council for consideration and decision.

## **Article 106**

### **Annexes**

Protocols and Annexes shall form an integral part of the Agreement.



## **Article 107**

### **Languages and number of originals**

This Agreement is drawn up in duplicate in the Danish, Dutch, English, Finnish, French, German, Greek, Italian, Portuguese, Spanish and Swedish languages and the official languages of the Republic of South Africa, other than English, namely Sepedi, Sesotho, Setswana, siSwati, Tshivenda, Xitsonga, Afrikaans, isiNdebele, isiXhosa and isiZulu, each of these texts being equally authentic.

## **Article 108**

### **Entry into force**

This agreement shall enter into force on the first day of the month following that during which the Contracting Parties have notified each other of the completion of the necessary procedures.





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