

provisional measures, the affected Party shall take into account the interests of both Parties.

Article 17

Accelerated Tariff Elimination by South Africa

1. If requested by South Africa, the Community shall 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 Community replies positively to this request, the new timetables for tariff elimination and elimination of export refunds shall simultaneously apply as of a date to be agreed by the two Parties.

3. In case of a negative response from the Community, the provisions of this Agreement on tariff elimination shall continue to be applicable.

Article 18

Review Clause

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

TITLE III

Trade Related Issues

SECTION A

Common Provisions

Article 19

Border Measures

1. Quantitative restrictions on imports or exports and measures having equivalent effect on trade between South Africa and the Community shall be abolished on 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 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 20

Agricultural Policies

1. The Parties may have regular consultations in the Cooperation Council on the strategy and practical modalities of their respective agricultural policies.
2. If either Party, in pursuit of their respective agricultural policies, considers it necessary to amend the arrangements laid down in this Agreement it will notify the Cooperation Council, which will decide 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 on by the Cooperation 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 21

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 22

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 in so far as they alter the rights and obligations provided for in this Agreement.
2. Consultation between the Community and South Africa shall take place within the Cooperation 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 European Union, such consultation shall take place so as to ensure that account can be taken of the mutual interests of the Community and South Africa.

Article 23

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 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 24 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 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 26.

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 26.

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 26.

Article 25 Transitional Safeguard Measures

1. Notwithstanding the provisions of Article 24, exceptional measures of limited duration which derogate from the provisions of Articles 12 and 15 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 Community as a result of the reduction of duties envisaged under Articles 12 and 15, particularly where these difficulties produce major social problems.

3. Customs duties on imports applicable in South Africa to products originating in the Community introduced by these measures may not exceed the level of the basic duty or the applied MFN rates of duty or 20 per cent ad valorem, whichever is the lower, and

shall maintain an element of preference for products originating in the Community. The total value of all imports of the products which are subject to these measures may not exceed 10 per cent of total imports of industrial products from the 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 12 years. These time limits may exceptionally be extended by decision of the Cooperation 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 Cooperation Council of the exceptional measures it intends to take and, at the request of the 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 Cooperation 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 Cooperation Council may decide on a different schedule.

Article 26

Safeguard Procedures

1. In the event of the Community or South Africa initiating a surveillance mechanism in respect of difficulties referred to in Article 24 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 24, before taking the measure provided for therein or, in cases to which subparagraph 5(b) of this Article apply, the Community or South Africa, as the case may be, shall as soon as possible supply the Cooperation Council with all relevant information, with the view to seeking a solution acceptable to both Parties.

3. In the selection of measures, 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 Cooperation 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 24, difficulties arising from the situation referred to in that Article shall be referred for examination to the Cooperation Council, which may take any decision needed to put an end to such difficulties. If the Cooperation 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 three years and shall contain elements which would digressively 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 South Africa, whichever is concerned, may, in the situations specified in Article 24, apply forthwith the precautionary measures necessary to deal with the situation and shall inform the other Party immediately thereof.

Article 27

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 possessing 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 28

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 29

Reconfirmation of GATS Obligations

1. In recognition of the growing importance of services for the development of their economies, the Parties 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 30

Further Liberalisation of Supply of Services

1. 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 Cooperation Council shall make the necessary recommendations for the implementation of the objective set out in paragraph 1.
3. When formulating these recommendations, the Cooperation 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 set out in paragraph 1 shall be subject to a first examination by the Cooperation Council at the latest five years after the entry into force of this Agreement.

Article 31

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 30, 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 32

Current Payments

1. Subject to the provisions of Article 34, 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 paragraph 1, which liberalise current payments, are not used by its residents to make unauthorised capital outflows.

Article 33

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 34

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

Competition Policy

Article 35

Definition

The following are incompatible with the proper functioning of this Agreement, in so far 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 36

Implementation

If, at the entry into 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 European Union organisations to operations initiated by South Africa under the same conditions.

Article 37

Appropriate Measures

If the Community or South Africa considers that a particular practice in its domestic market is incompatible with the terms of Article 35, and:

- (a) is not adequately dealt with under the implementing rules referred to in Article 36, 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 Cooperation Council, or after 30 working days following referral for such consultation. The appropriate measures to be taken shall respect the powers of the Competition Authority concerned.

Article 38

Comity

1. The Parties agree that, whenever the Commission or the South African Competition Authority has reason to believe that anti-competitive practices, defined under Article 35, 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.

2. 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.

3. 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.

4. 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, at 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 39

Technical Assistance

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

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

Article 40

Information

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

SECTION E

Public Aid

Article 41

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 42 Remedial Measures

1. If the Community or South Africa considers that a particular practice is incompatible with the terms of Article 41, 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 Cooperation Council to examine, in the context of such consultation, the Parties' public policy objectives justifying the grant of public aid referred to in Article 41.

Article 43 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 44 Review

1. In the absence of any rules or procedures for the implementation of Article 41, 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 Cooperation Council shall periodically review the progress made in these matters. In particular it shall continue to develop cooperation and understanding on the measures taken by each Party with regard to the operation of Article 41.

SECTION F Other Trade-Related Provisions

Article 45 Government Procurement

1. The Parties agree to cooperate to ensure that access to the Parties' procurement contracts is governed by a system which is fair, equitable and transparent.
2. The Cooperation Council shall periodically review the progress made in this matter.

Article 46 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 and its Member States confirm the importance they attach to the obligations arising from the:
 - (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 Organisations (Rome 1961);
 - (c) Patent Cooperation Treaty (Washington 1979 as amended and modified in 1984).
4. Without prejudice to the obligations arising from the WTO Agreement on TRIPs, South Africa could favourably consider accession to the multilateral conventions referred to in 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) WIPO 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 South Africa in, among 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, trade marks and service marks, topographies of integrated circuits, as well as the legal protection of databases and the protection against unfair competition as referred to in Article 10 bis of the Paris Convention for the Protection of Industrial Property and protection of undisclosed information on know-how.

Article 47

Standardisation and Conformity Assessment

The Parties will cooperate 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 cooperation 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) cooperation 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 48

Customs

1. The Parties shall promote and facilitate cooperation between their customs services in order to ensure that the provisions on trade are observed and to guarantee fair trade. The cooperation shall give rise, among other things, to the exchange of information and training schemes.

2. Without prejudice to other forms of cooperation envisaged in this Agreement, in particular under Article 90, the Contracting Parties' administrative authorities shall provide mutual assistance in accordance with the provisions of Protocol 2 of this Agreement.

Article 49

Statistics

The Parties agree to cooperate in this field. The cooperation 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 Cooperation

Article 50

Introduction

The Parties agree to develop and promote cooperation 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 cooperation, promoting cooperation 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 51

Industry

The aim of cooperation 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 cooperation between South African and Community industry.

The aim of the cooperation shall be, inter alia:

- (a) to encourage cooperation between the Parties' economic operators (companies, professionals, sectoral and other business organisations, organised labour, etc.);
- (b) to 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) to foster an environment which favours private initiatives, with the aim of stimulating and diversifying output for the domestic and export markets;
- (d) to 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 52

Investment Promotion and Protection

Cooperation 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.