

South Africa

**AGREEMENT ON TRADE, DEVELOPMENT AND COOPERATION
BETWEEN THE EUROPEAN COMMUNITY AND ITS MEMBER
STATES, OF THE ONE PART, AND THE REPUBLIC OF SOUTH
AFRICA, OF THE OTHER PART**

**SIGNED ON THE BASIS OF THE COUNCIL DECISION OF 29 JULY
1999 (99/753/EC)¹⁴²**

[...]

**TITLE III
TRADE RELATED ISSUES**

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 force of this Agreement, either Party has not yet adopted the necessary laws and regulations for the implementation of Article 35, in their jurisdictions it shall do so within a period of three years.

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.