



COMMISSION OF THE EUROPEAN COMMUNITIES

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Proposal for a

COUNCIL REGULATION (EC)

**on certain procedures for applying the Trade, Development and Co-operation
Agreement between the European Community and the Republic of South Africa**

(presented by the Commission)

EXPLANATORY MEMORANDUM

Subject to satisfactory completion of the approval procedures, the Trade, Development and Co-operation Agreement between the European Community and the Republic of South Africa is expected to enter into force on 1 January 2000.

The present Regulation opens necessary tariff quotas and provides detailed rules on calculation of preferential rates of duty, the surveillance of preferential imports and the management of the tariff quotas. It enables the Commission to adopt the necessary provisions to open and manage a tariff quota on cheese and curd. It also enables the Commission to adopt amendments and technical adaptations to the present regulation, which may result from future amendments to the Combined Nomenclature and Taric codes as well as adaptations arising from the conclusion of agreements, protocols or exchanges of letters between the Community and the Republic of South Africa.

In order to ensure smooth implementation, the Council should adopt the measures in time to allow the publication in the Official Journal before 31 October 1999.

Proposal for a

COUNCIL REGULATION (EC)

on certain procedures for applying 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 Article 133 thereof,

Having regard to the proposal from the Commission,

- (1) Whereas the Council has concluded a Trade, Development and Co-operation Agreement between the European Community and the Republic of South Africa, hereinafter referred to as “the Agreement”, and decided by Decision 1999/.../EC¹ that the Agreement enters into force on 1 January 2000;
- (2) Whereas it is necessary to lay down the procedures for applying certain provisions of the Agreement;
- (3) Whereas the preferential rates of duty to be applied by the Community under the Agreement should normally be calculated on the basis of the conventional rate of duty in the Common Customs Tariff for the products concerned; whereas they should, however, be calculated from the autonomous rate of duty where no conventional rate is given for the products concerned or where the autonomous rate is lower than the conventional rate; whereas it is unnecessary to include in the coverage of this Regulation products for which the Common Customs Tariff duty is free; whereas the calculation must in no case be based on duties applied under conventional or autonomous tariff quotas;
- (4) Whereas the Agreement stipulates that certain products originating in the Republic of South Africa may be imported into the Community, within the limits of tariff quotas, at a reduced or a zero rate of customs duty; whereas the Agreement specifies the products eligible for those tariff measures, their volumes and duties; whereas the most suitable method for managing the tariff quota for products of CN code ex 0406 is based on import licences and should be carried out by the Commission; whereas the other tariff quotas should be managed, as a rule, on a first-come first-served basis in accordance with Articles 308a to 308c of Regulation (EEC) No 2454/93 of 2 July 1993² laying down

¹ OJ L ...

² OJ L 253, 11.10.1993, p. 1. Regulation last amended by Regulation (EC) No 502/1999 (OJ L 65, 12.3.1999, p. 1).

provisions for the implementation of Council Regulation (EEC) No 2913/92 establishing the Community Customs Code³;

- (5) Whereas amendments to the Combined Nomenclature and Taric codes and adaptations arising from the conclusion of agreements, protocols or exchanges of letters between the Community and the Republic of South Africa do not involve changes of substance; whereas, in the interest of simplicity, provision should therefore be made for the Commission, assisted by the Customs Code Committee, to make the necessary amendments and technical adaptations to this Regulation;
- (6) Whereas in the interest of combating fraud, provisions should be made to submit preferential imports into the Community to surveillance;

HAS ADOPTED THIS REGULATION:

Article 1

1. For the application of preferential duty under the Agreement, the expression "duty effectively applied" shall be taken to mean either:
 - the lowest rate of duty appearing in column 3 or 4, taking into account the periods of application mentioned or referred to in that column, of the second part of Annex I of Council Regulation (EEC) No 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff⁴, or
 - the GSP rate according to Article 2 of Council Regulation (EC) No 2820/98 of 21 December 1998 applying a multiannual scheme of generalised tariff preferences for the period 1 July 1999 to 31 December 2001⁵,whichever is the lower. However, that expression shall not be taken to refer to a duty set up within the framework of a tariff quota under Article 26 of the Treaty or under Annex 7 of Regulation (EC) No 2658/87.
2. For the purposes of the Annex to this regulation, the term "MFN" shall be taken to mean the lowest rate of duty appearing in column 3 or 4, taking into account the periods of application mentioned or referred to in that column, of the second part of Annex I of Regulation (EEC) No 2658/87.
3. Subject to paragraph 4, the final rate of preferential duty calculated in accordance with this Regulation shall be rounded down to the first decimal place.

3 OJ L 302, 19.10.1992, p. 1. Regulation last amended by Regulation (EC) No 82/97 (OJ L 17, 21.1.1997, p. 1).

4 OJ L 256, 7.9.1987, p. 1. Regulation last amended by Regulation (EC) No 2261/98 (OJ L 292, 30.10.1998, p. 1).

5 OJ L 357, 30.12.1998, p. 1.

4. Where the result of calculating the rate of preferential duty in application of paragraph 3 is one of the following, the preferential rate shall be considered a full exemption:
 - 1 % or less in the case of *ad valorem* duties, or
 - EUR 0.5 or less per individual euro amount in the case of specific duties.

Article 2

1. The customs duties on the products listed in the Annex, originating in the Republic of South Africa, shall be reduced to the levels provided in the Annex and within the limits of the tariff quotas specified in that Annex.
2. These tariff quotas shall be managed in accordance with Articles 308a to 308c of Commission Regulation (EEC) No 2454/93.
3. The reductions of tariff quota duty referred to in the Annex are expressed as a percentage of the customs duties effectively applied to South African goods, as defined in Article 1 (1) on the day of entry into force of the Agreement.

Article 3

The Commission shall open an annual duty-free tariff quota for cheese and curd of CN codes 0406 10 20, 0406 10 80, 0406 20 90, 0406 30 10, 0406 30 31, 0406 30 39, 0406 30 90, 0406 40 90, 0406 90 01, 0406 90 21, 0406 90 50, 0406 90 69, 0406 90 78, 0406 90 86, 0406 90 87, 0406 90 88, 0406 90 93 and 0406 90 99 originating in the Republic of South Africa. The initial annual volume of this tariff quota shall be 5 000 tonnes. An annual growth factor of 5% shall apply to this volume.

Article 4

1. After the first year, the tariff quotas referred to in Articles 2 and 3 shall be increased each year by the percentage specified as the annual growth factor in the Annex. The resulting figure shall be rounded up to the next complete unit.
2. If this Regulation does not enter into force on 1 January 2000, the quota volumes provided in Article 3 and in the Annex shall be reduced *pro rata* on a monthly basis for application in the year 2000.

Article 5

1. Without prejudice to Articles 2 to 4, the amendments and technical adaptations of this regulation made necessary by amendments to the Combined Nomenclature and Taric codes or arising from the conclusion of

agreements, protocols or exchanges of letters between the Community and the Republic of South Africa, shall be adopted by the Commission, assisted by the Customs Code Committee, in accordance with the procedure set out in paragraph 2 of this Article.

2. The representative of the Commission shall submit to the Committee a draft of the measures to be taken. The Committee shall deliver its opinion on the draft within a time limit which the chairman may lay down according to the urgency of the matter. The opinion shall be delivered by the majority laid down in Article 205 (2) of the Treaty in the case of decisions which the Council is required to adopt on a proposal from the Commission. The votes of the representatives of the Member States within the Committee shall be weighted in the manner set out in that Article. The chairman shall not vote.

The Commission shall adopt the measures, which shall apply immediately. However, if these measures are not in accordance with the opinion of the Committee, they shall be communicated by the Commission to the Council forthwith. In that event:

- the Commission may defer application of the measures which it has decided for a period of not more than one month from the date of such communication;
 - the Council, acting by qualified majority, may take a different decision within the period referred to in the first indent.
3. The Committee may examine any question concerning the application of tariff quotas which is raised by its chairman either at the latter's initiative or at the request of a Member State.

Article 6

1. Products put into free circulation with the benefit of the preferential rates provided under the Agreement, other than those covered by Article 2, shall be subject to surveillance. The Commission in consultation with the Member States shall decide the products to which this surveillance applies.
2. Article 308d of Regulation (EEC) No 2454/93 shall apply.
3. The Member States and the Commission shall co-operate closely to ensure that this measure is complied with.

Article 7

This Regulation shall enter into force on the day following that of its publication in the *Official Journal of the European Communities*.

It shall apply from the date of entry into force of the Agreement. That date will be published in the *Official Journal of the European Communities*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels,

For the Council
The President

ANNEX

concerning products referred to in Article 2

Notwithstanding the rules for the interpretation of the combined nomenclature, the wording for the description of the products is to be considered as having no more than an indicative value, the preferential scheme being determined, within the context of this Annex, by the coverage of the CN codes as they exist at the time of adoption of the current regulation. Where ex CN codes are indicated, the preferential scheme is to be determined by application of the CN code and corresponding description taken together.

| Order No | CN code | Taric code | Description | Annual tariff quota volume, and annual growth factor ⁶ | Tariff quota duty (% reduction) |
|----------|----------------------------------------|------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------|---------------------------------|
| 09. 1803 | 0603 10 15 0603 10 51 0603 10 65 | | Fresh orchids, from 1.6 to 31.10 Fresh roses, from 1.1 to 31.5, from 1.11 to 31.12 Fresh chrysanthemums, from 1.1 to 31.5, and from 1.11 to 31.12 | 500 tonnes (agf 3 %) | 50 MFN or 80 GSP ⁷ |
| 09. 1805 | 0603 10 29 | | Other fresh flowers, from 1.6 to 31.10 | 600 tonnes (agf 3 %) | 50 MFN or 80 GSP ⁷ |
| 09. 1807 | ex0603 10 69 | 10 | Proteas, from 1.1 to 31.5, and from 1.11 to 31.12 | 900 tonnes (agf 5 %) | 100 |
| 09. 1809 | 0603 90 00 | | Other than fresh flowers | 500 tonnes (agf 3 %) | 75 MFN or 80 GSP ⁷ |
| 09. 1811 | 0811 10 90 | | Strawberries, frozen | 250 tonnes (agf 3 %) | 100 |

6 annual growth factor (agf) = % of base year volume.

7 Whichever results in the lower duty applicable.

| Order No | CN code | Taric code | Description | Annual tariff quota volume, and annual growth factor ⁸ | Tariff quota duty (% reduction) |
|----------|------------|---------------------------------------|------------------------------------|-------------------------------------------------------------------|---------------------------------|
| 09. 1813 | 2008 40 51 | | Pears, not containing added spirit | 40 000 tonnes gross weight (agf 3 %) | 50 MFN |
| | 2008 40 59 | | | | |
| | 2008 40 71 | | | | |
| | 2008 40 79 | | | | |
| | 2008 40 91 | | | | |
| | 2008 40 99 | | | | |
| | 2008 50 61 | Apricots, not containing added spirit | | | |
| | 2008 50 69 | | | | |
| | 2008 50 71 | | | | |
| | 2008 50 79 | | | | |
| | 2008 50 92 | | | | |
| | 2008 50 94 | | | | |
| | 2008 50 99 | Peaches, not containing added spirit | | | |
| | 2008 70 61 | | | | |
| | 2008 70 69 | | | | |
| | 2008 70 71 | | | | |
| | 2008 70 79 | | | | |
| | 2008 70 92 | | | | |
| | 2008 70 94 | | | | |
| | 2008 70 99 | | | | |

8 annual growth factor (agf) = % of base year volume.

| Order No | CN code | Taric code | Description | Annual tariff quota volume ⁹ , and annual growth factor ¹⁰ | Tariff quota duty (% reduction) |
|----------|----------------------------------------------------------------------------------------------------|------------|----------------------------------------------|----------------------------------------------------------------------------------|---------------------------------|
| 09. 1815 | 2008 92 59 2008 92 74 2008 92 78 2008 92 98 | | Mixtures of fruit, other than tropical fruit | 18 000 tonnes gross weight (agf 3 %) | 50 MFN |
| 09. 1817 | 2008 92 72 | | Mixtures of tropical fruit | 2 000 tonnes gross weight (agf 3 %) | 50 MFN |
| 09. 1819 | 2009 11 99 | | Frozen orange juice | 700 tonnes (agf 3 %) | 50 MFN |
| 09. 1821 | 2009 40 30 2009 70 11 2009 70 19 2009 70 30 2009 70 91 2009 70 93 2009 70 99 | | Pineapple juice Apple juice | 5 000 tonnes (agf 3 %) | 50 MFN |
| 09. 1823 | 2204 10 19 2204 10 99 | | Sparkling wine | 450 000 litres (agf 5 %) | 100 |

9 Net weight, unless otherwise stated.

10 annual growth factor (agf) = % of base year volume.

| Order No | CN code | Taric code | Description | Annual tariff quota volume, and annual growth factor¹¹ | Tariff quota duty (% reduction) |
|-----------------|------------------------------------------------------|-------------------|--------------------------------------------------------------|--------------------------------------------------------------------------|----------------------------------------|
| 09. 1825 | 2204 21 79 2204 21 80 2204 21 83 2204 21 84 | | Other wine | 32 000 000 litres (agf 3 %) | 100 |
| 09.1827 | 7202 41 10 7202 41 91 7202 41 99 | | Ferro-chromium, containing by weight more than 4 % of carbon | 515 000 tonnes | 100 |

11 annual growth factor (agf) = % of base year volume.

FINANCIAL STATEMENT

1. TITLE OF OPERATION

Proposal for a Council Regulation (EC) on certain procedures for applying the Co-operation Agreement between the European Community and the Republic of South Africa.

2. BUDGET HEADING INVOLVED

Chapter 12, Article 120

3. LEGAL BASIS

Article 133 of the Treaty

4. DESCRIPTION OF OPERATION

4.1 General objective

To provide for the necessary procedures for applying customs aspects of the Trade, Development and Co-operation Agreement between the European Community and the Republic of South Africa.

5. FINANCIAL IMPACT

This Regulation does not entail any financial losses or gains, other than those foreseen in the financial statement made on the occasion of the Decision adopting the Agreement.

6. FRAUD PREVENTION MEASURES

Provisions on the management of tariff quotas include the measures necessary for preventing and protecting against fraud and irregularities. An additional provision allows surveillance of preferential imports on a selective basis.