



COMMISSION OF THE EUROPEAN COMMUNITIES

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2001/0292 (ACC)

Proposal for a

COUNCIL DECISION

**on the conclusion of an agreement between the European Community
and the Republic of South Africa on trade in spirits**

(presented by the Commission)

EXPLANATORY MEMORANDUM

A. BACKGROUND

1. Under the negotiating directives approved by the Council on 19 June 1995 and 25 March 1996 on the Trade, Development and Cooperation Agreement between the Community and South Africa (hereafter known as the TDC Agreement), the Commission negotiated two sectoral agreements, on wines and on spirits, to reciprocally facilitate and promote trade in wines and spirits between the two Parties. The Commission has been carrying on these negotiations since 1995 in close collaboration with the Council, in accordance with Article 133 of the Treaty.
2. The political agreement on certain specific spirit names (Grappa, Ouzo, etc.), concluded in the exchange of letters of 15 and 16 February 2000 between Mr J Gama and Mr R Prodi, Presidents of the Council and of the Commission, of the one part, and Mr T Mbeki, President of the Republic of South Africa, of the other, has been incorporated into this agreement.
3. The Commission and South Africa concluded the negotiations on 25 July 2001 in Pretoria where, in a "Memorandum of Understanding on Wines and Spirits", the High Level Group of representatives of the Commission and South Africa agreed *ad referendum* on all important outstanding issues, in particular:
 - on phasing-out of conflictual trademarks along the lines of the compromise negotiated in June 2000 (see point 9 below),
 - on the use of the EUR 15 million set aside for restructuring the South African Wine and Spirit industry on the basis of a mutually agreed programme,
 - on 1 January 2002 as date for entry into force of the Wine and Spirit agreements.
4. The texts were initialled by the negotiating parties on 30 November 2001. The Commission presents this proposal to the Council without delay so that the two agreements could enter into force on 1 January 2002, as agreed in the Memorandum of Understanding.
5. The conclusion of the wine agreement will be the subject of a separate proposal which the Commission presents in parallel to the Council.

B. CONTENT OF THE SPIRITS AGREEMENT

6. The agreement covers spirits falling under heading 22.08 of the Harmonised System. It contains provisions on the reciprocal protection of geographical indications and certain specific designations, mutual assistance between control authorities and dispute settlement.
7. The protection of geographical indications is of particular importance to the Community. The provisions agreed in the agreement offer better protection for Community geographical indications, including appellations of origin, than does Section III of the multilateral TRIPs agreement on geographical indications. The

agreement contains a “bilateral register” comprising all the indications protected under the agreement, a factor which considerably increases legal security. In addition, the protection will be enforced *ex officio*.

8. The incorporation in the agreement of the elements of the February 2000 political agreement on the protection of the special designations “Grappa”, “Ouzo/Ούζο”, “Korn”, “Kornbrand”, “Jägertee/Jagertee/Jagatee” et “Pacharan” (see point 2) will provide exclusive protection of those designations for Community products after a transitional period of 5 years.
9. In order to ensure the protection of geographical indications or special designations covered by this Agreement against identical or similar trademarks which have been registered or for which rights have been acquired through use before the entry into force of the TRIPs agreement for “non-originating” spirits and which are considered as misleading as to the true origin, the Agreement provides the elimination of such conflictual trademarks after reasonable transitional periods. The parties shall settle the conflictual cases by 30 September 2002 at the latest.
10. With regard to the protection of traditional expressions other than the special designations protected by virtue of the agreement, under the joint Community/South Africa declaration on the wines and spirits agreements adopted by the Council on the day on which the TDC Agreement was signed, 11 October 1999, the text of the declaration relating to traditional expressions was incorporated into the text of this agreement. As a result, the agreement does not contain any provisions offering immediate protection to those expressions, but the two parties are asked to examine the objective and the principles of a system for the protection of traditional expressions so that it can be applied to specific cases to be incorporated into the agreement at a later date.
11. The agreement provides for mutual assistance between the official control authorities, of the two parties, which will facilitate direct collaboration between competent authorities without recourse to diplomatic procedures.

C. MANAGEMENT OF THE AGREEMENT

12. A Joint Committee comprising the Commission and representatives of South Africa will be set up. Its main task will be to monitor the correct operation of the agreement and to formulate recommendations if necessary. It will not take decisions. The Commission proposes that the Council authorise the Commission to make the technical amendments and adjustments found necessary for the implementation and management of the agreement (e.g. adjustments to Annexes or to the Protocol) in accordance with the implementation committee procedure laid down in Article 15 of Regulation (EEC) No 1576/89 laying down general rules on the definition, description and presentation of spirit drinks¹. That procedure permits close collaboration between the Member States and the Commission. Other bilateral spirits agreements in force already provide for that procedure.

¹ OJ L 160, 12.6.1989, p. 1.

D. FINANCIAL ASSISTANCE

13. At the same time as the wines and spirits agreements enter into force, the financial assistance of EUR 15 million which the Commission will grant to South Africa to restructure its wine and spirits industry will take effect, in accordance with Annex X to the TDC Agreement. In the case of the Community the decision will be taken independently of the adoption of this proposal in accordance with the relevant budget procedures.

E. CONCLUSIONS

14. The Commission regards the results of the negotiations as acceptable to the Community in that the agreement offers genuine commercial benefits to Community operators. Consequently, it invites the Council to adopt the attached decision on the conclusion of an agreement between the European Community and the Republic of South Africa on trade in spirits.

Proposal for a

COUNCIL DECISION

on the conclusion of an agreement between the European Community and the Republic of South Africa on trade in spirits

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 133 in conjunction with the first sentence of the first subparagraph of Article 300(2) thereof,

Having regard to the proposal of the Commission,

Whereas:

- (1) The Council has decided by Decision 1999/753(EC)² that the Trade, Development and Co-operation Agreement between the European Community and the Republic of South Africa, hereinafter referred to as "the Agreement", enters into force provisionally on 1 January 2000³.
- (2) That agreement, initialled on 30 November 2001, should be approved.
- (3) In order to facilitate the implementation of certain provisions of the agreement, the Commission should be allowed to make the necessary technical adjustments in accordance with the implementation committee procedure laid down in Article 15 of Regulation (EEC) No 1576/89 laying down general rules on the definition, description and presentation of spirit drinks³, as last amended by Regulation (EC) No 3378/94⁴,

HAS DECIDED AS FOLLOWS:

Article 1

The agreement between the European Community and the Republic of South Africa on trade in spirits and the joint declarations of the parties and the declarations of the Community thereto are hereby approved in the name of the Community.

The texts referred to in the first subparagraph are annexed hereto.

² OJ L 311, 4.12.1999, p. 1

³ OJ L 160, 12.6.1989, p. 1.

⁴ OJ L 366, 31.12.1994, p. 1.

Article 2

The President of the Council is authorised to designate the person authorised to sign the agreement and thus express the Community's agreement to being bound by it.

Article 3

For the purpose of applying Articles 5(8) and 16(2) of the agreement the Commission is hereby authorised, in accordance with the procedure laid down in Article 15 of Council Regulation (EEC) No 1576/89, to conclude the instruments required to amend the agreement.

Article 4

The Commission shall represent the Community in the Joint Committee set up under Article 17 of the agreement.

Article 5

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

Done at Brussels,

For the Council
The President

AGREEMENT

**between the European Community and the Republic
of South Africa on trade in spirits**

AGREEMENT

between the European Community and the Republic of South Africa on trade in spirits

The European Community, hereafter referred to as “the Community”,

and

the Republic of South Africa, hereafter referred to as “South Africa”,

hereafter referred to as “the Contracting Parties”,

WHEREAS the Trade, Development and Cooperation Agreement between the European Community and its Member States and the Republic of South Africa has been signed on 11 October 1999, hereinafter referred to as the “TDC Agreement”, and entered into force provisionally on 1 January 2000,

DESIROUS of creating favourable conditions for the harmonious development of trade and the promotion of commercial cooperation in the spirits sector on the basis of equality, mutual benefit and reciprocity,

RECOGNISING that the Contracting Parties desire to establish closer links in this sector which will permit further development at a later stage,

RECOGNISING that due to the long standing historical ties between South Africa and a number of Member States, South Africa and the Community use certain terms, names, geographical references and trade marks to describe their spirits products, farms and practices, many of which are similar,

RECOGNISING that the Contracting Parties have different internal requirements and definitions for spirits that should not be prejudiced by this Agreement,

RECALLING their obligations as parties to the Agreement establishing the World Trade Organisation (hereinafter referred to as the “WTO Agreement”), and in particular the provisions of the Agreement on the Trade Related Aspects of Intellectual Property Rights (hereinafter referred to as “the TRIPs Agreement”),

HAVE AGREED AS FOLLOWS:

ARTICLE 1 ***OBJECTIVES***

1. The Contracting Parties shall, on the basis of non-discrimination and reciprocity, facilitate and promote trade in spirits produced in South Africa and the Community, on the conditions provided for in the present Agreement.

2. The Contracting Parties shall take all general and specific measures necessary to ensure that the obligations laid down by this Agreement are fulfilled and that the objectives set out in this Agreement are attained.

ARTICLE 2

SCOPE AND COVERAGE

This Agreement applies to spirits falling under heading 22.08 of the International Convention on the Harmonised Commodity, Description and Coding System (“Harmonised System”), done at Brussels on 14 June 1983, which are produced in such a manner that they conform to the applicable legislation regulating the production of a particular type of spirit in the territory of a Contracting Party.

ARTICLE 3

DEFINITIONS

For the purposes of this Agreement, unless otherwise provided in this Agreement:

- (a) « originating », when used in relation to the name of one of the Contracting Parties, shall require that a spirit is produced entirely within the territory of that Contracting Party;
- (b) « geographical indication » shall mean an indication, including an “Appellation of Origin”, as defined in Article 22(1) of the TRIPs Agreement, which is recognised in the laws and regulations of a Contracting Party for the purpose of the identification of a spirit originating in the territory of that Contracting Party;
- (c) « homonymous » shall mean the same geographical indication or an indication so similar as to be likely to cause confusion, to denote different places, procedures or things;
- (d) « description » shall mean the words used to describe spirits on a label, or on the documents accompanying the transport of spirits, on commercial documents, particularly invoices and delivery notes, and in advertising, and « describe » shall have a similar meaning;
- (e) « labelling » shall mean all descriptions and other references, signs, designs, geographical indications or trade marks which distinguish spirits and which appear on the container, including its sealing device or the tag attached to the container and the sheathing covering the neck of bottles;
- (f) « Member State » shall mean a Member state of the Community;
- (g) « presentation » shall mean the words or signs used on containers, including their closure, on the labelling and the packaging;
- (h) « packaging » shall mean the protective wrappings, such as papers, straw envelopes of all kinds, cartons and cases, used in the transport of one or more containers or for presenting them with a view to sale to the final consumer;
- (i) « produced » shall mean the entire distillation and maturation process in making spirits;

- (j) « trade mark » shall mean :
- (i) a trade mark registered in terms of the legislation of a Contracting Party or a Member State,
 - (ii) a common law trade mark which is recognised under the law of a Contracting Party or a Member State, and
 - (iii) a well-known trade mark referred to in Article 6 *bis* of the Paris Convention (1967);
- (k) « identification », when used in relation to geographical indications, shall mean the use of geographical indications for the purpose of describing or presenting spirits.

ARTICLE 4
GENERAL RULES ON IMPORTATION AND MARKETING

Unless otherwise provided in this Agreement, importation and marketing shall be conducted in compliance with the laws and regulations applying in the territory of the Contracting Party concerned.

TITLE I
**RECIPROCAL PROTECTION OF SPIRITS NAMES AND
RELATED PROVISIONS ON DESCRIPTION AND PRESENTATION**

ARTICLE 5
PRINCIPLES

1. The Contracting Parties shall ensure, in accordance with this Agreement, the reciprocal protection of the names referred to in Article 6 which are used for the identification of spirits originating in the territories of the Contracting Parties. For this purpose, each Contracting Party shall provide the appropriate legal means to ensure effective protection.
2. The protected names:
 - (a) with regard to Community names:
 - (i) are exclusively reserved in South Africa to the spirits originating in the Community to which they apply, and
 - (ii) may not be used otherwise than under the conditions laid down in the laws and regulations of the Community;
 - (b) with regard to South African names:
 - (i) are exclusively reserved in the Community to the spirits originating in South Africa to which they apply, and
 - (ii) may not be used otherwise than under the conditions laid down in the laws and regulations of South Africa.

3. The protection provided for in this Agreement shall prohibit in particular any use of indications protected by virtue of this Agreement for spirits which are not originating in the geographical area indicated, even when:
 - (a) the true origin of the spirits is indicated;
 - (b) the geographical indication is used in translation;
 - (c) the indications are accompanied by expressions such as « kind », « type », « style », « imitation », « method » or the like.
4. In the case of homonymous geographical indications:
 - (a) where such indications protected by virtue of this Agreement are homonymous, protection shall be granted to each indication, provided it has been used traditionally and consistently and the consumer is not misled as to the true origin of the spirits;
 - (b) where such indications protected by virtue of this Agreement are homonymous with the name of a geographical area outside the territory of the Parties, the latter name may be used to describe and present spirits produced in the geographical area to which the name refers, provided the name is traditionally and consistently used, its use for that purpose is regulated by the country of origin and consumers are not misled as into believing that the spirit originates in the territory of the Party concerned.
5. The Contracting Parties may determine the practical conditions of use under which the homonymous names referred to in paragraph 4 will be differentiated from each other, taking into account the need to ensure equitable treatment of the producers concerned and that consumers are not misled.
6. The provisions of this Agreement shall in no way prejudice the right of any person to use, in the course of trade, their name or the name of their predecessor in business, except where such name is used in such a manner as to mislead consumers.
7. Nothing in this Agreement shall oblige a Contracting Party to protect a name of the other Contracting Party which is not or ceases to be protected in its country of origin or which has fallen into disuse in that country.
8. At the request of either of the two Parties, the Joint Committee shall examine the cases to be settled on the basis of exchanged registers of South Africa and the Community and its Member States.

On the basis of this examination, the Parties shall agree not later than 30 September 2002 that:

- (a) a settlement has to be decided for a case if:
 - (i) a trademark of a product of one Party is identical with, or similar to a geographical indication or other name of the other Party protected under this Agreement, and
 - (ii) the use of such trademarks of a product is misleading to the public as to the true place of origin of that product

or

- (b) the case is to be considered as non-conflictual.

Where point (a) above applies, the Parties shall agree on elimination and allow for a reasonable transitional period where coexistence is possible.

ARTICLE 6

PROTECTED NAMES

The following names are protected with regard to spirits:

- (a) originating in the Community :
 - (i) references to the name of the Member State in which the spirits originates,
 - (ii) the geographical indications referred to in the Annex,
 - (iii) the specific denominations « Grappa », « Ouzo/Oύζο », « Korn », « Kornbrand », « Jägertee », « Jagertee », « Jagatee » and « Pacharan »;
- (b) originating in South Africa:
 - (i) the name « South Africa » or other names used to indicate this country,
 - (ii) the geographical indications referred to in the Annex.

ARTICLE 7

TRANSITIONAL PROVISIONS REGARDING CERTAIN SPECIFIC DENOMINATIONS

Notwithstanding the protection provided for in Articles 5 and 6, the Contracting Parties agree that, after a transitional period of 5 years, the denominations referred to in Article 6(a)(iii) will not be used to denominate any spirits produced in South Africa and the only products authorised to be sold under those denominations on the South African market will be those originating in the Community. This undertaking, including the verification of third country imports which it implies, will be implemented on a mutual understanding that the principle of the protection of such spirit denominations conforms to TRIPs rules.

ARTICLE 8

EXPORTS

The Contracting Parties shall take the measures necessary to ensure that, in cases where spirits originating in the Contracting Parties are exported and marketed outside of their territories, the protected names of one Contracting Party referred to in Article 6 are not used to describe and present spirits originating in the other Contracting Party.

ARTICLE 9

EXTENSION OF PROTECTION

To the extent that the relevant legislation of each Contracting Party so allows, the benefit of the protection given by this Agreement shall be extended to natural and legal persons, bodies

corporate and to federations, associations and organisations of producers, traders or consumers whose headquarters are in the other Contracting Party.

ARTICLE 10

ENFORCEMENT

1. If the appropriate competent body designated in accordance with Article 14 becomes aware that the description or presentation of spirits, particularly on labels or in official or commercial documents or in advertising, is in breach of this Agreement, the Contracting Parties shall apply the necessary administrative measures and /or initiate legal proceedings as appropriate in order to combat unfair competition or to prevent in any other way the improper use of a protected name.
2. The measures and proceedings laid down in paragraph 1 shall be taken in particular in the following cases:
 - (a) where the translation of descriptions provided for by Community or South African legislation into the language or languages of the other Contracting Party results in the appearance of a word which is liable to be misleading as to the origin, nature or quality of the spirits thus described or presented;
 - (b) where descriptions, trade marks, names, inscriptions or illustrations which directly or indirectly give false or misleading information as to the provenance, origin, nature, vine variety or material qualities of spirits appear on containers or packaging, in advertising, or in official or commercial documents relating to spirits whose names are protected under this Agreement;
 - (c) where, for packaging, containers are used which are misleading as to the origin of spirits.
3. The application of paragraphs 1 and 2 shall not prejudice the possibilities of the persons and entities referred to in Article 9 to take appropriate actions in the Contracting Parties, including recourse to the courts.

ARTICLE 11

OTHER INTERNAL LEGISLATION AND INTERNATIONAL AGREEMENTS

Unless otherwise agreed between the Contracting Parties, this Agreement shall not preclude any more extensive protection afforded, now or in the future, to names protected by this Agreement, by the Contracting Parties under their internal legislation or other international agreements.

TITLE II

IMPORT CERTIFICATION REQUIREMENTS

ARTICLE 12

CERTIFICATION DOCUMENTS AND ANALYSIS REPORT

South Africa shall authorise the importation in its territory of spirits in accordance with the rules governing the import certification documents and analysis reports as provided for in its internal legislation.

ARTICLE 13

SAFEGUARD PROVISIONS

1. The Contracting Parties reserve the right to introduce temporary additional import certification requirements in response to legitimate public policy concerns, such as health or consumer protection or in order to act against fraud. In this case, the other Contracting Party shall be given adequate information in sufficient time to permit the fulfilment of the additional requirements.
2. The Contracting Parties agree that such requirements shall not extend beyond the period of time necessary to respond to the particular public policy concern in response to which they were introduced.

TITLE III

MUTUAL ASSISTANCE BETWEEN CONTROL AUTHORITIES

ARTICLE 14

ENFORCEMENT AUTHORITIES

1. Each Contracting Party shall designate the bodies to be responsible for the application of this Agreement. Where a Contracting Party designates more than one competent body, it shall ensure the coordination of the work of those bodies. For this purpose, a single liaison authority shall be designated.
2. The Contracting Parties shall inform one another of the names and addresses of the bodies and authorities referred to in paragraph 1 not later than two months after this Agreement comes into force. There shall be close and direct cooperation between those bodies.
3. The bodies and authorities referred to in paragraph 1 shall seek ways of improving assistance to each other in the application of this Agreement in order to combat fraudulent practices.

ARTICLE 15

INFRINGEMENT

1. If one of the bodies or authorities designated in accordance with Article 14 has reason to suspect that:
 - (a) spirits being or having been traded between South Africa and the Community, does not comply with this Agreement or with provisions laid down in the laws and regulations of the Contracting Parties, and
 - (b) this non-compliance is of particular interest to the other Contracting Party and could result in administrative measures or legal proceedings being taken,it shall immediately inform the competent bodies and the liaison authority of the other Contracting Party.
2. The information to be provided in accordance with paragraph 1 shall be accompanied by official, commercial or other appropriate documents; there should also be an indication of what administrative measures or legal proceedings may, if necessary, be taken. The information shall include, in particular, the following details of the spirits concerned:
 - (a) the producer and the person who has power of disposal over these spirits;
 - (b) the composition of these spirits;
 - (c) the description and presentation of these spirits, and
 - (d) details of the non-compliance with the rules concerning production and marketing.

TITLE IV

MANAGEMENT OF THE AGREEMENT

ARTICLE 16

TASKS OF CONTRACTING PARTIES

1. The Contracting Parties shall, either directly or through the Joint Committee established pursuant to Article 17, maintain contact on all matters relating to the implementation and the functioning of this Agreement.
2. In particular, the Contracting Parties shall:
 - (a) amend the Annex and Protocol to this Agreement by mutual decision to take account of any amendments to the laws and regulations of the Contracting Parties;
 - (b) mutually determine the practical conditions referred to in Article 5(5);
 - (c) inform each other of the intention to decide new regulations or amendments of existing regulations of public policy concern, such as health or consumer protection, with implications for the spirits sector;

- (d) inform each other of legislative measures, administrative measures and judicial decisions concerning the application of this Agreement and inform each other of measures adopted on the basis of such decisions.

ARTICLE 17

JOINT COMMITTEE

1. A Joint Committee shall be established, consisting of representatives of the Community and South Africa. It shall meet at the request of one of the Contracting Parties and in accordance with the requirements for implementing the Agreement alternately in the Community and in South Africa convened at a time and place mutually determined by the Contracting Parties.
2. The Joint Committee shall see to the proper functioning of this Agreement and shall examine all questions which may arise in implementing it.

In particular, the Joint Committee may make recommendations which would contribute to the attainment of the objectives of this Agreement.

3. It shall facilitate contacts and exchanges of information to optimise the functioning of this Agreement.
4. It shall put forward proposals on issues of mutual interest in the spirits sector.

TITLE V

GENERAL PROVISIONS

ARTICLE 18

TRANSIT SMALL QUANTITIES

Titles I and II of this Agreement shall not apply to spirits:

- (a) that are in transit through the territory of one of the Contracting Parties, or
- (b) that originate in the territory of one of the Contracting Parties and which are consigned in small quantities between those Contracting Parties under the conditions and according to the procedures provided for in the Protocol.

ARTICLE 19

TERRITORIAL APPLICATION

This Agreement shall apply, on the one hand, to the territories in which the Treaty establishing the European Community is applied and under the conditions laid down in that Treaty, and, on the other hand, in respect of South Africa, to the territories as defined in the South African Constitution.

ARTICLE 20
FAILURE TO COMPLY

1. If a Contracting Party is of the opinion that the other Contracting Party has failed to fulfil an obligation under this Agreement, it shall submit a written notice to this effect to the other party. This notice may request the party to enter into consultations within a specified period.
2. The Contracting Party which requests the consultations shall provide the other Contracting Party with all the information necessary for a detailed examination of the case in question.
3. In cases where any delay could endanger human health or impair the effectiveness of measures to control fraud, appropriate interim protective measures may be taken, without prior consultation, provided that consultations are held as soon as possible after the taking of these measures.
4. If, following the consultations provided for in paragraphs 1 and 3, the Contracting Parties have not reached agreement:
 - (a) the Contracting Party which requested the consultations or which took the measures referred to in paragraph 3 may take appropriate protective measures so as to permit the proper application of this Agreement;
 - (b) each Party may invoke the dispute settlement set out in Article 21.

ARTICLE 21
DISPUTE SETTLEMENT

1. A Contracting Party may refer any dispute relating to the application or interpretation of this Agreement to a body that meets with the approval of the other Contracting Party.
2. The body referred to in paragraph 1 may settle the dispute by means of a decision.
3. Each Contracting 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 Contracting Party may notify the other of the appointment of an arbitrator, whereafter the other Contracting Party must then appoint a second arbitrator within two months after receiving such notice.
5. Arbitrators appointed in accordance with paragraph 4 shall appoint a third arbitrator to consider the dispute together with the other two arbitrators.
6. The three arbitrators shall take a decision on the basis of a majority within a maximum period of 12 months..
7. Each Contracting Party shall be bound to take the measures involved in carrying out the decision referred to in paragraph 6.

ARTICLE 22
FUTURE DEVELOPMENTS

1. The Contracting Parties at any time amend this Agreement in order to enhance the level of cooperation in the spirits sector.
2. Within the framework of this Agreement, either of the Contracting Parties may put forward suggestions for widening the scope of their cooperation, taking into account the experience gained in its application.
3. South Africa recognises the importance that the Community attaches to its system of protection of “traditional expressions”. The Community recognises that South Africa has fundamental concerns about the nature, scope and applicability of this system. The Contracting Parties agree to continue to work together on this issue in the context of the Wine and the Spirits Agreements bearing in mind the future outcome of multilateral negotiations in this area. The Contracting Parties agree to examine the objective, principles and application to certain specific cases of a system that would apply to the Parties. Any agreement arising out of this provision will be incorporated in this Agreement.

ARTICLE 23
MARKETING OF PREEXISTING STOCKS

1. Spirits which, at the time of or prior to the entry into force of this Agreement, have been produced, described and presented in accordance with the internal laws and regulations of the respective Contracting Party, but in a manner prohibited by this Agreement, may be marketed under the following conditions:

Where products are described and labelled using geographical indications protected by this Agreement, they may continue to be marketed:

- (i) by wholesalers or producers, for a period of three years,
 - (ii) by retailers, until stocks are exhausted.
2. Spirits produced, described and presented in accordance with this Agreement when they are marketed and whose description or presentation ceases to conform to the Agreement following an amendment thereto may be marketed until stocks are exhausted unless otherwise agreed by the Contracting Parties.

ARTICLE 24
ANNEX AND PROTOCOL

The Annex and the Protocol to this Agreement shall form an integral part thereof.

ARTICLE 25
AUTHENTIC LANGUAGES

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 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 26
ENTRY INTO FORCE NOTICE

1. This Agreement shall enter into force on. 1 January 2002.
2. Either Contracting Party may terminate this Agreement by giving one year's written notice to the other Contracting Party.

Done at

For the European Community

For the government of South Africa

ANNEX

as referred to in Article 6

A. List of protected names of spirits originating in the Community:

1. Rum

Rhum de la Martinique
Rhum de la Guadeloupe
Rhum de la Réunion
Rhum de la Guyane

(The term 'traditional' may be added to these names.)

Ron de Málaga
Ron de Granada
Rum da Madeira

2. (a) Whisky

Scotch Whisky
Irish Whisky
Whisky español

(The terms 'malt' or 'grain' may be added to these names.)

(b) Whiskey

Irish Whiskey
Uisce Beatha Eireannach/Irish Whiskey

(The term 'Pot Still' may be added to these names.)

3. Grain Spirit

Eau-de-vie de seigle de marque nationale luxembourgeoise

4. Wine spirit

Eau-de-vie de Cognac
Eau-de-vie des Charentes
Cognac

(One of the following terms may be added to this name:

- Fine,
- Grande Fine Champagne,
- Grande Champagne,
- Petite Champagne,
- Petite Fine Champagne,
- Fine Champagne,
- Borderies,
- Fins Bois,
- Bons Bois)

Fine Bordeaux

Armagnac
Bas-Armagnac
Haut-Armagnac
Ténarèse
Eau-de-vie de vin de la Marne
Eau-de-vie de vin originaire d'Aquitaine
Eau-de-vie de vin de Bourgogne
Eau-de-vie de vin originaire du Centre-Est
Eau-de-vie de vin originaire de Franche-Comté
Eau-de-vie de vin originaire du Bugey
Eau-de-vie de vin de Savoie
Eau-de-vie de vin originaire des Coteaux de la Loire
Eau-de-vie de vin des Côtes-du-Rhône
Eau-de-vie de vin originaire de Provence
Faugères / eau-de-vie de Faugères
Eau-de-vie de vin originaire du Languedoc
Aguardente do Minho
Aguardente do Douro
Aguardente da Beira Interior
Aguardente da Bairrada
Aguardente do Oeste
Aguardente do Ribatejo
Aguardente do Alentejo
Aguardente do Algarve
Aguardente de Vinho da Região dos Vinhos Verdes
Aguardente da Região dos Vinhos Verdes Alvarinho
Lourinhã

5. Brandy

Brandy de Jerez
Brandy del Penedés
Brandy italiano
Brandy Αττικής /Brandy of Attica
Brandy Πελοποννήσου/Brandy of the Peloponnese
Brandy Κεντρικής Ελλάδας /Brandy of Central Greece
Deutscher Weinbrand
Wachauer Weinbrand, Weinbrand Dürnstein

6. Grape marc spirit

Eau-de-vie de marc de Champagne/marc de Champagne
Eau-de-vie de marc originaire d'Aquitaine
Eau-de-vie de marc de Bourgogne
Eau-de-vie de marc originaire du Centre-Est
Eau-de-vie de marc originaire de Franche-Comté
Eau-de-vie de marc originaire de Bugey
Eau-de-vie de marc originaire de Savoie
Eau-de-vie de marc originaire de Savoie
Marc de Bourgogne
Marc de Savoie
Marc d'Auvergne
Eau-de-vie de marc originaire des Coteaux de la Loire

Eau-de-vie de marc des Côtes du Rhône
 Eau-de-vie de marc originaire de Provence
 Eau-de-vie de marc originaire du Languedoc
 Marc d'Alsace Gewürztraminer
 Marc de Lorraine
 Bagaceira do Minho
 Bagaceira do Douro
 Bagaceira da Beira Interior
 Bagaceira da Bairrada
 Bagaceira do Oeste
 Bagaceira do Ribatejo
 Bagaceiro do Alentejo
 Bagaceira do Algarve
 Aguardente Bagaceira da Região dos Vinhos Verdes
 Bagaceira da Região dos Vinhos Verdes Alvarinho
 Orujo gallego
 Grappa di Barolo
 Grappa piemontese/Grappa del Piemonte
 Grappa lombarda/Grappa di Lombardia
 Grappa trentina/Grappa del Trentino
 Grappa friulana/Grappa del Friuli
 Grappa veneta/Grappa del Veneto
 Südtiroler Grappa/Grappa dell'Alto Adige
 Τσικουδιά Κρήτης /Tsikoudia of Crete
 Τσίπουρο Μακεδονίας /Tsipouro of Macedonia
 Τσίπουρο Θεσσαλίας /Tsipouro of Thessaly
 Τσίπουρο Τυρνάβου/Tsipouro of Tyrnavos
 Eau-de-vie de marc de marque nationale luxembourgeoise

7. Fruit spirit

Schwarzwälder Kirschwasser
 Schwarzwälder Himbeergeist
 Schwarzwälder Mirabellenwasser
 Schwarzwälder Williamsbirne
 Schwarzwälder Zwetschgengerwasser
 Fränkisches Zwetschgengerwasser
 Fränkisches Kirschwasser
 Fränkischer Obstler
 Mirabelle de Lorraine
 Kirsch d'Alsace
 Quetsch d'Alsace
 Framboise d'Alsace
 Mirabelle d'Alsace
 Kirsch de Fougerolles
 Südtiroler Williams/Williams dell'Alto Adige
 Südtiroler Aprikot / Südtiroler
 Marille/Aprikot dell'Alto Adige / Marille dell'Alto Adige
 Südtiroler Kirsch/Kirsch dell'Alto Adige
 Südtiroler Zwetschgeler/Zwetschgeler dell'Alto Adige
 Südtiroler Obstler/Obstler dell'Alto Adige
 Südtiroler Gravensteiner/Gravensteiner dell'Alto Adige

Südtiroler Golden Delicious/Golden Delicious dell'Alto Adige
 Williams friulano / Williams del Friuli
 Sliwovitz del Veneto
 Sliwovitz del Friuli-Venezia Giulia
 Sliwovitz del Trentino-Alto Adige
 Distillato di mele trentino / Distillato di mele del Trentino
 Williams trentino / Williams del Trentino
 Sliwovitz trentino / Sliwovitz del Trentino
 Aprikot trentino / Aprikot del Trentino
 Medronheira do Algarve
 Medronheira do Buçaco
 Kirsch / Kirschwasser Friulano
 Kirsch / Kirschwasser Trentino
 Kirsch / Kirschwasser Veneto
 Aguardente de pêra da Lousã
 Eau-de-vie de pommes de marque nationale luxembourgeoise
 Eau-de-vie de poires de marque nationale luxembourgeoise
 Eau-de-vie de kirsch de marque nationale luxembourgeoise
 Eau-de-vie de quetsch de marque nationale luxembourgeoise
 Eau-de-vie de mirabelle de marque nationale luxembourgeoise
 Eau-de-vie de prunelles de marque nationale luxembourgeoise
 Wachauer Marillenbrand

8. Cider spirit and perry spirit

Calvados du Pays d'Auge
 Calvados
 Eau-de-vie de cidre de Bretagne
 Eau-de-vie de poiré de Bretagne
 Eau-de-vie de cidre de Normandie
 Eau-de-vie de poiré de Normandie
 Eau-de-vie de cidre du Maine
 Aguardiente de sidra de Asturias
 Eau-de-vie de poiré du Maine

9. Gentian spirit

Bayerischer Gebirgsenzian
 Südtiroler Enzian/Genzians dell'Alto Adige
 Genziana trentina /Genziana del Trentino

10. Fruit spirits

Pacharán navarro

11. Juniper-flavoured spirits

Ostfriesischer Korngenever
 Genièvre Flandre Artois
 Hasseltse jenever
 Balegemse jenever
 Péket de Wallonie
 Steinhäger
 Plymouth Gin

Gin de Mahón

12. Caraway-flavoured spirits

Dansk Akvavit/Dansk Aquavit
Svensk Aquavit/Svensk Akvavit/Swedish Aquavit

13. Aniseed-flavoured spirits

Anis español
Évora anisada
Cazalla
Chinchón
Ojén
Rute

14. Liqueurs

Berliner Kümmel
Hamburger Kümmel
Münchener Kümmel
Chiemseer Klosterlikör
Bayerischer Kräuterlikör
Cassis de Dijon
Cassis de Beaufort
Irish Cream
Palo de Mallorca
Ginjinha portuguesa
Licor de Singeverga
Benediktbeurer Klosterlikör
Ettaler Klosterlikör
Ratafia de Champagne
Ratafia catalana
Anis português
Finnish berry/fruit liqueur
Grossglockner Alpenbitter
Mariazzeller Magenlikör
Mariazeller Jagasaftl
Puchheimer Bitter
Puchheimer Schlossgeist
Steinfelder Magenbitter
Wachauer Marillenlikör

15. Spirits

Pommeau de Bretagne
Pommeau du Maine
Pommeau de Normandie
Svensk Punsch/Swedish Punsch

16. Vodka

Svensk Vodka/Swedish Vodka
Suomalainen Vodka/Finsk Vodka/Vodka of Finland

B. List of protected names for spirits originating in South Africa

Brandy / Brandewyn

Avontuur
Backsberg
Laborie
Mons Ruber
Uitkyk

P R O T O C O L

THE CONTRACTING PARTIES HEREBY AGREE AS FOLLOWS:

- I. In applying Title II and III of the Agreement, the Contracting Parties agree that the methods of analysis recognised as reference methods by the International Vine and Wine Office (OIV) and published by that Office or, where an appropriate method does not appear in this publication, a method of analysis complying with the standards recommended by the International Organisation for Standardisation (ISO), shall prevail as reference methods for the determination of the analytical composition of the spirit in the context of control operations.
- II. Pursuant to Article 18(b) of the Agreement, the following shall be considered to be small quantities:
 1. spirit in labelled containers of not more than 5 litres fitted with a nonreusable closing device where the total quantity transported, whether or not made up of separate consignments, does not exceed 100 litres.
 2.
 - (a) quantities of spirit not exceeding 30 litres per traveller contained in traveller's luggage;
 - (b) quantities of spirit not exceeding 30 litres forming part of consignments from one individual to another;
 - (c) quantities of spirit forming part of the household effects of individuals moving house;
 - (d) which are imported for the purpose of scientific or technical experiments, subject to a maximum of 1 hectolitre;
 - (e) which are imported for diplomatic, consular or similar establishments as part of their duty-free allowance;
 - (f) which are held on board international means of transport as victualling supplies.

The case of exemption referred to in point 1 may not be combined with one or more of the cases of exemption referred to in point 2.

Joint Declaration
on the definitions referred to in Article 3

The Contracting Parties hereby declare that the terms « produced entirely » and « the entire distillation and maturation process » which appear in the definitions of Article 3(a) and (i) of the Agreement do not refer to the origin of the raw materials used in the production of a spirit drink.

Declaration by South Africa
on the protection of country names referred to in Article 6

South Africa hereby declares that it maintains its position in principle that the majority of names of Member States of the Community can not be protected as geographical indications in terms of the TRIPs Agreement.

Joint Declaration
on certification and analysis referred to in Article 12

The Contracting Parties hereby declare that the following parameters would be subject to the analysis foreseen under South Africa's rules on spirit import certification procedures:

1. Spirits other than those referred to in point 2 and 3:
 - % of alcoholic strength by volume,
 - content of methyl alcohol per hectolitre of 100% vol alcohol,
 - quantity of volatile substances per hectolitre of 100% vol alcohol.
2. Blended Whisky:
 - % of alcoholic strength by volume,
 - content of methyl alcohol per hectolitre of 100% vol alcohol,
 - quantity of volatile substances per hectolitre of 100% vol alcohol,
 - higher alcohols - amyl alcohol per hectolitre absolute alcohol.
3. Spirit based beverages:
 - 3.1. Liqueur, spirit cocktail:
 - % of alcoholic strength by volume,
 - content of methyl alcohol per hectolitre of 100% vol alcohol,
 - residual sugar g/litre;

3.2. Spirit cooler:

- % of alcoholic strength by volume,
- content of methyl alcohol per hectolitre of 100% vol alcohol,
- total sulphur dioxide,
- volatile acidity, expressed as acetic acid;

3.3. Cream liqueur:

- % of alcoholic strength by volume,
- content of methyl alcohol per hectolitre of 100% vol alcohol,
- residual sugar,
- butterfat;

3.4. Other:

- % of alcoholic strength by volume,
- content of methyl alcohol per hectolitre of 100% vol alcohol.

Joint Declaration

on bottle sizes and on the alcoholic strengths of spirits

The Contracting Parties hereby declare that bottle sizes and minimum alcoholic strengths by volume for release for human consumption of spirit drinks should not unnecessarily burden exporters in both Contracting Parties. They further declare that they will encourage further harmonisation.

FINANCIAL STATEMENT				
1. BUDGET HEADING: Chapter 10 – Agricultural duties			APPROPRIATIONS: EUR 1 121.7 million	
2. TITLE: Council Decision on the conclusion of an Agreement between the European Community and the Republic of South Africa on trade in spirits.				
3. LEGAL BASIS: Article 133 of the Treaty				
4. AIMS: To create favourable conditions for the harmonious development of trade and for the promotion of mutual cooperation in the spirits sector on the basis of equality, reciprocity and mutual benefit.				
5. FINANCIAL IMPLICATIONS	12 MONTH PERIOD (EUR million)	CURRENT FINANCIAL YEAR 2002 (EUR million)	FOLLOWING FINANCIAL YEAR 2003 (EUR million)	
5.0 EXPENDITURE - CHARGED TO THE EC BUDGET (REFUNDS/INTERVENTIONS) - NATIONAL AUTHORITIES - OTHER	-	-	-	
5.1 REVENUE - OWN RESOURCES OF THE EC (LEVIES/CUSTOMS DUTIES) - NATIONAL	-	-	-	
	2004	2005	2006	2007
5.0.1 ESTIMATED EXPENDITURE				
5.1.1 ESTIMATED REVENUE				
5.2 METHOD OF CALCULATION:				
6.0 CAN THE PROJECT BE FINANCED FROM APPROPRIATIONS ENTERED IN THE RELEVANT CHAPTER OF THE CURRENT BUDGET?			YES / NO	
6.1 CAN THE PROJECT BE FINANCED BY TRANSFER BETWEEN CHAPTERS OF THE CURRENT BUDGET?			YES / NO	
6.2 WILL A SUPPLEMENTARY BUDGET BE NECESSARY?			YES / NO	
6.3 WILL APPROPRIATIONS NEED TO BE ENTERED IN FUTURE BUDGETS?			YES / NO	
OBSERVATIONS: This Decision has no direct financial impact on the Community budget.				