



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 25.7.2007  
COM(2007) 444 final

2007/0160 (ACC)

Proposal for a

**COUNCIL DECISION**

**a Community position within the EU-South Africa Cooperation Council on the amendment of Annexes IV and VI to the 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 (TDCA), regarding certain agricultural products**

(presented by the Commission)

## EXPLANATORY MEMORANDUM

### 1. CONTEXT OF THE PROPOSAL

#### • **Grounds for and objectives of the proposal**

Article 106(1) of the 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 ('TDCA') empowers the Cooperation Council to decide on amendments put forward by any Party. According to Article 97(3) of the TDCA, the Cooperation Council has the power to take decisions in respect of all matters covered by the TDCA.

Furthermore, Article 17 of the EU-South Africa Agreement on Trade, Development and Cooperation (TDCA) provides that the Community shall consider, if requested by South Africa, 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.

In this context the objective of the proposed Council Decision is to eliminate the duties on Gouda, Cheddar and Processed cheese products for the Community's preferential exports to South Africa, which has the effect of eliminating export refunds for these same cheeses exported to South Africa. The Community export refunds for the remaining TRQ cheeses listed in Annex VI, list 4, "Cheese and curd", other than the three cheeses, would be maintained at the levels applied in July 2004, without prejudice to monetary rate adjustments.

It is also suggested to insert a footnote in the relevant Annex of the TDCA that clarifies the meaning of "gross weight" in the context of the global TRQs for certain canned fruit products. Following discussions at the Council ACP WG of 6 November 2002<sup>1</sup>, an understanding has been reached with South Africa on the formulation of such a footnote.

Since certain cheeses have been erroneously listed in list 8 of Annex IV of TDCA, under "Cheese and curd" for which tariff concessions are not applicable as these products are covered by the protected Community denominations, the relevant cheeses are therefore moved from list 8 to list 7 of Annex IV.

#### • **General context**

This Council decision follows intensive negotiations at the technical level, following a proposal of resolution of the outstanding agricultural issues between the EU and South Africa. The way forward was endorsed at the political level on 14 November 2006 in the context of the EU-South Africa Cooperation Council.

The Commission, therefore, proposes that the Council adopts a common position of the Community on the position to be adopted by the Community within the Cooperation Council.

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<sup>1</sup> Information note (Council ref. no. 112/02 ADD 1 ACP of 5.11.2002) has been provided for the Council ACP Working Group on 6 November 2002 on canned fruit TRQ, and in the context of the discussions, Member States appeared favourable to a Community position regarding this issue (ACP Working Group no. 14234/02 of 27.11.2002).

This balanced agreement gives a positive signal for the economic operators involved, and also for the future of the EU/South Africa relations that are currently being re-shaped into a more ambitious partnership in the context of "EU-South Africa Strategic Partnership"<sup>2</sup>.

- **Existing provisions in the area of the proposal**

Council Regulation (EC) No 980/2005

Council Decision 2004/441/EC

Council Decision 2001/631/EC.

- **Consistency with the other policies and objectives of the Union**

This decision is part of the broader review exercise, which both sides have agreed to undertake in accordance with Article 103 of the TDCA<sup>3</sup>.

## 2. CONSULTATION OF INTERESTED PARTIES AND IMPACT ASSESSMENT

- **Consultation of interested parties**

During the past years, several rounds of talks between the EU and South Africa took place at technical level to discuss the context and implications of this proposal.

Furthermore, the Member States were informed (orally) on the outcome of the talks during the whole negotiation period, at the 133 Committee and the ACP Council working group as well as at the "Advisory group on Milk".

- **Collection and use of expertise**

No need for external expertise.

- **Impact Assessment**

Not applicable.

## 3. LEGAL ELEMENTS OF THE PROPOSAL

- **Summary of the proposed action**

This Decision takes into account the tariff preferences on cheese products granted to the Community by South Africa as well as the elimination of the export refunds on the same cheese products. It also clarifies the interpretation of gross weight ("g.w.") in the context of certain canned fruit TRQs and modifies list 8 of Annex IV of the TDCA by moving certain erroneously included cheeses from list 8 to list 7 of Annex IV.

It is proposed that this amendment to the TDCA should enter into force as from 1 September 2007.

- **Legal basis**

Article 133 of the Treaty establishing the EC.

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<sup>2</sup> COM(2006) 347 final of 28.6.2006.

<sup>3</sup> COM(2006) 348 final of 28.6.2006 and COM(2006) 561 final of 2.10.2006.

- **Subsidiarity**

The proposal falls under the exclusive competence of the Community. The subsidiarity principle therefore does not apply.

- **Proportionality**

The proposal complies with the proportionality principle.

The proposed form of action (Council decision on a position to be adopted within the Cooperation Council) is as simple as possible in the context of the legal framework established in the TDCA).

- **Choice of instrument**

Proposed instruments: Council decision (only way to amend TDCA trade provisions).

#### **4. BUDGETARY IMPLICATIONS**

The budgetary impact for the Community budget will be negligible.

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## COUNCIL DECISION

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THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the Commission,

Whereas:

- (1) The 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<sup>4</sup> (hereinafter the 'Agreement') has been approved on behalf of the Community by Decision 2004/441/EC of the Council of 26 April 2004<sup>5</sup>.
- (2) Article 97(3) of the Agreement provides that the Cooperation Council shall have the power to take decisions in respect of all matters covered by the Agreement. Article 106(1) of the Agreement gives the Cooperation Council the power to decide on amendments put forward by any Party desirous of amending the Agreement.
- (3) Article 3 of Decision 2004/441/EC specifies that the position to be taken by the Community within the Cooperation Council shall be laid down by the Council on a proposal from the Commission, in accordance with the corresponding provisions of the Treaty establishing the Community. Furthermore, Article 10 of Council Decision 2001/631/EC<sup>6</sup>, adopting the rules of Procedure of the Cooperation Council, authorises the Cooperation Council to adopt decisions by means of a written procedure.
- (4) The meaning of "gross weight" in the context of the tariff lines included under the heading "Fruit, nuts and other edible parts of plants" in Annex IV, list 6 should be clarified.

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<sup>4</sup> OJ L 311, 4.12.1999, p. 3.

<sup>5</sup> OJ L 127, 29.4.2004, p. 109.

<sup>6</sup> OJ L 221, 17.8.2001, p. 37.

- (5) Certain technical adjustments to the lists containing the tariff lines under the heading "Cheese and curd" are necessary due to the protection of certain products as geographical indications under Regulation (EC) No 510/2006<sup>7</sup>.
- (6) In application of Article 17 of the Agreement, the Community has been requested by South Africa to consider a proposal relating to an accelerated timetable for tariff elimination for imports of certain cheeses in South Africa within the TRQ provided for in Annex VI, list 4 (Cheese and curd), coupled with the elimination of the export refunds for Community exports of the same cheese products to South Africa.
- (7) For three categories of cheeses, namely Gouda (corresponding EC Customs Code 0406 90 78), Cheddar (corresponding EC Customs Code 0406 90 21) and processed cheese, not grated or powdered (corresponding EC Customs Code 0406 30), listed in Annex VI, list 4 the current 50% MFN quota reduction applicable on imports into South Africa of products originating in the Community should be changed into an in-quota zero duty. The Community should consequently eliminate export refunds for those same products and maintain levels of export refunds for other products at the levels applicable as of 16 July 2004, depending on the full, effective and unconditional implementation by South Africa of the customs duties applicable on imports into South Africa of products originating in the Community.
- (8) Without prejudice to monetary rate adjustments, Community export refunds for the TRQ cheeses listed in Annex VI of the Agreement on list 4, other than Gouda, Cheddar and processed cheeses as specified under recital 7 above, should not be increased above the levels applicable as of 16 July 2004<sup>8</sup> for other cheese products.

HAS DECIDED AS FOLLOWS:

#### *Article 1*

The position to be adopted by the Community within the EU-South Africa Cooperation Council, through a written procedure, on the amendment of the relevant Annexes to the Trade, Development and Cooperation Agreement between the European Community and its Member States, of the one part, and the Republic of South Africa, of the other part, shall be based on the draft Decision of the Cooperation Council annexed to this Decision.

#### *Article 2*

The representative of the Community in the Cooperation Council is authorised to sign the Decision of the Cooperation Council in the name of the Community, and any exchange of letters as provided in Article 5(2) of the draft decision.

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<sup>7</sup> OJ L 93, 31.3.2006, p. 12.

<sup>8</sup> OJ L 244, 16.7.2004, p. 27.

*Article 3*

The Decision of the Cooperation Council shall be published in the *Official Journal of the European Union* as soon as it has been adopted.

Done at Brussels,

*For the Council  
The President*

## ANNEX

**Draft Decision No .../... of the EU-South Africa Cooperation Council on the amendment of Annex IV and Annex VI to the 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 (TDCA), regarding certain agricultural products**

THE EU-SOUTH AFRICA COOPERATION COUNCIL,

Having regard to the 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<sup>9</sup> (hereinafter referred to as the 'TDCA'), signed in Pretoria on 11 October 1999 and entered into force on 1 May 2004, but applied provisionally as from 1 January 2000, and in particular its Article 106(1);

Whereas:

- (1) The meaning of "gross weight" in the context of the tariff lines included under the heading "Fruit, nuts and other edible parts of plants" in Annex IV, list 6 should be clarified.
- (2) Certain technical adjustments to the lists containing certain tariff lines under the heading "Cheese and curd" are necessary due to the coverage of products as protected EU denominations<sup>10</sup>.
- (3) South Africa is obliged to open the tariff-rate quota as set out in Annex VI, list 4 regarding inter alia "Cheese and curd".
- (4) For three categories of cheeses, namely Gouda (corresponding EC Customs Code 0406 90 78), Cheddar (corresponding EC Customs Code 0406 90 21) and processed cheese, not grated or powdered (corresponding EC Customs Code 0406 30), listed in Annex VI, list 4 the current 50% MFN quota reduction applicable on import into South Africa of products originating in the Community should be changed into an in-quota zero duty.
- (5) The Community should eliminate the export refunds for those three products mentioned in the fourth recital above and not increase levels of export refunds for other cheese products above the levels applicable as of 16 July 2004, depending on the full, effective and unconditional implementation by South Africa of the customs duties applicable on import into South Africa of products originating in the Community,

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<sup>9</sup> OJ L 311, 4.12.1999, p. 3.

<sup>10</sup> Regulation (EC) No 510/2006 (OJ L 93, 31.3.2006, p. 12).



HAS DECIDED AS FOLLOWS:

*Article 1*

In Annex IV, list 6, in the tariff lines included under the heading "Fruit, nuts and other edible parts of plants", in the right column the following footnote is added to the abbreviation "g.w.":

"In this particular case, the term "gross weight" has to be considered as the aggregate mass of the goods themselves with the immediate packing but excluding any further packing."

*Article 2*

1. In Annex IV, list 7, the following list regarding "Cheese and curd" is inserted:

CN code 2007	Notes/tariff quota/reductions
<b>Cheese and curd</b>	
0406 90 13 (Emmentaler)	
0406 90 15 (Sbrinz)	
0406 90 17 (Bergkäse, Appenzell)	
0406 90 18 (fromage fribourgeois and tête de moine)	
0406 90 23 (Edam)	
0406 90 25 (Tilsit)	
0406 90 27 (Butterkäse)	
0406 90 29 (Kashkaval)	
0406 90 35 (Kefalo-Tyri)	
0406 90 37 (Finlandia)	
0406 90 39 (Jarlsberg)	
0406 90 73 (Provolone)	
ex 0406 90 75 (Caciocavallo)	
ex 0406 90 76 (Danbo, Fontal, Fynbo, Havarti, Maribo, Samsø)	
ex 0406 90 79 (Italico, Kernhem, Saint-Paulin)	
ex 0406 90 81 (Lancashire, Cheshire, Wensleydale, Blamey, Colby, Monterey, Double Gloucester)	
ex 0406 90 82 (camembert)	
ex 0406 90 84 (brie)	

2. In Annex IV, list 8, the list regarding "Cheese and curd" is replaced by the following:

CN code 2007	Notes/tariff quota/reductions
0406 20 10 (Glarus herb cheese (known as Schabziger))	
0406 40 10 (Roquefort)	
0406 90 15 (Gruyère)	
0406 90 18 (Vacherin Mont d'Or)	
0406 90 19 (Glarus herb cheese (known as Schabziger))	
0406 40 50 (Gorgonzola)	
0406 90 32 (Feta)	
0406 90 61 (Grana Padano, Parmigiano Reggiano)	
ex 0406 90 63 (Fiore Sardo)	
ex 0406 90 75 (Asiago, Montasio, Ragusano)	
ex 0406 90 76 (Fontina)	
ex 0406 90 79 (Esrom, Saint-Nectaire, Taleggio)	
ex 0406 90 81 (Cantal)	
0406 90 85 (Kefalograviera, Kasseri)	

### Article 3

1. In Annex VI, list 4, the list regarding "Cheese and curd" is replaced by the following:

HS code 1996	Notes/tariff quota/reductions
0406 10 10 (*)	Global cheese and curd 5 000 t; 50%; agf 3%
0406 10 20 (*)	Global cheese and curd 5 000 t; 50%; agf 3%
0406 20 10 (*)	Global cheese and curd 5 000 t; 50%; agf 3%
0406 20 90 (*)	Global cheese and curd 5 000 t; 50%; agf 3%
0406 30 00 (*)	Global cheese and curd 5 000 t; 0%; agf 3%
0406 40 10 (*)	Global cheese and curd 5 000 t; 50%; agf 3%
0406 40 90 (*)	Global cheese and curd 5 000 t; 50%; agf 3%
0406 90 10 (*)	Global cheese and curd 5 000 t; 50%; agf 3%
0406 90 25 (*)	Global cheese and curd 5 000 t; 50%; agf 3%
0406 90 35 (*)	Global cheese and curd 5 000 t; 50%; agf 3%
0406 90 90 (*) (except Gouda and Cheddar)	Global cheese and curd 5 000 t; 50%; agf 3%
0406 90 XX [to be defined by South Africa] (*) (Gouda and Cheddar)	Global cheese and curd 5 000 t; 0%; agf 3%

(\*) The annual growth factor (agf) will be applied annually to the relevant basic quantities.

2. The Community shall eliminate export refunds for exports to South Africa for Gouda, Cheddar and Processed cheeses, the three categories of cheese products falling within CN codes 0406 90 21, 0406 90 78 and 0406 30.
3. Without prejudice to monetary rate adjustments, for cheese products other than those referred to in paragraph 2 above, the Community shall not increase levels of export refunds for export to South Africa above the levels fixed by Regulation (EC) No 1305/2004 of 15 July 2004 fixing the export refunds on milk and milk products<sup>11</sup>.
4. The Community shall implement the commitments provided in paragraphs 2 and 3 of this Article depending on the full, effective and unconditional implementation by South Africa of the customs duties applicable on import into South Africa of products originating in the Community referred to in paragraph 1 of this Article. South Africa shall publish in the government Gazette an information notice before 1 September 2007 to repeal the measures against the EC cheese exports to South Africa and the opening of the global cheese and curd quota with the relevant modifications as described under paragraph 1.
5. The Community shall publish the amended export refunds as described under paragraphs 2 and 3 in the *Official Journal of the European Union* before 1 September 2007.

#### *Article 4*

Both Parties have agreed on the replacement of the current management system of the Community and South Africa cheese TRQs by a “first come first served” system to be implemented as from 1 January 2008.

#### *Article 5*

1. This decision shall enter into force on 1 September 2007.
2. In case South Africa has not finalised the ratification process by the date set in paragraph 1 of this Article, the entry into force date shall be agreed between the Parties by way of exchange of letters.

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<sup>11</sup> OJ L 244, 16.7.2004, p. 27.