

# **Agreement between the European community and the Republic of South Africa on Trade in wine**

THE EUROPEAN COMMUNITY,

hereinafter referred to as "the Community",

and

THE REPUBLIC OF SOUTH AFRICA,

hereinafter referred to as "South Africa",

hereinafter referred to as "the Contracting Parties",

WHEREAS 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, 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 wine 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 wines, farms and viticultural practices, many of which are similar,

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 wine produced in South Africa and the Community, on the conditions provided for in this 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 wines falling under heading 22.04 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 wine in the territory of a Contracting Party.

## **ARTICLE 3**

### **Definitions**

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

(a) "originating" means when used in relation to the name of one of the Contracting Parties, that a wine is produced within the territory of the Contracting Party concerned solely from grapes which have been wholly harvested in the territory of that Contracting Party;

(b) "geographical indication" means 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 wine originating in the territory of that Contracting Party;

(c) "homonymous" means 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" means the words used to describe wine on a label, or on the documents accompanying the transport of wine, on commercial documents, particularly invoices and delivery notes, and in advertising, and "describe" has a similar meaning;

(e) "labelling" means all descriptions and other references, signs, designs, geographical indications or trade marks which distinguish wines 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" means a Member State of the Community;
- (g) "presentation" means the words or signs used on containers, including their closure, on the labelling and the packaging;
- (h) "packaging" means 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" means the entire process of wine-making;
- (j) "trade mark" means:
  - (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) "vine varieties" means varieties of plants of *Vitis* without prejudice to any more restrictive legislation which a Contracting Party may have in respect of wine produced on its territory;
- (l) "identification" means, when used in relation to geographical indications, the use of geographical indications for the purpose of describing or presenting a wine.

## **ARTICLE 4**

### **General rules on importation and marketing**

Unless otherwise provided for 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**

### **OENOLOGICAL PRACTICES AND PROCESSES AND PRODUCT SPECIFICATIONS**

## **ARTICLE 5**

### **Mutual recognition**

1. The Community shall authorise the importation into the Community and the marketing in its territory for direct human consumption of all wines originating

in South Africa and produced in accordance with one or more of the oenological practices or processes, compositional and other product specifications as referred to in point 1 of [Annex I](#) and in the [Protocol](#).

2. South Africa shall authorise the importation into South Africa and the marketing in its territory for direct human consumption of all wines originating in the Community and produced in accordance with one or more of the oenological practices or processes, compositional and other product specifications as referred to in point 2 to [Annex I](#) and in the [Protocol](#).

## **ARTICLE 6**

### **New oenological practices – safeguard provisions**

1. If one Contracting Party authorises for its wines an oenological practice or process which is not authorised by the other Contracting Party by virtue of Article 5, it may make a request to the other Contracting Party for authorisation. In this case, the Party making the request shall place at the disposal of the other Contracting Party an appropriate dossier including the information necessary for the evaluation of the request.

2. A request in accordance with paragraph 1 shall be evaluated in particular in terms of the following criteria:

- (a) requirements for protection of human health,
- (b) requirements for consumer protection,
- (c) rules of good oenological practice, and in particular the requirement that the oenological practice or process in question does not involve an unacceptable change in the composition of the wine treated or a deterioration in the organoleptic characteristics thereof, and
- (d) the adequacy of the requesting Contracting Party's internal regulations concerned.

3. Within a period of twelve months from the submission of the dossier referred to in paragraph 1, the Contracting Parties shall mutually decide whether, and subject to what prescriptions, the oenological practice or process in question can be included in Annex I or whether a supplementary evaluation period is necessary.

4. In the event that the Contracting Parties are unable to agree on what constitutes safe and acceptable oenological practices, the dispute settlement procedure set out in Article 23 may be invoked by either Contracting Party.

5. The Contracting Party to which the request for authorisation was made, having fulfilled the procedural requirements referred to in paragraphs 3 and 4, may refuse the authorisation if the dispute settlement body referred to in Article 23 has made a ruling that the oenological practice or process is not in conformity with the requirements referred to in paragraph 2.

6. Paragraphs 1 to 5 shall also apply in cases where one Contracting Party:

(a) requests the other Party to render less restrictive the prescriptions for an oenological practice or process referred to in Annex I, or

(b) intends, on other than health grounds, to prohibit an oenological practice or process or to render more restrictive the prescriptions for an oenological practice or process referred to in Annex I.

7. Where a Contracting Party as a result of new information or of a reassessment of existing information has detailed grounds for establishing that an authorised oenological practice or process or a compositional and an other product specification as referred to in Article 5 endangers human health, it may temporarily suspend the authorisation or restrict the prescriptions regarding this practice or process listed in Annex I or in the Protocol. The other Contracting Party shall be informed of this at least four weeks before the suspension or restriction takes effect with an indication of the reasons which justify this decision. When the gravity of the danger so justifies, the suspension or restriction can be decided with immediate effect. In this case, the other Contracting Party shall be informed immediately with an indication of the reasons.

8. Where paragraph 7 is invoked, consultations between the Contracting Parties shall take place as soon as possible and in any event within 2 months, with a view to taking the appropriate measures as mutually decided. These measures may take the form of modifications to Annex I or to the Protocol. In the event that the Contracting Parties are unable to reach a decision, the dispute settlement procedure set out in Article 23 may be invoked by either Contracting Party.

9. The provisions of paragraph 4 shall apply without prejudice to the rights of the Contracting Parties under the WTO Agreement. However, during the evaluation period referred to in paragraph 3 or the dispute settlement procedure referred to in Article 23, the Parties waive their rights to rely on the relevant provisions of the WTO Agreement on consultations and dispute settlement.

## **TITLE II**

### **RECIPROCAL PROTECTION OF WINE NAMES AND**

### **RELATED PROVISIONS ON DESCRIPTION AND PRESENTATION**

## ARTICLE 7

### Principles

1. The Contracting Parties shall ensure, in accordance with this Agreement, the reciprocal protection of the names referred to in Article 8 which are used for the identification of wines 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 wines 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 wines 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 wines which are not originating in the geographical area indicated, even when:

(a) the true origin of the wine 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 wine;

(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 a wine 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 into believing that the wine 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 referred to in Article 19 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) applies, the Parties shall agree on elimination and allow for a reasonable transitional period where coexistence is possible.

## **ARTICLE 8**

### **Protected names**

Without prejudice to Article 9 and the Protocol the following names are protected with regard to wines:

- (a) originating in the Community:
  - (i) references to the name of the Member State in which the wines originates,
  - (ii) the geographical indications referred to in [Annex II](#);
- (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 [Annex II](#).

## **ARTICLE 9**

### **Transitional provisions regarding port and sherry and related trademarks**

Notwithstanding the protection provided for in Articles 7 and 8, the Contracting Parties agree to implement the provisions regarding Port and Sherry referred to in Annex X to the TDC Agreement which is comprehensive for all products currently using the "Port" and "Sherry" names.

## **ARTICLE 10**

### **Exports**

Without prejudice to Article 9, the Contracting Parties shall take the measures necessary to ensure that, in cases where wines originating in the Contracting Parties are exported and marketed outside of their territories, the protected names of one Contracting Party referred to in Article 8 are not used to describe and present a wine originating in the other Contracting Party.

## **ARTICLE 11**

### **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 12**

### Enforcement

1. If the appropriate competent body designated in accordance with Article 16 becomes aware that the description or presentation of a wine, 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 wine 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 the wine appear on containers or packaging, in advertising, or in official or commercial documents relating to wines whose names are protected under this Agreement;

(c) where, for packaging, containers are used which are misleading as to the origin of wines.

3. Paragraphs 1 and 2 shall be without prejudice to the possibilities of the persons and entities referred to in Article 11 to take appropriate actions in the Contracting Parties, including recourse to the courts.

## **ARTICLE 13**

### 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 III**

### IMPORT CERTIFICATION REQUIREMENTS

## **ARTICLE 14**

### Certification documents and analysis report

1. The Contracting Parties shall authorise the importation in their respective territories of wines in accordance with the rules governing the import certification documents and analysis reports as provided for in the Protocol.

2. Subject to Article 15, each Contracting Party agrees not to submit the import of wine originating in the territory of the other Contracting Party to more restrictive import certification requirements than any of those introduced by this Agreement.

## **ARTICLE 15**

### **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 IV**

### **MUTUAL ASSISTANCE BETWEEN ENFORCEMENT AUTHORITIES**

## **ARTICLE 16**

### **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 17**

### **Infringement**

1. If one of the bodies or authorities designated in accordance with Article 16 has reason to suspect that:

(a) a wine 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 wine concerned:

(a) the producer and the person who has power of disposal over the wine;

(b) the composition and organoleptic characteristics of the wine;

(c) the description and presentation of the wine, and

(d) details of the non-compliance with the rules concerning production and marketing.

## **TITLE V**

### **MANAGEMENT OF THE AGREEMENT**

#### **ARTICLE 18**

##### **Tasks of contracting parties**

1. The Contracting Parties shall, either directly or through the Joint Committee established pursuant to Article 19, 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 Annexes and Protocol 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 7(5);

(c) mutually decide to amend Annex I or the Protocol in accordance with Title I;

- (d) mutually determine in the Protocol the specific modalities referred to in Article 14(1);
- (e) mutually decide to amend the Protocol in order to determine the compositional and other product requirements referred to in Article 5;
- (f) 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 wine sector;
- (g) notify 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 19**

### **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. The Joint Committee shall facilitate contacts and exchanges of information to optimise the functioning of this Agreement.
4. The Joint Committee shall put forward proposals on issues of mutual interest in the wine sector.

## **TITLE VI**

### **GENERAL PROVISIONS**

#### **ARTICLE 20**

Transit – small quantities

Titles I, II and III of this Agreement shall not apply to wines:

- (a) which are in transit through the territory of one of the Contracting Parties,  
or

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

## **ARTICLE 21**

### **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 22**

### **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 procedure set out in Article 23.

## **ARTICLE 23**

### **Dispute settlement procedure**

1. A Contracting Party may refer any dispute relating to the application or interpretation of this Agreement to a body which 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 that it is not 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 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 24**

### **Future developments**

1. The Contracting Parties may at any time amend this Agreement in order to enhance the level of cooperation in the wine 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 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 25**

### **Marketing of pre-existing stocks**

1. Wines 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:

(a) where wine has been produced using one or more oenological practices or processes not referred to in Annex I or in the Protocol the wines may be marketed until stocks are exhausted;

(b) 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. Without prejudice to Article 6(7), wines 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.

3. Paragraphs 1 and 2 shall not apply in the case of products covered by the Port and Sherry compromise referred to in Article 9.

## **ARTICLE 26**

### **Annexes and protocol**

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

## **ARTICLE 27**

### **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 28**

### **Entry into force – Notice**

1. This Agreement shall enter into force on the first day of the month following that during which the Contracting Parties have notified each other of the completion of the necessary procedures.

2. If pending the entry into force of this Agreement, the Contracting Parties decide to apply it provisionally, all references to the date of entry into force, with

the exception of the reference in paragraph 3, shall be deemed to refer to the date such provisional application takes effect.

3. Either Contracting Party may terminate this Agreement at any time after its entry into force under paragraph 1, by giving one year's written notice to the other Contracting Party.

Done at Paarl on the twentieth day of December in the year two thousand and one.

Annex i

Annex ii:

A. GEOGRAPHICAL INDICATIONS OF WINES ORIGINATING IN THE EUROPEAN COMMUNITY

I. WINES ORIGINATING IN THE FEDERAL REPUBLIC OF GERMANY

II. WINES ORIGINATING IN THE FRENCH REPUBLIC

III. WINES ORIGINATING IN THE KINGDOM OF SPAIN

IV. WINES ORIGINATING IN THE HELLENIC REPUBLIC

V. WINES ORIGINATING IN THE ITALIAN REPUBLIC

VI. WINES ORIGINATING IN THE GRAND DUCHY OF LUXEMBOURG

VII. WINES ORIGINATING IN THE PORTUGUESE REPUBLIC

VIII. WINES ORIGINATING IN THE UNITED KINGDOM

IX. WINES ORIGINATING IN THE FEDERAL REPUBLIC OF AUSTRIA

X. WINES ORIGINATING IN THE KINGDOM OF BELGIUM

B. GEOGRAPHICAL INDICATION OF WINES ORIGINATING IN SOUTH AFRICA