

NOTICE NO OF 2012

DEPARTMENT OF AGRICULTURE, FORESTRY AND FISHERIES

PROCEDURES FOR THE APPLICATION, ADMINISTRATION AND ALLOCATION OF EXPORT PERMITS UNDER THE TRADE, DEVELOPMENT AND CO-OPERATION AGREEMENT BETWEEN THE EUROPEAN COMMUNITY AND THE REPUBLIC OF SOUTH AFRICA

A Trade, Development and Co-operation Agreement (TDCA) between the European Community (EC) and the Republic of South Africa has been established and came into force on 1 January 2000. This agreement provides for the establishment of a Bilateral Free Trade Area between the EC and South Africa in accordance with the World Trade Organization (WTO) rules and the strengthening of European development assistance to South Africa.

As part of the concessions provided for under the TDCA, the EC has agreed to grant tariff preferences on limited quantities of selected products in the form of tariff quotas. Export permits will be issued for the access quantities at reduced levels of duty under the conditions set out in the Schedule.

Sipho Ntombela

ACTING DIRECTOR-GENERAL: AGRICULTURE, FORESTRY AND FISHERIES.

SCHEDULE

1. Definitions

- 1.1 **“BEE-category”** means companies which qualify under the Broad-Based Black Economic Empowerment Act, Act No. 53 of 2003.
- 1.2 **“Historical category”** means companies that have a proven export performance over the period of one to three years, as stipulated under item 5.3 of this schedule and item 12 of the application form.
- 1.3 **“New entrants”** means new exporters that join the export market during the exporting year.
- 1.4 **“SMME”** means small, medium, and micro enterprises as defined in the National Small Business Act, Act No. 102 of 1996. The Act classifies small businesses according to size, and in descending order as medium, small, very small or micro enterprises.
- 1.5 **“SMME and new exporter’s category”** means SMME’s and new exporters that do not qualify under the historical or BEE-category.

2. Countries for Export

Permits for exportation of any of the products specified in the Table on Export Arrangements, to the European Community, will be issued only to exporters in South Africa registered at DTI and SARS of which proof is required as stipulated in paragraphs 7 and 8 of the Annexure A to the Schedule.

3. Application for EC export permits

- 3.1 Any person interested in exporting any of the products specified in the Table (excluding cut flowers – EC tariff code 0603.10 – 0603.90) must apply therefore on a copy of the application form attached as an Annexure.
- 3.2 Application for export permits issued annually must be submitted to the Administrative Officer: Management Support within four weeks from the date of publication of this notice. Permits will be valid from 1 January 2013 until 31 December 2013.
- 3.3 In the case of cut flowers, potential exporters must apply to SARS (Customs and Excise) on a first-come, first-served basis until the quota allocated is fully utilized.
- 3.4 The application form is available electronically on request from: JanK@daff.gov.za/SisiC@daff.gov.za /TimothyM@daff.gov.za;
- 3.5 The application form will only be accepted if duly completed.
- 3.6 An applicant bears the responsibility to ensure that –
 - (a) the application form reflects the correct information as requested for the product concerned;
 - (b) the application is submitted timeously as set out in paragraph 3.2, and
 - (c) the application (whether send electronically, faxed, posted or delivered by hand) has been received by the Administrative Officer: Management Support (Mr B. Nedombeloni).
- 3.7 All exporters and potential exporters must comply with –
 - (a) the sanitary, phyto-sanitary and other technical requirements as stipulated by the EC; and
 - (b) the Rules of Origin that form part of the TDCA and which can be obtained on request from the Department of Trade and Industry (Chief Directorate: Foreign Trade Relations, EU desk). Please note: The EUR 1 form that must accompany each consignment to be exported in terms of the TDCA preferential scheme, is obtainable from the applicant's local SARS office. The exception is Wine exporters with "Approved Exporter Status", who will follow the electronic exporter-to-client system on Wine Online.
 - (c) exporters that have obtained "Approved Exporter Status" may not use manually issued EUR 1 certificates as an alternative to the electronic exporter-to-client system. Contravention of this procedure will be

subject to suspension from the “Approved Exporter Status” classification by SARS and blacklisting on Wine Online.

- (d) exporters that used manually issued EUR 1 certificates without a quota will not qualify for a quota benefit in terms of the TDCA preferential scheme and will therefore be temporarily black listed for exportation until it has been reversed or corrected on Wine Online or at SARS.

4. Addresses for applications

4.1 Applications must –

- (a) when forwarded by post, be addressed to:
The Administrative Officer: Management Support
Department of Agriculture, Forestry and Fisheries
Private Bag X15
ARCADIA,
0007
(For attention: Mr. B.Nedombeloni, Sefala Building, Room 715);
- (b) when delivered by hand, be delivered to:
The Administrative Officer: Management Support
Department of Agriculture, Forestry and Fisheries
Sefala Building
503 Belvedere Street
ARCADIA
(For attention: Mr. B.Nedombeloni, Room 715);
- (c) when sent by facsimile, be transmitted to:
Facsimile number: (012) 319-8077
For attention: Mr. B.Nedombeloni
An application transmitted by facsimile must be followed up by forwarding the original application (do not include copies of the bills of entry export, DA 550/32 or Certificates of Export) to the address contemplated in paragraph (a) or (b) to reach the Department within 14 days of the facsimile transmission;
- (d) when sent electronically to BernardN@daff.gov.za; an electronic application including Wine Online applications must be followed up by forwarding the original application to the address contemplated in paragraph (a) or (b) to reach the Department within 14 days of the electronic transmission.

4.2 Applications delivered by hand will only be accepted during the Department’s official hours, namely 07:30 to 16:00.

5. Conditions for the issuing of export permits

5.1 Permits for the products specified in the Table will be allocated on the basis of the following categories, unless specified differently in the Table:

- (a) 70% to historical exporters.
- (b) 10% to BEE exporters.
- (c) 20% to the SMME and new exporter's category.

Please note that 5% of the initial quota will be reserved to new entrants. The exception is the wine quota, where one million liters will be reserved.

5.2 The allocation of quotas for permits will be done as follows:

- (a) Exporters in the SMME and new exporter's category on an equal basis.
- (b) BEE exporters either on an equal basis or as a historical exporter whichever will enhance government policy for BEE development.
- (c) Historical exporters in proportion to the average quantity of the product concerned, exported by the applicant during the period stipulated for the product in column 4 of the Table.
- (d) Exporters in the new entrants category equal to the maximum average of the SMME and new exporters category or combined category for BEE's, SMME's and New. The allocation for new entrants will be made until 30 April 2013, after which the balance of the unused quota will be re-allocated proportionally to the historical; New and SMME and BEE categories. New entrants must submit proof of orders and ability to export the applied quota.

5.3 The quantity exported by a historical exporter will be calculated on the basis of the detailed list of bills of entry export (DA 550/32 or export certificates for new exporters) or exports captured on the Wine Online System for the product applied for, for the period concerned, submitted together with the application form.

5.4 (a) If the allocation for a particular category is not fully utilized, the balance may be re-allocated to the other categories.

(b) In order to enhance government policy on BEE's, quotas for exporters in the SMME and new exporter's category, as well as the BEE category can be combined to ensure the most beneficial allocation.

5.5 The quotas allocated to exporters will be provisional quotas, and the rule of "use it or lose it" will be applied. Therefore, if quotas have not been utilized satisfactorily (export rate of 75% per month) by 30 April 2013 for and 31 July 2013, the Department has the prerogative to re-allocate the unused quotas after a process of consultation with the exporter has been followed.

5.6 Permits for the exportation of products under tariff headings 2008.40; 2008.50 and 2008.70 (canned fruit) will be allocated on receipt of a letter of intent from a local supplier indicating that the exporter can source the product for exportation to the EC with the exception of Black entrepreneurs who will qualify under of the BEE promotion initiative for Black exporters.

5.7 If the allocation for a particular product under tariff headings 2009.41– 2009.71 (pineapple and apple juice) is not fully utilized, the balance may be re-allocated to the other product concerned.

- 5.8 Despite any provisions in other laws, applicants registered as joint ventures, mergers, consortiums, holding companies or other similar business arrangements are not allowed to apply separately from their subsidiaries, minority shareholders or divisions for the same product, as this will establish an unfair advantage towards other applicants.
- 5.9 If the market share for a particular applicant exceeds the limit for dominant firms, contemplated in section 7(a)-(c) of the Competition Act, Act 89 of 1998 as amended, the Department can adjust the allocation formula to create fair competition within that industry sector.
- 5.10 A lost permit will only be replaced if an affidavit in this regard has been submitted and the Department is satisfied that the applicant acted in good faith and took the necessary steps to recover the original permit, as well as undertake to return the original permit if it is found. The pro forma of the affidavit is electronically available on the departmental website <http://www.daff.gov.za> or on request from TimothyM@daff.gov.za/SisiC@daff.gov.za.
- 5.11 The applicant must provide in each permit application the number of new jobs it expects to create annually as a result of the rebate. Refer to item 10 of the application form attached as Annexure A.
- 5.12 The provisions of this section shall apply subject to the conditions specified in the Table.

6. Procedure to pay for an export permit

- 6.1 (a) Payment of a tariff of R505 per permit will be payable for permits issued for annual permits, as well as lost permits and replacement permits issued until 31 March 2013.
- (b) Payment of a proposed tariff of R550 per permit to be approved by National Treasury will be payable for permits and replacement permits issued after 1 April 2013.
- 6.2 All application forms to be accompanied by proof of payment (bank deposit slip or cashier receipt) as stipulated under item 13 of the application form.
- 6.3 Payment to be made as follows:

Payment to Department of Agriculture,
bank account

Bank: Standard Bank
Branch: Arcadia
Branch No.: 01-08-45
Account No.: 013024175
Account Name: NDA:Marketing
Administration–
Trade Incentives

OR

Payment in cash: Department of
Agriculture cashier

Pretoria:
Agricultural Place, 20 Steve Biko Drive,
Arcadia,
Pretoria
Block P: Room GF 15

6.4 If a permit has been lost by an applicant either in his/her possession or during the process of clearing, a replacement permit will only be issued after proof of payment for the new permit has been received.

7. Compliance to BEE criteria in terms of Agri-BEE Charter for Agriculture

7.1 Permits issued for products in terms of the Trade Development and Co-operation Agreement between the EC and the RSA are subject to the Agricultural Black Economic Empowerment (AgriBEE) Sector Charter (AgriBEE Charter) under section 12 of the Broad Based Black Empowerment Act, 2003 (Act No 53 of 2003). The AgriBEE Charter was published in Notice no. 314 of Government Gazette No. 30886 of 20 March 2008, and the AgriBEE Sector 9 Code was published on 26 March 2012. The AgriBEE Charter is also available on the departmental website <http://www.daff.gov.za; Publications / Government Gazette / Notice no. 314>.

7.2 In the initial phase of implementation of the AgriBEE criteria, until such time that the AgriBEE Sector Code under section 9 of BEE Charter is fully implemented, exporters in the agricultural sector must submit their BEE Status in line with the Generic Scorecard. Exporters will not be disqualified for quota allocation purposes but failure to do an evaluation after the initial phase of implementation will constitute automatic non-compliance.

7.3 According to the Generic Codes of Good Practice, enterprises with a moving average turnover of less than R5 million (Exempted Micro Enterprises or EME's) are deemed to be exempted. Sufficient evidence of qualification as an Exempted Micro-enterprise is an auditor's certificate or similar certificate issued by an accounting officer or verification agency, and must be submitted to the Department of Agriculture, Forestry and Fisheries. The gazetted AgriBEE Sector Code under section 9 indicates the turnover threshold levels for Exempted Micro Enterprises (EME's) and Qualifying Small Enterprises (QSE's).

7.4 The AgriBEE Charter applies to multinational businesses or South African multinationals whose business falls within the scope of the Charter as defined in the Broad Based Black Empowerment Act, 2003 (Act No 53 of 2003). A specific regime for multinationals exists in the Codes of Good Practice and will apply.

7.5. Where an enterprise trades in more than one sector i.e. falls under more than one Sector Code or Section 12 Transformation Charter, the Measured Enterprise must be guided by the principles embodied in the Codes of Good Practice.

7.6 Enterprises using agricultural or agricultural related products for processing and / or manufacturing products in a multidiscipline sector will be evaluated according to the AgriBEE Charter.

- 7.7 Companies or businesses, irrespective of the size (large, medium, small, very small or micro) have to do a proper evaluation in terms of the indicative AgriBEE Scorecard to indicate their progress towards BEE compliance as at 31 October 2012.
- 7.8 Only BEE verification certificates issued by Accredited Verification Agencies or Verification Agencies that are in possession of a valid pre-assessment letter from South African National Accreditation Systems will be valid. The period of validity of the certificates will be 12 months from the date of issue. The list of accredited Verification Agencies is available on the Department of Trade and Industry website ([http:// www.thedti.gov.za](http://www.thedti.gov.za));. Certificates issued for a holding company can be used by all its subsidiaries.

8. General

- 8.1 Applicants must return all expired permits within thirty (30) days after the date of expiry thereof. Applicants who do not return their expired permits timeously will not be considered for the granting of permits.
- 8.2 This notice replaces all previous notices regarding the procedures for the application, administration and allocation of export permits under the TDCA between the EC and the Republic of South Africa.