

TRADE AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF THE PHILIPPINES AND THE GOVERNMENT OF THE REPUBLIC OF SOUTH AFRICA

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PREAMBLE

The Government of the Republic of the Philippines (hereinafter referred to as the "The Philippines"), and the Government of the Republic of South Africa (hereinafter referred to as "South Africa"), and jointly referred to as the "Parties" and in the singular as a "Party";

HAVING regard to the new bonds of friendship between their countries;

RECOGNIZING their mutual desire to establish relations with each other which will support, complement and extend cooperation between them;

HAVING RESOLVED to consolidate, strengthen and diversify the trade relations between their countries to the full extent of their growing capacity to meet each other's requirements on the basis of mutual benefit founded on the most-favoured-nation treatment in accordance with the principles contained in the World Trade Organization Agreement;

CONSCIOUS of the flow of trade between their countries;

MINDFUL that the more dynamic trade relationship desired by The Philippines and South Africa calls for close co-operation across the whole range of trade activities;

CONVINCED that such co-operation should be realized in evolutionary pragmatic fashion, as their policies develop;

DESIRING to strengthen their relations and to contribute jointly to international trade co-operation;

HEREBY agree as follows:

ARTICLE 1

UMBRELLA PROVISION

The Parties shall take all necessary measures to facilitate and promote trade and economic relations between the two countries subject to the domestic laws in force in their respective countries.

ARTICLE 2

MOST-FAVOURED-NATION TREATMENT

(1) Each Party shall grant to the country of the other Party most-favoured-nation treatment in accordance with the principles of the World Trade Organization Agreement in all matters relating to-

- (a) customs duties and all other charges and taxes applicable to importation or exportation of goods as well as methods of levying such duties, charges and taxes;

- (b) legal provisions pertaining to customs clearance, transit, storage and reloading;
- (c) all internal taxes or other charges of any kind imposed on or in connection with imports and exports; and
- (d) methods effecting payments arising from the implementation of this Agreement and transfer of such payments.

(2) In order to achieve the objective laid down in Article 1, the Parties shall promote-

- (a) the study, preparation and implementation of trade cooperation and facilitation projects of mutual interest;
- (b) cooperation relative to the financial and technical aspects of selected trade cooperation and facilitation projects.

ARTICLE 3

MOST-FAVOURED-NATION TREATMENT ON MERCHANT SHIPPING AND AIR TRANSPORT

(1) Merchant cargo-bearing vessels/cargo-bearing aeroplanes including their master and crew shall be granted most-favoured-nation treatment in respect of entry into, stay in, and departure from the harbour/airport of the other Party, in accordance with the domestic laws in force in the country of the said other Party.

(2) Merchant cargo-bearing vessels/cargo-bearing aeroplanes of either Party that are in distress shall be permitted to take refuge in the nearest harbour/airport of the other Party and shall receive friendly treatment, assistance, and protection.

ARTICLE 4

EXEMPTIONS FROM MFN

The provisions of Article 2 shall not apply to the grant or continuance, if any, of -

- (a) advantages, preferences and exemptions which either of the Parties has granted or may grant to its contiguous neighboring countries to facilitate frontier traffic;
- (b) preferences or advantages, accorded by either Party to any other country in accordance with a bilateral preferential trade agreement;
- (c) advantages or preferences which either of the Parties has granted or may grant under any scheme for the expansion of trade and economic cooperation among developing countries which scheme is open for participation by developing countries and to which either of the Parties is or may become a party; or
- (d) special preferences or other advantages accorded by either Party resulting from its association in a regional or sub-regional arrangement, customs union or a free trade area or measures leading to the formation of a customs union or a free trade area.

ARTICLE 5

SAFEGUARD MEASURES

Subject to the requirements that such measures are not applied in an arbitrary or discriminatory manner, the provisions of this Agreement shall not limit the rights of either Party to adopt or execute measures-

- (a) for reasons of public health, morals, order or security;
- (b) for the protection of human, plants and animals against diseases, pollution and pests or threat to life;
- (c) to safeguard its external financial position and balance of payments;

- (d) to protect national treasures of artistic, historical or archaeological value;
- (e) relating to traffic in arms, ammunitions, implements of war, or traffic in other materials carried on directly or indirectly for the purpose of supplying a military establishment;
- (f) relating to fissionable (nuclear) materials, the source thereof, or the radioactive by-products thereof except as may be required for medical purposes;
- (g) relating to international commitments, and development and rationalization of local industry,

ARTICLE 6

PAYMENT ARRANGEMENT

- (1) All payments arising from trade between the two countries shall be made in freely convertible currencies, subject to the foreign exchange regulations and other applicable domestic laws in force in either country.
- (2) Payments between the two countries may also be effected through other payment arrangements subject to the domestic laws in force in both countries and in consonance with international commitments of both Parties.

ARTICLE 7

EXCHANGE OF COMMERCIAL REPRESENTATIVES/PARTICIPATION IN TRADE FAIRS

- (1) In order to develop further trade between the two countries, the Parties shall, facilitate the visit of commercial representatives, groups and delegations of either Party to the country of the other Party, the participation in trade fairs to be held in either country and the arranging of exhibitions of either country in the territory of the other, on terms to be agreed upon between their competent authorities referred to in Article 10.
- (2) The exemptions from customs duties and other similar charges on articles and samples, intended for fairs and exhibitions, as well as their sale and disposition, shall be subject to the domestic laws, rules and regulations in force in the country where such fairs and exhibitions are held.

ARTICLE 8

PROMOTION OF CONDUCT OF TRADE AND ECONOMIC ACTIVITIES

Each Party shall endeavour to promote the conduct of trade and economic activities within its territory in accordance with generally accepted international trade practices.

ARTICLE 9

EXCHANGE OF TRADE INFORMATION

In order to facilitate exchange of goods, services, and payments between the two countries, and subject to the domestic laws, rules and regulations in force in both countries, either Party upon the request of the other Party shall furnish, through its commercial attaché and other appropriate representatives, all pertinent information for the development of trade and economic relations between the Parties.

ARTICLE 10

COMPETENT AUTHORITIES

The Parties designate the Department of Trade and Industry, on behalf of the Government of the Republic of the Philippines, and the Department of Trade and Industry, on behalf of the Government of the Republic of South Africa, as the competent authorities responsible for the coordination and execution of the Agreement.

ARTICLE 11

FACILITATION OF TRANSIT OF GOODS

The Parties shall endeavour to facilitate the transit traffic of commercial goods under this Agreement and agree to-

- (a) facilitate freedom of transit of goods originating from the countries of either of the Parties and destined for the country of a third party;
- (b) facilitate freedom of transit of goods originating from the country of a third party and destined for the country of either of the Parties.

ARTICLE 12

JURIDICAL FRAMEWORK FOR EXCHANGE OF GOODS

- (1) The exchange of goods within the framework of the Agreement shall be carried out in terms of contracts concluded between either juridical or natural persons of the two countries.
- (2) The Parties to a contract contemplated in sub-article (1) shall be responsible for the fulfillment of the contracts concluded by them in compliance with the laws and regulations in force in the country where any obligations thereunder are to be fulfilled.

ARTICLE 13

BUSINESS FACILITATION SERVICES FOR TRADE MATTERS

- (1) Nationals, state corporations and private organizations/companies of either country shall be afforded access to all courts of the other country, subject to the domestic laws, rules and regulations of such other country. Disputes relating to trade between nationals, or state corporations and private organizations or companies of both Parties shall be referred to appropriate courts where such disputes will be adjudicated. They shall not claim or enjoy immunities from suit or execution of judgment or other liability with respect to commercial or financial transactions and from taxation with respect to commercial or financial transactions.
- (2) Private organizations or companies of either country shall be permitted within the territory of the other country to deal directly with buyers and users of their products, for purposes of sales promotion and servicing their products, subject to the laws and regulations applicable in each country.
- (3) Each Party agrees to assist in the solution of business facilitation problems and that either Party may, if possible, gain access to appropriate government offices and officials in each other's country.

ARTICLE 14

SETTLEMENT OF DISPUTES

- (1) Any dispute as to the interpretation and the implementation of this Agreement shall be resolved primarily through consultations within the Joint Trade Committee contemplated in Article 15 and, where necessary, shall be referred for settlement to an arbitration party to be mutually agreed upon by both Parties.
- (2) The Parties shall supply the Joint Trade Committee with all relevant information required for a thorough examination of any dispute with a view to seeking a solution acceptable to the Parties.

ARTICLE 15

ESTABLISHMENT OF A JOINT TRADE COMMITTEE

- (1) The Parties shall agree to establish a Joint Trade Committee to discuss measures for the expansion of direct trade between the two countries and examine measures for the solution of problems or disputes that may arise in the course of the implementation of the Agreement. The Joint Trade Committee may also make the necessary suggestions for the achievement of the objectives of this Agreement.

(2) The Joint Trade Committee shall consist of representatives of The Philippines on the one hand, and of representatives of South Africa on the other.

(3) The Joint Trade Committee shall formally adopt its own rules or procedures.

(4) Each Party shall preside in turn over the Joint Trade Committee, in accordance with the arrangements to be laid down in its rules of procedure.

(5) The Joint Trade Committee shall act by mutual agreement.

(6) The Joint Trade Committee shall meet as required and as agreed by the Parties, and at such venue alternately designated by the Parties.

ARTICLE 16

TERMINATION OF CONTRACTS

The provisions of this Agreement shall apply for ten years after its termination to private contracts entered into during the period of the validity of this Agreement but not fully completed on the day of termination of this Agreement.

ARTICLE 17

AMENDMENT AND ENTRY INTO FORCE OF THE AGREEMENT

(1) This Agreement may be amended at any time by written agreement through the Exchange of Notes through the diplomatic channel: Provided that the constitutional requirements if any of the respective Parties concerning such amendment have been complied with.

(2) Any amendment of this Agreement or the termination thereof shall not adversely affect or in any way prejudice any rights or obligations accrued to or incurred by virtue of the application of this Agreement prior to the effective date of such amendment or termination.

(3) This Agreement shall enter into force when each Party has notified the other in writing through the diplomatic channel of its compliance with the constitutional requirements necessary if any for the implementation of the Agreement. The date of entry into force shall be the date of last notification.

(4) The Agreement shall be valid for a period of three (3) years, whereafter it shall automatically be extended for similar period unless, within a minimum period of three (3) months prior to the expiration of the current period of validity, either Party submits to the other a written notice of its intention to terminate the Agreement.

IN WITNESS WHEREOF the undersigned, being duly authorized representatives of the Parties have signed and sealed this Agreement in two originals in the English language both texts being equally authentic.

Done at Manila, The Philippines on the 1st day of March in the year one thousand nine hundred and ninety seven.

(SGD.)

(SGD.)

FOR AND ON BEHALF OF
THE GOVERNMENT OF THE
REPUBLIC OF THE PHILIPPINES
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