



**PARLIAMENT**  
OF THE REPUBLIC OF SOUTH AFRICA

**NATIONAL ASSEMBLY**

**MEMBER OF PARLIAMENT**

PO Box 15 Cape Town 8000 Republic of South Africa

Cell: 0027 82 339 1626

e-mail: [nokomasipa1@gmail.com](mailto:nokomasipa1@gmail.com)

[www.parliament.gov.za](http://www.parliament.gov.za)

[www.da.org.za](http://www.da.org.za)

## **NOKO MASIPA, MP**

SHADOW MINISTER OF AGRICULTURE, LAND REFORM AND RURAL DEVELOPMENT

[UNSIGNED ELECTRONIC COPY]

7 November 2023

Hon. Valdis Dombrovskis  
Executive Vice President of the European Commission – Economy  
EU Trade Commissioner  
Rue de la Loi / Wetstraat 200  
1049 Brussels  
Belgium

Dear Hon. Dombrovskis

### **REF: Race-based exclusionary policy by the South African government for agricultural exporters applying for export permits to the EU**

I am a Member of Parliament from South Africa representing the Democratic Alliance (DA), which is the country's official opposition party. I make these submissions in my capacity as the Shadow Minister of Agriculture, Land Reform and Rural Development.

#### **1. Context**

On 31 October 2023, the South African government, through the Minister of Agriculture, Land Reform and Rural Development, released a government gazette (notice) on Procedures for the the Application, Administration and Allocation of export permits ("the Procedures") for South African agricultural exporters working to gain market access to the European Union under the **Economic Partnership Agreement between the European Union (EU) and the Southern Africa Development Community (SADC-EU EPA TRQ) for the Year 2024**. I have attached the gazette, filed under gazette number 4020, for ease of reference.

The SADC-EU EPA TRQ was signed on the 10<sup>th</sup> of June 2016 between the EU and SADC member states (including South Africa), and came into effect on the 1<sup>st</sup> of October 2016. The agreement prescribes

agricultural products to be exported by SADC countries (including South Africa) into the EU market under the Tariff Rate Quota (TRQ) regime.

The Provisions published by South Africa's Minister of Agriculture, Land Reform and Rural Development are meant to give effect to the SADC-EU EPA TRQ by prescribing the procedure and requirements that South African agricultural exporters must adhere to when applying for export permits to the EU.

It is the DA's considered view that the Procedures are discriminatory and exclusionary as they seek to use race as the qualifying criteria for South African exporters applying for export permits under the SADC-EU EPA TRQ. Before an exporter is granted an export permit, they are required to comply with stringent Broad-Based Black Economic Empowerment (BBBEE) requirements – which places many minority-owned agricultural enterprises at great disadvantage.

## **2. The Issue**

Under the prescribed Procedures, any South African agricultural exporter who wishes to apply for an export permit must comply with South Africa's race-based red tape in the form of the Amended Agricultural Black Economic Empowerment (AgriBEE) Sector Code and the Broad-Based Black Empowerment Act No 53 of 2003. If an exporter does not conform to these provisions, through a certificate of compliance and annual reports to the regulatory council, they will not be eligible for an export permit.

These BBBEE requirements are by default applicable to all agricultural exporters because of the stipulation provided for in the AgriBEE Sector Code. The Procedures provide that the scope of the AgriBEE Sector Code shall include any enterprise which derives more than 50% of its turnover from the following:

- The primary production of agricultural products;
- The provision of inputs and services to enterprises engaged in the production of agricultural products;
- The beneficiation of agricultural products whether of a primary or semi-beneficiation form; and
- The storage, distribution, and/or trading and allied activities related to non-beneficiated agricultural products.

Although the Procedures outline qualifying criteria for agricultural exporters who may wish to be excluded from complying with the BBBEE requirements, the threshold to qualify for such an

exemption is extremely high and cumbersome. We are extremely concerned that the disqualification of producers who do not meet the requisite BBBEE recognition status may be detrimental to the development of South Africa's nascent agriculture export sector. For example, a farmer may have an export-quality agriculture product that is in demand in the EU, but because they are a single owner enterprise with no BBBEE partners, they will not be granted an export permit.

In effect, an agricultural producer that has the "wrong" skin colour will be prevented from exporting their products. This amounts to a flagrant form of unfair racial discrimination.

This has direct implications, not only on farmers' ability to run sustainable businesses, but also on workers. Viewed differently, even if a farmer provides proof that they qualify for exemption from BBBEE requirements, the decision still remains the prerogative of the respective sector council. In short, the AgriBBBEE is indirectly increasing the cost of doing business for agriculture exporters in South Africa.

Export-oriented agriculture operations are often run by entrepreneurs whose primary drive is to run a successful business, create jobs and contribute to national economic development. Asking agripreneurs to comply with onerous racial requirements in order to obtain export permits will deter investment and reduce competitiveness of South Africa's agricultural exports.

The South African government should be optimising South Africa's export competitiveness, rather than stifling it through imposing race-based barriers to exports to important markets such as the EU.

### **3. Race-based policies violate EU policies on fair trade**

Race-based trade and economic policies are by their nature meant to exclude and deny individuals from a particular race grouping from having fair access to opportunities. This is despite the fact that the South African Constitution, through the Bill of Rights, espouses the values of non-racialism and the equality of all South Africans, regardless of race.

From an EU perspective, the denial of market access for agricultural exporters from South Africa by the South African government, based on race, is inconsistent with EU Trade Policy. The Economic Partnership Agreement (EPA) that the EU has with South Africa is premised on protecting human rights, democratic principles and the rule of law. With a clause that establishes these standards as 'essential elements' of the EPA, the EU has "...the right to adopt 'appropriate measures' in relation to the party that has violated the essential elements of the agreement'. In enforcing these 'essential elements' to trade agreements, parties to EU EPAs are obliged to refrain from adopting policies contrary to respect for those values.

By pursuing policies such as BBBEE to discriminate against South African producers on the basis of race in accessing the EU market, the South African government has failed to protect their human

rights, infringed upon their democratic right to fair access to economic opportunities, and compromised the essential functioning of the rule of law by violating South Africa's Bill of Rights.

The South African Development Community (SADC) EPA with the EU, of which South Africa is a member, states that 'this Agreement is based on the [...] [e]ssential [...] [e]lements of the Cotonou Agreement, as set out in Article [...] 9 [...] of the Cotonou Agreement' in as far as it relates to the principles of respect for human rights, democratic principles and the rule of law, with attached legal consequences. These essential elements form the basis and are an essential element of the EPA agreement. If these elements are truly essential, they must be enforced in cases where they are violated.

#### 4. Remedial action

Consequently, I hereby request that the Office of the EU Trade Representative, through the Political Dialogue Mechanism contained in the SADC-EU EPA TRQ:

- Reminds the South African government of its obligations under the EPA and the essential elements underpinned by respect for human rights, democratic principles and the rule of law;
- Tables the unfair and racially-discriminatory Procedures gazetted by the South African government before the European Parliament for review under the auspices of the SADC-EU EPA TRQ; and
- Calls on the South African government to rescind the use of race-based policies such as the Amended Agricultural Black Economic Empowerment (AgriBEE) Sector Code and the Broad-Based Black Empowerment Act No 53 of 2003 to discriminate against South Africans working to gain access to the EU market.

I look forward to your consideration of the aforementioned request for remedial action, and your response thereto.

Thank you.

Kind Regards



**Noko Masipa, MP**

DA Shadow Minister: Agriculture, Land Reform and Rural Development

Email: [nokomasipa1@gmail.com](mailto:nokomasipa1@gmail.com)

Phone: +27(21)403 8668 | Mobile: +27(82)339 1626



P.O. Box 15 Cape Town. Republic of South Africa

[www.parliament.gov.za](http://www.parliament.gov.za)