

Trade Agreement between the Government of the Republic of
Zimbabwe and the Government of the Republic of Namibia

IT is hereby notified that His Excellency the President has been pleased, under the provisions of section 87 of the Customs and Excise Act [*Chapter 177*], to declare that the Agreement concluded with the Government of the Republic of Namibia under the powers conferred upon him by section 86 of the Act, and published in the Schedule shall come into force on the 30th April, 1993.

SCHEDULE

TRADE AGREEMENT BETWEEN THE GOVERNMENT OF THE
REPUBLIC OF ZIMBABWE AND THE GOVERNMENT OF THE
REPUBLIC OF NAMIBIA

The Government of the Republic of Zimbabwe and the Government of the Republic of Namibia (hereinafter referred to as "the Contracting Parties"):

RECOGNIZING that trade between their respective countries should be as free and uninterrupted as possible;

DESIROUS of continuing and improving the existing trading relations between them on a basis of equality and mutual benefit;

AGREE AS FOLLOWS:

ARTICLE I

1. Goods grown, produced or manufactured in the territory of either Contracting Party may be imported into the territory of the other free of customs duty.

2. For the purpose of clause 1 of this Article, customs duty includes surcharge as levied in Namibia on imported goods and surtax as levied in Zimbabwe on imported goods, but does not include sales tax as levied both on internal transactions and on imported goods in each country.

3. To qualify for such duty free treatment, the goods shall be accompanied by a certificate of origin issued in accordance with Article II hereof by a body authorized by the country of origin.

ARTICLE II

For the purpose of this Agreement—

- (a) the following categories of goods shall be considered as grown or produced in the territory of a Contracting Party—
- (i) mineral products extracted from its soil;
 - (ii) vegetable products harvested or gathered therein;
 - (iii) live animals born and raised therein;
 - (iv) products obtained therein from live animals;

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- (v) forest products harvested therein;
 - (vi) fish and other marine products gathered therein or from its marine economic zone; and
 - (vii) products obtained therein exclusively from products specified in (i) to (vi) above;
- (b) goods shall be considered as manufactured in the territory of a Contracting Party if they qualify under the Rules of Origin contained in the Annexure "A", attached hereto, which forms part of this Agreement.

ARTICLE III

1.—

- (a) a Party may impose anti-dumping duties on goods produced in the country of the other Party;
- (b) a Party may impose countervailing duties to offset subsidies granted directly or indirectly in respect of goods imported from the other country;
- (c) a Party, when requested by the other Party to assist in the investigation of dumping, shall provide all possible assistance in such investigation.

2. If an excise duty or similar tax applicable to goods which are or may be produced in the country of a Contracting Party is in force when this Agreement comes into force, or is subsequently introduced or increased, that Party may simultaneously levy on similar goods produced in the country of the other Party, which are imported into its territory, a duty equivalent to such excise duty or similar tax.

ARTICLE IV

1. The Contracting Parties agree that trade between the two countries shall be conducted through authorized ports of entry and exit.

2. The Contracting Parties shall use their best endeavours to prevent all movement between their two countries of goods, the import or export of which is contrary to the relevant laws and regulations in force in either country, as well as the movement of goods inclined to bypass established entry points.

ARTICLE V

1. The trade in goods and services between the territories of the Contracting Parties shall, under this Agreement, be subject to the laws and regulations relating to import and export in force from time to time in their respective countries.

2. Commercial transactions under this Agreement shall be effected on the basis of contracts to be concluded between natural and juridical persons of the Republic of Zimbabwe on the one hand and natural and juridical persons of the Republic of Namibia on the other hand. The natural and juridical persons, referred to in this subclause, shall carry out their commercial transactions in their own capacities.

ARTICLE VI

The Contracting Parties shall, subject to the laws and regulations in force in their respective countries and on conditions agreed upon by the competent authorities of both Parties, permit the import and export, free of customs duties, taxes and other similar levies or charges, not related to the payment for services, of the following—

- (a) samples of goods and publicity materials required only for obtaining order and for advertising purposes, which are not for sale and are of no commercial value;
- (b) goods imported temporarily for experiments and research activities;
- (c) goods imported temporarily for the purpose of trade fairs and exhibitions;
- (d) goods imported temporarily for effecting repairs and which are re-exported; and
- (e) goods originating in or from a third country and transported through the country of one of the Contracting Parties destined for the country of the other Contracting Party.

ARTICLE VII

To facilitate and promote the development of trade and commercial transactions under this Agreement, the Contracting Parties agree—

- (a) to allow the organization of trade fairs and exhibitions in their respective countries in accordance with their laws and regulations;
- (b) to furnish each other, on request, with all necessary information concerning the possibilities of supplying goods originating from their respective countries.

ARTICLE VIII

The Contracting Parties agree to facilitate, in accordance with their respective laws and regulations, freedom of transit through their respective territories of goods originating from—

- (a) the countries of either of them and destined for a third country;
- (b) the country of a third party and destined for the country of either of them:

Provided that such transit or movement of goods complies with the laws and regulations in force.

ARTICLE IX

All payments between the Contracting Parties in pursuance of this Agreement shall be effected in any freely convertible currency through normal banking channels in accordance with the foreign exchange laws and regulations in force in their respective countries.

ARTICLE X

The Contracting Parties, having regard to the objectives of this Agreement and recognizing that difficulties or problems may arise as a result of the operation of the Agreement, agree that—

- (a) a Contracting Party which proposes to take action in terms of the provisions of this Agreement, likely to impair trade in goods in which the other Contracting Party has substantial interest, shall consult with

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the other Contracting Party prior to taking such proposed action and, after having considered any representations made by the other Contracting Party, may impose such measures as it deems necessary. Consultations envisaged in this paragraph shall be conducted within a reasonable period of time and through diplomatic channels;

- (b) in critical circumstances, where delay would cause damage which it would be difficult to repair, action under paragraph (a) of this Article may be taken provisionally, without prior consultation, on the condition that consultation shall be effected immediately after such action.

ARTICLE XI

1. With the aim of securing the full and effective implementation of the provisions of this Agreement, a Joint Trade Commission shall be established consisting of representatives from both Contracting Parties.

2. The Joint Trade Commission shall meet at least once every six (6) months alternating between the capitals of both countries, at the request of either of the Contracting Parties.

3. The Joint Trade Commission will be able to recommend to the Contracting Parties any measures it might deem necessary or desirable for the improvement of trade between the two countries.

4. In particular, the Joint Trade Commission will consider ways of reducing non-tariff barriers to trade, including the progressive eliminating of import licence on mutually agreed lists of goods and the progressive elimination of foreign exchange restrictions on trade between the two countries.

5. The Joint Trade Commission will also review the Rules of Origin in Annexure "A" to this Agreement and propose to the Contracting Parties any improvements or modifications considered desirable.

6. Conclusions and recommendations of the Joint Trade Commission shall be reached or made by mutual agreement of the representatives of the two sides.

ARTICLE XII

1. The Government of the Republic of Zimbabwe hereby designates its Ministry of Industry and Commerce and the Government of the Republic of Namibia hereby designates its Ministry of Trade and Industry, as their respective organs for the purpose of implementing this Agreement and other matters related thereto.

2. Each Contracting Party shall have the right to designate in writing, at any time, any other appropriate body, organization or Ministry in place of the one already designated.

ARTICLE XIII

1. This Agreement shall come into force on a date to be fixed by an exchange of diplomatic notes indicating that each Party has complied with its constitutional requirements and shall remain in force for a period of five (5) years thereafter. It shall be automatically extended for additional period of two (2) years each.

2. This Agreement, or any extended period thereof, may be terminated by either Party upon six (6) months' written notice.

3. At the termination of this Agreement, its provisions and the provisions of any separate contracts or agreements made in respect thereof, shall continue to govern any unexpired and existing obligations assumed or commenced thereunder until they are fully executed.

DONE at Windhoek on this 17th day of August, 1992. In two originals in the English language, both texts being equally authentic.

HON. C. USHEWOKUNZE,
Minister of Industry and Commerce.

*For and on behalf of the
Government of the
Republic of Zimbabwe.*

HON. B. AMATHILA,
Minister of Trade and Industry.

*For and on behalf of the
Government of the
Republic of Namibia.*

ANNEXURE "A"

TO THE TRADE AGREEMENT BETWEEN THE REPUBLIC OF NAMIBIA AND THE REPUBLIC OF ZIMBABWE

1. For the purpose of Article II (b) of the Agreement, goods shall be regarded as having been manufactured in the territory of a Contracting Party when at least 25 per cent. of the manufacturing costs of these goods, as determined herein, which shall constitute "local content", is represented by materials produced and direct labour performed in that territory and the last process in the manufacture of those goods has taken place in that territory:

Provided that:

- (a) the last process of manufacture is substantial and sufficient to change the nature of the product and give it a new, essential and distinct characteristic and it was performed in an enterprise equipped for that purpose; and
- (b) the final product presents a completely new product or at least an important state in the manufacturing process.

2. "Territory" means with respect to the Republic of Namibia and the Republic of Zimbabwe, the territory to which their respective Customs laws apply, including any area beyond the territorial seas of either Republic within which, in accordance with international law and their domestic laws, each Republic may exercise rights with respect to the seabed and subsoil and their natural resources, and includes export processing zones located in either Republic.

3. In order to qualify for tariff preferences under this Agreement, goods exported from the territory of one Contracting Party must be transported to the territory of the other Party without having entered the commerce of any third country.

4. "Local Content", in relation to goods manufactured in the territory of either Contracting Party means such percentage of the manufacturing costs of such goods in their finished condition as is represented by the cost of—

- (a) any materials which were grown, produced or manufactured in the country concerned and which were used in the manufacture of the goods; and
- (b) the direct labour involved in the manufacture of the goods.

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5. For the purposes of this Annexure the following minimal processes shall *not* be regarded as manufacturing—

- (a) simple assembly operations;
- (b) simply placing goods in flasks, bags, cases, boxes, or fixing items on cards or boards and all other simple packing operations;
- (c) simple mixing or blending of imported ingredients which do not result in the formation of a different product;
- (d) operations required to ensure the preservation of merchandise in good condition during transportation and storages such as ventilation, spreading out, drying, freezing, placing in brine, sulphur dioxide or other aqueous solutions, removal of damaged parts, cleaning and similar operations;
- (e) changes of packing, consolidation of goods, breaking bulk or disassembly of consignments;
- (f) marking, labelling or affixing other like distinguishing signs on products or other packages;
- (g) simple operations consisting of removal of dust, sifting or screening, sorting, grading, classifying and matching, including the making up of sets of goods;
- (h) washing, painting, diluting, drying, steaming, heating, salting which does not result in a permanent change in the shape, form or nature of the article;
- (i) repair, remodelling or alteration of imported goods;
- (j) the combination of two or more operations specified in paragraphs (a) to (i) above; and
- (k) tanning of imported hides.

6. In the calculation of the costs of materials produced and direct labour performed in respect of the manufacture of any goods in any territory for the purpose of this Annexure, only the following items may be included—

- (a) the cost of local materials, including the cost of waste materials lost in the process of manufacture, used directly in the manufacture of such goods—
 - (i) where materials which are not wholly produced in the territory concerned are used directly in the manufacture, such goods will count to the extent of their prorated local content as determined in accordance with this Annexure;
 - (ii) locally manufactured materials or components which have been temporarily exported for further manufacture shall on return to the country of final manufacture be taken as 100 per cent. imported content for the purposes of calculating local content;
 - (iii) the following, *inter alia*, shall not be regarded as direct materials: water (provided it is not part of the finished product), electricity, consumable items, items for staff benefits such as tea, protective garments and uniforms;
- (b) the cost of labour directly incurred in the manufacture of such goods, where in addition to the wages and salaries paid to direct labour, the following costs will be included in the calculation of direct labour costs—

- (i) leave, except cash in lieu of leave;
- (ii) salaries for foremen and supervisors directly involved in the manufacturing processes;
- (iii) overtime payment at standard rates;
- (iv) predetermined incentives or bonuses if related to production;
- (v) on-the-job training;
- (vi) production quality control, including inspection and testing;
- (vii) materials handling on the production line;
- (viii) verifiable product development, design and engineering costs incurred within the territory of a Contracting Party;
- (ix) royalties, licensing or other such payments for the right to manufacture the goods in question; and
- (x) medical plan premiums paid for direct labour; unemployment insurance premiums for direct labour.

The term "direct labour" shall be taken to refer to those procedures applied to the input materials from which the product is manufactured from the time they first come into the hands of the workforce which actually manufactures the product to the time the finished article is put into retail packaging.

The following shall, *inter alia*, be excluded from "direct labour costs": costs related to the general expense of doing business such as executive, financial, sales, marketing, advertising, accounting, legal and insurance costs, cash in lieu of leave, production incentive bonuses not pre-determined or not related to production, the portion of salaries of foremen and supervisors not related to the manufacturing process, fringe benefits, business overheads, administration expenses and salaries, royalty payments related to rights to distribute goods, export packing, or profit.

7.—

- (a) the manufacturing cost of goods shall be calculated in accordance with the provisions of this Annexure and shall be representative of the standard costs arising from normal business practices, operating procedures and levels of production in the industry concerned as normally incurred over a period of not less than three months, such cost of the goods in their finished condition based on factual costs, charges and expenses incurred in their manufacture, including the cost of putting the goods up in their retail packages and the cost of such retail packages:

Provided that, if it is determined by the verifying authority that any cost, charge or expense has not been incurred by the manufacturer at the normal open market price in an arm's length transaction, the verifying authority may, in accordance with the generally accepted accounting principles, assess the amount of such cost, charge or expense on the basis of the normal open market prices, and the manufacturing cost shall be calculated in accordance with that assessment;

- (b) for the purposes of determining the local content of any goods manufactured either wholly or partly from locally produced or manufactured materials or components, the local content of such locally produced or manufactured materials or components shall be determined and apportioned as herein provided:

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- (c) for the purposes of determining the local content of any goods manufactured either wholly or partly from imported materials, the charges incidental to the delivery of the imported materials shall be considered as forming part of the value of those materials; and
 - (d) any formation which the verifying authority of a Contracting Party may require for the purpose of ascertaining the local content of the manufactured cost of any goods shall be provided in such form and certified in such manner as may be agreed by the Contracting Parties to ensure accuracy and clarity.
8. For the purposes of this Annexure, the following costs, charges and expenses shall be included in the manufacturing cost of the goods—
- (a) the cost of imported materials, including the cost of waste materials and materials lost in the process of manufacture, as represented by the landed cost of those materials at the factory, including any charges incidental to the delivery of such materials to the factory:
Provided that the cost of imported materials not imported by the manufacturer shall be the delivered price at the factory;
 - (b) the cost of local materials, including the cost of waste materials and materials lost in the process of manufacture, as represented by their delivered price at the factory;
 - (c) the cost of direct labour incurred in the manufacture of the goods, as qualified herein;
 - (d) the cost of direct manufacturing expenses as represented by—
 - (i) the operating costs of the machines used to manufacture the goods;
 - (ii) the expenses incurred in the cleaning, painting, drying, polishing, pressing or any other process, as may be necessary for the finishing of the goods;
 - (iii) the cost of putting the goods up their retail packages and the cost of such retail packages but excluding any extra cost of packing the goods for transportation or export and the cost of any extra package; and
 - (e) manufacturing overhead costs, as represented by—
 - (i) rent, rates, bond interest, and insurance charges directly attributable to the factory;
 - (ii) indirect labour charges, including salaries paid to factory managers, wages paid to foremen, examiners and testers of the goods and fees paid to efficiency advisers;
 - (iii) power, light, water and other service charges directly attributable to the cost of the manufacture of the goods;
 - (iv) consumable stores, including minor tools, grease, oil safety garments and other incidental items and materials used in the manufacture of the goods;
 - (v) depreciation and maintenance of factory buildings, plant, machinery, tools and other items used in the manufacture of the goods;
 - (vi) workmen's compensation payments, pension premiums and insurance;
 - (vii) development, design and engineering costs allocated to actual production.

9. The following costs, charges and expenses shall be excluded from the manufacturing cost of the goods—

- (a) administration expenses as represented by—
 - (i) office expenses, office rent and salaries paid to accountants, clerks, managers, lawyers and other executive personnel;
 - (ii) directors' fees, other than salaries paid to directors who act in the capacity of factory managers;
 - (iii) statistical and costing expenses in respect of the manufactured goods;
 - (iv) investigation and experimental expenses unrelated to production;
- (b) selling expenses as represented by—
 - (i) the cost of soliciting and securing of orders, including such expenses as marketing or advertising charges and agents or salesmen's commissions or salaries;
 - (ii) expenses incurred in the making of estimates and tenders;
- (c) distribution expenses, other than those provided for in paragraph 8 (a) or 8 (b), as represented by any expenditure incurred after the goods have left the factory, including—
 - (i) the cost of any materials and payment of wages incurred in the packaging of the goods for export;
 - (ii) warehousing and inventory expenses incurred in the storage of the finished goods;
 - (iii) the cost of transporting the goods to their destination; and
- (d) charges not directly attributable to the manufacture of the goods, including—
 - (i) any duty paid on the imported raw materials;
 - (ii) any excise duty paid on raw materials produced in the country where the finished goods are manufactured.

10. In determining or confirming local content, the verifying authority may exclude any process, operation or work in respect of which it is established, or in respect of which the facts as ascertained clearly justify the presumption, that the sole object was to circumvent the provisions of this Annexure.