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**MARKETING OF AGRICULTURAL PRODUCTS ACT**  
**NO. 47 OF 1996**

[ASSENTED TO 27 SEPTEMBER, 1996]

[DATE OF COMMENCEMENT: 1 JANUARY, 1997]

*(Africans text signed by the President)*

as amended by

Marketing of Agricultural Products Amendment Act, No. 59 of 1997

Marketing of Agricultural Products Amendment Act, No. 52 of 2001

**ACT**

To authorise the establishment and enforcement of regulatory measures to intervene in the marketing of agricultural products, including the introduction of levies on agricultural products; to establish a National Agricultural Marketing Council; and to provide for matters connected therewith.

1. Definitions.—(1) In this Act, unless the context indicates otherwise—

“agricultural product” means a product declared as an agricultural product in terms of subsection (2);

[Definition of “agricultural product” substituted by s. 1 (d) of Act No. 59 of 1997.]

“business plan” means a detailed and systematic formulation of a programme of action with specified objectives, time-frames, and a budget;

“class” in relation to an agricultural product, means a kind or a variety thereof determined according to the size, mass, measure, number, quantity, measurements, colour, appearance, purity or chemical, physical or micro-biological composition, or any other feature or characteristic thereof, or a unit or quantity thereof;

“consumers” means end users of agricultural products;

“control board” means a control board constituted in terms of the Marketing Act, 1968 (Act No. 59 of 1968), for the implementation of schemes in terms of that Act;

“Council” means the National Agricultural Marketing Council established in terms of section 3;

“Department” means the Department of Agriculture in the national government;

“directly affected group” means any group of persons which is party to the production, sale, purchase, processing or consumption of an agricultural product and includes labour employed in the production or processing of such product;

“Director-General” means the Director-General of the Department;

“food security” means access, by all individuals, to sufficient food of sufficient quality, necessary for a healthy and active life;

“inspector” means an inspector appointed in terms of section 21;

“levy” means a levy introduced by the Minister on agricultural products, in terms of section 15;

“market” means any market for agricultural products;

“Minister” means the Minister responsible for agriculture;

“officer” means an officer of the Department, as defined in section 1 (1) of the Public Service Act, 1994 (Proclamation No. 103 of 1994);

“parliamentary committees” means the Select and Portfolio Committees of Parliament responsible for agricultural affairs;

[Definition of “parliamentary committees” substituted by s. 1 (d) of Act No. 59 of 1997.]

“producer” means a person who produces an agricultural product;

“regulatory measure” means any measure relating to the regulation of the marketing of agricultural products;

[Definition of “regulatory measure” inserted by s. 1 (c) of Act No. 59 of 1997.]

“sell” . . . . .  
 [Definition of “sell” deleted by s. 1 (d) of Act No. 59 of 1997.]

“statutory measure” means a levy contemplated in section 15, and a direction contemplated in sections 16, 18 and 19;

[Definition of “statutory measure” substituted by s. 1 (e) of Act No. 59 of 1997.]

“trust” . . . . .  
 [Definition of “trust” deleted by s. 1 (f) of Act No. 59 of 1997.]

(2) (a) The Minister may by notice in the *Gazette*, after consultation with the Council, declare any product to be an agricultural product for the purposes of this Act, and may amend or repeal any such notice.

(b) Every notice issued under paragraph (a) shall be laid upon the table in Parliament and Parliament may thereupon confirm, amend or reject any such notice or any specific declaration in any such notice.

(c) Every declaration made under paragraph (a) shall be valid until repeated under paragraph (a) or rejected under paragraph (b).

2. Intervention in marketing of agricultural products.—(1) A statutory measure may only be introduced in terms of this Act if the Minister is satisfied that such measure will directly and substantially advance one or more of the objectives mentioned in subsection (2), without being substantially detrimental to one or more of such objectives.

(2) The objectives of this Act are—

- (a) the increasing of market access for all market participants;
- (b) the promotion of the efficiency of the marketing of agricultural products;
- (c) the optimisation of export earnings from agricultural products;
- (d) the enhancement of the viability of the agricultural sector.

(3) No statutory measure or prohibition in terms of section 22 which is likely to be substantially detrimental to food security, the number of employment opportunities within the economy or to fair labour practice may be instituted in terms of this Act.

3. Establishment of National Agricultural Marketing Council.—There is hereby established a juristic person to be known as the National Agricultural Marketing Council.

[S. 3 substituted by s. 2 of Act No. 59 of 1997.]

4. Constitution of Council.—(1) The Council shall consist of ten members.

(2) The members of the council shall be persons who have practical knowledge and experience of one or more of the following, namely—

- (a) the commercial production of agricultural products;
- (b) agricultural product-related trade and industry;
- (c) agricultural economics, including agricultural marketing and international agricultural trade;
- (d) consumer issues relating to agricultural products, including issues relating to previously disadvantaged communities; and

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4. Constitution of Council.—(1) The Council shall consist of ten members.

(2) The members of the council shall be persons who have practical knowledge and experience of one or more of the following, namely—

- (a) the commercial production of agricultural products;
- (b) agricultural product-related trade and industry;
- (c) agricultural economics, including agricultural marketing and international agricultural trade;
- (d) consumer issues relating to agricultural products, including issues relating to previously disadvantaged communities; and
- (e) the production and marketing of agricultural products by small-scale and previously disadvantaged farmers.

(3) The membership of the Council shall consist of two persons from each of the categories listed in subsection (2).

(4) Whenever it is necessary to appoint a member of the Council—

- (a) the Minister shall, by notice in the *Gazette* as well as other appropriate media, and by invitation to the parliamentary committees, call for the nomination of persons who comply with the criteria referred to in subsection (2);
- (b) the Minister shall establish a selection committee, consisting of not more than seven members appointed by the Minister;
- (c) the Minister shall refer all nominations received to such selection committee;
- (d) the selection committee shall compile a short-list of candidates in accordance with the provisions of subsections (2) and (3);
- (e) the selection committee shall, within 30 days after the signing of the letters of appointment of its members, recommend to the Minister a list of not less than three candidates for each of the categories contemplated in subsection (2);
- (f) the Minister shall appoint such number of members as is required from the list of candidates recommended by the selection committee; and
- (g) within 30 days after making any appointment in terms of paragraph (f), the Minister shall inform the parliamentary committees in writing of the appointment made.

[Sub-s. (4) substituted by s. 1 (a) of Act No. 52 of 2001.]

(5) Until the selection committee recommends candidates as contemplated in subsection (4) (e), the Minister may temporarily reappoint Council members whose terms of office have expired.

[Sub-s. (5) substituted by s. 1 (a) of Act No. 52 of 2001.]

(6) Any nomination contemplated in subsection (4), shall, in addition to any other relevant information that may be required, specify whether the nominee is available to serve on the Council in a full-time or part-time capacity.

(7) The Minister shall appoint one of the members of the Council to the position of chairperson and another member as vice-chairperson.

(8) When the first Council is constituted in terms of this Act, half of the members shall, subject to section 6, be appointed for a period of four years, and the other half for a period of two years, after which all appointments to the Council shall be for a period not exceeding four years.

(9) Before the expiration of a member's term of office the procedure set out in subsection (4) shall be followed for the appointment of a successor.

(10) A retiring member is eligible for reappointment, but no member may serve as chairperson for consecutive terms which exceed eight years in total.

(11) The chairperson, vice-chairperson and not more than three other members designated by the Minister may hold their offices in a full-time capacity.

(12) A member of the Council shall be paid such remuneration and allowances as may be determined by the Minister in consultation with the Minister of Finance.

(13) A person may not be nominated or appointed as a member of the council if such person—

- (a) is not a South African citizen or permanently resident in the Republic;
- (b) is an unrehabilitated insolvent in respect of whom the trustee of the insolvent estate has not certified that the insolvent is a fit and proper person to serve as a member of the Council;
- (c) has failed or is unable to comply in full with a judgement or order, including an order as to costs, given against such person by a court of law in civil proceedings;
- (d) has been convicted of an offence involving an element of dishonesty or has been sentenced for any other offence committed on or after 27 April, 1994, to a period of imprisonment without the option of a fine;
- (e) is of unsound mind; or
- (f) has contravened section 7 of the Promotion of Equality and Prevention of Unfair Discrimination Act, 2000 (Act No. 4 of 2000), and it has been so determined by an equality court.

[Sub-s. (13) added by s. 1 (b) of Act No. 52 of 2001.]

(14) A member of the Council shall vacate his or her office if that member—

- (a) is declared insolvent or surrenders his or her estate voluntarily;
- (b) is convicted of an offence and sentenced to a period of imprisonment without the option of a fine;
- (c) resigns as a member;
- (d) is nominated as a candidate for election as a member of Parliament, a Provincial House of Traditional Leaders, the National House of Traditional Leaders, a provincial legislature or the council or other governing body of a local government body or is appointed as an official of a political party and whose functions as such are incompatible with the functions of a member;
- (e) is removed from office under subsection (15); or
- (f) has contravened section 7 of the Promotion of Equality and Prevention of Unfair Discrimination Act, 2000 (Act No. 4 of 2000), and it has been so determined by an equality court.

[Sub-s. (14) added by s. 1 (b) of Act No. 52 of 2001.]

(15) The Minister may at any time remove a member of the Council from office if such member is incompetent to fulfil his or her duties or is guilty of misconduct.

[Sub-s. (15) added by s. 1 (b) of Act No. 52 of 2001.]

5. Meetings and recommendations of Council.—(1) The Council shall meet for the first time at the time and place determined by the Minister and thereafter at the times and places determined by the chairperson or, if he or she is absent, the vice-chairperson.

- (2) When the chairperson is absent or not able to perform his or her functions, the vice-chairperson shall act as chairperson and, if both the chairperson and the vice-chairperson are absent from a meeting or not able to perform their functions, the members present shall elect a person from their ranks to preside at that meeting.
- (3) The Council shall determine the procedure for calling a meeting, the procedure to be followed at meetings, as well as the times at which and manner in which members of the Council shall be notified of meetings.
- (4) (a) Six members of the Council shall constitute a quorum for a meeting of the council.  
(b) In any advice or recommendation to the Minister as contemplated in section 9 (1), the minority views of any one or more members of the Council, as well as any relevant report emanating from a committee appointed in terms of section 7, shall be included.  
(c) If the Council does not appoint a committee to consider a particular issue the Council shall as far as possible give directly affected groups an opportunity to comment on such an issue directly to the Council and in any report that the Council transmits to the Minister on such an issue, the full spectrum of comments received by the Council shall be presented as far as is reasonably possible.
- (5) No decision or recommendation by the Council to the Minister or action taken on authority of such decision or recommendation shall be invalid merely because of a casual vacancy in the Council or because a person who was not entitled to sit as member of the Council did sit as such when the decision was taken or the recommendation was formulated, if the decision or recommendation was agreed upon by a majority of the members of the Council who were then present and entitled to sit as members of the Council, and if the provisions of subsection (4) (b) were complied with.
6. Vacation of office by member of Council.—(1) A member of the Council shall vacate his or her office if—
- (a) he or she has been absent without the permission of the chairperson for more than two consecutive meetings of the council; or
- (b) he or she has tendered his or her resignation to the Minister in writing; or
- (c) his or her term of office is terminated by the Minister on the advice of the Council and after having granted such member an opportunity to refute any allegation made against him or her.
- (2) If a member's term of office expires before a replacement has been appointed, such member shall continue in office for a period not exceeding three months or until a replacement is appointed.
7. Committees of Council.—(1) The Council may appoint one or more committees to advise the Council or to perform such of the Council's functions as the Council may entrust to it.
- (2) The Council shall exercise effective control over such committees and shall determine the procedure of appointment and terms of office of committee members.
- (3) The Council may appoint any person it deems suitable as a member of such a committee.  
(Sub-s. (3) substituted by s. 2 of Act No. 52 of 2001.)
- (4) Notwithstanding the provisions of subsection (3), each committee shall consist of at least one Council member appointed by the Council.
- (5) The Council shall not be divested of any power or function temporarily granted or entrusted to a committee in terms of subsection (1).

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(6) Any committee established in terms of subsection (1) may be dissolved by a decision of the Council.

8. Personnel of Council and conditions of service.—(1) Such officers or employees appointed in terms of the Public Service Act, 1994, as may be necessary for the proper performance by the Council of its functions, shall be designated for that purpose on a full-time basis by the Director-General after consultation with the Council.

(2) Any officer or employee of the Department may be selected by the Council, in consultation with the Director-General, for transfer to the Council, and if the selection is accepted by such officer or employee, he or she shall, notwithstanding any provision to the contrary in the Public Service Act, 1994 (Proclamation No. 103 of 1994), as from the fixed date or such later date as may be agreed upon between the Director-General and the Council, cease to be such an officer or employee and, without interruption of his or her service, become an employee of the Council.

(3) Any person so transferred shall, with effect from the date of his or her transfer, be appointed by the Council on the conditions of service determined by it to a post in the Council which is similar to that which such person occupied in the Department immediately prior to such transfer. Provided that—

- (a) such person's salary or salary scale shall not be reduced by such appointment;
- (b) such person shall retain all vacation and sick leave standing to his or her credit with the Department immediately preceding his or her transfer, including all monetary benefits attached thereto;
- (c) such person shall be compensated by the Council for any loss which he or she may incur as a result of such transfer in respect of unemployment benefit contributions, medical aid contributions or other expenditure on health care that is necessary so as not to place him or her in a less favourable position with regard to such expenditure than that which applied to him or her immediately prior to his or her transfer, as well as for any other loss arising from any transfer from his or her present headquarters to new headquarters in accordance with the procedure applicable to officers and employees of the Department; and
- (d) such person's conditions of employment in respect of matters not specified in paragraphs (a) to (c) shall not be less favourable to him or her than those which applied to him or her immediately prior to the transfer.

(4) Any person transferred from the Department in terms of subsection (2) who immediately prior to such transfer was a member of the Government Employees Pension Fund, shall notwithstanding any provision to the contrary in any law or in the rules of that pension fund, upon such transfer remain a member of that pension fund for all purposes and the Council shall contribute to the said pension fund in respect of that person to the same extent as an employer is required in terms of the laws on and the rules of that pension fund to contribute to that pension fund in respect of an employee who is a member of that fund.

(5) For the purposes of the Income Tax Act, 1962 (Act No. 58 of 1962), no change of employer shall be deemed to have taken place when an officer or employee of the Department is transferred to the Council in terms of subsection (2), and the position of such officer or employee in respect of the phasing in of tax levied on a benefit or advantage derived by reason of employment or the holding of any office as contemplated in Schedule 7 to the Income Tax Act, 1962, shall be deemed to remain unchanged.

(6) Any disciplinary steps instituted or contemplated against any person transferred from the Department in terms of subsection (2) in respect of alleged misconduct committed prior to his or her transfer to the Council, shall be disposed of or instituted, as the case may be, in terms of the laws applicable to him or her immediately before such transfer.

(7) At least one month before the fixed date, the Director-General shall in writing inform every officer and employee concerned either—

- (a) that he or she has been selected for transfer to the Council in terms of subsection (2), and of the post that will be occupied by him or her and the date on which the transfer is to take effect; or
- (b) that he or she is to remain with the Department and of the post which he or she will occupy.

(8) Notwithstanding any provision to the contrary in the Public Service Act, 1994, any proposed action of which an officer or employee is notified in terms of subsection (7), shall be deemed to be an act which may form the subject of an appeal to the Minister in terms of the said Act.

(9) Any such appeal shall be lodged within 14 days of receipt of such notification by the officer or employee.

(10) Any employee of the Council shall be entitled to the ordinary severance conditions and benefits, excluding special voluntary severance conditions, not less favourable to him or her than those prescribed under the Public Service Act, 1994, in respect of a person to whom that Act applies and whose services are terminated.

(11) The Council may enter into agreements with persons for the performance of specific duties or the provision of specific services, and may employ persons to assist it in the performance of its functions.

(12) The Council shall pay to its employees such remuneration, allowances, subsidies and other benefit as the Council may determine, in accordance with a system approved from time to time by the Minister, with the concurrence of the Minister of Finance.

(13) For the purposes of this section, the term "fixed date" shall mean the date determined by the Minister by notice in the *Gazette*.

[S. 8 substituted by s. 3 of Act No. 59 of 1997.]

8A. **Financing of Council.**—(1) The funds of the Council shall consist of monies appropriated by Parliament and interest earned on investments by the Council.

(2) The Council shall utilise its funds for defraying expenses in connection with the performance of its functions.

(3) **The Council—**

- (a) shall in each financial year, at the time determined by the Minister, submit a budget of its estimated income and expenditure during the following financial year for approval by the Minister obtained with the concurrence of the Minister of Finance;
- (b) may in any financial year, at any time submit supplementary budgetary inputs of its estimated expenditure for that financial year, to the Minister for his or her approval in consultation with the Minister of Finance;
- (c) shall not incur any expenditure which exceeds the total amount approved under paragraphs (a) and (b);
- (d) may with the approval of the Minister invest any surplus funds of the Council: Provided that any surplus at the end of a financial year shall be carried over to the next financial year and form part of the budget of the Council for that financial year.

- (4) (a) The chairperson of the Council shall be the accounting officer charged with the responsibility of accounting for all money received and the utilisation thereof.
- (b) The accounting officer shall cause such records of account to be kept as are necessary to represent fairly the state of affairs of the Council and to explain the transactions and financial position of the Council.
- (c) The accounting officer shall submit year-end financial statements to the Minister within four months after the end of each financial year.

(5) The Auditor-General shall audit the books of accounts, accounting statements and annual financial statements of the Council and shall submit a copy of the report on the audit of the said statements to the Council.

(6) The financial year of the Council shall be the period from 1 April in any year to 31 March in the succeeding year.

[S. 8A inserted by s. 4 of Act No. 59 of 1997.]

9. Functions of Council.—(1) Subject to the provisions of section 2, the Council—

- (a) shall, when requested by the Minister, or of its own accord, investigate, in terms of section 11 (2) the establishment, continuation, amendment or revocation of statutory measures and other regulatory measures affecting the marketing of agricultural products, evaluating the desirability, necessity or efficiency and if necessary, proposing alternatives to the establishment, continuation, amendment or repeal of a statutory measure or other regulatory measure and report to and advise the Minister accordingly;

[Para. (a) substituted by s. 5 (e) of Act No. 59 of 1997.]

- (b) shall prepare and submit to the Minister for consideration statutory measures and changes to statutory measures which the Minister directs it to prepare;
- (c) shall, whenever requested by the Minister and at least once annually, report on the activities of the Council;
- (d) may direct any institution or body of persons designated for the purpose of the implementation or administration of a statutory measure in terms of section 14, to furnish the Council with such information pertaining to a statutory measure as the Council, the Minister or the parliamentary committees may require;
- (e) may undertake investigations and advise the Minister regarding—
- (i) agricultural marketing policy and the application thereof;
  - (ii) the co-ordination of agricultural marketing policy in relation to national economic, social and development policies and international trends and developments;
  - (iii) the possibilities for promoting the objectives mentioned in section 2 (2); and
  - (iv) the effect that the marketing of products has on the objectives mentioned in section 2 (2).

[Para. (e) substituted by s. 5 (a) of Act No. 59 of 1997.]

- (f) shall monitor the application of statutory measures and report thereon to the Minister and shall evaluate and review such measures at least every two years;
- (g) .....
- [Para. (g) deleted by s. 5 (b) of Act No. 59 of 1997.]

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(6) Any disciplinary steps instituted or contemplated against any person transferred from the Department in terms of subsection (2) in respect of alleged misconduct committed prior to his or her transfer to the Council, shall be disposed of or instituted, as the case may be, in terms of the laws applicable to him or her immediately before such transfer.

(7) At least one month before the fixed date, the Director-General shall in writing inform every officer and employee concerned either—

- (a) that he or she has been selected for transfer to the Council in terms of subsection (2), and of the post that will be occupied by him or her and the date on which the transfer is to take effect; or
- (b) that he or she is to remain with the Department and of the post which he or she will occupy.

(8) Notwithstanding any provision to the contrary in the Public Service Act, 1994, any proposed action of which an officer or employee is notified in terms of subsection (7), shall be deemed to be an act which may form the subject of an appeal to the Minister in terms of the said Act.

(9) Any such appeal shall be lodged within 14 days of receipt of such notification by the officer or employee.

(10) Any employee of the Council shall be entitled to the ordinary severance conditions and benefits, excluding special voluntary severance conditions, not less favourable to him or her than those prescribed under the Public Service Act, 1994, in respect of a person to whom that Act applies and whose services are terminated.

(11) The Council may enter into agreements with persons for the performance of specific duties or the provision of specific services, and may employ persons to assist it in the performance of its functions.

(12) The Council shall pay to its employees such remuneration, allowances, subsidies and other benefit as the Council may determine, in accordance with a system approved from time to time by the Minister, with the concurrence of the Minister of Finance.

(13) For the purposes of this section, the term "fixed date" shall mean the date determined by the Minister by notice in the *Gazette*.

[S. 8 substituted by s. 3 of Act No. 59 of 1997.]

**8A. Financing of Council.**—(1) The funds of the Council shall consist of monies appropriated by Parliament and interest earned on investments by the Council.

(2) The Council shall utilise its funds for defraying expenses in connection with the performance of its functions.

(3) The Council—

- (a) shall in each financial year, at the time determined by the Minister, submit a budget of its estimated income and expenditure during the following financial year for approval by the Minister;

[Para. (a) substituted by s. 3 of Act No. 52 of 2001.]

- (b) may in any financial year, at any time submit supplementary budgetary inputs of its estimated expenditure for that financial year, to the Minister for his or her approval;

[Para. (b) substituted by s. 3 of Act No. 52 of 2001.]

- (c) shall not incur any expenditure which exceeds the total amount approved under paragraphs (a) and (b); and

- (d) may with the approval of the Minister invest any surplus funds of the Council: Provided that any surplus at the end of a financial year shall be carried over to the next financial year and form part of the budget of the Council for that financial year.

(4) (a) The chairperson of the Council shall be the accounting officer charged with the responsibility of accounting for all money received and the utilisation thereof.  
 (b) The accounting officer shall cause such records of account to be kept as are necessary to represent fairly the state of affairs of the Council and to explain the transactions and financial position of the Council.  
 (c) The accounting officer shall submit year-end financial statements to the Minister within four months after the end of each financial year.

(5) The Auditor-General shall audit the books of accounts, accounting statements and annual financial statements of the Council and shall submit a copy of the report on the audit of the said statements to the Council.

(6) The financial year of the Council shall be the period from 1 April in any year to 31 March in the succeeding year.  
 [S. 8A inserted by s. 4 of Act No. 59 of 1997.]

9. Functions of Council.—(1) Subject to the provisions of section 2, the Council—

(a) shall, when requested by the Minister, or of its own accord, investigate, in terms of section 11 (2) the establishment, continuation, amendment or revocation of statutory measures and other regulatory measures affecting the marketing of agricultural products, evaluating the desirability, necessity or efficiency and if necessary, proposing alternatives to the establishment, continuation, amendment or repeal of a statutory measure or other regulatory measure and report to and advise the Minister accordingly;  
 [Para. (a) substituted by s. 5 (a) of Act No. 59 of 1997.]

(b) shall prepare and submit to the Minister for consideration statutory measures and changes to statutory measures which the Minister directs it to prepare;

(c) shall, whenever requested by the Minister and at least once annually, report on the activities of the Council;

(d) may direct any institution or body of persons designated for the purpose of the implementation or administration of a statutory measure in terms of section 14, to furnish the Council with such information pertaining to a statutory measure as the Council or the Minister may require;  
 [Para. (d) substituted by s. 4 of Act No. 52 of 2001.]

(e) may undertake investigations and advise the Minister regarding—

(i) agricultural marketing policy and the application thereof;

(ii) the co-ordination of agricultural marketing policy in relation to national economic, social and development policies and international trends and developments;

(iii) the possibilities for promoting the objectives mentioned in section 2 (2); and

(iv) the effect that the marketing of products has on the objectives mentioned in section 2 (2).  
 [Para. (e) substituted by s. 5 (a) of Act No. 59 of 1997.]

(f) shall monitor the application of statutory measures and report thereon to the Minister and shall evaluate and review such measures at least every two years.

(g) .....  
 [Para. (g) deleted by s. 5 (b) of Act No. 59 of 1997.]

(2) Copies of all reports which are submitted to the Minister in terms of subsection (1) shall simultaneously be dispatched to the parliamentary committees for their information.

**10. Request for establishment, continuation, amendment or repeal of statutory measure.—**(1) A directly affected group may in writing request the Minister to establish, continue, amend or repeal one or more statutory measures.

[Sub-s. (1) substituted by s. 5 of Act No. 52 of 2001.]

(2) A request under subsection (1) shall, where relevant, contain particulars—

- (a) regarding the agricultural products or class of agricultural products to which such existing or proposed statutory measure relates, the categories and sub-categories of directly affected groups which will probably be affected by such establishment, continuation, amendment or repeal, evidence of support by directly affected groups, and the geographical areas in which the statutory measure applies or should apply;
- (b) in the case of a request to establish or continue a statutory measure, of the manner in which one or more of the objectives referred to in section 2 (2) will be furthered as a result thereof and demonstrate that none of the other such objectives will be substantially prejudiced and that such establishment or continuation will not contravene section 2 (3);
- (c) in the case of a request to amend or repeal a statutory measure, of the reasons why such statutory measure fails or has ceased to further one or more of the objectives referred to in section 2 (2) or why it is substantially detrimental to one or more of the other such objectives or contravenes section 2 (3);
- (d) regarding the business plan to be implemented in order to establish, continue, amend or repeal the statutory measure;
- (e) subject to section 13 (2) (a), regarding the duration of the implementation of the statutory measure;
- (f) regarding an institution or body of persons which might be a suitable vehicle for implementation;
- (g) regarding the most appropriate way of organising the inspection and enforcement of the intervention.
- (3) Any particulars contemplated in subsection (2) (f) shall include a motivation as to why such institution or body of persons would be the most appropriate vehicle for the implementation, and shall give details as to the legal standing of that institution or body of persons, as well as its composition, and the degree to which that composition reflects the various parties interested in the proposed intervention.
- (4) Any request in terms of subsection (1) shall contain particulars in respect of the financial implications of such request for the fiscus.

**11. Consideration of request.—**(1) Upon receipt of a request in terms of section 10 which is not inconsistent with the provisions of section 2, the Minister shall refer the request to the Council for investigation and a report thereon.

(2) Upon receipt of such a request, the Council shall—

- (a) publish a notice setting out particulars of the request and an explanation in connection therewith in the *Gazette* and such magazines or newspapers as may be sufficient in order to bring the request to the attention of directly affected groups, and inviting such directly affected groups to lodge any objections or representations relating to the request within a specified time;
- (b) if necessary, appoint a committee in terms of section 7, which shall consider such objections or representations and advise the Council;
- (c) consider the objections and representations from, and level of support among, directly affected groups, and the advice of the committee, if applicable; and
- (d) report on its findings and make a recommendation to the Minister within 60 days or such longer period as may be approved by the Minister.

(3) The Council may, upon receipt of a request to amend a statutory measure, on reasonable grounds determine that the proposed amendment is not significant and that it is not necessary to act in terms of subsection (2).

(4) A determination under subsection (3) shall only be made if the proposed amendment places no additional statutory burden on any directly affected group.

(5) The Council shall consider whether any proposal made in terms of section 10 (2) (g) and 10 (3) would be optimal or may make its own recommendation regarding implementation.

(6) If the request is for the introduction, amendment or repeal of a levy, the Council shall send a copy of its recommendations to the parliamentary committees for their information.

12. Recommendations to Council by provincial government.—A provincial government shall be entitled to submit a request to the Minister in terms of section 10, and may, from time to time, make representations to the Minister on any matter relating to the marketing of agricultural products.

13. Establishment, amendment or revocation of statutory measure.—(1) The Minister may, after consideration of the Council's recommendations and subject to the provisions of section 15, establish, amend or revoke a statutory measure by notice in the *Gazette*, refer the matter back to the Council for further investigation or decline to take any action: Provided that the Minister shall in each case publish his or her reasons for a specific decision in the *Gazette* within 30 days of such decision.

[Sub-s. (1) amended by s. 6 of Act No. 52 of 2001.]

- (2) A notice whereby a statutory measure is established, shall—
- (a) determine the date on which the statutory measure shall come into operation and the date on which it shall cease;
  - (b) determine the geographical area in which it shall apply;
  - (c) determine the agricultural product or class thereof to which it shall apply;
  - (d) set out its purpose and aims and how it relates to the objectives referred to in section 2; and
  - (e) contain particulars regarding its implementation, administration and enforcement and any other particulars which the Minister may deem necessary.
- (3) A notice whereby a statutory measure is amended or repealed shall—
- (a) determine the date on which such amendment or repeal shall come into operation; and
  - (b) set out the purpose and aims of the amendment or revocation and how these relate to the objectives referred to in section 2.

14. Implementation of statutory measures.—The Minister may from time to time, by notice in the *Gazette*, entrust to any juristic person or body of persons, institution or the Department the implementation, administration and enforcement of one or more statutory measures in respect of any agricultural product or class thereof.

15. Introduction of levies.—(1) . . . . .

[Sub-s. (1) deleted by s. 7 (a) of Act No. 52 of 2001.]

(2) . . . . .

[Sub-s. (2) deleted by s. 7 (a) of Act No. 52 of 2001.]

(3) . . . . .

[Sub-s. (3) deleted by s. 7 (a) of Act No. 52 of 2001.]

(4) The Minister may, by notice in the *Gazette*, introduce a levy on an agricultural product or class thereof, which notice shall, in addition to the requirements of section 13, contain the following particulars, namely—

- (a) the amount of such levy, or the formula by which such a levy shall be calculated: Provided that the value of the levies on a particular agricultural product shall not exceed, in total, five percent of the guideline price for such agricultural product, which guideline price shall—

- (i) be based on an average price at its first point of sale during a preceding period not exceeding three years; and
- (ii) be determined by the Minister in consultation with the Council by notice in the *Gazette*;

[Para. (a) substituted by s. 6 of Act No. 59 of 1997.]

- (b) the persons by whom and to whom, the time at which, and the conditions under which, the levy shall be paid;
- (c) the different levies introduced on different classes of agricultural products and at different points in the marketing chain between the producer and consumer for each such class, subject to paragraph (a);
- (d) regarding the auditing of the collection of such levies and the particular purposes for which such levies are used.

(5) Notwithstanding the provisions of subsection (4)—

- (a) any levies collected, administered or kept by any person or body under this Act shall not form part of the assets of that person or body, and any levies remaining in the possession of or under the control of any person or body after the period for which such levies were approved, shall be utilised in a manner determined by the Minister; and
- (b) all levies shall in a manner and to the extent satisfactory to the Auditor-General be accounted for separately from any other funds or assets under the control or in possession of such person or body and be audited on an annual basis by the Auditor-General.

[Sub-s. (5) added by s. 7 (b) of Act No. 52 of 2001.]

(6) The provisions of subsection (5) shall not be construed as affecting any function of the Auditor-General in terms of section 188 of the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996).

[Sub-s. (6) added by s. 7 (b) of Act No. 52 of 2001.]

16. **Control of exports of agricultural products.**—(1) The Minister may by notice under section 13 direct a person who wishes to export the agricultural product or the class of agricultural product to which that notice pertains, to dispose of that product in the manner determined in the notice, subject to such conditions as may be specified in the notice.

(2) The Minister may in the notice referred to in subsection (1) prescribe for or exclude from such control—

- (a) a particular class, grade, quantity or percentage of agricultural products;
- (b) a particular date or period of time;
- (c) a particular destination; and
- (d) information on the transactions and transaction costs that may be made public.

(3) In formulating recommendations with regard to a direction contemplated in subsection (1) the Council shall have regard to—

- (a) the need to encourage some diversity of marketing channels to foreign markets or in respect of different classes of agricultural products;
- (b) whether value will be added to the agricultural product before it is exported;
- (c) whether the potential exporters have invested from the commencement of this Act in the development of the market to which the exports relate or intend to develop a new market; and
- (d) whether the exporters have facilitated or have demonstrated an intention to facilitate access to the market by small-scale farmers.

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17. Conducting of pools.—(1) The Minister may, apart from any pooling arrangements that may be instituted in terms of section 16, arrange that a pool be conducted by a particular body, at a particular location for the purchase and sale of a particular agricultural product or a class thereof and publicise such arrangement by notice in the *Gazette*.

[Sub-s. (1) substituted by s. 7 of Act No. 59 of 1997.]

(2) A pool conducted in terms of subsection (1) shall be conducted on the basis that any person who sells to, buys from or participates in any way in such a pool, shall not be compelled to sell to or buy from such a pool.

[Sub-s. (2) substituted by s. 7 of Act No. 59 of 1997.]

(3) The notice referred to in subsection (1) shall prescribe—

- (a) the conditions under which the pool shall be conducted;
- (b) the dates, times and places when and where delivery to the pool shall take place; and
- (c) the manner in which the costs of the pool shall be recovered or the proceeds of the pool shall be distributed.

18. Records and returns.—(1) The Minister may, by notice in the *Gazette*, direct that any person shall keep such records and returns as may be specified with regard to the agricultural products or classes thereof to which the notice pertains and which such person has in his or her possession or under his or her control, and direct that such records and returns be furnished to the institution or body of persons referred to in the notice.

(2) Such records and returns shall be kept for the period or furnished at the time and in the manner determined in such notice.

19. Registration.—The Minister may, by notice in the *Gazette*, direct that any person mentioned with regard to an agricultural product or class thereof to which the notice pertains and which such person has in his or her possession or under his or her control, shall be registered as specified in the notice.

[S. 19 substituted by s. 8 of Act No. 59 of 1997.]

20. Register of directly affected groups.—(1) The Minister shall by notice in the *Gazette* and through the news media invite any group of persons which regards itself as a group that is directly affected by this Act or any market intervention in terms thereof and which complies with the criteria determined by the Council and set out in the said notice, to furnish the Council with full particulars regarding the reasons why it regards itself so to be affected or potentially affected, its composition, its address, and any other information that may be required.

[Sub-s. (1) substituted by s. 9 of Act No. 59 of 1997.]

(2) The Council shall keep a register of all the particulars received in terms of subsection (1).

21. Inspectors.—(1) The Minister may designate and authorise a person as an inspector to perform the functions referred to in subsection (3).

[Sub-s. (1) substituted by s. 10 of Act No. 59 of 1997.]

(2) An inspector shall be furnished with a certificate, signed by or on behalf of the Minister and bearing a declaration that the bearer is an inspector in terms of this Act, which shall be carried by the inspector at all times during the execution of his or her duties.

- (3) An inspector may, on the authority of a warrant issued in terms of subsection (4)—
- (a) at any reasonable time, enter premises where he or she has reason to believe that a statutory measure or any prohibition, control or direction referred to in this Act has been or is being contravened, in order to investigate and obtain evidence;
  - (b) direct a person in control of or employed at such premises—
    - (i) to deliver any book, record or other document that pertains to the investigation and which is in the possession or under the control of that person;

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- (ii) to furnish such information as he or she has with regard to that matter; and
  - (iii) to render such assistance as the inspector requires in order to enable him or her to perform his or her functions under this Act;
- (c) inspect any book, record or other document and make copies thereof or excerpts therefrom;
- (d) seize any agricultural product, material, substance, book, record or other document which is or might be relevant to a prosecution under this Act and keep it in his or her custody: Provided that the person from whose possession or control any book, record or document has been taken, may, at his or her own expense and under supervision of the inspector concerned, make copies thereof or excerpts therefrom;
- (e) take samples of any agricultural product or any material or substance used or intended for use in the sale, manufacture, production, processing, treatment, preparation, grading, classification, packing or marking thereof, and of any agricultural product, material or substance seized in terms of paragraph (d), and examine, analyse, grade or classify such samples.
- (4) A warrant referred to in subsection (3) shall be issued by a judge of the Supreme Court or by a magistrate who has jurisdiction in the area where the premises in question are situated, and shall only be issued if it appears from information on oath that there are reasonable grounds for believing that an article or thing mentioned in subsection (3) is upon or in such premises, and shall specify which of the acts mentioned in that subsection may be performed thereunder by the person to whom it is issued.
- (5) Any inspector executing a warrant in terms of this section shall immediately before commencing the execution—
- (a) identify himself or herself to the person in control of the premises, if such person is present, and hand to such person a copy of the warrant or, if such person is not present, affix such copy to a prominent place on the premises;
  - (b) supply such person at the request of such person, with particulars regarding his or her authority to execute such a warrant
  - (6) Any inspector may without a warrant enter upon any premises, other than a private dwelling, and search for, seize and remove any article or thing referred to in subsection (3) if the person who is competent to do so consents to such entry, search, seizure and removal.
  - (7) (a) Any inspector who, on the authority of a warrant issued in terms of subsection (4), enters upon and searches any premises may use such force as may reasonably be necessary to overcome resistance to such entry or search.
  - (b) No person may enter upon or search any premises unless he or she has audibly demanded admission to the premises and has notified the purpose of his or her entry, unless such person is, upon reasonable grounds, of the opinion that any article or thing may be destroyed if such admission is first demanded and such purpose is first notified.
  - (c) Any entry and search in terms of this section shall be executed by day, unless the execution thereof by night is justifiable and necessary.
  - (8) A warrant contemplated in this section may be issued on any day and shall be of force until—
    - (a) it is executed; or

- (b) it is cancelled by the person who issued it or, if such person is not available, by any person with similar authority; or
- (c) one month from the date of its issue; or
- (d) the purpose for which the warrant was issued, no longer exists, whichever occurs first.

(9) If no criminal proceedings are instituted in connection with an agricultural product, material, substance, book, record or other document seized in terms of subsection (3) (d), or if it appears that such agricultural product, material, substance, book, record or other document is not required at the trial for the purposes of evidence or an order of court, that agricultural product, material, substance, book, record or other document shall be returned to the person from whom it was seized.

**22. Prohibition of import and export of agricultural product.**—(1) In extraordinary circumstances and bearing in mind the Republic's international obligations, the Minister may, after consultation with the Council, by notice in the *Gazette* prohibit the importation into the Republic of any agricultural product or class thereof, or the export of any agricultural product or class thereof from the Republic, or impose conditions, specified in such notice, with regard to any such importation or export.

(2) Before the Minister may impose a prohibition under subsection (1), the Council shall—

- (a) publish a notice setting out particulars of the proposed prohibition and an explanation in connection therewith in the *Gazette* and such magazines and newspapers as may be sufficient in order to bring the proposed prohibition to the attention of directly affected groups, and inviting such directly affected groups to lodge any objections or representations relating to the proposed prohibition within a specified time;
  - (b) if necessary, appoint a committee in terms of section 7, which shall consider such objections or representations and advise the Council;
  - (c) consider the objections and representations from, and level of support among, directly affected groups, and the advice of the committee, if applicable; and
  - (d) report on its findings and make a recommendation to the Minister within 60 days of the publication of the notice contemplated in paragraph (a) or such longer period as may be approved by the Minister.
- [S. 22 substituted by s. 8 of Act No. 52 of 2001.]

**23. Transparency and confidentiality.**—(1) All meetings of the Council, or its committees, shall be open unless the chairperson, in cases where he or she deems it justifiable and having given reasons therefor to everyone present, orders the public to withdraw from such meeting for the duration of the discussion of a particular matter or matters on the agenda.

(2) No person shall, except in the performance of his or her functions under this Act, or unless required to do so by a court of law or in terms of any law, or with the written consent of the Minister, disclose to any other person information, pertaining to any person, institution or body of persons, collected under section 18 or otherwise acquired in the performance of functions in terms of this Act.

**24. Offences and penalties.**—(1) Any person who contravenes or fails to comply with any provision of this Act or of any statutory measure established by or under this Act, shall be guilty of an offence.

(2) A person found guilty of an offence in terms of this Act—

- (a) shall on a first conviction be liable to a fine or imprisonment for a period not exceeding two years;

(b) shall on a second or subsequent conviction be liable to a fine or imprisonment for a period not exceeding five years.

25. Delegation of powers.—The Director-General may, subject to such conditions as he or she may determine, either in general or in respect of any particular case, delegate in writing any power conferred on him or her by or under this Act, except the power referred to in section 8 (2), to any officer of the Department.

26. Regulation of assets, liabilities and contractual rights and obligations of control boards.—(1) All control boards established under the Marketing Act, 1968 (Act No. 59 of 1968), as well as organisations funded in terms of section 84A of that Act, shall within 30 days of the commencement of this Act submit to the Minister for his or her approval a business plan for the following twelve months or such shorter period as the Minister may determine.

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(2) From the date of commencement of this Act any property, whether movable or immovable, and whether corporeal or incorporeal, owned, hired or in which any such control board or similar body established by or under a law mentioned in the Schedule has an interest, shall only be disposed of, alienated, let, hypothecated or otherwise dealt with, with the approval of the Minister.

[Sub-s. (2) substituted by s. 11 (a) of Act No. 59 of 1997.]

(3) On dissolution of any scheme in terms of the Marketing Act, 1968 (Act No. 59 of 1968), any surplus or shortfall of assets over liabilities of that scheme shall be dealt with in terms of the applicable scheme.

[Sub-s. (3) substituted by s. 11 (a) of Act No. 59 of 1997.]

(4) Any remaining assets or liabilities, rights and obligations acquired or accrued in terms of such a scheme, which have not been dealt with in terms of subsection (3) shall be dealt with in terms of a liquidation process determined by the Minister by notice in the *Gazette*.

[Sub-s. (4) added by s. 11 (b) of Act No. 59 of 1997.]

27. Repeal of Acts, and savings.—(1) Subject to the provisions of subsection (2), the laws mentioned in the Schedule are hereby repealed to the extent shown in the third column thereof.

(2) Notwithstanding the repeal of the Marketing Act, 1968 (Act No. 59 of 1968), in terms of subsection (1)—

(a) any scheme established under that Act, anything done or any measure introduced in terms of that Act or in terms of such a scheme, and any appointment, decision, levy, prohibition, requirement, direction, determination, regulation, or notice made, taken, imposed, given, promulgated or published under a provision of that Act, or under a scheme established under it, shall be valid for a period of one year after the first full meeting of the Council, or until it is repealed by the Minister by notice in the *Gazette*, whichever occurs first;

(b) the Minister may, after consultation with the parliamentary committees, subject to paragraph (a) and subsection (3), fill vacancies which may exist in the control boards established under that Act for such term of office as he or she may deem necessary; and

(c) the Minister may, after consultation with a control board and the parliamentary committees, subject to paragraph (a) and subsection (3), by notice in the *Gazette* amend or repeal any scheme, levy, prohibition, requirement, direction, determination, regulation or notice referred to in paragraph (a);

[Para. (c) substituted by s. 12 (a) of Act No. 59 of 1997.]

(d) the Minister may direct any control board to furnish the Council with such information pertaining to a scheme and its functions as the Council, the Minister or the parliamentary committees may require;

[Para. (d) added by s. 12 (b) of Act No. 59 of 1997.]

(e) any person who is dissatisfied with a decision of a control board which affects his or her rights, may appeal against such decision to the Minister who may, after consultation with the Council, confirm, set aside or vary such decision or make such order in connection therewith as he or she may deem fit.

[Para. (e) added by s. 12 (b) of Act No. 59 of 1997.]

(3) The Minister may by notice in the *Gazette* extend the period of one year referred to in subsection (2) on the advice of the Council if such extension is not inconsistent with the objectives mentioned in section 2, the need for a smooth transition, or the maintenance of the legal standing of control boards for the collection of outstanding levies.

(a) (2) Levies that were collected or used under sections 46A and 84A of the Marketing Act, 1968 (Act No. 59 of 1968), after the repeal of that Act and before 28 February, 1999, shall be deemed to have been collected or used under that Act as if that Act still applied.

(b) The Minister may, by notice in the *Gazette*, on the advice of the Council, authorise the transfer of funds originating from the collection of levies imposed under sections 46A and 84A of the Marketing Act, 1968, to a trust or trusts whose objectives are not inconsistent with the objectives mentioned in section 2.

[Sub-s. (4) added by s. 9 (b) of Act No. 52 of 2001.]

28. Short title.—This Act shall be called the Marketing of Agricultural Products Act, 1996, and shall come into operation on a date fixed by the President by proclamation in the *Gazette*.

SCHEDULE  
 ACTS REPEALED [SECTION 27(1)]

<i>No. and year of Act</i>	<i>Short title</i>	<i>Extent of repeal</i>
Act No. 59 of 1968	Marketing Act, 1968	The whole
Act No. 52 of 1969	Marketing Amendment Act, 1969	The whole
Act No. 69 of 1970	Marketing Amendment Act, 1970	The whole
Act No. 78 of 1971	Marketing Amendment Act, 1971	The whole
Act No. 68 of 1972	Marketing Amendment Act, 1972	The whole
Act No. 31 of 1973	Marketing Amendment Act, 1973	The whole
Act No. 73 of 1974	Marketing Amendment Act, 1974	The whole
Act No. 38 of 1975	Marketing Amendment Act, 1975	The whole
Act No. 50 of 1976	Marketing Amendment Act, 1976	The whole
Act No. 109 of 1977	Marketing Amendment Act, 1977	The whole
Act No. 6 of 1980	Marketing Amendment Act, 1980	The whole
Act No. 66 of 1984	Marketing Amendment Act, 1984	The whole
Act No. 79 of 1987	Marketing Amendment Act, 1987	The whole
Act No. 11 of 1992	Marketing Amendment Act, 1992	The whole
Act No. 188 of 1993	Marketing Amendment Act, 1993	Sections 1 and 2
Act No. 22 of 1986 (Ciskei)	Marketing Act, 1986	The whole to the extent that it is in force in the area of the former Republic of Ciskei.
Act No. 14 of 1978 (Lebowa)	Marketing Act, 1978	The whole to the extent that it is in force in the area of the former self-governing territory of Lebowa.
Act No. 9 of 1985 (Transkei)	Marketing Act, 1985	The whole to the extent that it is in force in the area of the former Republic of Transkei.
Act No. 18 of 1980 (Venda)	Marketing Act, 1980	The whole to the extent that it is in force in the area of the former Republic of Venda.
Act No. 11 of 1984 (Venda)	Marketing Amendment Act, 1984	The whole to the extent that it is in force in the area of the former Republic of Venda.
Act No. 5 of 1985 (Venda)	Marketing Amendment Act, 1985	The whole to the extent that it is in force in the area of the former Republic of Venda.