

MEMORANDUM OF AGREEMENT

BETWEEN

THE DEPARTMENT OF ENVIRONMENTAL AFFAIRS AND TOURISM (“DEAT”)

herein represented by Mohammed Valli Moosa in his capacity as Minister of DEAT

AND

ORGANISED LABOUR

herein represented by

Congress of South Africa Trade Unions, and

National Council of Trade Unions

AND

ORGANISED BUSINESS

herein represented by:

Chemical and Allied Industries Association,

Plastics Federation of South Africa,

Plastic Recyclers Employers Organisation, and

The Retailers Plastic Bag Working Group

1. BACKGROUND

- 1.1 In its role as custodian of the environment, the DEAT published regulations regarding the permissible characteristics of plastic bags within the country with the aim of addressing the problem of dispersed waste (i.e. litter) created by discarded plastic bags in South Africa and encouraging the re-use and recycling of plastic bags.
- 1.2 Whilst the DEAT, organised business and organised labour (collectively referred to as “the parties”) agree that –
 - 1.2.1 there is a need to address environmental issues, including dispersed waste, in a sustainable manner;
 - 1.2.2 the collection and disposal of plastic bags is a growing problem in South Africa; and that
 - 1.2.3 the problem impacts particularly on low-income areas where refuse collection services are inadequate.
- 1.3 Whilst organised business and labour have raised concerns about certain aspects of the regulations, regarding the unintended potentially negative socio-economic impacts, the purpose of this Agreement is to adopt an approach for addressing the negative impacts associated with the generation, use, collection, transportation and disposal of plastic bags which will optimise the impacts of the DEAT’s regulatory efforts whilst minimising any negative social or economic impacts, especially those relating to workers, the poor, women and rural areas.
- 1.4 This Agreement reflects the parties’ commitment to taking a co-operative approach towards addressing environmental problems that face South Africa and furthermore reflects the spirit of collaborative partnerships. By entering into this Agreement, the parties reiterate their commitment and support for the

White Paper on Integrated Pollution and Waste Management and the right to sustainable development.

- 1.5 This Agreement further reflects the parties' commitment to a partnership approach to the achievement of sustainable development, which includes social, economic and environmental goals. Sustainable development promotes environmental justice which integrates environmental considerations with social, political and economic justice and development in addressing the needs of all communities, sectors and individuals.
- 1.6 Building on the spirit of sustainable development enshrined in the Johannesburg Plan of Implementation, the parties reaffirm their commitment to the principles of the Rio Declaration, implementation of Agenda 21 and further commit themselves to the successful implementation of this, the first ground breaking partnership, which has been established since the summit.

2. AGREEMENT

- 2.1 The main purpose of this Agreement is to record the key areas of Agreement, as a package, between the parties and to outline the different responsibilities and obligations of each party. Clauses 2.4 to 4 below amplify each of the key areas by detailing the approach to the content of the areas, the institutional arrangements for implementing the Agreement and the different roles and responsibilities.
- 2.2 This Agreement represents a planned process and sets out institutions, approaches to legal instruments, and undertakings to achieve these goals. The process and its pre-requisites are set out in the Annexures which are incorporated as part of this Agreement. The parties undertake to act speedily to ensure that the pre-requisites are attained in order that the regulations can come into effect on the due date.

2.3 The parties agree that the intention of the regulations is to regulate the characteristics of plastic bags used to carry goods purchased by consumers and excludes flimsy barrier bags which are designed for the packaging of unpacked products for barrier and price-marking purposes. It is further agreed that the current definitions need to be refined to give effect to this intention and to be aligned with the requirements of import control legislation. It is not intended that the definition used in the regulations would have the consequence of increasing the price of food products and inputs.

2.4 Minimum thickness of plastic bags

2.4.1 The regulations currently provide that, inter alia, the manufacture, trade and commercial distribution of plastic bags, for use in South Africa of a wall thickness of less than 80 micrometres is prohibited: provided that plastic bags of between 30 and 80 micrometres may be manufactured, traded and commercially distributed plastic bags for use in South Africa if they do not have any printing, painting or marks of any kind, not expressly required by law.

2.4.2 The parties agree that in order to implement the regulatory requirements regarding prescribed thickness, a measurement technique will be developed through a South African Bureau of Standards (“SABS”) standard which can be applied, both to domestically produced plastic bags and imported plastic bags.

2.4.3 The parties further agree that in the development of the SABS standard referred to in 2.4.2, the maximum tolerance that will be allowed on the thickness of 30 micron is 20% for a period of five years, after which an appropriate standard to achieve 30 micron will be developed.

2.4.4 The parties agree that within the period of five years business will strive to attain a tolerance on the thickness of 30 micron of 10% through recapitalisation, investment and/ or innovation.

2.5 Disclosure and transparency

2.5.1 The parties agree that there must be transparency by business regarding the costs of plastic bags. The mechanisms for ensuring such transparency will be addressed by the Task Team referred to in 2.13.

2.5.2 In order to give effect to this Agreement –

2.5.2.1 The full cost of plastic bags will be passed on to the consumer. The cost of plastic bags will not be paid by or recovered from consumers without their knowledge. The DEAT, in collaboration with other government departments, will investigate regulatory mechanisms to give effect to this approach.

2.5.2.2 The major retailers will introduce 3 standard size plastic bags (viz a 24 litre, a 12 litre and a smaller bag size to be determined by the retailers).

2.5.2.3 Notwithstanding the terms of this agreement, the polymer producers and converters commit to continue the current voluntary environmental levy to the environmental initiative of the Plastics Federation of South Africa.

2.5.2.4 As a result of the recovery of the full cost of plastic bags from the consumer, the major retailers will no longer subsidise the packaging costs and will reduce the prices for goods accordingly.

2.5.2.5 In order to avoid a disproportionate burden on consumers and to encourage the principle of re-use and recycling,

2.5.2.5.1 consumers, at their own risk, will be allowed to use any bag they wish to transport their goods from the point of sale and will thus be able to re-use, a number of times, the bags that they have acquired; and

2.5.2.5.2 mechanisms to provide for the purchase of used bags from consumers will be developed by the Section 21 company referred to in clause 2.9.

2.6 Printing on plastic bags

- 2.6.1 The parties agree that the optimal balance between the inks used for printing and the amount of printing allowed on a plastic will be determined through a SABS standard which can be applied, both to domestically produced plastic bags and imported plastic bags, to increase recycling potential from current levels.
- 2.6.2 The SABS standard will specify the relationship between the type of ink and the amount of printing allowed. The quantitative specification in this regard will be determined on the basis of the measurement technique used to define the characteristics of the ink and the amount of ink allowed.
- 2.6.3 The SABS standard will provide for printing up to 50% of the surface area of the plastic bag, when the type of ink used has no detrimental effect on the recycling potential of the plastic bag. When inks other than those specified above are used, printing will be allowed up to 25% of the surface area of the plastic bag.
- 2.6.4 The parties agree that the markings on plastic bags will include safety messages, the name of the converter, e-mark, polymer identification, product barcode and country of origin.

2.7 The need for a market for recycled materials

- 2.7.1 As part of its law reform process, the DEAT will develop standards in consultation with the parties to this agreement and other relevant stakeholders regarding the minimum percentage recycle content for garbage bags and bin liners.
- 2.7.2 The DEAT will encourage green procurement practices at all levels of government, including local government to further support the extension of the

recycled materials market. This must also take into account the need to retain and create jobs as well as the need to ensure that the poor do not bear the brunt of the cost.

2.8 Promotion of job creation

- 2.8.1 The plastic bag manufacturers and recyclers commit that the introduction of a 20% or less tolerance on the thickness of the plastic bags will not lead to job loss during the five year period.
- 2.8.2 Retail, as a result of this Agreement, is committed not to change its current labour practise with regard to till-packing services which is to retain till-packers in the next five years.
- 2.8.3 The Section 21 company will support the expansion of collector networks, the establishment of rural collection SMMEs and the creation of additional capacity in NGOs.
- 2.8.4 In seeking to achieve the objectives set out in 2.8.3 the Section 21 company will work co-operatively with the Department of Trade and Industry (“the DTI”), and in alignment with government policy in this area to create expansion of collector sector, and SMMEs and to create job opportunities and decent work.
- 2.8.5 The parties agree that a sector summit process will be used to deal with appropriate issues arising from the restructuring which may occur as a result of this agreement.
- 2.8.6 The parties estimate that between 1 900 and 3 800 jobs could be created through the proposals outlined in this agreement. The parties agree to develop more specific targets in this area as part of the Memorandum of Agreement between the Section 21 company and DEAT.

2.8.7 In addition to the jobs referred to in 2.8.6 the Section 21 company will create between 180 and 220 formal jobs, provided that the prerequisites referred to in Annexure C are met.

2.8.8 The Section 21 company will work co-operatively with the appropriate Sector Education and Training Authority or Authorities to address the improvement of skills and re-skilling of workers, where appropriate and the unemployed wishing to enter the sector.

2.9 Institutional arrangements

2.9.1 A Section 21 Company will be established in terms of the Companies Act, 1973 (Act 61 of 1973).

2.9.2 The objects of the company shall be to –

2.9.2.1 To promote efficiency in the use, re-use, collection, recycling and disposal of plastic bags;

2.9.2.2 To register all polymer suppliers, manufacturers of plastic bags, distributors and plastic bag recyclers in South Africa;

2.9.2.3 To collate information on other plastic bag recycling related information;

2.9.2.4 To receive a levy from all registered plastic bag manufacturers, and to administer the levy in pursuance of the objects of the company;

2.9.2.5 To follow appropriate international trends in the enhanced recycling of plastic bags and apply them in South Africa as appropriate;

2.9.2.6 To explore opportunities for entering into partnerships with civil society organisations to achieve the objects of the company;

2.9.2.7 To develop and implement company specific performance indicators to monitor the achievement of objectives;

2.9.2.8 To investigate and make recommendations to government in respect of the development of new markets for recycled material;

2.9.2.9 To support import control initiatives, where appropriate;

2.9.2.10 To ensure that collection points are established within easy walking distance of all major settlements, and to this end exploring the possibility of co-operation with retailers and local governments;

- 2.9.2.11 To stimulate participation in education campaigns and recycling by small-scale and micro entrepreneurs and by organisations of civil society;
- 2.9.2.12 To support government in the removal of plastic-bag litter from environmentally sensitive areas and hot spots;
- 2.9.2.13 To ensure best-practice in recycling through educational work and technical support;
- 2.9.2.14 To manage the finances of the Section 21 company in terms of the Public Finance Management Act, 1999 (Act 1 of 1999);
- 2.9.2.15 To investigate mechanisms to ensure participation of all entities in the plastic bag value chain;
- 2.9.2.16 To support Proudly South African; and
- 2.9.2.17 To pursue each and all of the objects in a manner that demonstrates the parties' commitment to sustainable development.

2.9.3 The mandate of the Section 21 Company may be extended to cover other waste generating sectors and/ or streams as may be agreed to between the parties.

2.9.4 The Board of the Section 21 Company will comprise of equal representation of the parties to the agreement. In addition, the Minister will ensure that consumer groupings are represented.

2.9.5 The Minister will call for nominations, appoint the Board and Chair of the Board.

2.9.6 The Board shall report to the Minister annually.

2.9.7 A Business Plan for the company shall be presented to the Minister for approval not later than six months after the establishment of the company and thereafter annually.

2.9.8 The DEAT, in collaboration with other relevant government departments, will introduce legislation for the registration of plastic bag manufacturers, which registration will operate as precondition for operation and for imposition of the levy as referred to in clause 2.10.

2.9.9 The major retailers in support of this initiative agree to register with the Section 21 company.

2.10 Levy

2.10.1 A mandatory levy will be imposed on the plastic bag manufacturers with the understanding that the amount of the levy will be shown separately on any invoice and recovered from their customers.

2.10.2 From time to time Section 21 company, will make recommendations to the Minister of Finance regarding the amount of the levy.

2.10.3 The levy will be used by the Section 21 company to achieve the agreed objectives.

2.10.4 The Plastic Federation, on behalf of business, will pay an advance on the levy, as seed funding for the establishment of the Section 21 company and undertaking of any other tasks that are necessary to give effect to this Agreement.

2.11 Promotion of the "Proudly South African" campaign

2.11.1 The Section 21 company will become a member of Proudly South African.

2.11.2 The Section 21 company will actively encourage all plastic bag manufacturers, polymer producers, recyclers and retailers to adopt the Proudly South African logo and to comply with the requirements of the label.

2.12 Prevention of illegal imports

2.12.1 The DEAT, in collaboration with the DTI, agrees to implement such legislative and other measures as are required so as to ensure that importers of plastic bags and plastic bags imported into the Republic of South Africa comply with the provisions of this memorandum of agreement and any regulations that may be promulgated including but not confined to the imposition of any

special duties as are necessary for the equal protection of domestic producers of plastic bags.

2.13 Establishment of Task Team

2.13.1 A Task Team comprising representatives of the parties will be established within 7 days of the coming into effect of this Agreement.

2.13.2 The Task Team will –

2.13.2.1 undertake the necessary actions to give effect to this agreement and will give particular consideration to the estimation that 180 - 220 permanent jobs should be created by the Section 21 company and over what period, explore methods for advancing the intentions of this clause, the optimal utilisation of deploying levies and other resources for the purposes of this clause;

2.13.2.2 develop draft articles of association for the Section 21 company and a draft memorandum of understanding between the Section 21 company and DEAT and to undertake any other necessary preliminary tasks required to establish the company;

2.13.2.3 develop a detailed proposal for legislative amendments to ensure equal treatment for domestically produced and imported bags in consultation with the DTI and SARS; and

2.13.2.4 any other matter that may arise in order to give effect to this Agreement.

2.13.3 The Task Team will establish sub-committees to undertake specific sections of the work as necessary.

3. Legislation

3.1 The DEAT, in collaboration with other government departments will draft and promulgate regulations or amend regulations as the case may be so as to give

legislative effect to the terms of this memorandum, as appropriate. Provided that DEAT shall prior to the promulgation of such regulations, consult with the parties and other relevant stakeholders to this agreement on the terms and content of such regulations through the Task Team referred to in 2.13. The elements that require regulation are summarised in Annexure A.

3.2 The DEAT agrees to put an amendment forward to change the regulations to specify that the thickness of plastic bags shall be 30 micrometres.

4. Setting of standards

4.1 DEAT, in consultation with the DTI, will request the SABS to develop a standard covering the requirements set out in clauses 2.4, 2.6 and any specification required to give effect clause 2.12 and summarized in the briefing note in Annexure B.

4.2 The SABS standard referred to in 4.1 will be made mandatory in terms of the regulations referred to in 3.1.

5. GENERAL

5.1 This Agreement constitutes the entire agreement between the parties.

5.2 The Agreement shall commence on the date of the signature by the last party to sign this Agreement, and shall continue until terminated for any reason whatsoever, provided that reasonable notice shall be given prior to such termination.

5.3 Where legislative amendments or reform is required to give effect to any provision of this Agreement and such legislative amendments must be approved by Parliament, the provision shall not be of force and effect until the amendment has been accepted by Parliament.

- 5.4 Should any of the pre-requisites be delayed for reasons beyond the parties' control, the agreed timeframe will be adjusted accordingly.
- 5.5 This Agreement only applies to plastic bags as defined and in no way implies that DEAT will restrict its regulatory activities in respect of plastic to the ambit of plastic bags.
- 5.6 The task team shall be required to submit a work programme to the Minister, including timelines, within three weeks of establishment. Implementation will occur in terms of the plan set out in Annexure C and the timelines will be aligned with the plan. Monthly progress reports shall be presented to the Minister in writing and the task team may be requested to give a presentation from time to time.
- 5.7 This Agreement shall be reviewed annually, from the date of commencement, by the parties with the objective of determining whether the Agreement has achieved its purpose, whether it should be amended or terminated.
- 5.8 The Minister shall report on the implementation of this Agreement annually to Parliament.

SIGNED AT SANDTON ON THIS THE 26th DAY OF SEPTEMBER 2002

**DEAT (herein
represented by the
Minister of
Environmental Affairs
and Tourism)**

Witness

**Zwelinzima Vavi, duly
authorised to sign on
behalf of COSATU**

Witness

**Mahlomola Skhosana,
duly authorised to sign
on behalf of NACTU**

Witness

**Laurraine Lotter, duly
authorised to sign on
behalf of the Chemical
and Allied Industries
Association**

Witness

**Wolfgang Raffalsky, duly
authorised to sign on
behalf of the Plastics
Federation of South
Africa**

Witness

**Ulrich Martin, duly
authorised to sign on
behalf of the Plastic
Recyclers Employers'**

Witness

Organisation

Witness

**Graeme Laithwaite of
Pick 'n Pay Retailers
(Pty) Ltd, Brian Moore of
Woolworths (Pty) Ltd,
Billy Leisegang of Clicks
Stores and Brian Weyers
of Shoprite Checkers
(Pty) Ltd who are jointly
authorised to sign on
behalf of the Retailers
Plastic Bag Working
Group**

ELEMENTS OF THE MEMORANDUM OF AGREEMENT THAT REQUIRE LEGISLATIVE INTERVENTION

A1. Amendment of regulations in GN 233393 published on 9 May 2002

Refinement of definitions to reflect intention and to align with import control registration

Thickness of plastic shopping bags

Printing allowed on plastic shopping bags

Inclusion of SABS standard to allow enforcement

A2. Legislation to give effect to equal treatment of domestically produced and imported plastic bags

Prohibition of imported plastic bags not complying with regulation and SABS standard

Special additional duty on plastic bags complying with regulation and SABS standard

A3. Legislation to implement levy and registration

Registration of plastic bag manufacturers

Imposition of levy on domestically produced plastic bags as defined

ELEMENTS TO BE COVERED BY SABS STANDARD

B1. Composition of technical sub-committee

The Technical Subcommittee established to develop the standard to give effect to this agreement must comprise representatives of all parties.

B2. Thickness

Method of measurement, including 20% tolerance on the thickness, for the next five years and beyond

B3. Printing

Type of inks allowed

Relationship between the type of ink and the amount of printing

Measurement of amount of printing allowed

IMPLEMENTATION PLAN

C1. Implementation of regulations.

Date: 8 May 2003

Prerequisites

Amendments to regulations referred to in A1.

Simultaneous promulgation of import control legislation referred to in A2

Inclusion of SABS standard referred to in Annexure B in legislation.

C2. Establishment of section 21 company

Date: 8 May 2003

Prerequisites

Promulgation of legislation referred to in A3.

Agreement on Articles of Association

Agreement on Memorandum of Understanding between DEAT and Section 21 company

Prescription of recyclate content in garbage bags and bin liners

Agreement on ring-fencing of mandatory levy